CL-2024-0710

IN THE ALABAMA COURT OF CIVIL APPEALS

Traveka Stanley, *et al.*,

v.

KAY IVEY, *et al.*,

On Appeal from the Circuit Court of
Montgomery County (CV-2024-900649)

APPELLEES' BRIEF

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is needed because this appeal presents as issue of first impression regarding the original meaning of §32 of the Alabama Constitution, particularly with its recent amendment with the 2022 Constitution of Alabama.

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STATEMENT OF JURISDICTION

As set out further in Appellees' motion-to-transfer briefing, this case falls outside this Court's limited appellate jurisdiction under §12-3-10. The parties agree that no amount is involved, so this cannot be a case "where the amount involved" does not exceed $50,000. Jurisdiction over this appeal properly lies in the Alabama Supreme Court under its general appellate jurisdiction over an appeal from an order dismissing the inmates' case by the Montgomery County Circuit Court. *See* ALA. CODE §12-2-7. But no court has subject-matter jurisdiction over the inmates' claims because of sovereign immunity and lack of standing as discussed below.

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STATEMENT OF THE CASE

On November 8, 2022, Alabama voters ratified a "rearranged and cleaned-up" State Constitution. C.28. One of the fourteen textual changes was to Article I, §32, which previously banned slavery or involuntary servitude "otherwise than for the punishment of crime, of which the party shall have been duly convicted." The Constitution of 2022 no longer contains this penal exception. Appellants are five inmates who attempt to use this removal of defunct language to challenge the entire incentive structure of Alabama's prison system. A suit propounding the same theory was recently rejected by courts in Colorado. This Court should reach the same result.

The inmates say they are "forced by the State of Alabama to labor against their will for the Alabama Department of Corrections ('ADOC') and for private employers in violation" of §32. C.6. But they complain only of performing chores in prison, voluntarily laboring on public work projects, and voluntarily working for private employers on work release. The relief they seek is not an injunction ordering the State to shut down the work release and community work programs. To the contrary, the inmates want to live in a community-based facility and enjoy the

privileges that come with work release. *See* Op.Br.44 ("[A]ll of the Plaintiffs articulate a desire and plan to continue working." (citations omitted)). Instead, the inmates sue for an injunction prohibiting State officials from disciplining them—as part of the voluntary work release program and in accordance with State law—when they refuse to work or get fired from their jobs for cause. C.56-57. In other words, the inmates want a court order permitting them to abandon their posts on a day-by-day (or perhaps an hour-by-hour) basis no matter how legitimate the reason. *See, e.g.*, Op.Br.16 ("if, at any given moment, she is unable or unwilling to work").

The trial court properly dismissed the inmates' suit for lack of subject-matter jurisdiction. They have standing to challenge only ADOC Administrative Rule 403, not the Deputy Brad Johnson Act (§14-9-41) or Executive Order 725 because neither injured the inmates. And sovereign immunity bars the remaining claim because the inmates' requested relief directly affects ADOC's work release contracts with the inmates and their employers.

This Court may also affirm because the inmates failed to state a claim. Slavery and involuntary servitude do not exist in the State's prison

system. Qualifying inmates can volunteer to participate in the work release, community work, and correctional industries programs. Those inmates agree to abide by ADOC's rules governing job-related behavior. And every able-bodied inmate contributes to the maintenance of prison facilities with mandatory chores. Being required to serve in the cafeteria, take out the garbage, mop the halls, and the like is not involuntary servitude. No prisoner's basic rights are threatened for refusing to perform these communal tasks. True, prisoners may have some privileges temporarily suspended for shirking their duties, but the threat of losing a privilege does not transform normal, housekeeping work into involuntary servitude. The penal exception was never needed to justify these practices.

This suit is not about involuntary servitude. It is about individuals convicted of crimes trying to get all the benefits of the incentive structure of the State's prison system without any of the consequences for breaking the rules. The Court should affirm.

STATEMENT OF THE ISSUES

1. Do inmates who are not eligible for good time have standing to challenge the Deputy Brad Johnson Act and EO725, when those

provisions could injure them only through the loss of good-time credits or eligibility?

2. Is there standing to sue Governor Ivey when there is no allegation that she caused the inmates' injuries, which all concern AR403 that Commissioner Hamm enforces?

3. Does sovereign immunity bar the inmates' challenge to AR403, which requests relief that directly affects ADOC's work release contracts?

4. Does the original meaning of "involuntary servitude" encompass voluntary labor or mandatory housekeeping chores assigned to inmates in prison?

STATEMENT OF THE FACTS

From 2019 to 2021, the Alabama Legislature was recompiling the Alabama Constitution "in proper articles, parts, and sections," "removing all racist language," "delet[ing] duplicative and repealed provisions, consolidat[ing] provisions regarding economic development," and "arrang[ing] all local amendments by county of application." ALA. CONST. of 1901, art. XVIII, §286.02. The constitutional amendment authorizing this project commanded the Legislature to "make no other changes." *Id.*

Article I, §32 of the Constitution—closely resembling its federal counterpart—then declared: "That no form of slavery shall exist in this state; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted." *Id.* art. I, §32; *see also* ALA. CONST. of 1875, art. I, §33; U.S. CONST. amend. XIII. When recompiling the Constitution, the Legislature removed the language "otherwise than for the punishment of crime, of which the party shall have been duly convicted." ALA. CONST. of 2022, art. I, §32. Alabama voters ratified the tidied-up Constitution in November 2022. C.31.

Meanwhile, on June 30, 2022, Bibb County Deputy Sheriff Bradley Johnson was fatally shot in the line of duty. The man accused was Austin Patrick Hall, a convicted criminal and prison escapee who had recently been released from the Alabama Department of Correction's custody after having served just four years of his ten-year sentence.[1] In response to this tragedy, the Executive and Legislative branches took action to fix

[1] *See* Attorney General Steve Marshall, Press Release, June 6, 2022, https://www.alabamaag.gov/attorney-general-steve-marshall-issues-statement-concerning-bibb-county-shooters-criminal-record/ (last visited Dec. 9, 2024). Austin Hall's capital murder trial is scheduled for September 2025.

the "[f]undamental flaws in Alabama law granting correctional incentive 'good time' to inmates."[2] First, Governor Kay Ivey signed Executive Order No. 725 on January 9, 2023, titled "Promoting Public Safety by Establishing Standards and Accountability for Correctional Incentive Time." C.98-105; *see also* C.8, 32-35. The Order instructed ADOC Commissioner Hamm to implement "uniform minimum standards for correctional incentive time sanctions." C.99. ADOC accordingly promulgated Administrative Rule 403 ("Procedures for Inmate Rule Violations") on January 10, 2023. C.129; *see generally* C.107-146.

The Legislature, for its part, passed the Deputy Brad Johnson Act in April 2023, which amended Ala. Code §14-9-41 to reduce by half the number of days off a sentence that an inmate can accrue, to increase the time an inmate must demonstrate good behavior before progressing to the next classification, and to prohibit an inmate from earning good time if he or she commits specific violations while in prison, such as escape, sexual assault, rioting, and homicide.

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[2] Governor Kay Ivey, Press Release, July 5, 2023, https://governor.alabama.gov/newsroom/2023/07/governor-kay-ivey-announces-state-settlement-in-case-of-bibb-county-deputy-sheriff-brad-johnson/ (last visited Dec. 9, 2024).

Plaintiffs are five inmates in the custody of ADOC. All five want "to work for a free-world employer," but they do "not want to be punished by ADOC for not working." C.45 (Stanley), 47 (Burrell), 51 (Gray), 53 (Pringle), 54-55 (Smith). The inmates allege that EO725 and AR403 violate §32's prohibition on slavery and involuntary servitude. C.55. Only Plaintiff Smith alleges that the Deputy Brad Johnson Act violates §32. C.55-56. In addition to declaratory relief, they seek an injunction prohibiting State officials from punishing inmates in accordance with their voluntary employment agreements and State law who refuse to work or who get fired from their jobs. C.56-57.

The inmates' allegations implicate four distinct types of inmate labor: (1) voluntary labor for private employers through ADOC's work release program, *see* C.27, 38; *see generally* C.42-55; (2) voluntary community labor for State agencies, cities, and counties on public works or road projects, C.26, 51; (3) voluntary labor making goods for sale through ADOC's Correctional Industries, C.26, 42, 46; and (4) mandatory housekeeping duties at ADOC facilities such as cleaning, repair, cafeteria duty, and laundry, C.26, 38-39, 44-45, 50.

ADOC has various security levels that are relevant to these different types of labor inmates may perform. ADOC uses its classification system to evaluate each inmate to determine his or her appropriate security level. C.157; C.222-23. This evaluation includes determining whether the inmate can work alongside non-incarcerated workers without supervision by ADOC staff. Inmates are encouraged to work to lower classifications and are statutorily allowed to be employed "at such labor, in such places and under such regulations within the state as may be determined by the Department of Corrections." Ala. Code §14-3-47; *see also id.* §14-5-10.

Work Release. The lowest custody level, Minimum-Community, relates to the inmates' first category of inmate labor: work release. C.157; C.222-23. A Minimum-Community inmate is "allowed gainful employment in the community on a full-time basis and [is] supervised in community-based facilities when not working." C.278. Alabama statutory law authorizes work release and places four limitations on securing employment for inmates: (1) wages must be at the prevailing wage for similar work in the area; (2) inmates may not displace already employed workers; (3) inmates may not be employed as strikebreakers or impair existing

contracts; and (4) inmates may not be exploited. *See* Ala. Code §14-8-4; *see also* C.279. Employers sign an agreement that they "must pay for inmate labor in the same manner as for any other employee and must comply with the requirements established by the Fair Labor Standards Act." C.286. Further, inmates "will not be employed under adverse or unacceptable working conditions." C.279.

The work release statute authorizes ADOC to deduct portions of inmates' wages to cover its costs, specifically:

> The employer of an inmate involved in work release shall pay the inmate's wages directly to the Department of Corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate. After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate.

Ala. Code §14-8-6; *see also* C.42-43. ADOC transports work release inmates to their jobs. C.41-42; *see also* C.281. And because all free-world employees must pay for transportation and laundry, ADOC is allowed to charge a small fee for transportation and laundry services. C.281. The

transportation fee is waived if the employer opts to pick up and drop off the inmate. C.281, 287. Inmates are also subject to co-pays for various medical services. C.299.

Inmates participating in the work release program sign a contract, in which they agree to abide by the terms and conditions described above. C.293-94. Crucially, inmates certify that they "understand that if [they] violate any of these conditions, [they] may be removed from the privilege of the Work Release Program and returned to a major institution." C.294. No allegation in the complaint nor anything in the record suggests that the inmates here did not sign the form. *Contra* C.436.

Community Work. The inmates' second category of inmate laborers—those who perform public works projects for government entities—involves inmates classified as Minimum-Out. C.157. Minimum-Out is for inmates who "are not seen as risk to themselves or others and can be assigned to work assignments away from ADOC property without supervision by Correctional Officers. Most Minimum-Out custody inmates are housed at Community Work Centers." *Id.* ADOC is statutorily "authorized to hire or lease convicts to any department, agency, board, bureau or commission of the state on such terms, conditions and at such prices as

may be mutually agreed upon." ALA. CODE §14-5-10. The Alabama Department of Transportation, for example, is statutorily authorized to contract with ADOC for the use of inmate labor in its operations. *Id.* §23-1-37. Although not required by statute, Minimum-Out inmates are paid for participating in this work. C.313.

Like work release inmates, community work inmates volunteer of their own accord. In fact, an inmate who qualifies for and elects to participate on a Community Work squad signs an "Inmate Volunteer Waiver," wherein he or she attests to the following:

> I … understand that I have requested and am volunteering to provide free labor … under the terms of ADOC Form 439-A, *Application for inmate Work*, attached.
>
> I have not been coerced or forced into providing this service. I agree to follow all ADOC policies and understand that I may be removed from this work project and/or face disciplinary action for violations of ADOC policy. …
>
> I also understand that I may be removed from this project at any time, for any reason.

C.327.

Correctional Industries. The inmates' third category of inmate laborers includes those who make goods for Alabama Correctional Industries, another program established by statute based on the Legislature's findings that ADOC is:

> (1) To provide more adequate, regular and suitable employment for the vocational training and rehabilitation of the prisoners of this state, consistent with proper penal purposes.
>
> (2) To utilize the labor of prisoners for self-maintenance, reimbursing this state for expenses incurred by reason of their crimes and imprisonment, and for initial living expenses upon reentry into the community following release from prison.
>
> (3) To effect the requisitioning and disbursement of prison products directly through established state authorities without possibility of private profits therefrom.
>
> (4) To provide prison industry projects designed to place inmates in working and training environments in which they are able to acquire marketable skills and earn money to off-set the cost of incarceration, make payments for restitution to their victims, provide support for their families, and prepare for their release from prison.

ALA. CODE §14-7-7. ADOC implements this statute by employing inmates at ACI. C.26. ACI inmates make furniture, chemicals, clothing, mattresses, construct modules, and imprint vehicle tags. C.42. Prison-made goods that ACI produces may be sold only to the State or political subdivisions, and ADOC is prohibited from selling prison-made goods on the open market. *See* Ala. Code §§14-7-13, -22. Again, crucially, an "inmate may participate in the program … only on a voluntary basis and only after he or she has been informed of the conditions of his or her employment." *Id.* §14-7-22.1(b). Inmates are paid for this work as well. *Id.* §14-7-22.1(c).

Inmate Assigned Jobs. The inmates' fourth category of inmate laborers involves unpaid chores and duties performed at ADOC facilities or in the immediate vicinity of those facilities. Inmates are assigned various duties within the ADOC facilities. The assigned duties assist inmates in "their personal development and the efficient operation of their facility." C.329. An Institutional Job Placement Board assesses and assigns inmates these duties within the institution. C.156, 329-331. Inmate-assigned duties include anything from cooking, cleaning, and laundry to wiring and repairing the HVAC and electricity systems at ADOC facilities. C.26.

Relevant Sanctions. Whether an inmate has a free-world employer, volunteers for a Community Work squad, or elects to work for Alabama Corrections Industries, he or she may be subject to discipline for "[r]efusing to work" or "being terminated … for cause," among other violations not relevant here. C.126-27. The same goes for inmates who shirk their assigned duties at their ADOC facility. For medium-level violations, sanctions can include "forfeiture of a minimum of 720 accrued Good Time days," "at least a six-month bar from Good Time earning status," "confinement in Restrictive Housing for up to 30 days," "loss of any

and all privileges/incentives for up to 45 days," or "extra duty for up to 45 days." C.129; *see also* C.12, 55. The penalties for low, high, and severe violations are lower, higher, and more severe, respectively. C.129, 130, 132, 134, 140.

* * *

Consistent with the framework detailed above, the inmates allege that they performed their assigned jobs at ADOC facilities without compensation or that they volunteered to work on public works projects at less than minimum wage or for private employers. *See generally* C.43-53. They also allege that they have lost some privileges for violating ADOC disciplinary policies. They do not allege, however, that they have been forced to work under threat of criminal sanction or physical force.

STANDARD OF REVIEW

The district court's dismissal for lack of subject-matter jurisdiction is reviewed do novo. *Dep't of Revenue v. Arnold*, 909 So. 2d 192, 193 (Ala. 2005). A defendant can challenge subject-matter jurisdiction in two ways. *See Ex parte Safeway Ins. Co. of Ala., Inc.*, 990 So. 2d 344, 349-50 (Ala. 2008). For a facial attack on subject-matter jurisdiction, a court uses the same standard used to decide a 12(b)(6) motion. *Id.* at 349. A factual

attack, by contrast, requires a court to "go beyond the pleadings and resolve any disputed issues of fact the resolution of which is necessary to a ruling upon the motion to dismiss." *Id.* at 350 (citation omitted). The inmates bear the burden to prove that jurisdiction exists. *Id.* at 350.

This Court must affirm "on any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court[.]" *Jefferson Cnty. Comm'n v. Edwards*, 49 So. 3d 685, 691 (Ala. 2010) (citation omitted). Failure to state a claim was another valid legal ground presented below that supports affirmance. *See* C.81-94. "In considering whether a complaint is sufficient to withstand a motion to dismiss under Rule 12(b)(6), a court 'must accept the allegations of the complaint as true.'" *Crosslin v. Health Care Auth. of City of Huntsville*, 5 So. 3d 1193, 1195 (Ala. 2008) (citation omitted). But "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Ex parte Gilland*, 274 So. 3d 976, 985 n.3 (Ala. 2018) (citation omitted).

Finally, "[c]ourts will strive to uphold acts of the legislature," *City of Birmingham v. Smith*, 507 So. 2d 1312, 1315 (Ala. 1987), which "are presumed constitutional," *State ex rel. King v. Morton*, 955 So. 2d 1012,

1017 (Ala. 2006). The inmates must show "beyond a reasonable doubt" that the law is unconstitutional. *Id.* at 1017.

SUMMARY OF THE ARGUMENT

This Court should affirm the trial court's judgment dismissing the inmates' suit because there is not subject-matter jurisdiction over their claims under §32, which also fail on the merits.

First, as to jurisdiction, almost all the inmates' claims (except their challenge to AR403 against Commissioner Hamm) fail for lack of standing. The inmates lack an injury in fact to support their claims against the Deputy Brad Johnson Act and EO725—which could only injure the inmates through the loss of good-time credits or eligibility—because no inmate was eligible for good time at the time of filing the complaint. And the inmates' claim against AR403 as to Governor Ivey fails because any alleged injuries that AR403 causes are not traceable to her. Indeed, the complaint alleges that only Commissioner Hamm enforces AR403.

Second, as to jurisdiction, the inmates' remaining claim as to AR403 against Commissioner Hamm fails because he is entitled to sovereign immunity. The inmates' requested relief—being able to refuse to honor their work release agreement with ADOC "at any moment"—directly affects

the State's contract rights in those agreements along with ADOC's agreements with employers that participate in the work release program. No *Moulton* circumstance suggests otherwise.

And *third*, as to the merits, the inmates fail to state a claim. In adopting a recompiled constitution that omitted some defunct language—including §32's penal exception—Alabama voters did not intend to (and therefore did not) abolish ADOC's various work programs. Case law interpreting identical language in the Thirteenth Amendment to the U.S. Constitution confirms that the ordinary meaning of "slavery and involuntary servitude" does not encompass voluntary work programs and mandatory chores for inmates. Even though the circuit court did not rule on this issue, it is properly before the Court because failure to state a claim was a valid legal ground presented below that requires affirmance. And Defendants' argument, assuming the inmates' allegations to be true, is entirely consistent with 12(b)(6).

ARGUMENT

I. Lack of Standing Bars the Inmates' Challenges to the Deputy Brad Johnson Act and EO725 along with Any Claims against Governor Ivey.

Lack of standing is a "jurisdictional defect." *Prop. at 2018 Rainbow Drive*, 740 So. 2d at 1028. The Alabama Supreme Court has adopted the test from *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992), as "the means of determining standing in Alabama." *Ex parte Aull*, 149 So. 3d 582, 592 (Ala. 2014). Under *Lujan*, a plaintiff must establish three elements to prove standing: (1) injury in fact, (2) traceability, and (3) redressability. 504 U.S. at 560-61. This Court should affirm the dismissal of the inmates' suit because they cannot satisfy these elements as to the Deputy Brad Johnson Act, EO725, or Governor Ivey.[3]

A. Neither the Deputy Brad Johnson Act nor EO725 injured the inmates.

"[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek[.]" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (citation omitted). The inmates' brief repeatedly ignores this duty; they

[3] Defendants do not raise a standing argument as to the inmates' challenge to AR403 against Commissioner Hamm.

spend pages conflating their alleged injuries caused by AR403 with hypothetical injuries that the Deputy Brad Johnson Act and EO725 could not and did not impose on them. *See, e.g.*, Op.Br.45 ("Defendants are expressly authorized under AR 403, EO 725, and Section 14-9-41 to impose a wide range of sanctions on incarcerated persons …."). Defendants do not dispute that the punishments the inmates have incurred under AR403 constitute injury in fact for standing purposes, but that does not establish injury in fact to challenge the Deputy Brad Johnson Act or EO725.

The standing issues here stem from the inmates' inability to earn good-time credits, which is the only "punishment" available for violating EO725 and the Deputy Brad Johnson Act. According to the Complaint, the inmates challenge the Deputy Brad Johnson Act, EO725, and AR403 "because they require and enforce slavery and involuntary servitude." *See generally* C.55, 56. While AR403 allegedly "subject[s] incarcerated people, including Plaintiffs, to *various forms of punishment* for not working or refusing to work," C.55 (emphasis added), the Deputy Brad Johnson Act "require[s] punishment of incarcerated persons for refusal to work," *only* "in the form of prohibiting [them] … from earning good time,"

C.56. EO725's punishment is similarly limited; as relevant here, it only allegedly enforces slavery by "authoriz[ing] the revocation of … good-time credits." C.8. Violations of rules enumerated in AR403, by contrast, allegedly "impose a range of *other* punishments for the same conduct": "solitary confinement, transfer to a more dangerous prison, [and] loss of contact with loved ones[.]" C.8 (emphasis added).

The Complaint's allegations cited above rebut the inmates' argument here. Regardless, their brief does not establish that the Deputy Brad Johnson Act or EO725 could have injured them. Conflating again, they claim that all three provisions authorize Defendants to impose "a range of punishments," but the inmates don't cite any language from the Act or EO725 that authorizes punishments beyond revoking good-time credits. *See* Op.Br.40, 45. They cite §1(a), which requires Commissioner Hamm to "establish four levels of disciplinary rule violations" and to "assign each existing rule violation to one of those levels." But the inmates ignore EO725's pronouncements of the sanctions for these violations, which include only revoking good-time credits. *See* C.100, 101, 102.

They also claim that "EO 725 authorizes other forms of punishment that can be applied to all of the Plaintiffs." Op.Br.48. They later cite to

§1(h), which they argue "allow[s] 'additional sanctions' for violation of the EO" beyond loss of good-time credits. Op.Br.49. Below they argued that §1(h) "explicitly authorizes other punishments for refusing to work and other rule violations," C.417, and "contemplates expressly in the text of the order other types of punishments for refusing to work and other disciplinary violations," R.3. Their reading of §1(h) is unfounded. It states: "Nothing in this executive order shall preclude the imposition of further or additional sanctions beyond those set forth above, including but not limited to, time to be served in restrictive housing, loss of prison privileges, and other sanctions for disciplinary rule violations." C.103. Not precluding *additional* sanctions (like those that AR403 imposes) is a far cry from explicitly authorizing such punishments. EO725 imposes no such additional punishments.

Thus, the inmates lack standing to challenge the Deputy Brad Johnson Act and EO725 if they are ineligible to accrue good-time credits. Put simply, the inmates' labor cannot be coerced by a loss of good-time credits if they (1) are ineligible to accrue them and (2) lack any to lose.[4] Both conditions are true for all five inmates. To begin with, the inmates

[4] Indeed, EO725 affects "a good-time eligible person." C.33, 34.

allege that only Plaintiff Smith "is currently good-time eligible and subject to [§14-9-41]." C.11, 54-55, 56; *accord* Op.Br.48 ("Plaintiff Smith is the plaintiff that ADOC has determined is generally[5] eligible to earn good time[.]"). But Smith's inmate summary lists him as "Class IV - straight time," C.348, which means he is ineligible to earn good-time credits, *see, e.g.*, C.41; *accord* Op.Br.50 (acknowledging that Smith is ineligible).[6]

Inmate Smith argues that he "clearly has standing" because "*[i]f* [he] 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[.]" Op.Br.50 n.14 (emphasis added); *accord id.* ("Whether or not ADOC cites Mr. Smith with another rule violation between now and January …."); *id.* (arguing the same as to §14-9-41). Assuming the extension of good-time ineligibility could be an injury in fact,

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[5] In other words, Plaintiff Smith is not categorically ineligible like the other four inmates because of their specific convictions or sentences.

[6] "Standing is determined at the time the plaintiff files its complaint." *E.g.*, *Cook v. Bennett*, 792 F.3d 1294, 1298 (11th Cir. 2015) (citation omitted). Thus, whether "Mr. Smith faces the risk of losing additional good time"—which he currently lacks, *see* C.349—in the future, is irrelevant to whether he had standing at the time he filed suit.

this injury is conjectural and cannot support standing.[7] *See Hanes v. Merrill*, 384 So. 2d 616, 621 (Ala. 2023) (explaining that an injury is "by definition, conjectural" if the injury cannot be described "without beginning the explanation with the word 'if'" (citing *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 297-98 (3d Cir. 2003))); *cf. Ex parte Town of Summerdale*, 252 So. 3d 111, 121 (Ala. 2016) ("[T]he threat of injury needs to be imminent and tangible rather than purely speculative in order for there to be a bona fide justiciable controversy.").[8]

The other four inmates are similarly ineligible to earn good-time credits. Their inmate summaries show the classification "CLASS IV - PROHIBITED FROM EARNING GOODTIME[,]" which is consistent with their sentences over fifteen years (and Class A felony convictions for

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[7] Inmate Smith's allegations that ADOC revoked his good time on two occasions in the past, Op.Br.19 (citing C.54), are insufficient to establish standing to obtain the prospective injunctive relief he seeks, *see* C.56-58. *See also Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328 (11th Cir. 2013) ("Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party shows 'a real and immediate—as opposed to a merely conjectural or hypothetical—threat of *future* injury.'" (cleaned up)).

[8] Adding to the speculative nature of this injury, EO725 permits Inmate Smith to "be returned to good time-earning status … only after demonstrating good behavior for at least one year." C.101. Given his extensive disciplinary history over the last two years, *see* C.348-50, that is no guarantee either.

some). *See* C.334-47; *see also* ALA. CODE §14-9-41(e)(1). The inmate summaries also reflect that they lack any good-time credits to lose, listing their "GoodTime Bal" as "000000 Days." *See* C.334-47.

In sum, the inmates have not alleged facts showing that they would be injured by enforcement of the Deputy Brad Johnson Act or EO725 because those laws regulate good-time credits. At the time of filing the complaint, the inmates had none and could not accrue any more. Thus, the inmates lack standing to challenge the Deputy Brad Johnson Act and EO725.

B. The inmates' alleged injuries are not traceable to Governor Ivey.

As to AR403,[9] the inmates cannot satisfy the traceability element of standing as to Governor Ivey. This element requires the inmates to allege a "causal connection" between their alleged injuries (potential sanctions imposed under AR403 for their refusal to work) and Governor Ivey's conduct. *Lujan*, 504 U.S. at 560. No such allegations exist.

[9] Because the only injuries the Deputy Brad Johnson Act and EO725 cause relate to good time and the inmates are ineligible for good time, Governor Ivey (and Commissioner Hamm) could not have caused the nonexistent injuries in fact necessary to support those claims to begin with.

The inmates' allegations as to Governor Ivey generally relate to signing EO725. C.8, 32. There is no allegation that she enforces or otherwise caused the inmates' alleged injuries under AR403. To be sure, the inmates reference Ala. Code §14-1-17, which vests "all duties" of ADOC in Governor Ivey *or* "by and through such administrative divisions and such officers or employees or individuals as [s]he may designate." *Id.* ¶17.

But the inmates' allegations confirm that Commissioner Hamm "is responsible for promulgating and enforcing AR 403." C.12; *see* ALA. CODE §14-1-1.3 (granting Commissioner Hamm "independent direction, supervision and control" of ADOC). "Where the enforcement of a statute is the responsibility of parties other than the governor …, the governor's general executive power is insufficient to confer jurisdiction." *Women's Emergency Network v. Bush*, 323 F.3d 937, 949-50 (11th Cir. 2003) (citation omitted) (applying the related "some connection" standard from *Ex parte Young*). Commissioner Hamm's "independent action" (actual enforcement of AR403) defeats any argument that the inmates' sanctions under AR403 are fairly traceable to Governor Ivey. *Lujan*, 504 U.S. at 560 (citation omitted).

II. Commissioner Hamm Is Entitled to Sovereign Immunity as to the Inmates' Remaining Challenge to AR403.[10]

Article I, §14 of the Alabama Constitution states "[t]hat the State of Alabama shall never be made a defendant in any court of law or equity." "The wall of immunity erected by §14 is nearly impregnable." *Patterson v. Gladwin Corp.*, 835 So. 2d 891, 895 (Ala. 2008). Sovereign immunity is not merely an affirmative defense; it is a "jurisdictional bar" that requires dismissal for lack of subject-matter jurisdiction. *See Ala. Dep't of Corr. v. Montgomery County Comm'n*, 11 So. 3d 189, 191 (Ala. 2008). And sovereign immunity bars suit not just against the State and State agencies but also against State agents in their official capacities. *Burgoon v. Ala. State Dep't of Human Res.*, 835 So. 2d 131, 133 (Ala. 2002). A court must dismiss such suits "at the earliest opportunity." *Id.*

The inmates sued Commissioner Hamm in his official capacity as Commissioner of the Alabama Department of Corrections. C.12. Accordingly, Commissioner Hamm is entitled to sovereign immunity. That said, there are six "exceptions," or "limited circumstances," where sovereign immunity does not apply. *See Ex parte Moulton*, 116 So. 3d 1119, 1131

[10] If the inmates have standing to challenge AR403 as to Governor Ivey, this argument applies with equal force to her.

(Ala. 2013). The inmates argue that the second ("actions brought to enjoin State officials from enforcing an unconstitutional law"), fourth ("actions brought under the Declaratory Judgments Act … seeking construction of a statute and its application in a given situation"), and sixth ("actions for injunction … brought against State officials in their representative capacity … where it was alleged that they had acted … beyond their authority or in a mistaken interpretation of law") apply. *Id.*; Op.Br.29.

As an initial matter, the inmates have *Ex parte Cooper* backwards. 390 So. 2d 1030 (Ala. 2023). *Cooper* does not support (1) the principle that a plaintiff can escape sovereign immunity when "an action is not one of those enumerated in *Moulton*" or (2) the inmates' suggested per se rule that any suit seeking only declaratory or injunctive relief does not implicate §14. *See* Op.Br.29 n.6. To the contrary, *Moulton* explains that for a "claim … to survive the bar of State immunity, we must determine whether that claim falls within one of the recognized 'exceptions' to State immunity set forth above." 116 So.3d at 1133. And *Cooper*'s holding—the "upshot"—is that even if an action falls under one of the *Moulton* circumstances, §14 nonetheless bars the action if the relief would affect a contract or property right of the State or otherwise "could ultimately touch

the state treasury." 390 So. 3d at 1036;[11] *Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1206 (Ala. 2006) (quotation marks omitted) (citing *Moody v. Univ. of Ala.*, 405 So. 2d 714, 717 (Ala. Civ. App. 1981)).

Sovereign immunity thus bars the inmates' suit because their requested relief—being able to stop working at any given moment without facing sanctions under AR403—directly affects the State's contract rights. The Alabama Supreme Court "has long held that § 14's grant of State immunity" bars claims that interfere with State property or contract rights in any way, whether seeking payment, delivery, performance, or the imposition of impediments such as liens. *McGilvray v. Perkins*, SC-2023-0966, 2024 WL 3077473, at *3 (Ala. June 21, 2024). The inmates' requested relief here would cripple both ADOC's contracts with the inmates themselves, C.293–94 (Work Release Program Inmate Agreement), and ADOC's contracts with participating employers, C.285-91 (Work Release Program Employer Agreement). At any rate, the second,

[11] *Id.* at 1036 ("the bad-faith claim therefore *appears* to be within the category" (emphasis added)); *id.* ("The categories enumerated in *Moulton* are simply illustrations of claims for which State immunity *generally* does not apply").

fourth, and sixth *Moulton* circumstance do not apply to the inmates' challenge to AR403.

A. The second circumstance does not apply.

The inmates' challenge is not an action brought to enjoin State officials from enforcing an unconstitutional *law* because Administrative Regulation 403 isn't a law. Unlike with the legal-duty circumstance, the Alabama Supreme Court has not expanded the *Moulton* circumstances to include "a regulation, or a validly enacted internal rule." *See Ex parte Retirement Sys. of Ala.*, 182 So. 3d 527, 541 (Ala. 2015) (Parker, J., concurring specially). And, in the judicial-notice context, the Alabama Court of Criminal Appeals, recognized that "our legislature has not declared that the regulation 'shall have the force and effect of law'" in discussing AR403 specifically. *Cf. Jenkins v. State*, 516 So. 2d 944, 945 (Ala. Crim. App. 1987) (quoting *State v. Friedkin*, 14 So. 2d 363, 365 (Ala. 1943).[12] Relatedly, the Alabama Administrative Procedure Act exempts rules relating to "[t]he conduct of inmates of public institutions" from its definition of "rule." ALA. CODE §41-22-3(9)(g)(1).

[12] "[W]hen the act of the legislature expressly declares that the rules and regulations therein referred to shall have the force and effect of law, its status is as a public statute in this respect." *Friedkin*, 14 So. 2d at 365.

Binding precedent does not support the inmates' argument to the contrary. *Thomas v. Merritt*, which interpreted a different administrative regulation (AR410), discusses sovereign immunity (implicating a different *Moulton* circumstance) only in discussing the case's procedural history. *See* 167 So. 3d 283, 287-88 (Ala. 2013). It did not hold or even address whether a challenge to AR410's constitutionality fits under the second *Moulton* circumstance. The inmates cite *Thomas* as "exercising jurisdiction," but "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U.S. 507, 511 (1925).

The same goes for the inmates' reliance on *Evatt v. Thomas*, which did not involve AR403, which has been held to lack the force and effect of law. 99 So. 3d 886 (Ala. Civ. App. 2012). *Evatt* does spend three sentences discussing sovereign immunity's application to AR009 and AR452, but it provides no reasoning and fails to confront whether the administrative regulations were "laws" to fit under the second *Moulton* circumstance. *See id.* at 893; *see also* Brief of ADOC Commissioner Thomas, *Evatt v.*

Thomas, 2012 WL 1831319, at *14-*15 (appellee not making this argument).

Ex parte Alabama State Board of Chiropractic Examiners does not bind this Court either. 11 So. 3d 221 (Ala. Civ. App. 2007). That case involved a rule, not an internal administrative regulation. This Court too did not analyze whether the rule at issue was a "law" under the second circumstance. *See id.* at 225-26. It instead reasoned that because the Alabama Administrative Procedure Act authorizes determining the validity or applicability or a rule through an action for declaratory judgment or staying the rule's enforcement through injunctive relief, sovereign immunity did not bar the chiropractors' claims for declaratory and injunctive relief. *Id.* (citing ALA. CODE §41-22-10). But this Court—recognizing that the Legislature cannot waive sovereign immunity—subsequently rejected this reasoning. *See Ex parte Ala. Med. Cannabis Comm'n*, —So. 3d—, CL-2024-0073, 2024 WL 3077225, at *3 (Ala. Civ. App. June 21, 2024) (citing *Redbud Remedies, LLC v. Ala. Med. Cannabis Comm'n*, CL-2023-0352, 2024 WL 1335229, at *3 (Ala. Civ. App. Mar. 29, 20224)). Still, this reasoning could not apply to AR403 because the AAPA does not apply to it, as noted above. *See* ALA. CODE §41-22-3(9)(g)(1).

Next, *Wood v. State Personnel Board*, does not address immunity whatsoever. *See* 705 So. 2d 413 (Ala. Civ. App. 1997). That is no surprise given that it was an appeal to the State Personnel Board of an employee termination (not a suit against the State). *Id.* at 415. In any event, its holding that AR227 was not subject to the AAPA because it "is not analogous to 'legislation applicable to all persons or a relatively large segment of the population outside the context of any specific controversy,'" *id.* at 417, supports Defendants' argument that AR403 is not a law that would fit the second *Moulton* circumstance. Lastly, the Alabama Supreme Court's interpretation of "legal duties" (a broader term) in the first *Moulton* circumstance bind how this Court understands "law" in the second circumstance. *See* Op.Br.31 (citing *Rodgers v. Hopper*, 768 So. 2d 963, 968 (Ala. 2000)).

The second *Moulton* circumstance does not apply because AR403 is not a law, and the Court of Criminal Appeals has specifically held that it lacks the force and effect of law. There is no "binding precedent" to the contrary. *Contra* Op.Br.30.

B. The fourth circumstance does not apply.

The inmates misread the fourth *Moulton* circumstance. It does not except from immunity anytime a plaintiff seeks declaratory relief; it applies to "actions brought under the Declaratory Judgments Act … seeking construction of a statute and its application in a given situation." *Moulton*, 116 So. 3d at 1131 (citation omitted). Quite simply, this circumstance doesn't apply because the inmates never purported to bring an action under the Declaratory Judgments Act seeking construction of a statute. *See generally* C.55-58.

Ignoring that AR403 is not a statute, the inmates don't seek construction of AR403 or how it applies in a given circumstance; they just seek to have it declared unconstitutional—the inmates' post-hoc attempt to shoehorn their relief into the circumstance notwithstanding. *Compare* C.57 (complaint), *with* Op.Br.35. Even if the fourth circumstance included any claim seeking declaratory relief, that would not encompass the injunctive relief the inmates seek. *Lowndesboro*, 950 So. 2d at 1211 (citing *Curry v. Woodstock Slag Corp.*, 6 So. 2d 479 (1942)) Lastly, Ala. Code §6-6-230, which cannot supersede Commissioner Hamm's constitutional immunity, in no way supports the inmates' contention that relief

based on a declaratory judgment can never "run[] afoul of state immunity" so long as it is "necessary or proper." *See* Op.Br.35 n.9.

C. The sixth circumstance does not apply.

Finally, the inmates' suit against Commissioner Hamm is not an "action[] for injunction … where it was alleged that [he] acted … beyond [his] authority or in a mistaken interpretation of law." *Moulton*, 116 So. 3d at 1131–32. Commissioner Hamm is directly following what AR403 permits, and the inmates cite to no allegation in support of this argument—let alone one saying that he acted beyond his authority under or based on a mistaken interpretation of AR403. Even if §32 prevented Commissioner Hamm's enforcement of AR403, he still acted within his authority, particularly when the inmates agreed to abide by ADOC rules in their participation in the work release program. C.294. The inmates' argument that this sixth circumstance applies—that an official acts beyond his authority if a plaintiff alleges that his actions violate a constitutional provision—would render the second circumstance surplusage. *See* Op.Br.36.

* * *

The inmates' requested relief of being allowed to shirk their work-release duties at a whim, directly affects ADOC's contract rights with the inmates and participating employers in the work release program. And no *Moulton* circumstance can overcome that conclusion. *See Ex parte Cooper*, 390 So.3d at 1037. Thus, sovereign immunity applies to the inmates' remaining challenge to AR403 against Commissioner Hamm.

III. The Inmates' Allegations Fail to State a Claim under §32 of the Alabama Constitution.

Alabama courts "seek to sustain rather than strike down the enactment of a coordinate branch of government." *Ala. State Fed'n of Labor v. McAdory*, 18 So. 2d 810, 815 (Ala. 1944). Thus, "in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity." *Id.* It's a tough road for the inmates, who must demonstrate "beyond reasonable doubt" that the law is unconstitutional. *State ex rel. King v. Morton*, 955 So. 2d 1012, 1017 (Ala. 2006). But here, the inmates just presume that EO725, AR403, and the Deputy Brad Johnson Act violate §32 because they authorize disciplinary actions for enumerated rule violations, like not showing up to work or getting fired for cause. These allegations

misunderstand the Constitution's prohibition on slavery and involuntary servitude and mischaracterize the use of inmate labor in Alabama.

As an initial matter, the merits of the inmates' claims under §32 of the Alabama Constitution are properly before the Court because failure to state a claim was a valid legal ground that Defendants presented below. *See* C.81-94. Whether the circuit court "based its dismissal" on Defendants' merits argument, Op.Br.37 n.10, isn't the question. Instead, this Court must affirm "on any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court[.]" *Edwards*, 49 So. 3d at 691. The inmates cite no authority in support of their position that this Court need not "assess[] the merits … or even review[] the legal sufficiency of those claims." *See* Op.Br.11.

Defendants, of course, agree that the 12(b)(6) standard requires assuming that the inmates' factual allegations are true. *See* Op.Br.11-12. But this standard does not prevent this Court from considering the merits or require the Court to assume that those allegations state a claim. *See Gilland*, 274 So. 3d at 985 n.3. Defendants' argument is consistent with the 12(b)(6) standard: assuming the truth of their factual

allegations, the inmates cannot "possibly prevail." Op.Br.37 n.10 (quoting *Ex parte Mobile Infirmary Ass'n*, 349 So. 3d 842, 845 (Ala. 2021)).[13]

A. Alabama voters did not intend to abolish—and therefore did not abolish—ADOC's various inmate work programs.

"The object of all construction is to ascertain and effectuate the intention of the people in the adoption of the constitution. The intention is collected from the words of the instrument, read and interpreted in light of its history." *Barber v. Cornerstone Cmty. Outreach, Inc.*, 42 So. 3d 65, 79 (Ala. 2009) (quoting *State v. Sayre*, 24 So. 89, 92 (Ala. 1897)). And "it is permissible in ascertaining their purpose and intent to look to the history of the times, the existing order of things, the state of the law when the instrument was adopted, and the conditions necessitating such adoption." *Id.* (quoting *Houston County v. Martin*, 169 So. 2d 13, 16 (1936)).

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[13] Nor is "a fully developed factual record" necessary (or helpful) to determine the ordinary meaning of "slavery and involuntary servitude." *Contra* C.424. *Roberts v. Meeks* does not stand to the contrary. 397 So. 2d 111 (Ala. 1981). The "novel and untested" "theory of liability" there involved a negligence claim with a unique proximate causation argument (whether a jailer could be held liable for inmates who performed work in his home who stole firearms from the home and later raped the plaintiff). *See generally id.* The need for factual development there is a far cry from whether the inmates' allegations, if assumed true, constitute slavery or involuntary servitude.

In the November 2022 general election, Alabama voters were presented with the question: "Shall the following Recompilation of the Constitution of Alabama of 1901 be ratified?"[14] The ballot title of the proposed constitution read in full:

> Proposing adoption of the Constitution of Alabama of 2022, which is a recompilation of the Constitution of Alabama of 1901, prepared in accordance with Amendment 951, arranging the constitution in proper articles, parts, and sections, removing racist language, deleting duplicated and repealed provisions, consolidating provisions regarding economic development, arranging all local amendments by county of application, and making no other changes. (Proposed by Act 2022-111).[15]

The voters adopted the Constitution of 2022 with 888,456 votes in favor and 273,040 against.[16]

Ahead of the election, the Alabama Fair Ballot Commission published on the Secretary of State's website information on the reorganized Constitution.[17] The statement clarified that "[t]he Constitution of

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[14] Sample Ballot for Montgomery County, https://www.sos.alabama.gov/sites/default/files/sample-ballots/2022/gen/Montgomery-Sample.pdf (last visited Dec. 12, 2024).

[15] *Id.*

[16] https://governor.alabama.gov/assets/2022/11/2022-11-28-Post-Election-Proclamation-Recompilation-of-Constitution.pdf (last visited Dec. 12, 2024); *see also* C.31-32.

[17] https://www.sos.alabama.gov/sites/default/files/sample-ballots/2022/gen/Statewide-Amendments.pdf (last visited Dec. 12, 2024).

Alabama of 2022 will do only the following: (1) rearrange the constitution so that similar subjects are located together; (2) remove racist language; (3) delete repeated or repealed portions/language; (4) place all amendments which deal with economic development together; and (5) arrange local amendments by county." The Commission confirmed that the "reorganized constitution will make no changes other than those listed above and will not make any changes relating to taxes." The Commission also assured the public that there "are no costs to adopting the reorganized constitution."

The recompiled version made fourteen textual changes to the Constitution of 1901.[18] "Removal of Racist Language" was the reason given for three of those changes: (1) deleting defunct language from Article XVI, §256 providing for the segregation of schools by race; (2) cutting a repealed section about poll taxes; and (3) shortening Article I, §32 by deleting the language "otherwise than for the punishment of crime, of which the party shall have been duly convicted."

[18] https://alison.legislature.state.al.us/files/pdf/lsa/proposed-constitution/Chart_of_Textual_Differences_in_Proposed_Constitution_of_2022_vs_Recompilation.pdf (last visited Dec. 12, 2024); *see also* C.31 n.56.

The inmates acknowledged that the "recompilation process did not usher in wholesale reform" and that the Legislature's task "was limited to drafting a rearranged and cleaned-up constitution to be submitted to the people of Alabama for ratification." C.28. Yet somehow, *cleaning up* the Constitution, in the inmates' view, entailed overhauling Alabama's prison system. Never mind that the Legislature, when drafting the recompiled Constitution, was ordered to "make no other changes" other than removing racist and defunct language and improving the document's organization. ALA. CONST. of 1901 amend. 951.

Elsewhere, the inmates alleged that ADOC generates millions of dollars in revenue for the State from the Correctional Industries and Work Release programs. C.42 (about $3 million and $13 million respectively) (citing ALA. DEP'T OF CORR., *Monthly Statistical Report for September 2023*, https://doc.alabama.gov/docs/MonthlyRpts/September%202023.pdf). But if §32 now prohibits ADOC officers from disciplining work release and correction industries inmates who stop working, as the inmates claim, that would impose substantial costs on the programs (perhaps even requiring them to shut down), despite the assurances given to

voters that there will be "no costs to adopting the reorganized constitution." That Alabama voters intended this result is doubtful.

The inmates' complaint quoted selectively from a memo titled "Background Information on the Removal of Racist Language," authored by the Director of the Legislative Services Agency and addressed to the Committee on the Recompilation of the Constitution. C.29. While noting that the memo recommended deleting "racist language" from §32, the inmates ignore LSA's conclusion that "[b]ased on our research the removal of the phrase at issue would have no practical impact on our current incarceration practices nor punishment schemes."[19] The inmates also highlight that the memo "referenced the recent wave of other states' removing the same or similar language from their constitutions." C.29. But what the inmates fail to acknowledge is that the prison labor programs in those States appear fully operational and that the statutes authorizing those programs have not been repealed.[20]

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[19] *Memo on Racist Language*, JOINT INTERIM COMMITTEE ON THE RECOMPILATION OF THE CONSTITUTION, https://alison.legislature.state.al.us/files/pdf/lsa/proposed-constitution/Racist_Language_Backgound_Memo.pdf (Aug. 27, 2021)

[20] *See, e.g.*, COLO. REV. STAT. §17-20-115; NEB. REV. STAT. §83-183, 184; R.I. GEN. LAWS §42-56-21; VT. STAT. ANN. tit. 28, §753. These laws

For example, Colorado voters amended their constitution in 2018 to remove the punishment exception from its prohibition on slavery and involuntary servitude. *See Lamar v. Williams*, No. 21CA0511 (Colo. App. Aug. 18, 2022) (C.352-62), *cert. denied*, 2023 WL 2160849. A prisoner sued the Director of the Department of Corrections, seeking an injunction prohibiting DOC from requiring inmates to work. C.353. The Colorado Court of Appeals rejected that challenge on the pleadings, reasoning that "voters did not intend to abolish the DOC inmate program" and that Colorado prisoners were not being forced into involuntary servitude as a matter of law. C.359-61.

In sum, the inmates think they've found an elephant hiding in a mousehole. *See Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 468 (2001). But §32's ratification history and "the conditions necessitating [its] adoption" make clear that the purpose of recompiling the Constitution was to update some language and reorganize some sections, not to surreptitiously overhaul the State's prison system. *Barber*, 42 So. 3d at 79.

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authorize work release programs in states whose constitutional prohibitions of involuntary servitude contain no "penal exception."

B. The original meaning of "involuntary servitude" does not encompass voluntary labor or mandatory housekeeping chores.

Section 32 does not reach the inmates' allegations of unpaid prison chores and voluntary participation in work release, community work, and correctional industries programs. Thus, the penal exception was never needed to justify ADOC's practices. While Alabama courts have rarely had the opportunity to consider the meaning and application of §32, federal courts have spilled considerable ink interpreting the Thirteenth Amendment to the U.S. Constitution, which likewise prohibits slavery and involuntary servitude and was ratified ten years before §32's first appearance in the Alabama Constitution of 1875. *See Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) (Because the text "is obviously transplanted from another legal source, it brings the old soil with it." (cleaned up)).[21]

[21] Similarly, because the 2022 Constitution merely transplants "slavery" and "involuntary servitude" from previous constitutions (starting in 1875), any argument that "slavery and involuntary servitude" in the 2022 Constitution must be interpreted based on a modern definition and inconsistently from that language in the Thirteenth Amendment fails. *See* C.425. A theory requiring reinterpretation of every constitutional provision—the overwhelming majority of which went unchanged—because the State reordered its constitution cannot stand.

The Thirteenth Amendment's "primary purpose … was to abolish the institution of African slavery" and "forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results." *United States v. Kozminski*, 487 U.S. 931, 942 (1988) (internal quotation marks omitted) (quoting *Butler v. Perry*, 240 U.S. 328, 332 (1916)). Still, the amendment "introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the state, such as services in the army, militia, on the jury, etc." *Butler*, 240 U.S. at 333. "The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of essential powers." *Id.* at 333.

In *Butler v. Perry*, the Supreme Court upheld a Florida law that required "[e]very able-bodied male person over the age of twenty-one years" to "work on the roads and bridges of the several counties for six days of not less than ten hours each in each year when summoned to do so." *Id.* at 329. Refusing to work could result in a misdemeanor conviction, fines, and jail time. *Id.* at 330. One Floridian who was jailed for shirking road duty challenged the law as imposing "involuntary

servitude not as a punishment for crime." *Id.* Chronicling the history of this and other civic duties, the Court had little trouble concluding that mandatory road maintenance was not a form "of compulsory labor akin to African slavery" prohibited by the Constitution. *Id.* at 332-33.

Similarly, the compulsion of other "civic duties" "by threat of criminal sanction" has never fallen under the Thirteenth Amendment's "prohibition against involuntary servitude." *Kozminski*, 487 U.S. at 943-44. *See, e.g.*, *Hurtado v. United States*, 410 U.S. 578, 589-90 n.11 (1973) (detention of a material witness); *Selective Draft Law Cases*, 245 U.S. 366 (1918) (compulsory military service); *Robertson v. Baldwin*, 165 U.S. 276 (1897) (forcing sailors to complete voyage); *United States v. 30.64 Acres of Land*, 795 F.2d 796, 800-01 (9th Cir. 1986) (mandatory *pro bono* work for lawyers); *Rowe v. City of Elyria*, 38 F. App'x 277, 283 (6th Cir. 2002) (requiring residents to mow city property on threat of fine); *Gasses v. City of Riverdale*, 701 S.E.2d 157, 160 (Ga. 2010) (similar); *State v. McKinney*, 743 N.W.2d 550, 553 (Iowa 2008) (providing evidence in a court of law).[22]

[22] This caselaw, which has nothing to do with slavery or involuntary servitude in a penal setting, is not "rooted in the Thirteenth Amendment's 'exception clause.'" *Contra* C.424. Alabama voters overwhelmingly and explicitly departed from defunct language; they didn't vote to depart

If these do not qualify as involuntary servitude, then what does? The Supreme Court clarified in *Kozminski* that involuntary servitude arises when "the victim ha[s] no available choice but to work or be subject to legal sanction" or "physical coercion." 487 U.S. at 943. Thus, "peonage—a condition in which the victim is coerced by threat of legal sanction to work off a debt to a master—is involuntary servitude." *Id.* A system of criminal surety, "under which a person fined for a misdemeanor offense could contract to work for a surety who would, in turn, pay the convict's fine to the state" would also be involuntary servitude. *Id.* "The critical feature of the system was that that breach of the labor contract by the convict was a crime. The convict was thus forced to work by threat of criminal sanction." *Id.*

The takeaway is that to "state a claim for involuntary servitude, a plaintiff must prove he suffered [1] physical or [2] legal coercion." *McCullough v. City of Montgomery*, No. 2:15-cv-463, 2020 WL 3803045, at *8 (M.D. Ala. July 7, 2020).[23] Here, the inmates do not allege that they

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from the plain and ordinary meaning of "slavery and involuntary servitude." *Contra* C.22.

[23] Defendants haven't relied on *McCullough*'s holding to support their argument. *Contra* C.429. Nor do they dispute that the court there denied

are physically or legally coerced to work with any of the prison labor practices at issue.

Voluntary work programs. The inmates contend that "Defendants have maintained a system of involuntary servitude within ADOC" by disciplining inmates (pursuant to State law and their voluntary work release agreements) who refuse to work or get fired from their paid jobs in work release and community work programs.[24] *See* C.32, C.43-44 (**Stanley** twice missed the van to her free-world job); C.146 (**Burrell** was fired from his free-world job); C.51 (**Gray** was fired from his job on a community work squad); C.52-53 (**Pringle** refused to go to his free-world job and was fired from another job); C.54 (**Smith** refused to check out for work twice). Sanctions the inmates allegedly faced for breaking work

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Montgomery's motion to dismiss because it "saw allegations of modern-day peonage in the plaintiffs' complaint." 2020 WL 380345, at *9. *McCullough* catalogued allegations of being "forced to" or "made to" work (e.g., "Ms. Johnson was informed of and forced to accept alternative ways to perform jail labor in order to work off her debt sooner."). *Id.* (cleaned up). No such allegations exist here as to the inmates' voluntary participation in work release programs that they want to continue participating in.

[24] Although Plaintiff Burrell claims to have worked at Alabama Correctional Industries, he does not allege that he was ever disciplined for refusing to work or that he worked under threat of punishment. *See* C.46. None of the other inmates allege to have worked at ACI. Even so, work at ACI is entirely voluntary. *See* ALA. CODE §14-7-22.1(b).

rules included temporarily losing canteen, telephone, and visitation access, being assigned extra unpaid chores, and, in Smith's case, losing his position in work release. *See* C.54.

These allegations fail to state a claim of involuntary servitude for the fundamental reason that work release and community work programs are voluntary. *See supra* at 10, 11, 12; C.293-94; C.319 at 18. The inmates have agreed in writing to abide by inmate work rules and to accept the consequences if they break them. *Id.* "The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even where the consequences of that choice are exceedingly bad." *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 459 (2d Cir. 1996) (quotation marks omitted); *see also Watson v. Graves*, 909 F.2d 1549, 1552-53 (5th Cir. 1990) (giving an inmate the "choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing" did not violate the Thirteenth Amendment); *Brooks v. George County*, 84 F.3d 157, 163 (5th Cir. 1996) (pretrial detainee's choice

between periodically working outside jail for free and remaining in jail all day, while "painful" was not unconstitutionally coercive).[25]

Defendants do not force inmates to participate in work release or community work, but if inmates choose to do so, it does not violate §32 to hold them accountable for job-related misconduct. Again, when "the employee has a choice, even though it is a painful one, there is no involuntary servitude." *Watson*, 909 F.2d at 1552; *see also Thomas*, 167 So. 3d at 293 ("[E]ach of the challenged deductions"—ADOC's fee for transportation and withholding of wages—"results from a voluntary and unnecessary undertaking by the inmate.").

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[25] The inmates below argued that "even if [they have signed such forms, they could still state a claim for involuntary servitude, as the law well recognizes that one cannot 'voluntarily' contract oneself into conditions of slavery and involuntary servitude." C.426. That may be what the law recognizes, but it's not applicable here. Bailey v. State of Alabama involved a contract for labor where the State sought legal sanction when the laborer stopped working. *See generally* 219 U.S. 219 (1911). Similarly, the plaintiff in *Downey v. Bituminous Casualty Corporation* "was not performing work voluntarily" because the labor was explicitly forced "under sentence after conviction for a felony" (i.e., a literal convict-leasing system). 349 So. 2d 1153, 1155 (Ala. 1977). These cases are inapplicable because the inmates don't allege that they want to stop working and suffer legal sanction if they don't continue to do so. *See* Op.Br.44 ("[A]ll of the Plaintiffs articulate a desire and plan to continue working." (citations omitted)).

Mandatory chores. In addition, some of the inmates seem to allege that being disciplined for refusing to complete their unpaid inmate assigned jobs is involuntary servitude. *See* C.44-45 (**Stanley** did not report for work on the Tutwiler garbage crew); C.46-47 (**Burrell** refused to go to work in the kitchen during an inmate labor strike); C.50 (**Gray** refused to do his job on the garbage crew); C.54 (**Smith** once cleaned hallways, dorms, and the yard "under threat of punishment").

First, none of the inmates alleges that they have been or could be subject to criminal sanction for refusing to do their chores. *Cf. Kozminski*, 487 U.S. at 943 (discussing the threats of criminal sanctions attending the systems of peonage and criminal surety). Even the most severe sanctions attaching to the inmates' rule violations target privileges the inmates may accrue as part of the State's incentive structure to encourage rehabilitation and good behavior. C.129 at 23.[26] These sanctions do not threaten property or liberty interests.[27] Indeed, under common law, post-

[26] Even severe-level rule violation sanctions, which the inmates' allegations do not implicate, target only privileges, not the fundamental rights to life, liberty, and property. C.129.

[27] Alabama courts have held that inmates do not have a protected liberty interest in these privileges that would entitle them to due process protections. *See, e.g.*, *Ex parte Shabazz*, 989 So. 2d 525, 527 (Ala. 2008).

conviction prisoners have "no property rights" and only have the property rights expressly created by Alabama law. *Givens v. Ala. Dep't of Corr.*, 381 F.3d 1064, 1068-70 (11th Cir. 2004).

The inmates have no right to any of the following, and more:

- Job assignment, *see Bulger v. U.S. Bureau of Prisons*, 65 F.3d 48, 49, 50 n.3 (5th Cir. 1995) (collecting cases);
- Custody or security classification, *see Block v. Ala. Dep't of Corr.*, 923 So. 2d 342, 343 (Ala. Crim. App. 2005);
- Work release placement, *see Francis v. Fox*, 838 F.2d 1147, 1150 (11th Cir. 1988);
- Good-time earning status, *see Coslet v. State*, 697 So. 2d 61, 64 (Ala. 1997);
- Store access, *see Summerford v. State*, 466 So. 2d 182, 185 (Ala. Crim. App. 1985); *Zamudio v. State*, 615 So. 2d 156, 157 (Ala. Crim. App. 1993); *Austin v. Ala. Dep't of Corr.*, 975 So. 2d 398 (Ala. Crim. App. 2007);
- Telephone access; *Zamudio*, 615 So. 2d at 157; *Austin*, 975 So. 2d 398;

Indeed, "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." *Sandin v. Conner*, 515 U.S. 472, 484 (1995).

- Avoiding extra work duty, *see Summerford*, 466 So. 2d at 185;
- Visitation, *see Austin*, 975 So. 2d 398;
- Avoiding restrictive housing, *see Shabazz*, 989 So. 2d at 527 (collecting cases); *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); *Whitehorn v. Harrelson*, 758 F.2d 1416, 1420 (11th Cir. 1985) (collecting cases); *Sandin*, 515 U.S. at 486.472, 486 (1995).).).

The "threat that certain privileges may be forfeited if an inmate refuses to work does not implicate" the prohibition on involuntary servitude. *Fletcher v. Williams*, No. 22-1371, 2023 WL 6307494, at *2 (10th Cir. Sept. 28, 2023) (rejecting a claim brought under 18 U.S.C. §1584—the federal criminal prohibition on involuntary servitude). This result makes perfect sense, given that "involuntary servitude claims, to be cognizable, relate to extreme cases, such as labor camps, isolated religious sects, and forced confinement." *Mw. Retailer Assoc. v. City of Toledo*, 563 F. Supp. 2d 796, 809 (N.D. Ohio 2008) (collecting cases). "In contrast, when the state has conditioned a privilege or license on the recipient's providing a specific service, courts have generally found no violation of the Thirteenth Amendment." *Id.* (collecting cases). Thus, withholding

privileges to which inmates had no original statutory or common law right cannot—by definition—be legal coercion.

Courts that have considered similar challenges agree and have held that general housekeeping duties imposed on pretrial detainees, INS inmates, or inmates in mental hospitals is not involuntary servitude. *See Channer v. Hall*, 112 F.3d 214, 219 (5th Cir. 1997) (INS detainees can be required to perform "housekeeping tasks"); *Hause v. Vaught*, 993 F.2d 1079, 1085 (4th Cir. 1993) (mandatory cleaning assignments for pretrial detainees was not involuntary servitude); *Bijeol v. Nelson*, 579 F.2d 423, 424-25 (7th Cir. 1978) (same); *Jobson v. Henne*, 355 F.2d 129, 131-32 (2d Cir. 1966) (inmates in mental hospitals can be required to perform housekeeping chores). As one court put it:

> [N]o Court of Appeals has ever questioned the power of a correctional institution to compel inmates to perform services for the institution without paying the minimum wage. Prisoners may thus be ordered to cook, staff the library, perform janitorial services, work in the laundry, or carry out numerous other tasks that serve various institutional missions of the prison, such as recreation, care and maintenance of the facility, or rehabilitation. Such work occupies prisoners' time that might otherwise be filled by mischief; it trains prisoners in the discipline and skills of work; and it is a method of seeing that prisoners bear a cost of their incarceration.

Danneskjold v. Hausrath, 82 F.3d 37, 43 (2d Cir. 1996) (rejecting prisoner's argument that the Fair Labor Standards Act applies to inmates with prison jobs).

In sum, Alabama's courts "approach the question of the constitutionality of a legislative act with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of government." *Bynum v. City of Oneonta*, 175 So. 3d 63, 66 (Ala. 2015) (cleaned up). The inmates' theory turns these deferential principles upside down: it asks this Court to presume that repealing outdated language rendered the incentive structure of Alabama's current prison system along with many State laws unconstitutional. For all these reasons, the inmates' claim under §32 of the Alabama Constitution should be dismissed.

CONCLUSION

The Court should affirm the circuit court's dismissal of the inmates' §32 suit.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word limitation set forth in Alabama Rule of Appellate Procedure 28(j)(1). According to the word-count function of Microsoft Word, the brief contains 10,912 words from the Statement of the Case through the Conclusion. I further certify that the brief complies with the font requirements set forth in. The brief was prepared using Century Schoolbook 14-point font.

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CERTIFICATE OF SERVICE

I certify that on this 17th day of December, 2024, I filed the foregoing with the Clerk of the Court using the electronic filing system and served a copy on all counsel to this proceeding by email:

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