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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT

STANLEY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 03-CV-2024-900649
	)	
IVEY, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO DISMISS

Defendants Governor Kay Ivey and Alabama Department of Corrections Commissioner John Hamm move to dismiss Plaintiffs' Complaint (Doc.2). On November 8, 2022, Alabama voters ratified a "rearranged and cleaned-up" State Constitution. Doc.2 ¶96. One of the fourteen textual changes amended 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 the penal exception. Plaintiffs are six prisoners who attempt to use this linguistic modernization to challenge the entire incentive structure of Alabama's prison system. A suit propounding an identical theory was recently rejected by courts in Colorado. This Court should likewise dismiss Plaintiffs' Complaint.

Plaintiffs 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. Doc.2 ¶1. But they only complain of performing chores at their assigned correctional facilities, voluntarily laboring on public work projects, and voluntarily working for private employers on work release. And—unsurprisingly—the relief they seek is not an injunction ordering Defendants to shut down the work release and community work programs. To the contrary, Plaintiffs want to live in a community-based facility and enjoy the privileges that come with participating in the work release program. Instead, Plaintiffs sue for an injunction prohibiting State officials from disciplining them in accordance with State law when they refuse to work or get fired from their jobs for cause. *Id.* at 51-52. In other words, Plaintiffs 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.

Their suit should be dismissed for lack of subject-matter jurisdiction and for failure to state a claim. As to jurisdiction, Plaintiffs cannot overcome the Defendants' sovereign immunity, and they only have standing to challenge Administrative Regulation 403, assuming it has the force and effect of law. As to the merits, 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 and

regulations 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 does not constitute 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 law is clear that the threat of losing a privilege does not transform normal, housekeeping work into involuntary servitude.

The Court should dismiss Plaintiffs' Complaint.

LEGAL STANDARDS

Defendants move to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction on grounds of sovereign immunity and lack of standing. 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 (as discussed below). *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). Plaintiffs bear the burden to prove that jurisdiction exists. *Id.* at 350.

Defendants also move to dismiss under Rule 12(b)(6) for failure to state a claim. "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) (quoting *Creola Land Dev., Inc. v. Bentbrooke Hous., L.L.C.*, 828 So. 2d 285, 288 (Ala. 2002)). 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) (quoting *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)).

While "the trial court's examination is limited to the pleadings," *Pub. Rels. Couns., Inc. v. Mobile*, 565 So. 2d 78, 81 (Ala. 1990), "if a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss," *Bell v. Smith*, 281 So. 3d 1247, 1252 (Ala. 2019) (quoting *Donoghue v. Am. Nat'l Ins. Co.*, 838 So. 2d 1032, 1035 (Ala. 2002)). Also, the Court "may take judicial notice of public records." *See Johnson v. Hall*, 10 So. 3d 1031, 1034-35 (Ala. Civ. App. 2008).

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). Plaintiffs bear the burden of showing "beyond a reasonable doubt" that the law is unconstitutional. *Id.* at 1017.

BACKGROUND

From 2019 to 2021, the Alabama Legislature was hard at work 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, 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. Doc.2 ¶109.

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, both the Executive and Legislative branches took action to fix 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." Ex. A (EO725) at 1; *see also* Doc.2 ¶¶5, 112-25. The Order instructed ADOC Commissioner Hamm to implement "uniform minimum standards for correctional incentive time sanctions." Ex. A at 2. ADOC accordingly promulgated Administrative Regulation 403 ("Procedures for Inmate Rule Violations") on December 12, 2023. Ex. B (AR403).

The Legislature, for its part, passed the Deputy Brad Johnson Act in April of 2023, which amended Ala. Code §14-9-41 to reduce by half the number of days off

[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 May 27, 2024). Austin Hall's capital murder trial is scheduled for September 2024.

[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 May 27, 2024).

a sentence that an inmate can accrue, to increase the period of time an inmate must demonstrate good behavior before progressing 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. *See id.*

Plaintiffs are six incarcerated individuals in the custody of ADOC. All six want "to work for a free-world employer," but they do "not want to be punished by ADOC for not working." Doc.2 ¶¶175 (Stanley), 184 (Burrell), 196 (Avery), 207 (Gray), 218 (Pringle), 228 (Smith).[3] Plaintiffs allege that EO725 and AR403 violate Article I, §32's prohibition on slavery and involuntary servitude. Doc.2 ¶¶230-33. Only Plaintiff Smith alleges that the Deputy Brad Johnson Act violates §32. *Id.* ¶¶234-35. Accordingly, in addition to declaratory relief, they seek an injunction prohibiting State officials from punishing inmates in accordance with State law who refuse to work or who get fired from their jobs. *Id.* at 51-52.[4]

Plaintiffs' allegations implicate four distinct types of inmate labor: (1) voluntary labor for private employers through ADOC's work release program, *see* Doc.2 ¶¶88, 146; *see generally id.* ¶¶164-229; (2) voluntary community labor for State

[3] Plaintiffs emphasize repeatedly that for one month during the Fall of 2022, thousands of inmates "led a systemwide labor strike inside Alabama prisons." Doc.2 ¶¶5, 89-94, 112-14. It seems Plaintiffs also believe inmates have a right to organize and participate in work stoppages.

[4] Plaintiffs Stanley and Avery also ask the Court to "expunge any disciplinary reports and behavior citations issued after November 28, 2022, related to refusing to work or not working." *Id.* at 52 ¶A.8.

agencies, cities, and counties on public works or road projects, *id.* ¶¶87, 206; (3) voluntary labor making goods for sale through ADOC's Correctional Industries (ACI), *id.* ¶¶86, 164, 179; and (4) mandatory housekeeping duties at ADOC facilities such as cleaning, repair, cafeteria duty, and laundry, *id.* ¶¶85, 147, 172, 200.

ADOC has various security levels that are relevant to these different types of labor inmates may perform. ADOC utilizes its classification system to evaluate each inmate to determine his or her appropriate security level. Ex. C (Men's Handbook) at 7; Ex. D (Women's Handbook) at 7. This evaluation includes determining whether the inmate can work alongside non-incarcerated workers without supervision by ADOC staff. Inmates are encouraged to work their way 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, pertains to Plaintiffs' first category of inmate labor: work release. Ex. C at 7; Ex. D at 7. 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." Ex. E (AR410) at 2. 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* Ex. E at 3. 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." Ex. E at 10. Further, inmates "will not be employed under adverse or unacceptable working conditions." *Id.* at 3.

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* Doc.2 ¶165. ADOC transports work release inmates to their jobs. *Id.* ¶161; *see also* Ex. E at 5. Because all free-world employees must pay for transportation and laundry, ADOC is allowed to charge a small fee for transportation and laundry services. Ex. E at 5. The transportation fee is waived if the employer opts to pick up and drop off the inmate. *See id.* at 5, 11. Inmates are also subject to co-pays for various medical services. Ex. F (AR703).

Inmates participating in the work release program sign a contract, in which they agree to abide by the terms and conditions described above. Ex. E at 17-18. 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." *Id.* at 18.

Community Work. Plaintiffs' second category of inmate laborers—those who perform public works projects for government entities—involves inmates classified as Minimum-Out. Ex. C at 7; Ex. D at 7. 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 utilization 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. Ex. G (AR439) at 4.

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.

Id. at 18.

Correctional Industries. Plaintiffs' 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. Doc.2 ¶86. ACI inmates make furniture, chemicals, clothing, mattresses, construct modules, and imprint vehicle tags. *Id.* ¶164 (citing ADOC September 2023 Monthly Report at 15). Prison-made goods produced by ACI 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. Plaintiffs' 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." Ex. H (AR444) at 1. An Institutional Job Placement Board assesses and assigns inmates these duties within the institution. Ex. C at 6; Ex. D at 6, Ex. H. Inmate-assigned duties include anything from cooking, cleaning, and laundry to wiring and repairing the HVAC and electricity systems at ADOC facilities. Doc.2 ¶85.

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. Ex. B at 20-21. 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." *Id.* at 23; *see also* Doc.2 ¶¶19, 233. The penalties for low, high, and severe violations are lower, higher, and more severe, respectively. Ex. B at 23, 24, 26, 28, 34.

* * *

With the above framework in place, Plaintiffs' allegations regarding inmate labor are completely unextraordinary—despite their conclusory allegations of slavery and involuntary servitude. Plaintiffs 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* Doc.2 ¶¶167-220. They also allege that they have lost some privileges for violating ADOC disciplinary policies. Missing are allegations that they have been forced to work under threat of criminal sanction or physical force.

ARGUMENT

I. This Court lacks subject-matter jurisdiction.

"A court without subject-matter jurisdiction 'may take no action other than to exercise its power to dismiss the action.'" *Chapman v. Gooden*, 974 So. 2d 972, 984 (Ala. 2007) (quoting *State v. Prop. at 2018 Rainbow Drive*, 740 So. 2d 1025, 1029 (Ala. 1999)). "Any other action" would be "null and void." *Id.* A suit that "fails to trigger the subject-matter jurisdiction of the circuit court" is "a nullity" that may not be cured even by amendment. *Ala. Dep't of Corrs. v. Montgomery Cnty. Comm'n*, 11 So. 3d 189, 193 (Ala. 2008) ("The purported amendment of a nullity is also a nullity."). As explained further below, this Court lacks subject-matter jurisdiction over the Complaint because (1) sovereign immunity bars Plaintiffs' claims and (2) Plaintiffs lack standing to challenge EO725 and the Deputy Brad Johnson Act and thereby to bring claims against Governor Ivey.

A. Governor Ivey and Commissioner Hamm are entitled to sovereign immunity.

Article I, §14 of the Alabama Constitution of 1901 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; rather, it is a "jurisdictional bar" that requires dismissal for lack of subject-matter jurisdiction. *See Ala. Dep't of Corrs.*, 11 So. 3d at 191. And sovereign

immunity bars suits 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.*

Plaintiffs sue Governor Ivey and Commissioner Hamm in their respective official capacities as Governor of Alabama and Commissioner of the Alabama Department of Corrections. Doc.2 ¶¶17-18. Accordingly, Governor Ivey and Commissioner Hamm are entitled to sovereign immunity. However, there are six "exceptions," or "limited circumstances," where sovereign immunity does not apply. *See Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013). But none are implicated here.

Though Plaintiffs do not allege that any specific circumstance applies, Plaintiffs' challenge appears at first blush to fit under "actions brought to enjoin State officials from enforcing an unconstitutional *law*[.]" *Id.* at 1131 (emphasis added). However, this exception does not apply to Plaintiffs' challenge to AR403 because the Legislature has not "declared that the regulation 'shall have the force and effect of law[.]'" *Cf. Jenkins v. State*, 516 So. 2d 944, 945 (Ala. Crim. App. 1987) (quoting *State v. Friedkin*, 14 So. 2d 363, 365 (Ala. 1943) (finding that AR403 is not judicially noticeable)).[5] Regardless, for the reasons discussed *infra*, Defendants'

[5] "[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.

enforcement of EO725, AR403, and the Deputy Brad Johnson Act does not violate §32 of the Constitution. Thus, Plaintiffs cannot overcome Governor Ivey and Commissioner Hamm's immunity.

B. Plaintiffs lack standing to sue Governor Ivey because they lack standing to challenge EO725 and the Deputy Brad Johnson Act.

Lack of standing is another "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 dismiss Plaintiffs' Complaint because they cannot satisfy these elements as to EO725 and the Deputy Brad Johnson Act and thereby Governor Ivey.

1. Plaintiffs have not suffered an injury in fact as to EO725 and the Deputy Brad Johnson Act.

The standing issues here stem from Plaintiffs' 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, Plaintiffs challenge EO725, AR403, and the Deputy Brad Johnson Act "because they require and enforce slavery and involuntary servitude." *See generally* Doc.2 ¶¶231, 233, 235. While AR403 allegedly "subject[s] incarcerated people, including Plaintiffs, to *various forms of punishment* for not working or refusing to work," *id.* ¶223 (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," *id.* ¶245. EO725's punishment is similarly limited; as relevant here, it only allegedly enforces slavery by "authoriz[ing] the revocation of … good-time credits." *Id.* ¶5. 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[.]" *Id.* ¶¶5, 6 (emphasis added).

Plaintiffs have no standing to challenge EO725 and the Deputy Brad Johnson Act if they are ineligible to accrue good-time credits. Put simply, Plaintiffs' 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.[6] Both conditions are true for all six Plaintiffs. As an initial matter, Plaintiffs only allege that Plaintiff Smith "is currently good-time eligible and subject to [§14-9-41]." *Id.* ¶¶16, 228, 235. But Smith's inmate summary lists him as "CLASS IV - STRAIGHT TIME," Ex. I at 16, which means he is ineligible to earn good-time credits, *see, e.g.*, Doc.2 ¶158. The other five Plaintiffs' 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 some). Ala. Code §14-9-41(e)(1). The

[6] Indeed, EO725 affects "a good-time eligible person." Doc.2 ¶¶117, 119, 121, 122.

inmate summaries also reflect that Plaintiffs lack any good-time credits to lose, listing their "GoodTime Bal" as "000000 Days." Ex. I at 2 (Stanley), 4 (Burrell), 8 (Avery), 11 (Gray), 13 (Pringle), 16 (Smith).

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

2. Plaintiffs' alleged injuries are not traceable to Governor Ivey.

As to AR403, Plaintiffs cannot satisfy the traceability element of standing as to Governor Ivey. This element requires Plaintiffs 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.

Plaintiffs' allegations as to Governor Ivey generally relate to her signing EO725. Doc.2 ¶¶5, 112. To be sure, Plaintiffs 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—as confirmed by Plaintiffs' allegations—Commissioner Hamm "is responsible for promulgating and enforcing AR 403." *Id.* ¶18; *Cf. Women's Emergency Network v. Bush*, 323 F.3d 937, 949-50 (11th Cir. 2003) ("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." (citation omitted)). Plaintiffs have failed to allege that Governor Ivey enforces the "range of other punishments" that AR403 authorizes that allegedly injure them. *See* Doc.2 ¶5. Thus, Governor Ivey is not a proper defendant as to Plaintiffs' challenge to AR403.

* * *

This Court lacks subject-matter jurisdiction over the Complaint. The sovereign immunity "exception" for suits brought to enjoin a State official from enforcing an unconstitutional law does not apply to Plaintiffs' challenge to AR403 specifically or generally because EO725, AR403, and the Deputy Brad Johnson Act do not violate the Alabama Constitution. Additionally, Plaintiffs lack standing to challenge all but Commissioner Hamm's enforcement of AR403. In other words, this Court lacks subject-matter jurisdiction over Plaintiffs' claims against EO725 and the Deputy Brad Johnson Act (because enforcement of those laws does not injure Plaintiffs) and their claims against Governor Ivey (because she does not enforce and thus could not cause Plaintiffs' alleged injuries as to AR403).

II. Plaintiffs' Complaint Is an Improper Shotgun Pleading.

"Shotgun pleadings 'are flatly forbidden by the spirit, if not the letter, of" Rules 8(a) and 10(b) of the Federal Rules of Civil Procedure. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021). Like Federal Rule 8(a), Alabama Rule 8(a) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." And like Federal Rule 10(b), Alabama Rule

10(b) requires a complaint to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Despite the lack of Alabama caselaw on shotgun pleadings, this Court should give similar effect to Alabama's materially identical rules that form the basis of the Eleventh Circuit's robust shotgun-pleading jurisprudence. *See Hoff v. Goyer*, 160 So. 3d 768, 773 (Ala. Civ. App. 2014) (relying on Eleventh Circuit precedent on shotgun pleadings).

Shotgun pleadings "fail to one degree or another … to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015). Moreover, these types of pleadings have the tendency to "waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts." *Barmapov*, 986 F.3d at 1324.

Plaintiffs' Complaint is a textbook example of one "that … is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Weiland*, 792 F.3d at 1322.[7] The

[7] Despite varying slightly from the "mortal sin" of having counts that adopt all preceding allegations (including predecessor counts' necessarily irrelevant allegations and legal conclusions), *Weiland*, 792 F.3d at 1324. Plaintiffs' tactic of having each count adopt the same 229 paragraphs provides no more clarity. Both Defendants and the Court still face the onerous task of sifting through Plaintiffs' 53-page, 235-paragraph complaint to determine what facts are relevant to what count or what Defendant.

Complaint highlights that all plaintiffs are black. Doc.2 ¶¶11-16. It recounts in detail the State's historical, discriminatory practices toward "[b]lack, brown, and poor people" and uses highly charged language suggesting that the State craves to "maintain domination and control in a racialized caste system." *Id.* ¶25. It emphasizes the discriminatory Black Codes of the nineteenth century, *id.* ¶¶44-47, and how the victims of old convict leasing practices were overwhelmingly black individuals, *id.* ¶54. And it discusses prison overcrowding and the disparate representation of black people in both the prison population and those granted parole. *Id.* ¶¶76-84.

With such a stirring narration of egregious historical practices and repeated appeals to racial statistics, one would expect an Equal Protection Clause count to follow. But no such claim exists. Instead, Plaintiffs claim that Defendants violated §32 of the Alabama Constitution, which prohibits slavery and involuntary servitude. They do not suggest that the alleged violations would compel servitude on the basis of race or hint that the State would be inflicting any injury on black inmates that it would not on others. Rather, this Complaint contains a myriad of "factual allegations that could not possibly be material to any of the causes of action [Plaintiffs] assert." *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991).

Racializing a case without a race-based claim is not a new strategy for public interest groups suing the State. Justice Mitchell, in a concurring opinion, recently admonished a plaintiff for similar misconduct. *See Hudson v. Ivey*, —So. 3d—, No.

SC-22-0836, 2023 WL 2620607, at *6-8 (Ala. Mar. 24, 2023). There, the plaintiff "spen[t] so much time focusing on race … to insinuate [that the challenged action] was motivated by bigotry." *Id.* at *6. And yet, the plaintiff only brought a nondelegation challenge and stopped "short of actually arguing that point or presenting evidence in support of it." *Id.* Plaintiffs in this case employ the same offensive strategy "for no apparent reason other than to make an ideological point." *Id.* at *8. Plaintiffs' Complaint is replete with race-based factual allegations to support claims that have no race-based component; they thus have no bearing on this case and should not have been included in the Complaint.

"[T]he ultimate goal of pleadings under the Alabama Rules of Civil Procedure [is] to provide fair notice to adverse parties of the claim against them and the grounds upon which it rests." *Simpson v. Jones*, 4660 So. 2d 1282, 1285 (Ala. 1984) (citing *Dempsey v. Denman*, 442 So. 2d 63 (Ala. 1983)). A shotgun pleading is "never plain because it is impossible to comprehend which specific factual allegations the plaintiff intends to support which of his causes of action, or how they do so." *Est. of Bass v. Regions Bank, Inc.*, 947 F.3d 1352, 1358 (11th Cir. 2020). Though Alabama courts construe these rules liberally, they must still balance "fair notice to adverse parties." *Id.* This balance weighs in the State's favor. Plaintiffs have thrown the kitchen sink of immaterial race-based allegations at the State to inflate the race-

neutral claims they actually bring. This Court should dismiss Plaintiffs' Complaint as a shotgun pleading, with leave to refile a new complaint that cures these deficiencies.

III. Plaintiffs' 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 Plaintiffs, 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, Plaintiffs 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.

A. Alabama voters did not intend to abolish—and therefore did not abolish—ADOC's various 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 (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)).

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?"[8] 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).[9]

The Constitution of 2022 was adopted with 888,456 votes in favor and 273,040 against.[10] Ahead of the election, the Alabama Fair Ballot Commission published on the Secretary of State's website information on the reorganized Constitution.[11] The

[8] Sample Ballot for Montgomery County, https://www.sos.alabama.gov/sites/default/files/sample-ballots/2022/gen/Montgomery-Sample.pdf (last visited May 29, 2024).

[9] *Id.*

[10] https://governor.alabama.gov/assets/2022/11/2022-11-28-Post-Election-Proclamation-Recompilation-of-Constitution.pdf (last visited May 29, 2024); *see also* Doc.2 ¶¶109-10.

[11] https://www.sos.alabama.gov/sites/default/files/sample-ballots/2022/gen/Statewide-Amendments.pdf (last visited May 29, 2024).

statement clarified that "[t]he Constitution of Alabama of 2022 will only do 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.[12] "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."

Plaintiffs acknowledge 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." Doc.2 ¶96. Yet somehow, *cleaning up* the Constitution, in Plaintiffs' view, entailed

[12] 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 May 29, 2024); *see also* Doc.2 ¶108 n.56.

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, Plaintiffs allege that ADOC generates millions of dollars in revenue for the State from the Correctional Industries and Work Release programs. Doc.2 ¶164 (about $3 million and $13 million respectively) (citing Ala. Dep't of Corrs., *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 refuse to work, as Plaintiffs 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."[13] That Alabama voters intended this result is doubtful.

Plaintiffs quote 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. Doc.2 ¶¶100-02. While noting that the memo recommended deleting "racist

[13] https://www.sos.alabama.gov/sites/default/files/sample-ballots/2022/gen/Statewide-Amendments.pdf (last visited May 29, 2024).

language" from §32, Plaintiffs totally 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."[14] Plaintiffs also highlight that the memo "referenced the recent wave of other states' removing the same or similar language from their constitutions." Doc.2 ¶102. But what Plaintiffs fail to acknowledge is that the prison labor programs in those States remain fully operational and that the statutes authorizing those programs have not been repealed.[15]

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) (attached as Ex. J). A prisoner sued the Director of the Department of Corrections, seeking an injunction prohibiting DOC from requiring inmates to work. 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. *Id.* ¶¶14-19.

[14] *Memo on Racist Language*, Joint Interim Committee on the Recompilation of the Constitution, https://www.legislature.state.al.us/pdf/lsa/proposed-constitution/Racist_Language_Background_Memo.pdf (Aug. 27, 2021)

[15] *See, e.g.*, Colo. Rev. Stat. Ann. §17-20-115; Neb. Rev. Stat. Ann. §83-4, 143; Vt. Stat. Ann. tit. 28, §753. These laws authorize work release programs in States whose constitutional prohibitions of involuntary servitude contain no "penal exception."

In sum, Plaintiffs 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.

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

The original public meaning of "involuntary servitude," as it appears in §32, does not reach Plaintiffs' allegations of unpaid prison chores and voluntary participation in work release, community work, and correctional industries programs. 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*, 139 S. Ct. 1795, 1801 (2019) (Because the text "is obviously transplanted from another legal source, it brings the old soil with it.").

The "primary purpose" of the Thirteenth Amendment "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).

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 constitute 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." *McCullogh v. City of Montgomery*, 2020 WL 3803045, at *8 (M.D. Ala. July 7, 2020). Here, Plaintiffs do not allege that they are physically or legally coerced to work.

Voluntary work programs. Plaintiffs contend that "Defendants have maintained a system of involuntary servitude within ADOC" by disciplining inmates who refuse to work or get fired from their paid jobs in work release and community work programs.[16] *See* Doc.2 §IV; *id.* ¶¶169-70 (**Stanley** twice missed the van to her free-world job); *id.* ¶182 (**Burrell** was fired from his free-world job); *id.* ¶189 (**Avery** was fired from two free-world jobs); *id.* ¶206 (**Gray** was fired from his job on a community work squad); *id.* ¶¶214-17 (**Pringle** refused to go to his free-world job and was fired from another job); *id.* ¶¶226-27 (**Smith** refused to check out for work twice). Sanctions Plaintiffs allegedly faced for breaking work rules included temporarily losing canteen, telephone, and visitation privileges, being assigned extra unpaid chores, and, in Smith's case, losing his position in work release. *See id.* ¶¶226-27.

[16] 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* Doc.2 ¶179. No other Plaintiff alleges to have worked at ACI. Even so, work at ACI is entirely voluntary. *See* Ala. Code §14-7-22.1(b).

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* 7-12; Ex. E at 17-18; Ex. G at 18. Further, Plaintiffs have agreed in writing to abide by inmate work rules and to accept the consequences if they break them. Ex. E at 17-18; Ex. G at 10. "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).

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 v. Merritt*, 167 So. 3d 283, 293 (Ala. 2013) ("[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.").

Mandatory chores. In addition, some Plaintiffs seem to allege that being disciplined for refusing to complete their unpaid inmate assigned jobs constitutes involuntary servitude. *See* Doc. 2 ¶¶171-72 (**Stanley** did not report for work on the Tutwiler garbage crew); *id.* ¶¶181, 183 (**Burrell** refused to go to work in the kitchen during the inmate labor strike); *id.* ¶¶200-01 (**Gray** refused to do his job on the garbage crew); *id.* ¶¶224 (**Smith** once cleaned hallways, dorms, and the yard "under threat of punishment").

First of all, no Plaintiff 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). Nor could they. Even the most severe sanctions attaching to Plaintiffs' rule violations target privileges Plaintiffs may accrue as part of the State's incentive structure to encourage rehabilitation and good behavior. Ex. B at 23.[17] No property or liberty interests are threatened. Indeed, under common law, post-conviction prisoners have "no property rights" and only have the property rights expressly created

[17] Even severe level rule violation sanctions, which are not implicated by Plaintiffs' allegations, target only privileges, not the fundamental rights to life, liberty, and property. *See* Ex. B at 23.

by Alabama law. *Givens v. Ala. Dep't of Corrs.*, 381 F.3d 1064, 1068-70 (11th Cir. 2004).

Plaintiffs 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. Alabama Department of Corrections*, 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 Corrs.*, 975 So. 2d 398 (Ala. Crim. App. 2007);
- Telephone access; *Zamudio*, 615 So. 2d at 157; *Austin*, 975 So. 2d 398;
- Avoiding extra work duty, *see Summerford*, 466 So. 2d at 185;
- Visitation, *see Austin*, 975 So. 2d 398.
- Avoiding restrictive housing, *see Ex parte Shabazz*, 989 So. 2d 524, 527 (Ala. 2008) (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 v. Conner*, 515 U.S. 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*, 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, constitute legal coercion.

Courts that have considered similar challenges agree and have held that general housekeeping duties imposed on pre-trial detainees, INS inmates, or inmates in mental hospitals do not constitute 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 did not constitute 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 our 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). Plaintiffs' 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 numerous State laws unconstitutional. For all these reasons, Plaintiffs' claim under §32 of the Alabama Constitution should be dismissed.

CONCLUSION

This Court should dismiss Plaintiffs' Complaint.

Respectfully submitted,

Steve Marshall
Attorney General

James W. Davis (DAV103)
Deputy Attorney General

Soren A. Geiger (GEI005)
Assistant Solicitor General

s/Benjamin M. Seiss
Benjamin M. Seiss (SEI017)
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA

501 Washington Avenue
Montgomery, Alabama 36130-0152
Telephone: 334.35.8674
Facsimile: 334.353.8400
Jim.Davis@AlabamaAG.gov
Soren.Geiger@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2024, I electronically filed the foregoing with the Court using AlaFile, which will send notification of such filing to all counsel of record.

s/Benjamin M. Seiss
Counsel for Defendants