No. CL-2024-0710

IN THE COURT OF CIVIL APPEALS OF ALABAMA

Traveka Stanley, *et al.*,

Plaintiffs-Appellants,

v.

Kay Ivey, *et al.*,

Defendants-Appellees.

On appeal from the Circuit Court of Montgomery County, Circuit Judge James H. Anderson (CV-2024-900649)

BRIEF OF THE APPELLANTS

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 28(a)(1) and Rule 34(a) of the Alabama Rules of Appellate Procedure, Plaintiffs-Appellants Traveka Stanley, Reginald Burrell, Charlie Gray, Melvin Pringle, and Ranquel Smith (collectively, "Plaintiffs") respectfully request oral argument in this matter. Oral argument is necessary because this appeal is not frivolous, the dispositive issues have not been decided recently, the lower court's ruling would fundamentally change the standard for surviving a motion to dismiss under Rule 12(b)(1) of the Alabama Rules of Civil Procedure in cases challenging state officials' promulgation and enforcement of unconstitutional laws, and the decisional process would be significantly aided by oral argument. Ala. R. App. P. 34(a)(1)-(3).

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STATEMENT OF JURISDICTION

The Circuit Court of Montgomery County had jurisdiction under Alabama Constitution Article VI, Section 142 and Alabama Code Sections 6-6-222, 12-11-31(1), and 12-31-33(1) because Plaintiffs properly filed an action for declaratory and injunctive relief. Plaintiffs timely filed their notice of appeal to the Alabama Court of Civil Appeals on

September 10, 2024. The Alabama Court of Civil Appeals has appellate jurisdiction over this case pursuant to Alabama Code Section 12-3-10 because this is a civil appeal seeking equitable relief only, "where the amount involved" does not exceed $50,000.

STATEMENT OF THE CASE

On May 1, 2024, Plaintiffs Traveka Stanley, Reginald Burrell, Dexter Avery, Charlie Gray, Melvin Pringle, and Ranquel Smith[1] filed a Complaint in the Circuit Court of Montgomery County against Kay Ivey in her official capacity as Governor of Alabama and John Hamm in his official capacity as Commissioner of the Alabama Department of Corrections ("ADOC") (collectively, "Defendants"). C_6–58.

In their Complaint, Plaintiffs challenged three legal provisions—Executive Order No. 725 ("EO 725"), ADOC Administrative Regulation 403 ("AR 403"), and Section 14-9-41 of the Alabama Code[2]—that authorize ADOC officials to punish incarcerated people who refuse to

[1] The correct spelling of Ms. Stanley's first name is "Traveka." Her name is listed incorrectly in ADOC's system as "Trayveka"; consequently, Plaintiffs' pleading and briefing before the trial court referred to the incorrect spelling of Ms. Stanley's first name. Mr. Pringle is listed in the Alabama Department of Corrections' ("ADOC") system under his middle name, Jermaine.

[2] Only Mr. Smith challenges Section 14-9-41. C_55.

work for ADOC and public and private employers, effectively coercing their labor. Plaintiffs contend this forced labor violates Article I, Section 32 of the Constitution of Alabama of 2022 ("Section 32"), which prohibits slavery and involuntary servitude within the State of Alabama. C_55-56.

On June 5, 2024, Defendants filed a Motion to Dismiss. C_59–96. On July 22, 2024, Plaintiffs filed their response in opposition to the Motion to Dismiss. C_404–434. The circuit court held a hearing on July 29, 2024. On August 1, 2024, the circuit court issued a two-sentence order granting Defendants' Motion to Dismiss, finding that the court lacked subject-matter jurisdiction "due to sovereign immunity and lack of standing." C_435. The circuit court entered a final judgment dismissing Plaintiffs' claims. *Id.*

In August 2024, Plaintiff Dexter Avery died in ADOC custody.

On September 10, 2024, Plaintiffs Traveka Stanley, Reginald Burrell, Charlie Gray, Melvin Pringle, and Ranquel Smith timely filed their Notice of Appeal and Docketing Statement in the Alabama Court of

Civil Appeals, pursuant to Rule 4(a)(1), to appeal the circuit court's dismissal and judgment in its entirety. C_436–39.[3]

On October 2, 2024, Defendants filed a Motion to Transfer to the Supreme Court of Alabama. On October 9, 2024, Plaintiffs filed their response in opposition to the Motion to Transfer to the Supreme Court of Alabama. On October 16, 2024, Defendants filed their reply in support of the Motion to Transfer. On October 29, 2024, this Court ordered that the Motion to Transfer to the Supreme Court of Alabama will be considered upon submission of briefing on appeal and reinstated the briefing schedule for appeal, with Plaintiffs brief being due on November 19, 2024. Plaintiffs are timely filing this Brief on November 19, 2024.

STATEMENT OF THE ISSUES

In this appeal, this Court is not tasked with assessing the merits of Plaintiffs' claims under Section 32 of the Alabama Constitution of 2022 or even reviewing the legal sufficiency of those claims. Rather, upon

[3] Later on September 10, 2024, Appellants amended their Notice of Appeal and Docketing Statement to list all counsel of record's names and email addresses. C_440–43.

accepting the allegations in the Complaint as true and viewing them in the light most favorable to Plaintiffs, as this Court is required to do at the pleading stage, this Court must decide the following two issues regarding the circuit court's subject matter jurisdiction over Plaintiffs' state constitutional claims:

- **Issue I**: Whether Plaintiffs' Complaint alleges sufficient facts to establish that their claims are not barred by sovereign immunity under Section 14 of the Alabama Constitution for actions against state officers and instrumentalities, where Plaintiffs seek to enjoin and declare unconstitutional Defendants' enforcement of EO 725, AR 403, and Section 14-9-41 for their violation of Plaintiffs' constitutional right to be free from slavery and involuntary servitude, even in prison, under Section 32 of the Alabama Constitution?
- **Issue II**: Whether Plaintiffs' Complaint alleges sufficient facts to establish their standing to sue Defendants for declaratory and injunctive relief to remedy Defendants' violation of Plaintiffs' right to be free from slavery and involuntary servitude under Section 32, where Plaintiffs—all of whom are incarcerated in ADOC prisons—

suffer tangible harms in the form of actual and threatened punishments imposed on them by Defendants for not working pursuant to Defendants' issuance and ongoing enforcement of EO 725, AR 403, and Section 14-9-41, and where Plaintiffs' requested equitable relief would prevent Defendants from imposing these harms on them in the future?

STATEMENT OF THE FACTS

In 2022, the People of the state of Alabama voted to ratify a new state constitution that bans slavery and involuntary servitude in all its forms, with no exceptions. C_31. Despite this constitutional revision, incarcerated people in Alabama, including Plaintiffs, remain subject to punishment if they do not work as required by ADOC and continue to labor against their will every day, some for ADOC and some for public and private employers contracting with ADOC. C_45, 47, 49, 51, 53, 55.

In defiance of the new constitution, Alabama government officials took action in 2023 to increase penalties for refusing to work in Alabama prisons. Defendant Ivey signed EO 725, which authorized the revocation of hundreds of days of good-time credits—effectively adding years to individuals' prison time—for "refusing to work" and related violations.

C_32–35. EO 725 also authorizes other types of punishment for work-related violations. C_34.

In response, Defendant Hamm revised AR 403 to incorporate EO 725's requirements and further impose a range of other punishments for the same conduct. C_35–37. Likewise, the Alabama Legislature made changes to Alabama Code Section 14-9-41 to increase punishments for incarcerated people who refuse to work, consistent with EO 725; those changes took effect on April 14, 2023. C_40–42.

As alleged in the Complaint, Plaintiffs are individuals who are currently incarcerated in ADOC prisons and who are subject to slavery and involuntary servitude, including through the punishments that ADOC officials are authorized to impose on incarcerated people for not working under EO 725, AR 403, and, with respect to Mr. Smith, Section 14-9-41. C_9–11, 37–40, 42–55. Plaintiffs allege that they will continue to be subject to these laws and policies for the duration of their incarceration. C_9–11.

Plaintiff Traveka Stanley is a Black woman who is incarcerated in the custody of ADOC. C_9. As specifically pleaded before the circuit court, Ms. Stanley has been punished and threatened with punishment by

ADOC officials for not working. C_43–45. She was twice punished in February 2022 and August 2023 for missing the van transport to work, including on one occasion when the van left early, even though she still made it to work on time on a later van, and again when her employer changed her work schedule without informing ADOC. C_43–44. Each time, ADOC officials issued her a behavior citation for "Refusing to Work/Failing to Check Out for Work" under AR 403 – Rule 320.[4] On both occasions, she was punished with the loss of canteen, telephone, and visitation access. *Id*. On the latter occasion, she was also punished with seven days of unpaid extra work duty—also under threat of punishment and in addition to her existing work-release job—inside the prison, including sweeping, mopping, and emptying cigarette receptacles. C_44.

On April 22, 2024, Ms. Stanley was threatened with punishment under AR 403 – Rule 925 for "failure to obey a direct order of an ADOC employee" when she did not wake up in time to report to her unpaid work assignment on the garbage crew at Tutwiler Prison. C_45. Ms. Stanley

[4] "Rule 320" does not appear to be listed in any version of AR 403 operative during the past decade; the description of the rule listed on Ms. Stanley's disciplinary documents corresponds with Rule 518, "Refusing to work / fail to check out for work." C_39 n. 76.

alleges that she wants to work during her incarceration without facing the constant threat of punishment by ADOC officials if, at any given moment, she is unable or unwilling to work. *Id.*

Plaintiff Reginald Burrell is a Black man who is incarcerated in the custody of ADOC. C_10. At the time of filing the Complaint, he held a work release job as a line cook at Applebee's in Athens, Alabama. C_47. As specifically pleaded before the circuit court, Mr. Burrell has been punished and threatened with punishment by ADOC officials for not working. C_46–47. For example, in February 2022, he stopped working at Kith Furniture due to unsafe working conditions after he was hit on the head with a heavy piece of furniture while on the job. C_46. In response, ADOC officials issued him a behavior citation under AR 403 for violating "Rule 320 – refusing to work/failing to check out for work." *Id.* He was punished with the loss of access to phone and visitation, and with 30 days of unpaid work duty, including working outside the prison at a private landfill. *Id.*

In October 2022, during a state-wide prison labor strike, ADOC officials assigned Mr. Burrell to be transferred from Camden Work Release to work in the kitchen at Bibb County Correctional Facility to

replace the striking workers. C_46–47. Concerned about his safety as a strikebreaker, he refused. *Id.* ADOC officials issued him a disciplinary report for "inciting a riot or rioting" under AR 403 – Rule 920 and transferred him to Elmore Correctional Facility. *Id.* Mr. Burrell alleges that he wants to work during his incarceration without facing the constant risk of punishment by ADOC officials if, at any given moment, he is unable or unwilling to work. C_47.

Plaintiff Charlie Gray is a Black man who is incarcerated in the custody of ADOC. C_10. At the time of filing the Complaint, he was required to work without pay as a dorm cleaner at Frank Lee Community Work Center. C_50. As specifically pleaded before the circuit court, Mr. Gray has been punished and threatened with punishment by ADOC officials for not working. *Id.* In 2014, he was punished with unpaid extra duty for being fired from his job on a state road crew. C_51. More recently, in 2024, he was threatened with punishment for refusing to work without pay on the trash crew at Donaldson Correctional Facility. C_50. When he stopped working on the trash crew, where he was required to handle hazardous waste without any personal protective equipment, ADOC officials threatened to discipline him for refusing to work. *Id.* Mr. Gray

started to skip meals to avoid seeing the officers who were threatening him. *Id*. He was transferred to Frank Lee, where he is assigned to work as a dorm cleaner. *Id*. He believes ADOC will punish him if he declines to work. *Id*. Mr. Gray alleges that he wants to work during his incarceration without facing the constant risk of punishment by ADOC officials if, at any given moment, he is unable or unwilling to work. C_51.

Plaintiff Melvin Pringle is a Black man who is incarcerated in the custody of ADOC. C_11. As specifically pleaded before the circuit court, Mr. Pringle has been punished and threatened with punishment by ADOC officials for not working. C_52–53. He has been punished for not working on three occasions since Alabama voters ratified the new state constitution. *Id*. In late November 2022, he received a disciplinary report for "refusing to check out for work" under AR 403 – Rule 518 when he stopped working at Bama Budweiser because the pay was inadequate. C_52. In August 2023, ADOC officials punished him with 30 days extra duty and the loss of phone and canteen access under AR 403 – Rule 319 for "being fired from a job" after raising issues of unfair pay at his work-release job. *Id*. And in February 2024, he was again disciplined for being fired from a job. *Id*. Each time, ADOC officials punished him with 30 to

45 days of unpaid extra duty and the loss of access to the canteen, phone, and visitation. *Id.* Mr. Pringle alleges that he wants to work during his incarceration without facing the constant risk of punishment by ADOC officials if, at any given moment, he is unable or unwilling to work. C_53.

Plaintiff Ranquel Smith is a Black man who is incarcerated in the custody of ADOC. C_11. As specifically pleaded before the circuit court, Mr. Smith has been punished and threatened with punishment by ADOC officials for not working. C_54. On two occasions, Mr. Smith was punished with the loss of good time credits for not working. *Id.* On September 7, 2022, ADOC officials issued Mr. Smith a disciplinary under AR 403 for Rule 320 "refusing to work/failing to check out for work." *Id.* As punishment, ADOC took away one day of the good time Mr. Smith had earned, assigned Mr. Smith to weeks of extra duty, and prevented Mr. Smith from working in the free world and having access to phone calls, canteen, and visitation. *Id.* On or about November 23, 2022, ADOC officials issued him a disciplinary report under Rule 518, "refusing to work/failing to check out for work," because he was a few minutes late reporting to the van to transport him to work. *Id.* As punishment, ADOC took away one day of the good time Mr. Smith had earned, assigned Mr.

Smith to weeks of extra duty, and prevented Mr. Smith from working in the free world and having access to phone calls, canteen, and visitation. Mr. Smith alleges that he wants to work during his incarceration without facing the constant risk of punishment by ADOC officials if, at any given moment, he is unable or unwilling to work. C_54–55.

Former Plaintiff Dexter Avery was a Black man who, at the time of filing the Complaint, was incarcerated in the custody of ADOC. C_10. As specifically pleaded before the circuit court, Mr. Avery was punished and threatened with punishment by ADOC officials for not working. C_48–49. In April 2023, ADOC officials issued him a disciplinary report under AR 403 – Rule 319 for "being fired from a job" and punished him with the loss of passes to visit his family, the loss of telephone and visitation access, and 20 days of unpaid extra duty. C_48. In August 2023, ADOC officials issued him a disciplinary report for "being fired from a job" after he reported late to work because he fell asleep in the transport van as a result of mental health medication prescribed to him by ADOC healthcare providers. *Id*. As a result, he was transferred from the work release facility to a Limestone Correctional Facility and was punished

with the loss of phone, visitation, and canteen access. *Id.* On August 19, 2024, Mr. Avery died in ADOC custody.

Plaintiffs Stanley, Burrell, Gray, Pringle, and Smith allege in the Complaint that they continue to face the risk of punishment for not working or for refusing to work due to Defendants' ongoing policy and practice of enforcing EO 725, AR 403, and, with respect to Mr. Smith, Section 14-9-41. C_143–54, 163, 177, 185, 205, 208, 220, 229.

STANDARD OF REVIEW

A dismissal for lack of subject-matter jurisdiction is reviewed de novo, with no presumption of correctness. *Hill v. Hill*, 89 So. 3d 116, 117-18 (Ala. Civ. App. 2010); *Town of Mountainboro v. Griffin*, 26 So. 3d 407, 409 (Ala. 2009); *Hutchinson v. Miller*, 962 So. 2d 884, 887 (Ala. Civ. App. 2007); *State, Dep't of Revenue v. Arnold*, 909 So. 2d 192, 193 (Ala. 2005). In reviewing the jurisdictional allegations of a complaint, "the court must accept as true the allegations in the complaint and consider the factual allegations of the complaint in the light most favorable to the non-moving party." *Ex parte Safeway Ins. Co. of Ala., Inc.*, 990 So. 2d 344, 349 (Ala. 2008) (quotations and citations omitted).

SUMMARY OF THE ARGUMENT

While the substance of Plaintiffs' claims under the recently-changed language of Section 32 of the Alabama Constitution may be novel, the issues presented in this appeal are not. This appeal concerns well-trodden ground for Alabama courts, including the Court of Civil Appeals, regarding sovereign immunity and basic concepts of standing under Alabama law, including the state constitution. Well-settled precedent from the Alabama Supreme Court and this Court's own prior decisions dictates the outcome here: this Court must find that Defendants are not immune from suit; that Plaintiffs have standing to bring their state-constitutional claims; and that the circuit court incorrectly dismissed Plaintiffs' claims for lack of subject matter jurisdiction under Alabama Rule of Civil Procedure 12(b)(1) "due to sovereign immunity and lack of standing" and said dismissal must be reversed. C_435. The dismissal was erroneous for two reasons.

First, sovereign immunity under Section 14 of the Alabama Constitution does not apply where, as here, Plaintiffs are suing state-official Defendants in their official capacities for violating the state constitution and are seeking only injunctive and declaratory relief to redress Defendants' violation of Section 32 and compel Defendants'

compliance thereunder. Section 14 of the Alabama Constitution, which bars actions against the state, does not apply here. To hold otherwise would upend binding precedent from this Court and the Alabama Supreme Court and create a dangerous new court-made rule permitting state officials to violate our state's constitution with impunity.

Alabama courts have long recognized that actions brought to enjoin state officials from enforcing an unconstitutional law, as well as actions against state officials in their official capacity seeking declaratory relief, are not, in effect, actions against the state, and therefore they are not barred by sovereign immunity under Section 14. *See Ex parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d 1135, 1141-42 (Ala. 2018) (citing, *inter alia*, *Ex parte Moulton*, 116 So. 3d 1119, 1141 (Ala. 2013)). Indeed, this Court previously held that sovereign immunity does not apply to a constitutional challenge to an ADOC regulation brought by an incarcerated plaintiff. *Evatt v. Thomas*, 99 So. 3d 886, 893 (Ala. Civ. App. 2012).

Here, Plaintiffs are suing two state officials in their official capacities, seeking to enjoin them from enforcing portions of an executive order, an ADOC regulation, and a state statute in violation of Plaintiffs'

rights under Section 32 of the Alabama Constitution. Plaintiffs also seek a declaration that the challenged provisions are unconstitutional. They do not seek damages or any other form of relief that would "directly affect a contract or property right of the State." *Ex parte Cooper*, 390 So. 3d 1030, 1036 (Ala. 2023). Accordingly, the circuit court erred in concluding that Plaintiffs' claims are barred by sovereign immunity.

Second, Plaintiffs—all of whom are currently incarcerated—have standing to bring their claims for equitable relief under Section 32's total ban on slavery and involuntary servitude because they have been punished and threatened with punishment for not working by virtue of Defendants' enactment and ongoing enforcement of EO 725, AR 403, and Section 14-9-41.

Specifically, Plaintiffs have pled sufficient facts to establish standing under the three-prong test applied by Alabama courts. *See Ex parte Aull*, 149 So. 3d 582, 592 (Ala. 2014) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)). Accepting as true the allegations in the Complaint and construing them in Plaintiffs' favor, Plaintiffs have demonstrated that they have suffered and continue to suffer actual and threatened injuries by virtue of Defendants' enactment and enforcement

of EO 725, AR 403, and, with respect to Mr. Smith, Section 14-9-41; Plaintiffs have also demonstrated a "well-founded fear" of future injury sufficient to confer standing. *See Munza v. Ivey*, 334 So. 3d 211, 218–19 (Ala. 2021) (quoting *Parker v. Jud. Inquiry Comm'n of Ala.*, No. 2:16-cv-442-WKW, 2017 WL 3820958 at *5 (M.D. Ala. Aug. 31, 2017)). Moreover, Plaintiffs have a legally protected interest under Section 32 to be free from slavery and involuntary servitude, and Defendants have violated that interest by actually punishing Plaintiffs and threatening them with a range of physical and legal sanctions for not working. As specifically alleged in the Complaint, ADOC officials routinely impose those punishments on Plaintiffs and other incarcerated people in ADOC custody, including in the time since Alabama voters ratified the changes to Section 32.

Plaintiffs' injuries are also traceable to both Defendants, and are redressable by a court order granting them the injunctive and declaratory relief they request. Accordingly, the circuit court erred in dismissing Plaintiffs' claims for lack of standing.

This Court should apply settled case law to hold that Plaintiffs' claims against Defendants Ivey and Hamm are not barred by sovereign

immunity and that Plaintiffs have standing to bring their claims under Section 32 of the Alabama Constitution.

ARGUMENT

I. The Circuit Court Erred When It Dismissed Plaintiffs' Claims Based on Sovereign Immunity.

The circuit court's sovereign immunity ruling cannot stand because it is out of line with binding precedent from the Alabama Supreme Court and goes directly against the prior rulings of this Court. The Alabama Constitution means nothing if it cannot be enforced. For that reason, Alabama courts have long held that state officials, in their official capacities, can be sued for declaratory and injunctive relief when they violate the state constitution through their enactment and enforcement of state laws, including executive orders, state agency regulations, and statutory provisions. [5]

[5] Notably, neither in their Motion to Dismiss nor at the July 29, 2024 hearing, did Defendants argue that executive orders and statutes do not constitute "laws" for purposes of state immunity analysis. *See* C_72-74; R_9:25-10:11. Indeed, they characterized their sovereign immunity argument as being "very narrow" and limited to Administrative Regulation 403. R_9:25-10:11. Defendants' omission of such argument is presumably because Alabama courts routinely exercise jurisdiction over challenges to executive orders and statutes. *See, e.g.*, *Ex parte Ala. Dep't of Youth Servs.*, No. SC_2023-0627 and No. SC_2023-0628, 2024 WL 1335931, at *6 (Ala. Mar. 29, 2024) (holding that state officials are not

The circuit court's ruling on sovereign immunity is erroneous because Plaintiffs' constitutional claims against Defendants Ivey and Hamm are not, in effect, actions *against the state*, and thus do not come within the scope of sovereign immunity under Article I, Section 14 of the Alabama Constitution. "[T]he immunity afforded the State by § 14 applies to instrumentalities of the State and State officers sued in their official capacities *when such an action is effectively an action against the State*." *Ex parte Moulton*, 116 So. 3d at 1130 (emphasis added) (quoting *Vandenberg*, 81 So. 3d at 332). Not all actions against state officials are "considered to be actions against the State for § 14 purposes." *Id.* at 1132 (quotations and citations omitted); *Ex parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 ("Section 14 immunity . . . is not always absolute; there are actions against State officials that are not barred by the general rule

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immune from suit seeking declaration of rights and injunctive relief under Alabama statute); *Vandenberg v. Aramark Educ. Servs., Inc.*, 81 So. 3d 326, 333 n.7 (Ala. 2011) (explaining that, while plaintiff-students' statutory and constitutional claims against state university's board of trustees were barred by state immunity because the board is a state instrumentality, "the students may seek injunctive and declaratory relief against the university administrators" in their official capacities); *Monroe v. Harco, Inc.*, 762 So. 2d 828, 834 (Ala. 2020) (considering the legality of a statute and executive order); *Wallace v. Baker*, 336 So. 2d 156, 156 (Ala. 1976) (enjoining enforcement of executive order).

of sovereign immunity."). When determining whether a claim against state officials is effectively one against the state, "[t]he touchstone is . . . whether a result favorable to the plaintiff would directly affect a contract or property right of the State." *Ex parte Cooper*, 390 So. 3d at 1036 (Ala. 2023) (citation omitted).

Indeed, the Alabama Supreme Court has recognized six categories of actions against state officials that are *not* actions against the state and thus are not barred by sovereign immunity:

> (1) actions brought to compel State officials to perform their legal duties; (2) actions brought to enjoin State officials from enforcing an unconstitutional law; (3) actions to compel State officials to perform ministerial acts; . . . (4) actions brought under the Declaratory Judgments Act ... seeking construction of a statute and its application in a given situation . . . (5) valid inverse condemnation actions brought against State officials in their representative capacity; and (6) actions for injunction or damages brought against State officials in their representative capacity and individually where it was alleged that they had acted fraudulently, in bad faith, beyond their authority or in a mistaken interpretation of law.

Ex parte Moulton, 116 So. 3d at 1131-32 (citations omitted). As the Alabama Supreme Court recently clarified, the "*Moulton* categories," while sometimes inaccurately referred to as "exceptions," are in fact "simply illustrations of claims for which State immunity generally does not apply." *Ex parte Cooper*, 390 So. 3d at 1036 (Ala. 2023). Thus, an

action that falls squarely into one of the six *Moulton* categories is not barred by sovereign immunity—case closed.

As detailed below, Plaintiffs' claims fall within at least three categories of actions against state officials recognized by the Alabama Supreme Court as being outside of the scope of Section 14's bar, the second, fourth, and sixth *Moulton* categories: actions brought to enjoin enforcement of unconstitutional laws; declaratory-judgment actions; and actions for injunction brought against State officials in their representative capacity where it is alleged that they acted beyond their authority or in a mistaken interpretation of law. *Ex parte Moulton*, 116 So. 3d at 1131-32. [6]

Therefore, this Court should apply binding precedent to hold that sovereign immunity does not shield Governor Ivey and Commissioner Hamm from Plaintiffs' constitutional claims seeking to declare unconstitutional, and to enjoin enforcement of, EO 725, AR 403, and

[6] And as the Alabama Supreme Court has made clear, the fact that an action is not one of those enumerated in *Moulton* does not necessarily mean that it is barred by Section 14. *See id.* In this case, Plaintiffs seek only declaratory and injunctive relief. *See* C_56–58. No contract or right against the State of Alabama is therefore implicated here. Whether or not this case falls within an enumerated *Moulton* category, it clearly lies outside the bounds of Section 14 immunity.

Section 14-9-41. If upheld, the circuit court's dismissal on sovereign immunity grounds would prevent Alabamians from seeking and obtaining equitable relief related to unconstitutional or otherwise unlawful statutes, administrative regulations, and executive orders. Bestowing executive officials with unreviewable authority to violate the Alabama Constitution could have horrifying consequences for Alabamians of all walks of life.

A. This Case Is an Action Brought to Enjoin Defendants from Enforcing Unconstitutional Laws.

Because Plaintiffs' claims in this case fall squarely within the second *Moulton* category of sovereign immunity—"actions brought to enjoin State officials from enforcing an unconstitutional law"—sovereign immunity does not apply. 116 So. 3d at 1131 (quotations and citations omitted). Critically, binding precedent on constitutional challenges to Alabama agency regulations runs counter to the circuit court's dismissal on sovereign immunity grounds. *See, e.g.*, *Thomas v. Merritt*, 167 So. 3d 283, 291-93 (Ala. 2013) (exercising jurisdiction over case seeking injunctive relief from ADOC AR 410 that allegedly violated Alabama

statute); *Rodgers v. Hopper*, 768 So. 2d 963, 968 (Ala. 2000) (interpreting the *Moulton* category of "actions brought to compel State officials to perform their legal duties" to extend to duties imposed by "a law, a regulation, or a validly enacted internal rule"); *Evatt v. Thomas*, 99 So. 3d at 893-94 (reversing trial court's dismissal of plaintiff's equal protection challenge to ADOC AR 452); *Ex parte Alabama State Bd. of Chiropractic Examiners*, 11 So. 3d 221, 226 (Ala. Civ. App. 2007) (holding that chiropractors' constitutional challenge to State Board of Chiropractic Examiners' rules seeking injunctive and declaratory relief was not barred by sovereign immunity); *Wood v. State Personnel Bd.*, 705 So. 2d 413, 419-23 (Ala. Ct. Civ. App. 1997) (considering the constitutionality of ADOC AR 227 in a correctional officer's challenge to the termination of his employment).

The circuit court's sovereign immunity holding directly contradicts this Court's prior decision holding that sovereign immunity does not bar constitutional challenges to ADOC regulations. In *Evatt v. Thomas*, the Court of Civil Appeals concluded that the ADOC Commissioner "is not entitled to § 14 immunity" in a suit for injunctive and declaratory relief brought against him in his official capacity by an incarcerated plaintiff

challenging the constitutionality of two ADOC administrative regulations because "such claims are exempt from § 14." 99 So. 3d at 893. The circumstances in this case are identical to those in *Evatt* in every way that matters: Plaintiffs here are suing state officials in their official capacities; they challenge the constitutionality of an ADOC administrative regulation (as well as a state statute and executive order); and they seek "a judgment declaring the unconstitutionality of [AR 403] and to enjoin [Defendants] from enforcing th[at] regulation[]." *Id.*; *see* C_8–9, 11–12, 55–57. *Evatt* dictates the conclusion here: Plaintiffs' challenge to AR 403 is not barred by sovereign immunity.

Even if this Court were to revisit its holding in *Evatt* and adopt a cramped construction of Section 14 that does not recognize state agency regulations as "laws" for purposes of applying the second *Moulton* category, *see* C_73–74, the "touchstone" inquiry under Section 14 still leads to the same result: Plaintiffs' challenge to the constitutionality of AR 403 is not an action against the state because this action does not affect a contract or property right of the state. *See Ex parte Cooper*, 390 So. 3d at 1036. Rather, Plaintiffs sue Defendants in their official

capacities seeking to ensure that they do what they are already required to do: abide by the Alabama Constitution.

To allow the circuit court's decision on sovereign immunity to stand would lead to absurd and deeply undesirable results. State officials would be free to adopt and enforce brazenly unconstitutional regulations, as well as executive orders and statutory provisions,[7] leaving aggrieved Alabamians with no remedy in court against ongoing violations of their state and federal rights. *See Ex parte Ret. Sys. of Ala.*, 182 So. 3d 527, 540–41 (Ala. 2015) (Parker, J., concurring) (quoting *Rodgers*, 768 So. 2d at 968) ("Given the ever growing power of government through regulations, the people of Alabama must not be barred from challenging State officials seeking to enforce unconstitutional regulations . . . . All the § 14 exceptions must be read to include 'a law, a regulation, or a validly enacted internal rule,' as applicable."). To preserve the basic functioning of the rule of law, the *Moulton* category of actions "to enjoin State officials from enforcing an unconstitutional law"—as well as the other categories of actions enumerated in *Ex parte Moulton*—must be read to include

[7] *See supra* n.5 (citing examples of Alabama courts' routine exercise of jurisdiction over challenges to executive orders and statutes).

constitutional challenges to rules and regulations, as well as executive orders and state statutes.

B. Plaintiffs' Claims Fall Under Several Other Recognized Categories of Actions That Are Not Barred by Section 14.

Additionally, Plaintiffs' claims fall within the fourth *Moulton* category: declaratory-judgment actions against state officials "seeking construction of a statute and its application in a given situation." They also fall within the sixth *Moulton* category: "actions for injunction brought against State officials in their representative capacity . . . where it is alleged that they had acted . . . beyond their authority, or in a mistaken interpretation of law." *Ex parte Moulton*, 116 So. 3d at 1131–32 (quotations and citations omitted).

The fourth *Moulton* category—actions for declaratory relief: Plaintiffs' claims for declaratory relief are not barred by sovereign immunity. *See id.* at 1131; *accord Evatt*, 99 So. 3d at 893–94; *Porter v. Hugine*, 101 So. 3d 1228, 1236 (Ala. Civ. App. 2012) (holding that portion of plaintiffs' request for declaratory relief that did not "implicate[] the payment of money from the State treasury" was not barred by Section

14); *Ex Parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1144–45.[8] At this time, Plaintiffs seek no other relief under the Declaratory Judgment Act than a "construction of [Section 32 of the Alabama Constitution] and how it should be applied [to Defendants' enforcement of the challenged portions of EO 725, AR 403, and Section 14-9-41]." *Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1211 (Ala. 2006) (quoting *Aland v. Graham,* 250 So. 2d 677, 679 (1971)); *see* C_57 (requesting declaratory relief).[9] Therefore, Plaintiffs' claims for declaratory relief were erroneously dismissed by the circuit court.

The sixth *Moulton* category—actions to enjoin state officials in their representative capacity: Moreover, this is an "action[] for injunction . . . brought against State officials in their representative

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[8] While the case law on state immunity tends to refer specifically to actions "seeking construction of a statute and its application in a given situation," *Ex Parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 (quotations and citations omitted), the courts' declaratory judgment powers, when properly invoked, also extend to constructions of the state constitution. *Morgan v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 26 So. 2d 108, 110 (1946); *see also* Ala. Code § 6-6-226.

[9] Nevertheless, Alabama law is clear that "further relief based on a declaratory judgment may be granted whenever necessary or proper" without running afoul of state immunity. Ala. Code § 6-6-230; *Redbud Remedies, LLC v. Alabama Med. Cannabis Comm'n*, No. CL-2023-0352, 2024 WL 1335229, *3 (Ala. Civ. App. Mar. 29, 2024) ("[I]njunctive relief generally may be awarded in a declaratory-judgment action . . . .").

capacity . . . where it was alleged that they had acted . . . beyond their authority[] or in a mistaken interpretation of law." *Ex Parte Moulton*, 116 So. 3d at 1131–32 (quotations and citations omitted). Here, in their enactment and enforcement of EO 725, AR 403, and Section 14-9-41, Defendants disregard the supreme law of this state under Section 32 of the Alabama Constitution, which forbids slavery and involuntary servitude everywhere, including in prisons. Such actions are beyond the authority of state officials. *See Ingle v. Adkins*, 256 So. 3d 62, 68 (Ala. 2017) (holding that, under the sixth *Moulton* category, board of education members in their official capacities were not immune from suit challenging unconstitutional employment contract); *cf. Wallace v. Bd. of Educ. of Montgomery Cnty.*, 197 So. 2d 428, 431, 434-36 (Ala. 1967) (holding that building commission members exceeded their statutory authority, and thus were not immune from suit, when they mandated minimum wages for state contractors). Thus, Plaintiffs' claims fall within the sixth *Moulton* category of cases not subject to sovereign immunity. *Ex Parte Wilcox Cnty. Bd. of Educ.*, 279 So. 3d at 1141 (quotations and citations omitted).

Therefore, Plaintiffs' claims for injunctive and declaratory relief against Defendants in their official capacities seeking to clarify their duties under, and compel their compliance with, the Alabama Constitution are not claims against the state, and therefore they are not barred by sovereign immunity. Accordingly, the circuit court's order dismissing Plaintiffs' claims due to sovereign immunity must be reversed.[10]

II. The Circuit Court Improperly Dismissed Plaintiffs' Claims for Lack of Standing.

The circuit court's dismissal of Plaintiffs' claims for lack of standing was erroneous and is due to be reversed.

To establish standing, Plaintiffs must demonstrate "(1) an actual, concrete and particularized injury in fact—an invasion of a legally

[10] To the extent the circuit court based its dismissal on Defendants' argument below that EO 725, AR 403, and Section 14-9-41 do not violate the Alabama Constitution, C_73-74, such argument has no bearing on whether Defendants are entitled to sovereign immunity and is wholly inappropriate at the motion-to-dismiss stage. *Ex parte Mobile Infirmary Ass'n*, 349 So. 3d 842, 845 (Ala. 2021) (explaining that at the pleading stage, the court is obligated to construe plaintiffs' well-pled allegations "most strongly in [their] favor" and consider "only whether [they] may possibly prevail" (quotations and citations omitted)). Defendants will have the opportunity to make such an argument at the merits stage before the circuit court.

protected interest; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Ex parte Aull*, 149 So. 3d at 592 (cleaned up). The allegations in Plaintiffs' Complaint satisfy all three prongs.

A. Plaintiffs Have Alleged Actual and Threatened Harms Sufficient to Establish Injury-in Fact for Their Claims Under Section 32 of the Alabama Constitution.

In order to satisfy the first prong of the standing test, a plaintiff must "allege specific concrete facts demonstrating an actual particularized injury in fact," *Munza v. Ivey*, 334 So. 3d at 219 (cleaned up), that constitutes the "invasion of a legally protected interest." *Ex Parte Aull*, 149 So. 3d at 592 (quoting *Lujan*, 504 U.S. at 560). "A party's injury must be tangible, and a party must have a concrete stake in the outcome of the court's decision." *Ex parte Merrill*, 264 So. 3d 855, 863 (Ala. 2018) (cleaned up). In short, Plaintiffs "must show that they personally have suffered some actual or threatened injury as a result of the purportedly illegal conduct" and "demonstrate how the challenged practices harm [them] in a concrete way." *Id.* at 633-34 (quotations and

citations omitted). In essence, the harm or threatened harm a plaintiff pleads must be real and specific to her, not atmospheric or conjectural.

Plaintiffs have met that standard here in four ways, as further detailed below. Plaintiffs have suffered past and ongoing injuries, and face the credible threat of future injuries, by virtue of Defendants' issuance and enforcement of AR 403, EO 725, and Section 14-9-41. These challenged provisions expressly authorize—and have in fact been applied by—ADOC officials to impose a range of physical and legal sanctions on Plaintiffs for not working. By punishing and threatening to punish them for not working, Defendants are infringing upon Plaintiffs' right under Section 32 the Alabama Constitution to be free from slavery and involuntary servitude.

1. Plaintiffs Have a Legally Protected Interest under Section 32 of the Alabama Constitution to be Free from Slavery and Involuntary Servitude.

The "legally protected interest" at the heart of all three counts in Plaintiffs' Complaint is their absolute right to be free from slavery and involuntary servitude—a right guaranteed to all Alabamians under the Alabama Constitution's Declaration of Rights. Ala. Const. art. I, § 32. In November 2022, Alabama voters elected to remove the exception clause

from Section 32 that permitted slavery or involuntary servitude as punishment for a crime. C_31. Section 32's now-total ban on slavery and involuntary servitude thus applies with equal force to all Alabamians, including Plaintiffs, regardless of one's status as an incarcerated person or a person convicted of a crime.

2. Plaintiffs Have Suffered and Continue to Suffer Tangible Harms in Violation of Their Rights under Section 32.

Plaintiffs have suffered and continue to suffer in palpably concrete ways as a result of Defendants' infringement of their rights under Section 32.[11] Through their issuance and enforcement of AR 403, EO 725, and Section 14-9-41, Defendants are expressly authorized to impose—and have in fact imposed—a range of punishments on Plaintiffs (and other incarcerated people) for not working. These actual and threatened harms are sufficient to confer standing. The Complaint details the various forms

[11] While Alabama courts have not yet had the occasion to interpret the exact meaning and scope of the terms "slavery" and "involuntary servitude" under Section 32, authorities interpreting similar terms in the pre-2022 Alabama Constitution and federal statutes enacted under the Thirteenth Amendment of the U.S. Constitution suggest that, at a minimum, forcing someone to work through physical or legal coercion plausibly constitutes involuntary servitude in violation of Section 32—a definition with which Defendants agree, *see* C_89—and thus constitutes a harm for purposes of standing.

of physical and legal sanctions that Plaintiffs—all of whom are currently incarcerated in ADOC custody in work-release and major facilities—have faced for not working, and are likely to continue to face if they do not work when ADOC officials order them to do so. These punishments are routinely meted out against people in ADOC custody, including Plaintiffs, both before and after Alabama voters ratified the current version of Section 32.

All of the Plaintiffs have been punished in the past for not working. C_43–44 (Stanley), C_46 (Burrell), C_51 (Gray), C_52–53 (Pringle), C_54 (Smith); *cf.* C_48–49 (Avery).[12] Plaintiffs' unwillingness or inability to work has resulted in each Plaintiff either having good-time revoked, C_54; being transferred to higher-security and more dangerous facilities, C_48–49; losing their paid work-release employment and being reassigned to unpaid labor for a different private employer, C_46; being subjected to disciplinary proceedings that could reduce their chances of

[12] Though Mr. Avery died in ADOC custody before this appeal was filed, the allegations in the Complaint specific to Mr. Avery may still inform this Court's standing analysis, as they provide additional support for the surviving Plaintiffs' allegations that ADOC routinely imposes punishment on incarcerated people for not working, including after the 2022 changes to the Alabama Constitution.

being granted parole and resulted in the temporary loss of access to canteen, phone, and visitation, *see, e.g.*, C_37–39; and being assigned to extra duty—i.e., additional involuntary (and unpaid) labor. *See, e.g.*, C_40, 52.

Notably, several of these punishments have occurred since Alabama voters ratified the 2022 changes to the Constitution that removed the exception clause from Section 32. This demonstrates both that the affected Plaintiffs have suffered a cognizable injury-in-fact in violation of their rights under the Alabama Constitution and that all Plaintiffs face a credible threat of future injury due to Defendants' routine practice of enforcing the challenged provisions in defiance of the changes to Section 32. Ms. Stanley was issued a behavior citation in August 2023 for "refusing to work/failing to check out for work" when her work-release employer, Burger King, changed her schedule and failed to inform ADOC. C_44. Mr. Pringle has been disciplined by ADOC three times since November 30, 2022 for "refusing to work" or "being fired from a job," including in two instances where he was fired from private work-release employers after complaining about unfair and inadequate pay. C_52. Mr. Smith was issued a disciplinary report for "refusing to

work/failing to check out for work" on or around November 23, 2022. C_54. Mr. Gray was directly threatened with punishment by ADOC officials if he did not work on the trash crew at Donaldson. C_50. After he was transferred to Frank Lee in April 2024, Mr. Gray was assigned to carry out unpaid cleaning work; he alleges that "ADOC will issue him a disciplinary report or behavior citation if he declines to work." *Id*. Mr. Avery was also punished by ADOC twice after the constitutional revision for "being fired from a job." C_48.

Plaintiffs have alleged, as required by Alabama Supreme Court case law on standing, "that they personally have suffered some actual or threatened injury as a result of [Defendants'] purportedly illegal conduct." *Merrill*, 264 So. 3d at 863 (citation omitted). Plaintiffs *have actually been punished* or threatened with punishment for not working in violation of Section 32, and Plaintiffs continue to live and labor every day in ADOC custody under the threat of punishment for not working. This gives them the sort of "concrete stake in the outcome" of this case that the *Merrill* plaintiffs lacked. *Id*.

3. Plaintiffs Face a Credible Threat of Future Injury Because the Risk of Being Punished for Not Working Looms Close at All Times.

Plaintiffs face a credible threat of future injury sufficient to confer standing. A threat of future injury is sufficient for standing purposes where a plaintiff alleges: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by" the challenged legal provision, and (2) "an actual and well-founded fear that the law will be enforced against him." *Munza*, 334 So. 3d at 218–19 (cleaned up). The "credible threat" standard is "quite forgiving." *Robinson v. Att'y Gen.*, 957 F.3d 1171, 1177 (11th Cir. 2020) (quoting *Wollschlaeger v. Governor*, 848 F.3d 1293, 1305 (11th Cir. 2017) (*en banc*)).[13] Here, Plaintiffs have alleged that they face a credible threat of future injury, as evidenced by their own past experiences, *see supra* Sections II.A.2, as well as Defendants' official policies and practices of routinely punishing individuals in ADOC custody for not working.

First, all of the Plaintiffs articulate a desire and plan to continue working. *See* C_45, 47, 51, 53–55. Yet, as Plaintiffs allege in their Complaint, they risk being subjected to punishment if, on any given day,

[13] The Alabama Supreme Court has adopted the federal courts' standing test, *see Ex Parte Aull,* 149 So. 3d at 592, and Alabama courts often look to federal case law on standing as instructive. *See, e.g., Stiff*, 878 So. 2d at 1141; *Munza*, 334 So. 3d at 218–19.

they do not show up for work or lose their job—even if they have a valid and understandable reason to do so. *See, e.g.,* C_46 (alleging Mr. Burrell was punished by ADOC for refusing to work after getting hit on the head with an entertainment center at his work-release job and complaining about unsafe working conditions); C_48–49 (alleging Mr. Avery was punished by ADOC for getting fired from job after falling asleep on the transport van on the way to work due to mental-health medications); C_52 (alleging Mr. Pringle was punished for getting fired from work-release jobs for raising concerns about unequal pay). This risk exists for all Plaintiffs, regardless of their current location or work status within ADOC. *See, e.g.*, C_45 (alleging Ms. Stanley was threatened with punishment for not reporting to work on unpaid trash duty at Tutwiler, a major prison); C_46–47 (alleging Mr. Burrell was threatened with punishment and actually punished for refusing, out of fear for his safety, to leave work-release facility to work without pay in the kitchen at a major prison during the statewide prison labor strike in the fall of 2022).

Second, Defendants are expressly authorized under AR 403, EO 725, and Section 14-9-41 to impose a wide range of sanctions on incarcerated persons for not working, including solitary confinement,

transfer to a more dangerous prison, loss of contact with loved ones, and forfeiture of good-time credits and loss of good-time earning status. C_8, 32–37, 40–41; *accord* C_70–71. This is the sort of "official policy of the State," *Poiroux v. Rich*, 150 So. 3d 1027, 1042 (Ala. 2014) (quotations omitted), that Plaintiffs, who remain in ADOC custody, are subject to at all times, and are likely to have applied against them in the future if they refuse to work. As Plaintiffs' own experiences demonstrate, these sanctions do not only exist on paper—they are routinely applied to people in ADOC custody. *See Parker*, 2017 WL 3820958, at *5 (citing *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 320 (1979)) (noting fact that plaintiff "has already once been subjected to investigation based on the alleged violation of [the challenged provision] . . . is enough to demonstrate" threat of future injury for standing purposes).

Therefore, the risk of future injury that Plaintiffs face is real and particular to them as incarcerated workers, not generalized or conjectural. Plaintiffs have alleged much more than a mere belief that the challenged provisions are invalid under Section 32. *See Munza*, 334 So. 3d at 218 ("[A]n individual's belief that a law is invalid or unenforceable is not the kind of actual, concrete and particularized injury

in fact that supports an individual's standing to sue." (cleaned up)). Plaintiffs are unlike the plaintiffs in *Munza*, who made broad assertions that they were "directly affected" by Governor Ivey's COVID-era mask-mandate proclamation simply because it applied to them, but failed to show that they were likely to be punished for violating the masking requirement or harmed by it in some other way. *Id.* at 217–18. Rather, Plaintiffs here have articulated specific facts demonstrating an ongoing and future threat that the challenged provisions will be applied to them, in ways that cause them concrete harm, as long as they remain in ADOC custody. Thus, Plaintiffs have demonstrated a credible threat of future injury.

4. Plaintiffs Have Pleaded Sufficient Injury-in-Fact with Respect to Each Count in the Complaint.

The actual and threatened injuries Plaintiffs have suffered as a direct result of Defendants' enforcement of AR 403 clearly establish their standing to challenge that provision. Indeed, Defendants conceded in the circuit court that all of the Plaintiffs have demonstrated a sufficient injury-in-fact to establish their standing to challenge AR 403. C_77 ("Plaintiffs lack standing to challenge all but Commissioner Hamm's enforcement of AR403."); *see also* R_3:6-12. Before the circuit court,

Defendants only disputed whether Plaintiffs' injury under AR 403 is traceable to Defendant Ivey. But, as addressed *infra* in Section II.B, Defendant Ivey is also responsible for Plaintiffs' harms arising from the enforcement of AR 403 and, thus, Plaintiffs have standing to challenge both Defendants' enforcement of AR 403.

Additionally, all Plaintiffs, regardless of their good-time earning status, have standing to challenge Executive Order No. 725, which was issued by Defendant Ivey in January 2023 on the heels of both the statewide prison labor strike and the changes to Section 32. C_32; C_98-105. Plaintiff Smith is the plaintiff that ADOC has determined is generally eligible to earn good time, and thus the only plaintiff who currently faces the risk of having EO 725's good-time-related sanctions applied against him. C_33–34, 41-42, 54; *see also* C_400. But EO 725 authorizes other forms of punishment that can be applied to all of the Plaintiffs. Section 1.a of EO 725 orders the ADOC Commissioner to establish certain rule violations, including high-level rule violations for "rioting or inciting a riot," "encouraging or causing a work stoppage," and "failure to obey a direct order of an ADOC employee," and a medium-level violation for "refusing to work." C_99.

The former violations can be—and actually have been—used to punish incarcerated people for not working, as Plaintiffs' experiences demonstrate. *See, e.g.,* C_45 (alleging ADOC officials issued Ms. Stanley a disciplinary report for Rule 925, "failure to obey direct order," when she did not wake up in time to report for work on garbage crew at Tutwiler Prison). EO 725 expressly permits other, non-good-time-related sanctions for these and other violations, including "solitary confinement and loss of prison privileges." C_34; *see also* C_103 (allowing "additional sanctions" for violation of the EO, "including but not limited to . . . restrictive housing, loss of prison privileges, and other sanctions").

Accordingly, all Plaintiffs, regardless of their good time eligibility, face a credible threat of being subjected to solitary confinement, loss of contact with loved ones, and other sanctions under EO 725 for refusing to work and other offenses related to not working. This threatened injury is not merely "conjectural or hypothetical," *Town of Cedar Bluff v. Citizens Caring for Child.*, 904 So. 2d 1253, 1260 (Ala. 2004) (quotations omitted), but ever-present for Plaintiffs—especially under the "quite

forgiving" "credible threat" standard. *See Robinson*, 957 F.3d at 1177 (quoting *Wollschlaeger*, 848 F.3d at 1305); *Munza*, 334 So. 3d at 218.[14]

Finally, Mr. Smith has standing to challenge Section 14-9-41 of the Alabama Code, which governs the accrual of good time credits, and which was amended in 2023 to further punish good-time-eligible individuals in ADOC custody for not working. C_40–41. Whether or not ADOC cites Mr. Smith with another rule violation between now and January (when he is scheduled to return to good-time earning status, C_417–18), Section 14-9-41(c)(4) permits ADOC to classify Mr. Smith as Class IV, and thus ineligible to earn good time pursuant to subsection (a)(4), if he is "able to work and refuse[s]." C_41. Thus, Mr. Smith faces the risk of losing additional good time and good-time earning status under Section 14-9-41. The threatened injury to Mr. Smith under Section 14-9-41 is

[14] Even if this Court determines that the non-good-time-eligible Plaintiffs lack standing to challenge EO 725, Mr. Smith clearly has standing. If Mr. Smith refuses to work, or if ADOC officials charge him with other violations under EO 725 for not working, the period in which he is ineligible to earn good time can be extended—possibly for years. *See* C_33–34; *see also* C_101 (an incarcerated person must maintain "good behavior"—i.e., not incur another disciplinary violation—in order to restore good-time earning status). The fact that Mr. Smith is not currently in good-time earning status, *see* C_75, does not alter this analysis.

especially pronounced when combined with Defendant Ivey's commands to Defendant Hamm and all ADOC officials under EO 725, to exact heightened punishments on incarcerated persons who withhold their labor. *See* C_32, 35, 41.

B. Plaintiffs' Injuries Are Fairly Traceable to Both Defendants.

In order to meet the second prong of the standing test, "there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant." *Ex parte Ala. Educ. Television Comm'n*, 151 So. 3d 283, 290 (Ala. 2013) (citing *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 41–42 (1976)), *as modified on denial of reh'g* (Jan. 24, 2014) ["*AETC*"]. A plaintiff's alleged injuries cannot be "the result of the independent action of some third party not before the court." *Ex parte LeFleur*, 329 So. 3d 613, 625 (Ala. 2020) (cleaned up) (quoting *Lujan*, 504 U.S. at 561). Here, Plaintiffs' injuries can be traced to both Defendants by virtue of Defendant Ivey's issuance of EO 725, Defendant Hamm's issuance of AR 403, and their joint enforcement of all three challenged provisions.

Plaintiffs' injuries under AR 403 are traceable to Defendant Hamm, as Defendants conceded below. *See supra* Section II.A.4; C_77. Plaintiffs

allege in their Complaint, C_12, and Defendants agree, C_76, that Defendant Hamm is responsible for promulgating and enforcing AR 403. Indeed, this Court has sustained its jurisdiction over actions against the ADOC Commissioner that challenge ADOC Administrative Regulations. *See, e.g.*, *Evatt*, 99 So. 3d at 889, 894 (reversing dismissal for lack of standing and failure to state a claim in incarcerated plaintiff's claim against ADOC Commissioner challenging AR 452). Plaintiffs' injuries under AR 403 are clearly traceable to Defendant Hamm.

Plaintiffs' injuries under EO 725 are traceable to both Defendants. Any injury suffered by Plaintiffs under EO 725 is clearly traceable to Defendant Ivey, who issued the Executive Order. C_32. Those injuries are also traceable to Defendant Hamm, who is charged with enforcing the order and who revised AR 403 to be consistent with the order. *See* C_32–34; C_99-104.

With respect to all three challenged provisions, including Section 14-9-41, Plaintiffs have demonstrated that Defendants Ivey and Hamm share "statutory authority to enforce" the rules and laws governing ADOC—the minimum showing to establish a causal connection in injunctive-relief actions against government officials. *Support Working*

Animals, Inc. v. Governor of Fla., 8 F.4th 1198, 1200–01 (11th Cir. 2021); *see* C_11-12 (citing Ala. Code § 14-1-17). Moreover, and perhaps most importantly, the three challenged provisions do not operate in isolation from each other. They work in tandem, and were issued or amended—*after Alabama voters overwhelmingly elected to remove the exception clause from Section 32*—specifically to punish incarcerated people who decline to work (or encourage others to do so). Defendant Ivey's issuance of EO 725 in January 2023 was quickly succeeded by Defendant Hamm's revisions to AR 403 only one day later and the Legislature's amendment of Section 14-9-41 via Senate Bill 1 during the early days of its 2023 regular session. *See* C_35, 41. The interaction of these three provisions and Defendants' hands in each of them—commencing with Defendant Ivey's issuance of EO 725—further cements the causal connection between Plaintiffs' injuries and both Defendant Ivey and Defendant Hamm.

C. Plaintiffs' Injuries Are Redressable by a Court Order.

Finally, the injuries Plaintiffs have suffered and continue to suffer can be redressed by a court order providing them with the equitable relief they seek. In order to establish standing, a plaintiff must "demonstrate a

likelihood that their alleged injury will be redressed by a favorable decision." *AETC*, 151 So. 3d at 288 (cleaned up) (citations omitted) (holding that plaintiffs, former Television Commission employees who only requested for civil fines to be imposed against Defendants for their past violation of the Open Meetings Act, did not meet the redressability prong because they "s[ought] not remediation of their injury but vindication of the rule of law" (cleaned up) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998)); *see also Dream Defs. v. Governor of the State of Fla.*, 57 F.4th 879, 888-89 (11th Cir. 2023) (finding plaintiffs' injuries were redressable by preliminary injunction prohibiting Florida governor and sheriff from enforcing allegedly unconstitutional law), *certified question answered sub nom. DeSantis v. Dream Defs.*, 389 So. 3d 413 (Fla. 2024). Here, an order declaring the challenged provisions of AR 403, EO 725, and Section 14-9-41 unconstitutional, restraining Defendants from further enforcing those provisions against Plaintiffs or coercing their labor through other means, and expunging Plaintiffs' past work-related disciplinaries, *see* C_56–58, would remedy Plaintiffs' injuries.

These forms of relief are routinely granted by Alabama courts to plaintiffs who prevail in public-law equitable-relief cases against state officials. *See, e.g.*, *Poiroux*, 150 So. 3d at 1043 (holding that bail bonding companies had standing to challenge state statute imposing allegedly unconstitutional fees on them because their alleged injuries "would be redressed by the requested declaratory and injunctive relief"; reversing circuit court's dismissal of their claim for lack of standing). Accordingly, Plaintiffs' injuries are redressable by a court order binding Defendants.

CONCLUSION

For the reasons set forth herein, the circuit court erred in concluding that it lacked subject matter jurisdiction over Plaintiffs' claims. Plaintiffs' claims are not barred by sovereign immunity, and Plaintiffs have standing to bring each of their claims against both Defendants. This Court should therefore reverse the circuit court's August 1, 2024 order dismissing Plaintiffs' claims.

Dated: November 19, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the style requirements and word limitations of Alabama Rule of Appellate Procedure 32.

This document is submitted in Century Schoolbook font, size 14, and contains 9,693 words.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Court using the Alabama Appeals e-File system, which will send notification of such filing to all counsel of record.

s/ Caitlin J. Sandley
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