THE SHIFTING BOUNDARIES OF IMMUNITY: ANALYZING *SENTARA MEDICAL GROUP V. KLENA*; *ELLIS V. JOLLEY*; *AND NEWPORT NEWS SCHOOL BOARD V. Z.M.* UNDER VIRGINIA'S SOVEREIGN IMMUNITY DOCTRINE

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INTRODUCTION

For decades, Virginia's sovereign immunity doctrine has been described as "alive and well" in protecting the Commonwealth and its agencies,[1] but it is often criticized as an opaque shield from tort liability for government employees.[2] In a series of opinions, *Sentara Medical Group v. Klena*,[3] *Ellis v. Jolley*,[4] and *Newport News School Board v. Z.M.*,[5] the Supreme Court of Virginia reaffirmed that sovereign immunity remains alive and well for the Commonwealth, cities, towns, and counties. The court also ruled that because of the broad scope of enabling acts passed by the General Assembly, a facts and circumstances analysis similar to that enumerated in *James v. Jane*[6] is applicable to a new generation of derivative entities.[7] Collectively, the three opinions upheld that the Commonwealth retains absolute immunity while progressively limiting immunity protection for agencies, cities, towns, and, to a greater extent, government employees in what the *Sentara* court described as a "sliding scale" of immunity protection.[8] The court acknowledged that current government participation in business is pervasive, as endorsed by the General Assembly through its enabling acts.[9] In today's competitive market, states vie for economic development, and state legislatures grant carte blanche powers to

1. Messina v. Burden, 228 Va. 301, 307, 321 S.E.2d 657, 660 (1984); Ian J. McElhaney, *If a Tree Falls in a Roadway, Is Anyone Liable?: Proposing the Duty of Reasonable Care for Virginia's Road-Maintaining Entities*, 76 WASH. & LEE L. REV. 509, 529–30 (2019).

2. *See* James A. Willett, Comment, *Virginia's Law of Sovereign Immunity: An Overview*, 12 U. RICH. L. REV. 429, 430–31, 433 (1978); Katherine Mims Crocker, *Qualified Immunity, Sovereign Immunity, and Systemic Reform*, 71 DUKE L.J. 1701, 1701 (2022); Colleen F. Shepherd, *Why All the King's Horses and All the King's Men Couldn't Put Sovereign Immunity Back Together Again: An Analysis of the Test Created in* James v. Jane, 11 RICH. J.L. & PUB. INT., Jan. 1, 2008, at 2, 5, 37–38. *See also* William Baude, *Sovereign Immunity and the Constitutional Text*, 103 VA. L. REV. 1, 2, 4 (2017) (discussing constitutionality of sovereign immunity doctrine); Nicholas Simopoulos, *The Virginia Human Rights Act: Protecting All, or Only Some, Employees from Discrimination*, 30 J. VA. TRIAL LAW. ASS'N, Nov. 1, 2023, at 3–7 (discussing government employers' discrimination protection against their employees).

3. __ Va. __, __, 925 S.E.2d 873, 877–78 (2026).

4. 304 Va. 552, 557–558, 923 S.E.2d 304, 307 (2025).

5. 304 Va. 276, 280, 915 S.E.2d 56, 57 (2025).

6. 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980) (enumerating facts and circumstances test for determining when government employees may be granted protection under sovereign immunity doctrine).

7. *Sentara*, __Va. at __, 925 S.E.2d at 878–80.

8. *See id.* at __, 925 S.E.2d at 879; *Ellis*, 304 Va. at 558, 923 S.E.2d at 307; *Z.M.*, 304 Va. at 283, 915 S.E.2d at 59.

9. *See Sentara*, __ Va. at __, 925 S.E.2d at 875–76.

their agencies, authorities, and cities. As a result, these subsidiaries create a variety of entity types from public-private partnerships to competitive for-profit endeavors.[10] The current status of the sovereign immunity doctrine for these entities is still uncertain, but the *James* test should be the "appropriate starting point" for circuit courts in determining whether derivative entities should inherit their principals' sovereign immunity status.[11]

In *Sentara*, the supreme court acknowledged for the first time that because state agencies, authorities, and municipalities are granted immense enabling power, the derivative entities they create to pursue objectives and purposes beyond traditional governmental functions could be subject to tort liability. The *Sentara* court rejected the concept of a *halo effect* where a subsidiary of a public entity, in this case a statutory hospital authority, assumed immunity by proxy.[12] The *Sentara* court stated that immunity is not inherited through corporate structure, but that immunity protection is to be judged through a new variation of the *James* four-part test.[13]

While the court appeared to be narrowing sovereign immunity available to derivative entities of a principal, the opinions in *Ellis v. Jolley* and *Newport News School Board v. Z.M.* endorsed the doctrine that municipalities and school systems possess immunity. However, by again relying on the *James* test, *Ellis* and *Z.M.* limited the employees' immunity protection.[14] The *Ellis* decision clarified the distinction between the acts of municipal employees involving "discretion," which enjoy immunity, and "ordinary" acts (also referred to as "ministerial" acts), which do not.[15] The *Z.M.* decision reaffirmed that school systems have sovereign immunity, including while transporting their students to and from school, and that school systems can be subject to liability only through specific

10. *See id.* at __, 925 S.E.2d at 876 ("'[T]o transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations joint ventures or other entities, facilities that will assist or aid the Authority' in pursuing the objectives of its enabling legislation." (quoting 1987 Va. Acts ch. 396, § 7.1(7))).

11. *Id.* at __, 925 S.E.2d at 880.

12. *See id.* at __, 925 S.E.2d at 879.

13. *Compare id.* at __, 925 S.E.2d at 880 (adopting new variation of *James* test), *with* James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980) (creating original *James* test).

14. Ellis v. Jolley, 304 Va. 552, 559–62, 923 S.E.2d 304, 308–09 (2025); Newport News Sch. Bd. v. Z.M., 304 Va. 276, 282–83, 915 S.E.2d 56, 59 (2025).

15. *Ellis*, 304 Va. at 560, 923 S.E.2d at 308.

legislation limiting their immunity protection.[16] Nonetheless, *Z.M.* made clear that individual school board employees, a bus driver and a bus attendant, each of whom were accused of gross negligence, did not enjoy immunity.[17]

The sovereign immunity doctrine originated under the maxim "the king can do no wrong"[18] and has long been accepted as sound public policy.[19] Virginia has embraced the doctrine for decades.[20] From its adoption, it was believed that cities, towns, counties, and their employees also shared in this immunity. Over time, however, exceptions emerged. Courts quickly affirmed that the Commonwealth and cities could be sued in a variety of capacities, including municipal property and contract disputes.[21] Immunity protections could also be waived by statute.[22] Courts began to distinguish between proprietary services of cities and towns, which did not warrant protection, and governmental functions, which were immune.[23] Virginia courts drew a clear distinction between the sovereign entity itself and its individual employees.[24] While the Commonwealth retained near-absolute immunity for core

16. *Z.M.*, 304 Va. at 282–83, 915 S.E.2d at 59.

17. *Id.*; Brief of Appellee at 4–5, Newport News Sch. Bd. v. Z.M., 304 Va. 276, 915 S.E.2d 56 (2025) (No. 240833) (identifying the school board employees as a "bus assistant" and a "bus driver").

18. The phrase was notably popular in *Commentaries on the Laws of England* (1765) by Sir William Blackstone. *See* 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 68, 246 (Richard Burn & John Williams eds., London, A. Strahan, T. Cadell & D. Prince, 10th ed. 1787) (1765).

19. Gray v. Va. Sec'y of Transp., 276 Va. 93, 101, 662 S.E.2d 66, 70 (2008); Messina v. Burden, 228 Va. 301, 307, 321 S.E.2d 657, 660 (1984).

20. *See* Higginbotham's Ex'x v. Commonwealth, 66 Va. (25 Gratt.) 627, 637 (1874); Bd. of Pub. Works v. Gannt, 76 Va. 455, 461 (1882); Fry v. Cnty. of Albemarle, 86 Va. 195, 196–97, 200, 9 S.E. 1004, 1005–06 (1890).

21. *See* City of Petersburg v. Applegarth's Adm'r, 69 Va. (28 Gratt.) 321, 347 (1877) (holding city liable for negligence in maintaining city-owned wharf); City of Richmond v. Smith, 82 U.S. 429, 438–39 (1872) (holding city liable when violated pledge to pay).

22. Eriksen v. Anderson, 195 Va. 655, 658, 79 S.E.2d 597, 599 (1954); *see* Commonwealth v. Chilton Malting Co., 154 Va. 28, 36, 152 S.E. 336, 338 (1930). The General Assembly created express waivers to the Commonwealth's sovereign immunity in specified circumstances with the enactment of the Virginia Tort Claims Act in 1981. 1981 Va. Acts ch. 449 (codified as amended at VA. CODE ANN. §§ 8.01-195.1 to 195.9 (2024)).

23. *See, e.g.*, Ashbury v. City of Norfolk, 152 Va. 278, 283, 147 S.E. 223, 224 (1929); Hoggard v. City of Richmond, 172 Va. 145, 155–57, 200 S.E. 610, 614–15 (1939); Fenon v. City of Norfolk, 203 Va. 551, 555, 125 S.E.2d 808, 811 (1962); City of Richmond v. Long's Adm'rs, 58 Va. (17 Gratt.) 375, 378–79 (1867).

24. *See, e.g.*, Sayers v. Bullar, 180 Va. 222, 230, 22 S.E.2d 9, 13 (1942); Lawhorne v. Harlan, 214 Va. 405, 408, 200 S.E.2d 569, 572 (1973); Short v. Griffitts, 220 Va. 53, 55, 255 S.E.2d 479, 481 (1979).

governmental functions,[25] employees accused of intentional torts and gross negligence had no protection.[26] Further, employees performing what were labeled "ordinary" or "ministerial" acts generally received limited protection for their simple negligence.[27] This evolution produced the modern "sliding scale" of sovereign immunity in Virginia.[28]

I. *JAMES V. JANE*

James v. Jane arose from a suit by two plaintiffs alleging medical malpractice by three staff physicians under whose care they had been at the University of Virginia Hospital (the "Hospital").[29] All three defendants held dual roles as professors at the University of Virginia Medical School (the "Medical School") and staff physicians at the Hospital.[30] The question before the Supreme Court of Virginia was whether the three physicians were acting as independent contractors, as the plaintiffs claimed, or, as the physicians countered, as "employees and agents of the Commonwealth."[31] The defendants contended that attending to patients was "performing a discretionary act within the scope of their employment," and that if the University of Virginia (the "University") and the Hospital were immune from liability, that immunity should extend to them as well.[32]

The *James* court confronted the issue, stating, "We make a distinction between the sovereign Commonwealth of Virginia and its employees, and local governmental agencies and their employees. And we have specifically held that the latter do not enjoy governmental immunity and are answerable for their own acts of simple

25. Taylor v. City of Newport News, 214 Va. 9, 10, 197 S.E.2d 209, 210 (1973); City of Chesapeake v. Cunningham, 268 Va. 624, 633–34, 639, 604 S.E.2d 420, 426, 429–30 (2004).

26. Tomlin v. McKenzie, 251 Va. 478, 481, 468 S.E.2d 882, 884 (1996); *see* Messina v. Burden, 228 Va. 301, 311, 321 S.E.2d 657, 662 (1984) (discussing the immunity afforded to employees when within the scope of employment).

27. Heider v. Clemons, 241 Va. 143, 145, 400 S.E.2d 190, 191 (1991); *see* Wynn v. Gandy, 170 Va. 590, 595, 197 S.E.2d 527, 529 (1938).

28. *See* Sentara Med. Grp. v. Klena, __ Va. __, __, 925 S.E.2d 873, 879 (2026).

29. James v. Jane, 221 Va. 43, 45–46, 282 S.E.2d 864, 864 (1980).

30. *Id.* at 46, 282 S.E.2d at 864–65.

31. *Id.* at 49–50, 282 S.E.2d at 867.

32. *Id.*

negligence."[33] The court presented a top-down, fact-specific analysis. It described the governance and economic structure of the University and its direct ownership and control of the Hospital.[34] The court focused on the extent of supervision once a doctor-patient relationship is created, noting that "the relationship becomes the personal and confidential one of doctor and patient, not the Commonwealth of Virginia and patient."[35] The court concluded, "The exercise by the attending physician of his professional skill and judgment in treating his patient, and the means and methods used, from the very nature of things, are not subject to the control and direction of others."[36]

Having developed the proposition that employees of an immune entity do not always enjoy the same protection even when acting within the scope of their employment, the court enunciated the *James* four-part test to evaluate when immunity *does* apply:

> Under such circumstances we examine the function this employee was performing and the extent of the state's interest and involvement in that function. Whether the act performed involves the use of judgment and discretion is a consideration, but it is not always determinative. Virtually every act performed by a person involves the exercise of some discretion. Of equal importance is the degree of control and direction exercised by the state over the employee whose negligence is involved.[37]

In applying its test, the court disposed of the first three factors with clarity: functionality, extent of the Hospital's interest, and control and authority exercised over each defendant. The court found first that these physicians were like all physicians in the state and all practiced under the same professional and universal standard.[38] In effect, there was nothing unique about how these physicians were practicing medicine at the Hospital compared to others throughout the Commonwealth.[39] Second, the court found the Commonwealth's interest in the case to be "slight," speculating that each defendant physician had purchased medical malpractice

33. *Id.* at 51, 282 S.E.2d at 868 (citing Short v. Griffitts, 220 Va. 53, 55, 255 S.E.2d 479, 481 (1979); Crabbe v. Cnty. Sch. Bd., 209 Va. 356, 359, 164 S.E.2d 630, 641 (1968); Kellam v. Sch. Bd., 202 Va. 252, 258, 117 S.E.2d 96, 100 (1960)).

34. *Id.* at 46–48, 282 S.E.2d at 865–66.

35. *Id.* at 50, 282 S.E.2d at 867.

36. *Id.* at 50–51, 282 S.E.2d at 867–68.

37. *Id.* at 53, 282 S.E.2d at 869.

38. *See id.* at 54, 282 S.E.2d at 870 (discussing Sayers v. Bullar, 180 Va. 222, 22 S.E.2d 9 (1942) and Lawhorne v. Harlan, 214 Va. 405, 200 S.E.2d 569 (1973)).

39. *See id.*

insurance, and adding, "We cannot conceive of any physician, regardless of his status, practicing medicine in this era without the protection of liability insurance, which he purchases for himself or which is provided for him by his employer."[40] Third, relying on its previous discussion of the doctor-patient relationship superseding the Hospital-employee relationship, the court viewed the overall control exercised by the Hospital as "equally slight."[41]

The fourth factor, whether the professional acts encompassed the use of "judgment and discretion," proved the most difficult for the *James* court to reconcile.[42] The court seemed to lessen the significance of this factor, saying, "[J]udgment and discretion is a consideration, but it is not always determinative," and "Virtually every act performed by a person involves the exercise of some discretion."[43] The court largely downplayed any analytical differentiation and settled on the position that if these physicians committed malpractice, it was "a departure from a condition of their employment" and therefore they were left to defend themselves against negligence claims.[44] Quoting *Eriksen v. Anderson*,[45] the court determined:

> There is no statute which authorizes the officers or agents of the State to commit wrongful acts. On the contrary, they are under the legal obligation and duty to confine their acts to those which they are authorized by law to perform. If they exceed their authority, or violate their duty, they act at their own risk, . . . and the State is not responsible or liable therefor.[46]

This failure to detail the fourth factor of judgment and discretion has lent itself to various interpretations. Courts have presented different rationales for distinguishing employment actions that receive immunity from acts deemed "ordinary" or "ministerial," which do not. As is evident in the cases that follow, courts have defined the fourth factor differently and have given it varying significance. In *Ellis*, the Supreme Court of Virginia affirmed the Court of Appeals of Virginia's holding in *Jolley v. Ellis*, where the

40. *Id.*

41. *Id.*

42. *See id.* at 53, 282 S.E.2d at 869 ("Admittedly, no single all-inclusive rule can be enunciated or applied in determining entitlement to sovereign immunity.").

43. *See id.*

44. *See id.* at 55, 282 S.E.2d at 870.

45. 195 Va. 655, 79 S.E.2d 597 (1954).

46. *James*, 221 Va. at 55, 282 S.E.2d at 870 (quoting *Eriksen*, 195 Va. at 660–61, 79 S.E.2d at 600).

court of appeals applied the judgment and discretion factor on an almost moment-to-moment basis.[47] Likewise, in *Z.M.*, the Supreme Court of Virginia tried to explain when the act of driving a school bus requires judgment and discretion versus when it does not, making a distinction based on whether the bus had passengers.[48] *Ellis*, *Z.M.*, and *Sentara* did not treat *James* as authoritative on the application of the "judgment and discretion" factor. Had the *Sentara* court sought to apply the *James* test, its application of this factor likely would not have drawn on prior opinions.

II. *SENTARA MEDICAL GROUP V. KLENA*

In *Sentara Medical Group v. Klena*, the plaintiff Sentara Medical Group sought to enforce a non-compete covenant against one of its former physicians, Dr. James Klena, who resigned from Sentara to take a similar position with Chesapeake Regional Medical Group ("CRMG").[49] In its suit, Sentara alleged that CRMG tortiously interfered with Sentara's employment agreement by knowingly hiring Dr. Klena, who was restricted by contract from practicing as a cardiovascular surgeon within twenty-five miles of Sentara's hospitals.[50] CRMG filed a plea in bar asserting sovereign immunity.[51] Without hearing evidence, and on oral argument alone, the circuit court issued a letter opinion "dismissing the action against CRMG with prejudice."[52]

47. Ellis v. Jolley, 304 Va. 552, 556, 923 S.E.2d 304, 306 (2025), *aff'g in part, rev'g in part* Jolley v. Ellis, 82 Va. App. 220, 234–35, 906 S.E.2d 151, 157–58 (2024) (discussing employee's moment-to-moment judgment and discretion).

48. *See* Newport News Sch. Bd. v. Z.M., 304 Va. 276, 282–83, 915 S.E.2d 56, 59 (2025) ("The school bus itself was not involved in any accident. The plaintiff's injuries do not relate in any way to the way the bus was being operated or to the process of loading or unloading of passengers.").

49. Sentara Med. Grp. v. Klena, __ Va. __, __, 925 S.E.2d 873, 874, 876–77 (2026).

50. *Id.* at __, 925 S.E.2d at 876–77.

51. *Id.* at __, 925 S.E.2d at 877.

52. *Id.*

The Supreme Court of Virginia granted Sentara's interlocutory appeal.[53] [54] [55] As part of the background of the opinion, the court chose to include the legislative history of the Chesapeake Hospital Authority (the "Authority"), the sole owner of CRMG, highlighting the expansive sanctions the General Assembly had granted it.[56] Specifically, the court emphasized the Authority's matchless jurisdiction:

> [t]o assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities, and to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities organized for any purpose. . . .[57]

The court structured its opinion in three stages: (1) assessing an entity's standing regarding sovereign immunity; (2) proposing a method to test it; and (3) listing elements or circumstances to consider.

The court began by explaining that derivative agencies are subject to the "sliding scale" of sovereign immunity rather than the

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53. *Id.* ("Sentara timely petitioned to the Court pursuant to Code [of Virginia] §§ 8.01-626 and 8.01-670.2 seeking review of the circuit court's immunity ruling.").

54. VA. CODE ANN. § 8.01-626 (Cum. Supp. 2026), in pertinent part, provides:

> When a circuit court (i) grants a preliminary injunction, (ii) refuses such an injunction, (iii) having granted such an injunction, dissolves or refuses to enlarge it, or (iv) enters an order reviewable pursuant to § 8.01-670.2 or 8.01-670.3, an aggrieved party may file a petition for review with the clerk of the Supreme Court within 15 days of the circuit court's order.
>
> The clerk shall assign the petition to a three-justice panel of the Supreme Court . . . . The Supreme Court may take such action thereon as it considers appropriate under the circumstances of the case.
>
> Nothing in this section shall be construed to prevent the Supreme Court from resolving a petition for review by an order joined by more than three justices.

Id. § 8.01-670.2 (2024), in pertinent part, provides:

> When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted, would immunize the movant from compulsory participation in the proceeding, the order is eligible for immediate appellate review.

55. One reason for the numerous sovereign immunity opinions is that the Supreme Court of Virginia can hear interlocutory appeals on that single issue. This saves litigants' money but has produced more appeals.

56. *Sentara*, __ Va. at __, 925 S.E.2d at 875–76.

57. *Id.* at __, 925 S.E.2d at 875 (alteration in original).

absolute blanket of protection afforded to the Commonwealth, asserting, "In effect, the further away a person or entity is from the sovereign, the less likely it is that the person or entity will be entitled to immunity, and the entitlement to immunity, if any, for agents and employees necessarily will depend on the specific facts and circumstances."[58] Second, the court articulated what procedures should be employed to determine where the entity falls on the immunity scale. The court endorsed the four-part *James* test as a starting point:

> Although we reiterate that "no single all-inclusive rule can be enunciated or applied in determining [the] entitlement to sovereign immunity" of individual or corporate agents of immune entities, we believe the use of the *James* framework by then-Judge Lemons is an appropriate starting point for determining whether a corporate agent shares in the immunity of its principal. Although the test was formulated to address the status of individuals, it provides at least a framework for making the determination regarding corporate agents as well.[59]

For the third stage, the court identified four elements or circumstances to be tested: (1) "the nature and structure of the corporate agent" (the "subsidiary"); (2) "its relationship with the immune entity" (the "principal"); (3) "the degree of control the immune entity or other governmental actor [principal] exerts over the corporate agent"; and (4) "whether the corporate agent was necessary or merely convenient to the performance of a governmental function if the immune entity is a municipal corporation all will be relevant, albeit non-dispositive, considerations."[60] The court also created a fifth element, saying that the type of claim asserted would affect the analysis "because a corporate agent that 'acts beyond the scope of' its agency and 'exceeds [its] authority and discretion' is not entitled to share in the immunity of its principal."[61] This portion of the opinion established that a facts and circumstances approach is necessary and logically led to adoption of the *James* test.[62]

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58. *Id.* at __, 925 S.E.2d at 879.

59. *Id.* at __, 925 S.E.2d at 880 (alteration in original) (citation omitted) (quoting James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980)).

60. *See id.*

61. *Id.* (alteration in original) (quoting James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980)).

62. The court noted the Appellant elected not to put on evidence to judge the fact and circumstances as required in the *James* test but instead sought disposition by its plea in bar. *Id.* at __, 925 S.E.2d at 874 n.1.

The *Sentara* analysis of derivative corporate entity standing began by affirming that Virginia's sovereign immunity doctrine was indeed alive and well:

> In Virginia the doctrine of sovereign immunity represents "a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities."[63] The doctrine generally has been accepted as "an established principle of sovereignty" that precludes the Commonwealth from being "sued in its own courts . . . without its consent and permission."[64]

The court proceeded to outline the "sliding scale" of immunity: "Although not the absolute blanket of protection afforded to the Commonwealth, its agencies, and counties, sovereign immunity, in certain circumstances, provides protection to other entities. Municipal corporations enjoy the protections of sovereign immunity 'from tort liability arising from [their performance of] governmental functions, but not proprietary functions.'"[65] [66] The court cited three cases involving a city, a county, and a municipally created authority, all of which were sued for negligence. In two of those cases, *Massenburg v. City of Petersburg*[67] and *Carter v. Chesterfield County Health Commission*,[68] the Supreme Court of Virginia held that the negligent acts occurred when the city or county employees were performing governmental functions, and therefore, in both cases, the entities themselves were immune from liability.[69] Alternatively, in *Virginia Electric and Power Co. v. Hampton Redevelopment & Housing Authority*, the housing authority was subject to tort claims for negligence in operating and maintaining a government-sponsored housing project that leased apartments.[70] In

63. *Id.* at __, 925 S.E.2d at 877 (quoting City of Chesapeake v. Cunningham, 268 Va. 624, 633, 604 S.E.2d 420, 426 (2004) (quoting City of Va. Beach v. Carmichael Dev. Co., 259 Va. 493, 499, 527 S.E.2d 778 (2000))).

64. *Id.* at 878 (alteration in original) (quoting Gray v. Va. Sec'y of Transp., 276 Va. 93, 101, 662 S.E.2d 66, 70 (2008) (quoting Bd. of Pub. Works v. Gannt, 76 Va. 455, 461 (1882))).

65. *Id.* (alteration in original) (quoting Massenburg v. City of Petersburg, 298 Va. 212, 218, 836 S E.2d 391, 395 (2019)).

66. Interestingly, the court twice mentioned that counties are treated differently from cities and that counties, as political subdivisions of the Commonwealth, enjoy the same tort immunity as does the Commonwealth. *Id.*

67. 298 Va. 212, 215, 836 S.E.2d 391, 394 (2019) (negligently maintaining fire hydrant).

68. 259 Va. 588, 590, 527 S.E.2d 783, 784 (2000) (negligently operating nursing home).

69. *See Massenburg*, 298 Va. at 221, 836 S.E.2d at 397 (citing Gambrell v. City of Norfolk, 267 Va. 353, 359, 593 S.E.2d 246, 250 (2004)) (city); *Carter*, 259 Va. at 593–94, 527 S.E.2d at 786–87 (citing Edwards v. City of Portsmouth, 237 Va. 167, 172, 375 S.E.2d 747, 750 (1989)) (county health commission).

70. 217 Va. 30, 31–32, 225 S.E.2d 364, 366 (1976).

Virginia Electric, the Supreme Court of Virginia noted that the City of Hampton Circuit Court found the activities regarding the housing authority as "proprietary" based on the evidence presented concerning landlord-tenant rental suppositions, terms, and conditions.[71] However, relying on the Virginia Housing Authorities Act, which referenced housing activities as a "governmental function," the circuit court asserted the statute converted the proprietary act into a governmental function.[72] The supreme court reversed, holding that the circuit judge had misinterpreted the statute, and that the reference to governmental functions was intended to declare that housing authorities in general serve a governmental function.[73]

Further down the "sliding scale," the *Sentara* court noted that sovereign immunity for individuals and employees was "qualified."[74] Only certain acts are protected, and only after they are assessed under the *James* test.[75] The court contended:

> [W]e did not endorse the idea that individual state employees are never entitled to the protections of sovereign immunity. Rather, we held that the entitlement to immunity will depend on the specific facts and circumstances because, unlike the Commonwealth which enjoys "absolute" immunity, an employee is, at most, entitled to "qualified immunity."[76]

The court further concluded: "Taken together, these cases establish a sliding scale of sovereign immunity from the 'absolute' immunity of the Commonwealth and its agencies to the 'qualified' immunity of other entities, agents, and employees."[77]

The Supreme Court of Virginia appears to have ruled out applying the sliding scale when an action serves both governmental and proprietary purposes. In *City of Hopewell v. Shree Arihant Motel, Inc.*, decided after *Sentara*, the plaintiff, Shree Arihant, alleged that the City of Hopewell used the Virginia Residential Code for blighted property to demolish the plaintiff's shopping center as a

71. *Id.* at 36, 225 S.E.2d at 369.

72. *Id.* at 34–35, 225 S.E.2d at 368 (referring to the Virginia Housing Authorities Law (VA. CODE ANN. §§ 36-1 to -55.1 (2024))).

73. *See id.* at 35, 225 S.E.2d at 368.

74. Sentara Med. Grp. v. Klena, __ Va. __, __, 925 S.E.2d 873, 878 (2026).

75. *See id.*

76. *Id.* (citing James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864 (1980)).

77. *Id.* at __, 925 S.E.2d at 879.

subterfuge to facilitate the redevelopment of the property.[78] The court held that the plaintiff's complaint established that the demolition of the shopping center had a dual purpose which included the elimination of the City's blighted real property, a governmental function, and it concluded, "Therefore, the claims at issue in this case arise—at least in part—from the performance of a governmental function. When governmental functions coincide with other functions, the 'governmental function is the overriding factor and the doctrine of sovereign immunity will shield the locality from liability.'"[79] [80]

In defining the "sliding scale" standard to be applied, the supreme court both endorsed the *James* test and restated *James'* four factors.[81] It then demonstrated how the circuit judge in *Stevens v. Hospital Authority of the City of Petersburg*[82] implemented the *James* test.[83] The plaintiff in *Stevens* had sued the Hospital Authority of Petersburg ("HAP") and twenty-five other defendants, alleging unlawful and tortious restraint of a patient at the Petersburg Hospital, which was owned and operated by HAP.[84] The circuit judge granted HAP immunity based on the established precedent that sovereign immunity protects the Commonwealth and statutorily created authorities from "the threat or use of vexatious litigation."[85] As to the remaining defendants, who were either Petersburg Hospital employees or vendors and their employees, the

78. City of Hopewell v. Shree Arihant Motel, Inc., __ Va. __, __, 932 S.E.2d 513, 515–16 (2026). "Blight abatement is a governmental function." *Id.* at __, 932 S.E.2d at 518. The Court assumed redevelopment to be a proprietary act, stating in a footnote: "In this case, it is unnecessary to determine whether economic development, in itself, may constitute a governmental function." *Id.* at __, 932 S.E.2d at 519 n.3.

79. *Id.* at __, 932 S.E.2d at 519 (quoting City of Chesapeake v. Cunningham, 268 Va. 624, 639, 604 S.E.2d 420, 429–30 (2004) (quoting City of Va. Beach v. Carmichael Dev. Co., 259 Va. 493, 499, 527 S.E.2d 778, 782 (2000))).

80. The Supreme Court of Virginia reversed the Hopewell Circuit Court and granted the City's plea in bar for the tort claims but remanded the matter on the plaintiff's takings claim. *Id.* Additionally, the supreme court dismissed the plaintiff's claim that the City failed to comply with statutory code and municipal ordinances, reasoning that: "If a claim arises from the performance of a governmental function, a municipality is generally entitled to sovereign immunity from that claim—even when the municipality exercises its authority in a negligent or improper manner." *Id.* at __, 932 S.E.2d at 518 (internal quotations omitted).

81. *Sentara*, __ Va. at __, 925 S.E.2d at 878–79.

82. 45 Va. Cir. 162 (1998) (City of Richmond).

83. *Sentara*, __ Va. at __, 925 S.E.2d at 880 (relying on *Stevens*).

84. *Stevens*, 45 Va. Cir. at 163–66.

85. *Id.* at 162–63. In general, the legal standard at issue was whether the twenty-five defendants would be subject to a simple negligence standard if the court found that they were performing an ordinary or ministerial act, or gross negligence if they were performing a governmental function.

circuit judge applied the *James* test. After three days of evidence on the facts and circumstances, the judge sorted the twenty-five defendants into three groups with similar fact patterns. Within each group, the facts and circumstances lent themselves to the application of the four-part *James* test.[86] In ruling on the immunity of each group, the circuit court held that each group was performing a governmental function under the control of HAP and was therefore protected by sovereign immunity.[87]

After endorsing the implementation of the *James* test, the *Sentara* court stopped and remanded the matter for "further proceedings consistent with this opinion," stating that without facts and circumstances in evidence, it could not assess whether CRMG was performing governmental functions or proprietary ones.[88] By championing the evidentiary process used in *Stevens*, the court did illustrate how circuit courts should approach vetting sovereign immunity cases in the future. Nevertheless, the supreme court did not explain how the *James* test should be retrofitted to evaluate entity immunity. How can a capitalist endeavor be permitted immunity when the doctrine only applies to governments? As the court addressed in *Ellis*, individuals can move from performing governmental functions to ordinary ones in a matter of seconds or a distance of a few feet. Can derivative entities of an immune principal claim immunity in some circumstances, but at other times be held accountable for tort claims? Beyond listing the four elements—structure, relationship, control and necessity—to be considered for judging derivative entities, the court fell short of defining the relative weight the elements should carry.

III. *ELLIS V. JOLLEY*

Ellis v. Jolley came to the Supreme Court of Virginia on appeal from the Court of Appeals of Virginia's decision in *Jolley v. Ellis*.[89] [90] The court of appeals had held that neither the City of

86. *Id.* at 162–67; *see Sentara,* __ Va. at __, 925 S.E.2d at 880 (discussing application of *James* in *Stevens*).

87. *Stevens*, 45 Va. Cir. at 165–67; *see Sentara*, __ Va. at. __, 925 S.E.2d at 880 (same).

88. *See Sentara*, __ Va. at __, 925 S.E.2d at 880–81.

89. Ellis v. Jolley, 304 Va. 552, 556, 923 S.E.2d 304, 306 (2025).

90. From 2019 through September 30, 2025, the Supreme Court of Virginia granted 138 appeals from the Court of Appeals and issued 65 opinions affirming and 65 opinions reversing in whole or in part. *See* VA. CIR., REPORT TO THE SENATE COMMITTEE FOR COURTS OF

Chesapeake nor Jason Ellis ("Mr. Ellis"), the driver of a garbage truck involved in a collision with a car, was entitled to sovereign immunity protection.[91] Mr. Ellis was operating a specially equipped, city-owned vehicle when he ran a stop sign, causing an accident.[92] The plaintiff sued Mr. Ellis for negligence.[93]

The supreme court quickly dismissed the City of Chesapeake, finding that garbage collection is a governmental function and not a "proprietary function[]" because garbage collection "promote[s] public health and comfort."[94] In reversing the court of appeals' decision, the supreme court held:

> In stating that the City does not benefit from sovereign immunity, the Court of Appeals appears to conflate the sovereign immunity of the government employee and that of the City. The *City's* immunity does not hinge on whether its *employee* derivatively benefits from sovereign immunity. The City is immune because trash collection is a governmental function.[95]

The supreme court devoted more attention to whether the garbage truck driver, acting within the scope of his employment, should also be granted immunity. In upholding the court of appeals' determination that Mr. Ellis did not share in immunity, the supreme court endorsed the application of the *James* test, citing *Colby v. Boyden* and *Messina v. Burden*.[96] The supreme court stated that the "first three factors are not in contention here," but the fourth factor under consideration, the degree of judgment and discretion used by the driver, was "decisive."[97] Although the *Ellis* court claimed to endorse *James*, it seemed to bypass the second factor of the *James* test, the extent of the state's interest in the function, and the third factor, the degree of control and direction exercised over employees. Further, the *Ellis* court did not attempt to claim that Mr. Ellis was outside the scope of his employment, as

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JUSTICE AND THE HOUSE COMMITTEE FOR COURTS OF JUSTICE, THE ANNUAL REPORT OF THE COURT OF APPEALS OF VIRGINIA 36 (2025).

91. Jolley v. Ellis, 82 Va. App. 220, 235, 906 S.E.2d 151, 158 (2024).

92. *Id.* at 226, 906 S.E.2d at 153.

93. *Id.*

94. *Ellis*, 304 Va. at 558–59, 923 S.E.2d at 307 (alteration in original) (first quoting Patterson v. City of Danville, 301 Va. 181, 189, 875 S.E.2d 65, 69 (2022); and then quoting Ashbury v. City of Norfolk, 152 Va. 278, 283, 147 S.E.2d 223, 224 (1929)).

95. *Id.*

96. *Id.* at 559, 562, 923 S.E.2d at 308–09 (citing Colby v. Boyden, 241 Va. 125, 129, 400 S.E.2d 184, 186–87 (1991) (citing Messina v. Burden, 228 Va. 301, 313, 321 S.E.2d 657, 663 (1984))).

97. *Id.* at 559, 923 S.E.2d at 308.

the *James* court did in concluding that the physician-patient relationship fell outside the scope of employment with the University hospital.[98] The supreme court placed no weight or value on these first three *James* elements, which is inconsistent with the *James* four-factor approach.

The court settled on a slightly different application of the *James* four-factor test, instead opting for the two-part process enumerated in *McBride v. Bennett*,[99] stating, "'In situations involving the exercise of judgment and discretion by government employees while driving, we look to whether the means of effectuating the applicable government function involves 'ordinary driving in routine traffic' versus driving that requires a 'degree of judgment and discretion beyond ordinary driving situations in routine traffic.'"[100] In *McBride*, the supreme court defined the two-part process: only when the employee is effectuating an applicable governmental function will the court then consider whether the "degree of judgment and discretion" required creates a "special risks" circumstance warranting immunity.[101] The *Ellis* court provided examples of when municipal employees were entitled to immunity, including a police officer driving a patrol car in hot pursuit and a firefighter driving a fire truck to a burning building.[102] In contrast, the court cited two other cases in which the driver was found to be engaged in ordinary driving as a ministerial act: a firefighter responding to a nonemergency "public service call"[103] and a sheriff returning after completing a service of process.[104] Neither was entitled to immunity.[105]

98. *See* James v. Jane, 221 Va. 43, 51, 282 S.E.2d 864, 868 (1980) (claiming the physicians failed to exercise reasonable care in the treating of patients).

99. 288 Va. 450, 455, 764 S.E.2d 44, 47 (2014).

100. *Ellis*, 304 Va. at 560, 923 S.E.2d at 308 (quoting *McBride*, 288 Va. at 455, 764 S.E.2d at 47 (quoting Friday-Spivey v. Collier, 268 Va. 384, 390–391, 601 S.E.2d 591, 594–95 (2004)).

101. *McBride*, 288 Va. at 455, 764 S.E.2d at 47; *see also Ellis*, 304 Va. at 560, 923 S.E.2d at 308 (discussing *McBride*). The court also recognized that operating a motor vehicle under these circumstances required additional specialized training and skills that were not essential to routine daily driving.

102. *See Ellis*, 304 Va. at 560, 923 S.E.2d at 308 (citing *McBride*, 288 Va. at 456, 764 S.E.2d at 47).

103. *Id.* at 560, 923 S.E.2d at 308 (citing Friday-Spivey v. Collier, 268 Va. 384, 390–91, 601 S.E.2d 591, 594 (2004)).

104. *Id.* (citing Heider v. Clemons, 241 Va. 143, 144–45, 400 S.E.2d 190, 190–91 (1991)).

105. *Id.* (first citing Heider v. Clemons, 241 Va. 143, 144–45, 400 S.E.2d 190, 190–91 (1991); and then citing Friday-Spivey v. Collier, 268 Va. 384, 390–91, 601 S.E.2d 591, 594 (2004)).

Utilizing these cases, the *Ellis* court affirmed that first responders in pursuit or approaching dangerous conditions are engaged "in situations that involve *special risks* arising from the governmental activities they are tasked with performing . . . ."[106] The *Ellis* court found that garbage truck drivers could be protected and applied the two-part special risks process at the time the driver is "[s]lowing down to pick up a trash can, maneuvering around obstacles to reach the can or using the joystick to pick up a trash can, [as those] are a few examples of conduct that would involve special risks or the use of judgment or discretion."[107] The *Ellis* court appeared not to have adopted the court of appeals' definition of "special risks," which applied a higher skill threshold. The *Jolley* court differentiated the decision making skill set required of first responders compared to truck drivers, stating, "Ellis was not engaged in 'split-second decisions balancing grave personal risks, public safety concerns, and the need to achieve the governmental objective.'"[108] *Jolley* concluded, "Unlike a first responder driving in an emergency, where the driving is integral to the function of emergency response itself, the manner of driving the garbage truck was not integrated with the function of collecting trash."[109]

Exactly how the *McBride* "special risks" two-part process applies is still an open question. If Mr. Ellis had been approaching the next garbage can for collection when the accident occurred, would he have had immunity?[110] *Ellis* did not address the two-part process, but instead relied on Mr. Ellis's own testimony, as did the court of appeals, to reach its conclusion: "Here, however, Ellis testified to driving 'normally' at the time of the accident when he proceeded through a stop sign without stopping, causing this accident."[111]

Also unaddressed in *Ellis*, though mentioned in the opinion's "Background," are the unique features of the garbage truck itself,

106. *Id.* at 561, 923 S.E.2d at 309 (emphasis added).

107. *Id.*

108. Jolley v. Ellis, 82 Va. App. 220, 235, 906 S.E.2d 151, 158 (2024) (quoting Colby v. Boyden, 241 Va. 125, 129-30, 400 S.E.2d 184, 187 (1991)).

109. *Id.*

110. In *Jolley*, the court included in its decision the dicta from *Stanfield v. Peregoy* which held that a snow-plow/salt truck was protected by sovereign immunity while spreading the salt, but if the driver had been driving en route to the area or returning to headquarters, "he would have been engaged in the simple operation of the truck in routine traffic, a ministerial act." *See id.* at 231, 906 S.E.2d at 156 (internal quotations omitted) (quoting Stanfield v. Peregoy, 245 Va. 339, 344, 429 S.E.2d 11, 13 (1993)).

111. *Ellis*, 304 Va. at 561, 923 S.E.2d at 309; *see Jolley*, 82 Va. App. at 234–36, 906 S.E.2d at 157–59.

including the right-side driver position and the use of air brakes, and how these and other driver skills were required to operate the vehicle.[112] The *Ellis* court determined that, "[T]he fact that a governmental employee has received 'specialized training' to operate 'a special or heavy duty vehicle' is not 'a controlling factor.'"[113] What type, size, and characteristics of vehicles would meet the *McBride* "degree of judgment and discretion beyond ordinary driving situations in routine traffic" test remains a question.[114]

In explaining when Mr. Ellis's driving of the garbage truck fell under the use of judgment and discretion versus an ordinary and routine manner, the *Ellis* court cited two more cases involving school bus accidents that illustrate that immunity requires driving directly tied to an obvious governmental function.[115] In *Linhart v. Lawson*, the Supreme Court of Virginia granted immunity for an accident that took place while the driver had students on board "because the act of 'transporting school children, involved judgment and discretion.'"[116] In contrast, in *Wynn v. Gandy*, the driver of an empty school bus involved in an accident was participating in ordinary driving in routine traffic, which the court deemed "the simple operation of the bus."[117] The driver in *Wynn* therefore was not entitled to sovereign immunity.[118] This type of analytical approach for the most part ignored *James*. Arguably, the second factor of *James*, the extent of state interest and involvement in the function, may have been applied but was not officially recognized. Ultimately the supreme court did find that policemen in pursuit, firemen driving to burning buildings, and bus drivers carrying schoolchildren generate enough state interest and involvement to protect those employees under sovereign immunity without explaining the significance and interaction of each factor of the *James* test.[119]

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112. *See Ellis*, 304 Va. at 556, 923 S.E.2d at 306.

113. *Id.* at 560, 923 S.E.2d at 308 (quoting Friday-Spivey v. Collier, 268 Va. 384, 390–91, 601 S.E.2d 591, 595 (2004)).

114. *See* McBride v. Bennett, 288 Va. 450, 455, 764 S.E.2d 44, 47 (2014) (same).

115. *Ellis*, 304 Va. at 561, 923 S.E.2d at 308–09 (first citing Linhart v. Lawson, 261 Va. 30, 36, 540 S.E.2d 875, 878 (2001); and then citing Wynn v. Gandy, 170 Va. 590, 197 S.E.2d 527 (1938)).

116. *Id.* (citing Linhart v. Lawson, 261 Va. 30, 36, 540 S.E.2d 875, 878 (2001)).

117. *Id.* (citing Wynn v. Gandy, 170 Va. 590, 595, 197 S.E.2d 527, 529 (1938)).

118. *Id.* (same).

119. *Id.*; *see* Colby v. Boyden, 241 Va. 125, 130, 400 S.E.2d 184, 187 (1991) (police pursuit); Nat'l R.R. Passenger Corp. v. Catlett Volunteer Fire Co., 241 Va. 402, 413–14, 404

In *Ellis*, the supreme court affirmed the court of appeals' holding in *Jolley* that the courts are to review the employee's actions at the time of the accident. Mr. Ellis had asked the court of appeals to consider his circumstances in their totality rather than the moment of the accident in isolation.[120] The *Jolley* court said the parties agreed that Mr. Ellis was performing a governmental function in garbage collection, but the court of appeals looked further into the specific event, holding, "Although sometimes a garbage truck driver could engage in activities involving discretion and judgment between scheduled stops, that was not the case here."[121] In rejecting Mr. Ellis's totality position, the court of appeals defended its approach, stating that its conclusions were based on Mr. Ellis's own testimony that "between cans he was not doing anything differently than if he was 'just normally driving down the street' in his own car and that all he did between stops was 'look for [his] surroundings and make sure all is clear . . . .'"[122] The court of appeals' holding in *Jolley* on what constitutes decision-making "judgment and discretion" within the scope of employment was the most granular dissection a Virginia court has undertaken, and the court recognized this:

> In reaching this conclusion, we do not suggest that sovereign immunity starts and stops with every house along a garbage route—in Ellis's case, about 800 stops a day. Indeed, the evidence shows that the function of garbage collection is more than just picking up an individual can. But the evidence is equally clear that Ellis was not doing anything other than driving to the place where he would next perform his garbage collection function. In these difficult cases, we must look not to the judgment required of the job as a whole, but to the degree of discretion exercised at the moment of the accident.[123]

Pinpointing the exact moment at which Mr. Ellis was exercising enough discretion and judgment to be immune from personal liability was left unaddressed by both the court of appeals and the supreme court.[124] In the cases regarding first responders and

S.E.2d 216, 222 (1991) (attending a fire); Linhart v. Lawson, 261 Va. 30, 35, 540 S.E.2d 875, 877 (2001) (driving a bus with children aboard).

120. Jolley v. Ellis, 82 Va. App. 220, 234, 906 S.E.2d 151, 157 (2024).

121. *Id.* at 225, 234, 906 S.E.2d at 153, 157.

122. *Id.* at 234–35, 906 S.E.2d at 158 (alteration in original).

123. *Id.* at 236, 906 S.E.2d at 158 (footnote omitted).

124. The supreme court in *Ellis* found that Mr. Ellis was performing a governmental function and was applying judgment and discretion when collecting garbage from approximately 800 houses, stopping, and using a claw to pick up the garbage can, dumping the garbage in the truck, and moving on to the next destination. *See Ellis*, 304 Va. at 556–57, 923 S.E.2d at 306–07.

school bus drivers, both courts have determined that the state's interest and involvement were significant at the time the first responders were in pursuit of the emergency and when the bus drivers were carrying students on the bus. The *Ellis* decision leaves us with open questions. First, it is unclear whether courts will apply the *James* test, in whole or in part, or will instead adopt a new test requiring the employee driver to be directly engaged in a governmental function at the moment of the alleged claim. Second, it is unclear when a governmental function begins and ends. Equally important, neither court addressed the issue of the employee's fatigue or the physical strain of performing a governmental function for long periods of time and whether that would affect application of the "special risks" standard.[125]

IV. *NEWPORT NEWS SCHOOL BOARD V. Z.M.*

The allegations in *Z.M.* involved a nonverbal autistic child, Z.M., who was struck in the face, told by an employee of the school system that the employee wished he could "whip his tail," and allowed by the employees to leave the school bus without clothes on the lower part of his body.[126] Z.M. sued the Newport News School Board ("NNSB"), the bus driver, and the bus attendant on duty for negligence, gross negligence, and punitive damages.[127] Nowhere in the record did the parties contest that transporting Z.M. was a governmental function.[128] The plaintiff argued that Code of Virginia section 22.1-194 waived any immunity and provided Z.M. standing to sue NNSB.[129] Under section 22.1-194, sovereign immunity is waived for public school systems when their school buses are "involved in an accident," and there is insurance coverage so that the locality or school board will not incur financial loss if any damages

125. The parties did not mention in briefs or oral argument the physical toll the garbage collection job took on the employee. Neither the court of appeals nor the supreme court addressed the fatigue and physical wear and tear on the driver nor whether that could create "special risks."

126. Newport News Sch. Bd. v. Z.M., 304 Va. 276, 279, 915 S.E.2d 56, 57 (2025).

127. *Id.*; Brief of Appellee at 4–5, Newport News Sch. Bd. v. Z.M., 304 Va. 276, 915 S.E.2d 56 (2025) (No. 240833) (identifying the school board employees as a "bus assistant" and a "bus driver").

128. "Absent an express statutory or constitutional provision waiving sovereign immunity, the Commonwealth and its agencies are immune from liability for the tortious acts or omissions of their agents and employees." *Z.M.*, 304 Va. at 280, 915 S.E.2d at 57 (quoting Rector & Visitors of the Univ. of Va. v. Carter, 267 Va. 242, 244, 591 S.E.2d 76, 78 (2004)).

129. Z.M. v. Newport News Sch. Bd., No. CL2301997B-00, slip op. at 2–3 (Va. Cir. Ct. Sep. 18, 2024) (City of Newport News).

were awarded.[130] Both parties agreed that there was adequate insurance coverage.[131] Under this statute, a school system stands liable for simple negligence, but its employees are not necessarily liable to that same standard. *Linhart* was specific that section 22.1-194 did not lower the standard to simple negligence for employees engaged in a tortious act occurring within the scope of employment while performing a governmental function.[132] However, if section 22.1-194 does not apply, school systems are immune and employees remain liable for intentional torts and gross negligence. The Newport News Circuit Court accepted the plaintiff's position and ruled that the NNSB would stand trial for negligence but struck the claim for punitive damages after determining that sovereign immunity did protect the entity from that.[133]

NNSB filed an interlocutory appeal under Code of Virginia sections 8.01-626 and 8.01-670.2(A),[134] claiming that the circuit court misinterpreted section 22.1-194 by failing to recognize that the Code created a two-prong test: first, the school bus vehicle must have been involved in an accident; and second, the school system

130. VA. CODE ANN. § 22.1-194 (2025) provides:

> In case the locality or the school board is the owner, or operator through medium of a driver, of, or otherwise is the insured under the policy upon, a vehicle involved in an accident, the locality or school board shall be subject to action up to, but not beyond, the limits of valid and collectible insurance in force to cover the injury complained of or, in cases set forth in subsection D of § 22.1-190, up to but not beyond the amounts of insurance required under subsection A of § 22.1-190 and the defense of governmental immunity shall not be a bar to action or recovery. In case of several claims for damages arising out of a single accident involving a vehicle, the claims of pupils and school personnel, excluding driver when not a pupil, shall be first satisfied. In no event, except where approved self-insurance has been provided pursuant to subsection D of § 22.1-190, shall school funds be used to pay any claim or judgment or any person for any injury arising out of the operation of any such vehicle. The locality or school board may be sued alone or jointly with the driver, provided that in no case shall any member of a school board be liable personally in the capacity of school board member solely.

131. *Z.M.*, slip op. at 3.

132. Linhart v. Lawson, 261 Va. 30, 35, 540 S.E.2d 875, 877 (2001).

133. *Z.M.*, slip op. at 3–4.

134. Newport News Sch. Bd. v. Z.M., 304 Va. 276, 279, 915 S.E.2d 56, 57 (2025); *see* § 8.01-670.2(A) (2024) ("When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted, would immunize the movant from compulsory participation in the proceeding, the order is eligible for immediate appellate review. Any person aggrieved by such order may, within 15 days of the entry of such order, file a petition for review with the Supreme Court in accordance with the procedures set forth in § 8.01-626.").

must have adequate insurance such that the school board would not be subject to a judgment debt.[135]

In agreeing with NNSB, the supreme court held that both prongs of section 22.1-194 had to be met.[136] The court stated that for the statute to apply, the vehicle itself had to be involved in an accident.[137] The court applied the plain-meaning test, deciding, "In interpreting a statute, we seek 'to effectuate the intent of the legislature as expressed by the plain meaning of the words used in the statute.'"[138] The plaintiff's position, both at trial and on appeal, was that any claims involving injuries in or around the bus, including those pled by Z.M., were covered by the following statutory language:

> [If] the school board is the owner . . . or otherwise is the insured under the policy upon, a vehicle involved in an accident, the locality or school board shall be subject to action up to, but not beyond, the limits of valid and collectible insurance in force to cover the injury complained of . . . .[139]

Z.M. argued that, once insurance coverage was confirmed, the second element, the "accident" requirement, should be read broadly in favor of plaintiffs. Z.M.'s position was that if the General Assembly wanted to limit claims to accidents in which buses were damaged, it would have done so.[140] In rejecting Z.M.'s reasoning, the court said, "We are not at liberty to ignore this language [of involvement in an accident] . . . . [W]e conclude that the waiver of sovereign immunity [under Code of Virginia section 22.1-194] does not apply because, in this instance, the bus was not a 'vehicle involved in an accident.'"[141]

The *Z.M.* court specifically reversed the circuit court's ruling in part, and left intact its finding that section 22.1-194 did not address punitive damages, and that the school board was therefore

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135. *Z.M.*, 304 Va. at 281, 915 S.E.2d at 58 ("The arguments of the parties center on whether the waiver of sovereign immunity found in Code [of Virginia] § 22.1-194 contains one prerequisite or two. The School Board argues that two conditions must be satisfied for sovereign immunity to be waived under this statute . . . .").

136. *Id.* at 281–82, 915 S.E.2d at 58.

137. *Id.*

138. *Id.* at 281, 915 S.E.2d at 58 (quoting Llewellyn v. White, 297 Va. 588, 595, 831 S.E.2d 494, 497 (2019)).

139. *See* Brief of Appellee at 8–9, 14, Newport News Sch. Bd. v. Z.M., 304 Va. 276, 915 S.E.2d 56 (2025) (No. 240833) (citing VA. CODE ANN. § 22.1-194 (2025)).

140. *See id.* at 10–28.

141. *Z.M.*, 304 Va. at 282, 915 S.E.2d at 58.

protected by sovereign immunity.[142] The court, applying *Patten v. Commonwealth*,[143] held, "[T]he School Board [NNSB] itself benefits from immunity from suit, whether the claims involve simple negligence, gross negligence, or even intentional torts."[144] The *Z.M.* decision remanded the case to the circuit court for the plaintiff to pursue his allegations of gross negligence against the bus driver and the bus attendant only.[145] [146]

Z.M. was also cited in another matter regarding the application of sovereign immunity in which elected officials were sued. In *Brooks-Buck v. Wahlstrom*,[147] the question before the Supreme Court of Virginia was whether statements authored by elected officials in an official writing could be subject to a tort claim for defamation if an elected official intentionally made the statements out of personal ill will as a vindictive act. The plaintiff in *Brooks-Buck* claimed defamation and defamation per se for statements made by City of Suffolk School Board members in an internal disciplinary complaint filed by the defendants against another school board member.[148] The plaintiff, who was not a school board member, alleged that she was defamed when she was mentioned by name in the narrative of the disciplinary complaint in which the defendants claimed that the plaintiff had committed perjury in prior litigation.[149] The school board members filed a demurrer,[150] arguing that they were entitled to immunity under either of two doctrines, common law sovereign immunity, or by statutory immunity in Code of Virginia section 8.01-223.2.[151]

The court held that neither the immunity doctrine nor the statute would protect the defendants if their writings were intended to

142. *Id.* at 278–79, 283, 915 S.E.2d at 57, 59.

143. 262 Va. 654, 553 S.E.2d 517 (2001).

144. *Z.M.*, 304 Va. at 282–83, 915 S.E.2d at 59 (citing *Patten*, 262 Va. at 658, 553 S.E.2d at 519). "In the absence of express statutory or constitutional provisions waiving the Commonwealth's immunity, the Commonwealth and its agencies are immune from liability for the tortious acts or omissions of their agents and employees." *Id.* (same).

145. *Id.* at 283, 915 S.E.2d at 59.

146. *Z.M.* settled soon after the court issued its opinion without further rulings by the circuit court. *Z.M. v. Newport News Sch. Bd.* (Case No. CL2301997B-00) Case Information, VA. CTS. CASE INFO. SYS., https://eapps.courts.state.va.us/CJISWeb/circuit.jsp [https://perma.cc/U2EP-Y47P].

147. 304 Va. 470, 482–83, 485, 921 S.E.2d 223, 229–31 (2025).

148. *See id.* at 475–76, 921 S.E.2d at 226.

149. *See id.*

150. *Id.* at 476, 921 S.E.2d at 226.

151. *Id.* at 476–77, 921 S.E.2d at 226–27.

personally defame the plaintiff.[152] The court affirmed the City of Suffolk Circuit Court's holding that the plaintiff could pursue her claim.[153] The supreme court recognized the distinction between a school board's members being sued in their official capacity and those being sued in their individual capacity. Quoting *Hinchey v. Ogden*,[154] the court said, "[A government employee], sued in his official status, enjoys whatever immunity the sovereign may be entitled to claim."[155] Citing *Z.M.*, the court expanded, "The same degree of immunity does not extend to school board members who are sued in their individual capacities. When sued in their individual capacities, school board members are not immune from gross negligence claims."[156] The court did not address the ultimate issue of whether the defendants were acting in an official capacity or a personal capacity, stating, "We have not addressed whether the act of disciplining a local legislator for misconduct constitutes a legislative act that falls within the scope of common law legislative immunity."[157]

In one of the few reversals with final judgment on a plea in bar, the Supreme Court of Virginia in *Commonwealth v. Mattocks* dismissed the suit filed by employees of the Department of Corrections seeking overtime compensation.[158] The plaintiffs, relying on the Virginia Overtime Wage Act (the "Wage Act"), filed suit after the General Assembly had reinstated sovereign immunity for the Commonwealth.[159] The Wage Act was originally passed in 2021 and expressly waived sovereign immunity for the Commonwealth, cities, and counties by defining the term "[p]erson" to apply to "the Commonwealth, any of its constitutional officers, agencies, institutions, or political subdivisions, or any public body. This definition constitutes a waiver of sovereign immunity by the Commonwealth."[160] The Wage Act came under criticism even before it was

152. *Id.* at 483–84, 921 S.E.2d at 230–31.

153. *Id.* at 485, 921 S.E.2d at 231.

154. 226 Va. 234, 307 S.E.2d 891 (1983).

155. *Brooks-Buck*, 304 Va. at 482, 921 S.E.2d at 230 (alteration in original) (quoting *Hinchey*, 226 Va. at 238, 307 S.E.2d at 893).

156. *Id.* (citing Newport News Sch. Bd. v. Z.M., 304 Va. 276, 282–83, 915 S.E.2d 56, 59 (2025)).

157. *Id.* at 480, 921 S.E.2d at 229.

158. Commonwealth v. Mattocks, __ Va. __, __, 925 S.E.2d 710, 712, 714 (2026).

159. *Id.* at __, 925 S.E.2d at 711–12.

160. Virginia Overtime Wage Act, 2021 Va. Acts (Spec. Sess. I) ch. 445 (codified as amended at VA. CODE ANN. § 40.1-29.2 (Cum. Supp. 2026)).

enacted.[161] In the following session of the General Assembly, the statute was amended, and the waiver of sovereign immunity was repealed.[162]

The issue before the *Mattocks* court was whether the revised version of the Wage Act applied retroactively to claims arising before it went into effect on July 1, 2022, or whether the plaintiffs lacked subject-matter jurisdiction to file suit when no waiver of immunity existed.[163] The court, quoting *Seabolt v. County of Albemarle*, held, "In the absence of a legislative waiver of immunity, the circuit court was without jurisdiction to adjudicate [the plaintiff's] claim . . . . The circuit court should have granted the . . . special plea of sovereign immunity. The court had no jurisdiction to decide the case on any other basis."[164] The court granted final judgment for the Commonwealth, concluding that the suit was barred for lack of subject matter jurisdiction:

> The General Assembly has the power to retain sovereign immunity, waive sovereign immunity, or repeal the waiver of sovereign immunity, as it deems appropriate. In this instance, the General Assembly repealed the waiver of sovereign immunity. That repeal went into effect on July 1, 2022. This action was filed after that date. Consequently, looking to the law in effect at the time the suit was filed, sovereign immunity barred the suit.[165]

In *Martin v. City of Waynesboro*, the Court of Appeals of Virginia addressed whether sovereign immunity was waived under the Virginia Fraud and Abuse Whistle Blower Protection Act (the "Act").[166] In that case, a former police officer filed suit against the City of Waynesboro (the "City") and its chief of police, alleging wrongful termination in retaliation for reporting misconduct within the police department.[167] The court determined that the language in the Act, Code of Virginia section 2.2-3011, was specific:

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161. Articles from Virginia law firms bluntly described the Wage Act as overbroad and too expansive. *See, e.g.*, Faith A. Alejandro, *Virginia Wage Overtime Act: Ambiguities Astound Employers*, SANDSANDERSON (June 23, 2021), https://www.sandsanderson.com/insights/thought/virginia-wage-overtime-act-ambiguities-astound-employers [https://perma.cc/64Q3-3EN5].

162. 2022 Va. Acts chs. 461, 462 (codified as amended at § 40.1-29.2) (amending statute and repealing waiver of sovereign immunity).

163. *Mattocks*, __Va. at __, 925 S.E.2d at 711–12.

164. *Id.* at __, 925 S.E.2d at 713 (alteration in original) (quoting Seabolt v. Cnty. of Albemarle, 283 Va. 717, 722, 724 S.E.2d 715, 718 (2012)).

165. *Id.* at __, 925 S.E.2d at 713–14.

166. Martin v. City of Waynesboro, 87 Va. App. 67, 73–74, 926 S.E.2d 516, 520 (2026). *See generally* §§ 2.2-3009 to -3014 (2026).

167. *Martin*, 87 Va. App. at 73–74, 926 S.E.2d at 519–20.

the police chief (the tortfeasor) had no immunity, but the "agency" (the City) maintained its sovereign immunity.[168]

The court reaffirmed that the Commonwealth and its agencies retain immunity unless it is specifically rescinded. "A statutory waiver of sovereign immunity occurs 'only when the statutory language has explicitly and expressly announced such a waiver'. . . . '[A] waiver of sovereign immunity cannot be implied from general statutory language.'"[169] The court examined two of the Act's provisions, Code of Virginia sections 2.2-3010 (definitions)[170] and 2.2-3011 (prohibition on retaliation by employers and penalties).[171]

Referencing the statutory definition, the court said, "Code [of Virginia] § 2.2-3010 separately defines the terms 'employer' and 'governmental agency.' An 'employer' is an individual person who supervises an 'employee,' whereas a 'governmental agency' is an entity for which employees and employers work."[172] In upholding sovereign immunity for the City, the court held, "Code [of Virginia] § 2.2-3011 creates a civil action only 'for violation of *this section*,' and prohibits only an 'employer' from retaliating against an

168. *Id.* at 83–84, 926 S.E.2d at 524–25.

169. *Id.* at 82, 926 S.E.2d at 524 (alteration in original) (quoting Ligon v. Cnty. of Goochland, 279 Va. 312, 317, 319, 689 S.E.2d 666, 669–70 (2010)).

170. *See* § 2.2-3010 (2026) ("'Employer' means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the governmental agency. . . . 'Governmental agency' means (i) any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act and any independent agency; (ii) any county, city, or town or local or regional governmental authority; and (iii) any local school division as defined in § 22.1-280.2:2.").

171. *See id.* § 2.2-3011(D)–(E) (2026) ("In addition to the remedies provided in § 2.2-3012, any whistle blower may bring a civil action for violation of this section in the circuit court of the jurisdiction where the whistle blower is employed. In a proceeding commenced against any employer under this section, the court, if it finds that a violation was willfully and knowingly made, may impose upon such employer that is a party to the action, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $500 nor more than $2,500, which amount shall be paid into the Fraud and Abuse Whistle Blower Reward Fund. The court may also order appropriate remedies, including (i) reinstatement to the same position or, if the position is filled, to an equivalent position; (ii) back pay; (iii) full reinstatement of fringe benefits and seniority rights; or (iv) any combination of these remedies. The whistle blower may be entitled to recover reasonable attorney fees and costs. No action brought under this subsection shall be brought more than three years after the date the unlawful discharge, discrimination, or retaliation occurs. Any whistle blower proceeding under this subsection shall not be required to exhaust existing internal procedures or other administrative remedies. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle blower for his misconduct or any violation of criminal law.").

172. *Martin*, 87 Va. App. at 84–85, 926 S.E.2d at 525.

employee for whistleblowing."[173] Although the City was immune, the court found the Act did create a right of action against the employer—in this case, the police chief individually.[174]

In *Drasovean v. Walts*, the court of appeals, sitting en banc,[175] considered whether sovereign immunity protected school employees from gross negligence claims when sued in their official capacities.[176] There, the plaintiff claimed gross negligence against the Prince William County superintendent of schools, the Director of Special Education, and the plaintiff's school principal for allowing a special education student to transfer into her class.[177] This transfer resulted in the student allegedly sexually assaulting the plaintiff.[178] The Prince William Circuit Court had granted the defendants' plea in bar, holding that the three defendants were acting in their official capacities, and that the case was functionally a suit against the school board itself.[179] [180] The initial three judge panel reversed, holding that the school board should be treated like a municipality and not "an arm of the State," and that the three defendants were conducting a proprietary act and were not immune from liability.[181] The three-judge panel concluded, "[W]here, as here, the underlying claim is based upon individual actors or actions rather than policy or other governmentally necessary duties,

173. *Id.* at 85, 926 S.E.2d at 525.

174. *See id.* at 83–84, 926 S.E.2d at 525.

175. The majority opinion was supported by two concurring opinions and dissented by two lengthy opinions.

176. Drasovean v. Walts, 85 Va. App. 293, 296, 917 S.E.2d 518, 519 (2025).

177. *Id.* at 295–96, 917 S.E.2d at 519.

178. *Id.*

179. *Id.* at 296, 917 S.E.2d at 519.

180. The Court of Appeals of Virginia in *Petersen v. Spotsylvania County Public School Board* held that the decision by school board members to reinstate previously banned books from school libraries was a protected act under sovereign immunity, stating, "School boards, despite being 'public quasi corporations' that act at a local level, are state agencies for purposes of the doctrine." No. 1986-24-2, 2026 Va. App. LEXIS 296, at *6, *10–11 (May 26, 2026) (alteration in original) (quoting Kellam v. Sch. Bd., 202 Va. 252, 254, 117 S.E.2d 96, 98 (1960). "Thus, '[s]chool boards are covered by sovereign immunity.'" *Id.* at *6 (alteration in original) (quoting Newport News Sch. Bd. v. Z.M., 304 Va. 276, 280, 915 S.E.2d 56, 57 (2025)). As to the suit against the individual members, the court dismissed those claims, holding, "'And because the Commonwealth can act only through individuals,' the doctrine of sovereign immunity 'applies not only to the state, but also to certain government officials,' including 'school officials acting in their official capacities.'" *Id.* at *1, *6 (quoting Ibanez v. Albemarle Cnty. Sch. Bd., 80 Va. App. 169, 189–90, 897 S.E.2d 300, 311 (2024) (quoting Gray v. Va. Sec'y of Transp., 276 Va. 93, 102, 662 S.E.2d 66, 70–71 (2008))).

181. *See Drasovean*, 85 Va. App. at 296, 298, 917 S.E.2d at 519–20 (quoting Drasovean v. Walts, No. 0259-23-4, 2024 Va. App. LEXIS 640, at *23 (Nov. 6, 2024) (unpublished panel decision)).

a school board's 'actions' should be considered proprietary."[182] The en banc court stated that sovereign immunity applies to entities other than the Commonwealth itself from two perspectives.[183] First, the General Assembly, by its own authority, is authorized to establish separate agencies to perform Commonwealth functions which would incorporate the same level of immunity.[184] Second, pursuant to the Constitution of Virginia, municipalities performing governmental functions are granted the same immunity as the Commonwealth.[185]

The court relied on *Hinchey*, *Kellam*, and *Z.M.* in granting immunity to the three defendants. It affirmed the *Hinchey* principle that a suit against a government employee in his official capacity was functionally a suit against the government entity itself.[186] Second, following *Kellam*, the court determined that the school board maintained the same standing as the Commonwealth because it was a mandated agency of the state.[187] Finally, regarding any level of tort liability, the court, in reaffirming *Z.M.* held, "[a]lthough government *employees* are not immune from claims of gross negligence, the School Board itself benefits from immunity from suit, whether the claims involve simple negligence, gross negligence, or even intentional torts."[188] [189]

The *Z.M.* opinion was issued at a time when the Newport News School Board was drawing national attention for a shooting incident in which a six-year-old first-grader brought a pistol to school in his backpack and opened fire on his teacher.[190] In *Zwerner v.*

182. *Id.* at 298, 917 S.E.2d at 520 (internal quotations omitted) (citing Drasovean v. Walts, No. 0259-23-4, 2024 Va. App. LEXIS 640, at *33 (Nov. 6, 2024) (unpublished panel decision)).

183. *Id.* at 299, 917 S.E.2d at 521.

184. *Id.* ("[T]hat entity will also be clothed with the Commonwealth's immunity.").

185. *See id.*

186. *Id.* at 300, 917 S.E.2d at 521 (citing Hinchey v. Ogden, 226 Va. 234, 238, 307 S.E.2d 891, 893 (1983)).

187. *Id.* at 300–01, 917 S.E.2d at 521 (citing Kellam v. Sch. Bd., 202 Va. 252, 253–54, 117 S.E.2d 96, 97–98 (1960)).

188. *Id.* at 302, 917 S.E.2d at 522 (quoting Newport News Sch. Bd. v. Z.M., 304 Va. 276, 282, 915 S.E.2d 56, 59 (2025)).

189. The Supreme Court refused writ of error. *See Drasovean v. Walts* (Case No. 0259-23-4) Case Information, S. CT. OF VA. APP. CASE MGMT. SYS., https://eapps.courts.state.va.us/acms-public/ [https://perma.cc/885H-X6N2].

190. The fallout of this event was significant. The Plaintiff teacher won a $10,000,000 jury verdict against the assistant principal. Final Judgment Order, Zwerner v. Parker, CL2301146H-00, at 1–2 (Va. Cir. Ct. Jan. 30, 2026) (City of Newport News). The assistant principal was charged with eight counts of felony child abuse and disregard for life, one

Newport News School Board, the injured teacher sued the school board, the superintendent of the school system, the principal, and the assistant principal for $40 million.[191] Zwerner claimed that they were liable for negligence, gross negligence, and intentional tort for allowing the six-year-old assailant to have a weapon in his backpack even after the assistant principal had been made aware of the gun.[192] After the *Z.M.* opinion was rendered, the Newport News Circuit Court dismissed claims against the superintendent and the principal.[193] As for the assistant principal, the court held that she "enjoys sovereign immunity for claims of simple negligence, but not for claims of gross, reckless or wanton and willful negligence."[194] After a week-long trial, a jury returned a verdict against the assistant principal for $10 million.[195]

CONCLUSION

Collectively, *Sentara*, *Ellis*, and *Z.M.* demonstrate that sovereign immunity is "alive and well" in Virginia. Although *James* has been repeatedly affirmed and the four-part test endorsed, its application by Virginia courts is neither consistent nor definitive. The *Sentara* decision demonstrates that courts must determine whether the entity's function qualifies for immunity based on the facts and circumstances of each case. The extent to which the *James* test is to be applied in the context of a principal entity's enabling mission, corporate governance, purpose, and commercial

count for each of the bullets in the gun the six-year-old possessed. *See id.* The circuit judge dismissed the charges against the assistant principal after the Commonwealth presented its evidence. Order, Commonwealth v. Parker, Nos. CR24000541-01 to -08, at 2 (Va. Cir. Ct. May 21, 2026) (City of Newport News). The mother of the assailant was also charged and pled guilty to felony child neglect. Memorandum of Plea Agreement, Commonwealth v. Taylor, Nos. CR23000463-01 to -02, at 1–2 (Va. Cir. Ct. Apr. 15, 2023) (City of Newport News). She was also charged and found guilty of unlawful use of a controlled substance while possessing a firearm. Judgment, United States v. Taylor, No. 4:23cr45-001, at 1 (E.D. Va. Nov. 15, 2023); Sentencing Minutes, United States v. Taylor, No. 4:23cr45-001, at 1 (E.D. Va. Nov. 15, 2023).

191. *See* Zwerner v. Newport News Sch. Bd., 115 Va. Cir. 479, 479–80 (2025) (City of Newport News).

192. *See* Complaint at 4–10, Zwerner v. Newport News Sch. Bd., 115 Va. Cir. 479 (2025) (City of Newport News) (No. CL2301446), 2023 WL 12260954.

193. *Zwerner*, 115 Va. Cir. at 480, 487; Order, Zwerner v. Parker, CL2301146H-00, at 1–2 (Va. Cir. Ct. July 3, 2026) (City of Newport News). The plaintiff nonsuited her claim against the school board. Order of Nonsuit, Zwerner v. Parker, CL2301146H-00, at 1 (Va. Cir. Ct. June 11, 2026) (City of Newport News).

194. *Zwerner*, 115 Va. Cir. at 488.

195. Final Judgment Order, Zwerner v. Parker, CL2301146H-00, at 1–2 (Va. Cir. Ct. Jan. 30, 2026) (City of Newport News).

activities remains unknown. The *Ellis* opinion makes clear that for sovereign immunity to apply to individuals, there must be a direct and specific relationship between the individual's act and the governmental function being performed. *Z.M.*'s reference to *Linhart* and *James* confirms that Code of Virginia section 22.1-194 does not impose a lower liability standard on school board employees but still requires application of the four-part test. If the *James* test is applied to fact patterns similar to any of these three cases, the resulting precedent will be shaped by how courts weigh and apply the four factors.