Ex parte Greg Pinkard

In re: Ronnie Taylor
v.
Allstate Property & Casualty Insurance Company et al.

No. 1200658

Supreme Court of Alabama

May 27, 2022

(Marion Circuit Court: CV-18-900089)

PETITION FOR WRIT OF MANDAMUS

MITCHELL, JUSTICE.

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One summer afternoon, Ronnie Taylor returned from an out-of-town trip to find his cabin burned to the ground. State Deputy Fire Marshal Greg Pinkard suspected that Taylor had started the fire himself in a scheme to collect insurance money. Pinkard conveyed this suspicion to Taylor's insurance companies and to local prosecutors, who charged Taylor with arson and tampering with evidence. In his report to prosecutors, Pinkard indicated that Taylor had "admitted" to maintaining the fire and destroying evidence.

Once the transcript of Pinkard's conversation with Taylor surfaced, however, it became clear that Taylor had not actually confessed responsibility for the fire. Prosecutors dropped the charges against him, and Taylor responded by filing this lawsuit, claiming among other things that Pinkard maliciously prosecuted and defamed him. Pinkard argued below that Taylor's claims against him are barred by the doctrines of State immunity and State-agent immunity. The trial court rejected Pinkard's arguments and ruled that Taylor's claims should be heard by a jury. Pinkard then filed a petition for a writ of mandamus in this Court, asking us to overturn the trial court's ruling. We deny his petition because the trial court was correct to hold that (1) Taylor's claims against

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Pinkard are not barred by State immunity and (2) Pinkard's eligibility for State-agent immunity involves disputed factual questions. In holding that Taylor's claims are not barred by State immunity, we overrule an erroneous aspect of our recent decision in *Barnhart v. Ingalls*, 275 So.3d 1112 (Ala. 2018), and its progeny, which incorrectly held that State immunity can block suits against individual State employees that seek damages only from a State employee's personal assets.

Facts and Procedural History[1]

When Taylor drove up to his property in rural Marion County on July 31, 2016, he saw a pile of ash where his cabin once stood. Taylor and his wife had used the cabin at various times as a rental property, a secondary home, and, most recently, a workshop. It housed several thousand dollars' worth of Taylor's mechanical equipment as well as his 1996 Lincoln Town Car. By the time Taylor arrived, it was too late to

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save the car, the cabin, or anything inside it -- all that remained was the cabin's charred foundation and heaps of burnt rubble.

Taylor, who had served as a volunteer firefighter for several years, called the Haleyville Fire Department to ask his colleague, Phillip Pratt, whether the department had received a call reporting the fire. Pratt told Taylor that he had not received any reports relating to Taylor's property and asked if Taylor would like a fire truck dispatched. Taylor explained that the fire had completely consumed the cabin and that there was nothing left. He asked Pratt to at least come out to draft a report, but Pratt responded that incident reports were outside his jurisdiction and advised Taylor to contact the Marion County authorities instead.

Taylor did as Pratt suggested, contacting the Haleyville dispatch and the Marion County Sheriff's Office to request that a deputy come to the scene. Later that afternoon, the deputy

arrived and examined the remains of the cabin, which he described as a pile of "cold" ash, drafted a report, and left.

Taylor then reported the fire to the bank that held the mortgage on the cabin and filed an insurance claim with the company that insured his Town Car. Together, the cabin and the car were insured for about

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$40, 000. Due to an internal mistake, the bank did not report the loss to the home-insurance company until a month after the fire. Once the bank finally did report the loss, the insurance company sent an adjuster to inspect the scene of the fire.

When the adjuster arrived at the property on September 4, 2016, he noticed that a "burn barrel" (a 55-gallon steel barrel containing burnt trash) was sitting atop the cabin's ashes. The adjuster thought that the barrel was suspicious, so he asked the State Fire Marshal's Office to investigate the fire's origins. In his communications with the Fire Marshal's Office, the adjuster stated (incorrectly) that Taylor never reported the fire to the local fire department.

The Fire Marshal agreed to look into the matter and in mid-September assigned Deputy Pinkard to the case. Pinkard began his investigation by interviewing Taylor on September 16. The interview, which started off cordially, quickly escalated after Pinkard asked Taylor when the fire started. Taylor suggested that the fire must have started not too long before he arrived at the scene, because he had stopped by the cabin the day before and had not noticed anything amiss during that visit. Pinkard insisted that it was impossible for a structure as large as

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the cabin to burn to ashes and then go cold in only a single day. He exclaimed that Taylor's version of events could not possibly be true and began accusing Taylor of deliberately "maintaining" or accelerating the fire. Taylor protested, but Pinkard interrupted him and demanded to know why Taylor never reported the fire to the fire department or the police.

When Taylor explained that he had, in fact, reported the fire to both the fire department and law enforcement -- and that he had the phone records to prove it -- Pinkard accused Taylor of calling authorities merely to get a report to collect insurance money. Pinkard admonished Taylor for not dispatching a fire truck to put out "whatever was still left" of the fire, telling Taylor that this failure means "you're guilty of arson." Taylor reiterated that "there was nothing left" to put out and explained that Pratt told him there was nothing the fire department could do. Pinkard again cut Taylor off, insisting, "That's not up to you [to decide] whether or not the fire's out enough. There is evidence in that fire that you let burn up ... and you knew better [because] you're a volunteer firefighter." The interview continued along these lines for some time, with Taylor

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maintaining his innocence and Pinkard insisting that Taylor deliberately "let [the house] burn" in order to get his "mortgage … paid off."

Eventually, Pinkard asked Taylor about the burn barrel that the insurance adjuster had noticed sitting on top of the rubble. Taylor explained that he had placed the barrel there recently, just "the other day," because he wanted to use the barrel to clean up the ash and debris. Pinkard responded by insinuating that Taylor had added the barrel to the fire as it was still burning to accelerate the flames. Taylor denied this accusation, explaining that he had not added the barrel until after the fire had died out.

Taylor also rebuffed Pinkard's suggestion that he had started the fire to collect insurance money. Taylor admitted that he had frequently fallen behind on mortgage payments for his primary home, but he said that he had never fallen behind on mortgage payments for the cabin. Taylor told Pinkard that the fire was a financial setback to his family, despite the

insurance payments, because he had stored several thousand dollars' worth of mechanical equipment in the cabin, none of which was insured and all of which was destroyed by the flames.

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By the end of the interview, Pinkard's tone had softened. Pinkard intimated that he believed that Taylor might be telling the truth and stated that, in his view, "the only thing you [Taylor] did wrong was ... that you should have called somebody to make sure that the fire was completely put out."

But Pinkard's report to the district attorney's office struck a different note. In that report, Pinkard wrote that the barrel contained "several fuel items" and stated that Taylor "admit[ted] that he threw the barrel into the house after the structure had caught fire" and "before any investigator from the Fire Marshal's Office or Insurance Company was able to investigate the scene." Pinkard concluded his report by writing that "it is DSFM Pinkard['s] opinion that Ronnie Taylor maintained the structure/vehicle fire by not only refusing the service of Haleyville Fire Department, after contacting them, but also admitted to adding the barrel onto the structure with extra fuel items to burn maintaining the fire and destroying evidence."

After reading Pinkard's report, the assistant district attorney decided to pursue criminal charges against Taylor. She drafted an indictment based on Pinkard's report, charging that Taylor "intentionally

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... start[ed] or maintain[ed] a fire," "refus[ed] the service of the fire department," and "add[ed] a barrel of fuel items onto the burning structure, masking the fire cause or origin." Pinkard reiterated the conclusions in his report during his testimony before the grand jury, [2]which voted to indict Taylor for second-degree arson under § 13A-7-42, Ala. Code 1975, and for tampering with evidence under § 13A-10-129, Ala. Code 1975.

Pinkard also explained his suspicions about Taylor's guilt to the insurance companies and to the Haleyville Fire Department. He encouraged Taylor's insurers to withhold financial reimbursements and requested that the Haleyville Fire Department suspend Taylor from his volunteer position.

In the aftermath of Pinkard's statements and testimony, Taylor's life began to unravel. The Haleyville Fire Department suspended him from his volunteer position. The company that insured Taylor's cabin

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sued him for over $36, 000 and urged the bank to withhold payments from Taylor until after the criminal proceedings concluded. On top of these financial consequences, local news outlets reported that Taylor had been charged with arson, and those reports undermined Taylor's reputation within his community. He began experiencing severe anxiety, eventually requiring psychiatric intervention.

This unhappy state of affairs persisted for several months. Then, in the summer of 2017, Taylor's defense attorney deposed Pinkard, who clarified during his deposition that Taylor had not actually admitted to deliberately accelerating the fire. After Pinkard's deposition, prosecutors dropped all charges and voluntarily dismissed the case against Taylor.

Taylor responded by filing this lawsuit against Pinkard and several other defendants. Taylor's amended complaint lists several claims against Pinkard, but the gist of his allegations is that Pinkard (along with other defendants) defamed him, lied to prosecutors to frame him for arson, and conspired with insurance companies to deny him coverage. Taylor eventually settled with all the defendants except Pinkard. Pinkard filed a motion for summary judgment, arguing that Taylor's claims against him were barred by the doctrines of State immunity and

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State-agent immunity. When the trial court denied Pinkard's motion, Pinkard filed a petition for a writ of mandamus in this Court.

Standard of Review

For a writ of mandamus to issue, Pinkard must show" '" '(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" '" *Ex parte Utilities Bd. of Foley*, 265 So.3d 1273, 1279 (Ala. 2018) (citations omitted).

"' "While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus." '" *Ex parte City of Montgomery*, 272 So.3d 155, 159 (Ala. 2018) (citations and emphasis omitted). Whether review of the denial of a summary-judgment motion is by mandamus or appeal, our" 'standard of review remains the same, '" meaning that we review legal questions de novo and resolve all factual disputes in favor of the nonmoving party, which in this case is Taylor. *Id.* (citation omitted). Ultimately, if" 'there is a genuine issue as to any material fact on the

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question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment.'" *Id.* (citation omitted).

Analysis

Pinkard argues that Taylor's claims against him are barred by two forms of immunity: State immunity and State-agent immunity. Because State immunity, unlike State-agent immunity, is jurisdictional in nature, we address it first. *See Ex parte Sawyer*, 984 So.2d 1100, 1107-08 (Ala. 2007).

A. State Immunity

Alabama's Constitution codifies the longstanding legal principle that sovereign States are immune from suit, providing that "the State of Alabama shall never be made a defendant in any court of law or equity." Ala. Const. 1901, Art. I, § 14 (Off. Recomp.). Section 14's grant of State immunity is a jurisdictional bar[3] -- it strips courts of all power to adjudicate claims against the State, even if the State has not raised its immunity as a defense. *Ex parte Alabama Dep't of Transp.*, 985 So.2d 892, 894 (Ala. 2007); *but see Ex parte Moulton*, 116 So.3d 1119, 1131 (Ala. 2013)

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(listing several types of actions not within the prohibition of § 14).

Section 14 applies not only to suits against the State and its agencies, but also to "official-capacity" suits against State officers, employees, and agents.[4] § 36-1-12(b), Ala. Code 1975. That is because a suit against a State agent in his "official capacity" is equivalent to a suit against the office itself. *Haley v. Barbour Cnty.*, 885 So.2d 783, 788 (Ala. 2004). This rule explains why claims filed against an officer in his "official capacity" run not just against the named official but against all his successors in office. *See Ex parte Alabama Dep't of Mental Health & Mental Retardation*, 937 So.2d 1018, 1021 n.6 (Ala. 2006). It also explains why official-capacity claims seeking money damages constitute an impermissible attempt to reach "the public coffers": damages awarded against a State agent in his official capacity presumably would come from the State treasury rather than the agent's personal assets. *Suttles v. Roy*, 75 So.3d 90, 98 (Ala. 2010).

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Unlike an official-capacity claim, an individual-capacity claim seeks to hold a government official or employee *personally liable*, and to the extent that it seeks monetary recovery, it demands it from the individual himself rather than from a "governmental entity" or the State treasury. *Id.* Because genuine individual-capacity claims run against officers

personally, not against the State, we have traditionally held that such claims cannot trigger § 14's jurisdictional bar. *See Sawyer*, 984 So.2d at 1108.

It sometimes happens, however, that a plaintiff will label a claim an "individual capacity" claim even though the substance of that claim makes clear that the State is, in reality, the adverse party. In such a circumstance, this Court has long held that substance trumps form: the so-called individual-capacity claim is functionally a claim against the State and therefore barred by § 14. *See Glass v. Prudential Ins. Co. of Am.*, 246 Ala. 579, 586, 22 So.2d 13, 19 (1945).

We have identified two broad instances in which self-styled "individual capacity" claims are substantively against the State for purposes of § 14. First, if a claim against an officer seeks relief that would "directly affect a contract or property right of the State" -- such as

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by demanding money from the State treasury, requesting specific performance of the State's contractual obligations, or asking the court to quiet title to State lands -- the claim is against the State and barred by § 14. *Mitchell v. Davis*, 598 So.2d 801, 806 (Ala. 1992). Second, this Court recently held for the first time in *Barnhart v. Ingalls*, 275 So.3d 1112 (Ala. 2018), that claims against a State officer alleging that the officer breached "duties ... that ... existed solely because of [the officer's] official position[]" are, "in effect," claims against the State and likewise trigger § 14 immunity. *Id.* at 1126. Put simply, the first inquiry focuses on the source of the *relief* demanded, while the second focuses on the source of the *duty* owed.

Taylor's claims against Pinkard do not implicate the first inquiry, because Taylor demands damages from Pinkard in his individual capacity and asks nothing of the State itself. But Pinkard argues that Taylor's claims *do* fall within the ambit of the second inquiry. According to Pinkard, our decision in *Barnhart* stands for the proposition that "claims against State officials that indisputably involve[] conduct within the line and scope of [the official's] employment" are, in effect, official-capacity claims and therefore barred by § 14. Pinkard contends that

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because he was acting within the scope of his duties as a Deputy State Fire Marshal when he investigated Taylor's cabin fire, Taylor's claims arising out of that investigation must be treated as official-capacity claims under *Barnhart*'s test. Taylor, for his part, argues that *Barnhart* took a "dangerous[ly]" overbroad view of § 14 immunity, and he urges us to overrule that decision.

After careful consideration, we agree with Taylor that *Barnhart* is due to be overruled. *Barnhart*'s holding is not supported by the text of § 14, and it conflicts with several of our earlier, better-reasoned precedents.

Start with the text. Section 14 is a short provision. As noted above, it simply reads: "[T]he State of Alabama shall never be made a defendant in any court of law or equity." Undoubtedly, that language prohibits courts from entertaining suits in which the State is named as a defendant in the caption of the plaintiff's complaint. This Court has further held that § 14's text also bars suits in which the State is the substantial or "real" defendant -- meaning that the complaint demands relief from the State -- even if not a named defendant. *Glass*, 246 Ala. at 586, 22 So.2d at 19; *Wallace v. Malone*, 279 Ala. 93, 97, 182 So.2d 360, 362-63 (1964).

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But nothing in the text of § 14 prohibits courts from hearing a claim against an individual State employee if the claim does not name or seek relief from the State. For over a century, our caselaw recognized this. Indeed, this Court has gone out of its way to emphasize that "any action against a State official that seeks only to recover monetary damages against the official 'in [his or her] individual capacity' is, of course, not an action against that person in his or her official capacity" and, therefore, "would of

necessity fail to qualify as 'an action against the State' for purposes of § 14." *Ex parte Bronner*, 171 So.3d 614, 622 n. 7 (Ala. 2014); *see also, e.g.*, *Elmore v. Fields*, 153 Ala. 345, 45 So. 66 (1907) (similar). That is, at least, until *Barnhart*.

Barnhart involved a suit brought by several former employees of the Space Science Exhibit Commission -- an entity that all parties assumed to be a State agency[5] -- demanding backpay to which the employees were entitled by statute. As part of their suit, the employees alleged that the Commission's officers had committed negligence and

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breach of fiduciary duty when they failed to issue the payments. The employees "made it clear that they [sought] *personal* payment from the Commission officers" and argued that, because their claims did not seek any payment from or performance by the State, those claims could not be barred by § 14. 275 So.3d at 1126. *Barnhart* rejected that argument, holding for the first time that any "individual capacity" claims alleging breach of duties that "existed solely because of [the officers'] official positions" are substantively claims against the State for purposes of § 14.[6] In reaching this result, *Barnhart* expressly overruled "any previous decisions" to the contrary. *Id.* at 1127.

Barnhart's logic may have ultimately led to a correct result (dismissal), but it did so for the wrong reason. *Barnhart* correctly understood that the employees' individual-capacity claims were nonstarters because the Commission officers obviously owed no duty in their individual capacities to pay the employees. *Id.* at 1127 n.9. But failure to plead the existence of a legal duty is a *merits* defect, not a

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jurisdictional one. *Barnhart* overlooked that distinction, so it erroneously rejected the employees' individual-capacity claims for lack of subject-matter jurisdiction (under § 14) instead of on the merits (for failure to state a claim).

Barnhart's mistake might have been relatively harmless if it had been cabined to the breach-of-payment-obligations scenario in which it arose. After all, most claims demanding damages from individual agents for breach of State payment obligations would fail on the merits, even if not jurisdictionally barred, because State agents generally are not parties (in their personal capacities) to State contracts. But *Barnhart* ventured beyond the breach-of-contract context by prohibiting *any* claim, including individual-capacity tort actions, where "the duties allegedly breached by the … officers were owed to the [plaintiff] *only* because of the positions the … officers held." *Barnhart*, 275 So.3d at 1126. That was a broad holding, and we soon began applying it outside the narrow class of suits involving State financial or contractual obligations. *See Meadows v. Shaver*, 327 So.3d 213 (Ala. 2020) (plurality opinion) (concluding that *Barnhart*'s rule barred individual-capacity claims for negligence, wantonness, and false imprisonment); *Ex parte Cooper*, [Ms. 1200269,

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Sept. 30, 2021] So.3d _ (Ala. 2021) (applying *Barnhart*'s rule to block individual-capacity tort claims for personal injury).

The rule announced in *Barnhart* and extended in *Cooper* threatens to work an unprecedented, and unjustified, doctrinal shift. As noted above, Alabama courts have long recognized the right of tort victims to recover damages from State employees who injure them while acting within the scope of their official duties. *See, e.g.*, *Elmore*, 153 Ala. at 351, 45 So. at 67; *Bronner*, 171 So.3d at 622 n. 7. *Barnhart* and its progeny dispensed with that ancient rule by cloaking State agents with absolute and unqualified sovereign immunity for any claim alleging breach of an official duty, including individual-capacity tort actions. That result is unmoored from the text and history of § 14 and is at odds with this Court's more carefully reasoned precedents. Having recognized our mistake, we are determined not to repeat it. The expansive interpretation of § 14 announced in *Barnhart* and its progeny[7] is overruled.

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In overruling these cases, we return to our pre-*Barnhart* understanding of § 14, which properly recognized that State immunity does not bar claims that name and seek relief only from individual officers in their personal capacity, as Taylor's claims against Pinkard do. *See Bronner*, 171 So.3d at 622 n.7. The circuit court therefore had subject-matter jurisdiction over Taylor's claims.

B. State-Agent Immunity

A State agent, such as Pinkard, who is not protected by absolute State immunity may nonetheless be eligible for the more limited defense of State-agent immunity for certain acts performed as part of his official duties.[8] *See* § 36-1-12; *Ex parte Cranman*, 792 So.2d 392 (Ala. 2000) (plurality opinion); *Ex parte Butts*, 775 So.2d 173, 177-78 (Ala. 2000) (adopting the *Cranman* plurality's restatement of State-agent immunity in a majority opinion). As relevant here, an "officer, employee or agent of the state ... is immune from civil liability in his or her personal capacity when the conduct" at issue "is based upon the agent's ... [e]xercising judgment in the enforcement of the criminal laws of the state." § 36-1-

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12(c)(4). A plaintiff can pierce this immunity, however, by proving that the agent "act[ed] willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." § 36-1-12(d)(2).

Because both parties agree that Pinkard's conduct stemmed from the "exerci[se of his] judgment in the enforcement of [Alabama's] criminal laws," Taylor bears the burden of putting forth "substantial evidence" that Pinkard's conduct fell within one of the exceptions to State-agent immunity. *Ex parte City of Montgomery*, 272 So.3d 155, 167 (Ala. 2018). Taylor focuses his arguments on the exceptions for willful, malicious, fraudulent, and bad-faith conduct (which we refer to in this opinion as the "malice exception"). The malice exception to State-agent immunity cannot be triggered merely because the agent acted negligently or even recklessly; instead, the agent must have acted"' "with a design or purpose to inflict injury" '" without reasonable justification. *Id.* at 168 n.5 (citations omitted); *see also Ex parte Price*, 256 So.3d 1184, 1191 (Ala. 2018).

Taylor argues that he has presented evidence from which a reasonable factfinder could conclude that Pinkard acted maliciously. He

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points to an array of circumstantial evidence -- including the fact that Pinkard falsely represented that Taylor had "admitted" to starting the fire, Pinkard's tone during the interview, Pinkard's "secret" recording of the interview, and Pinkard's alleged failure to comply with applicable fire-investigation rules -- which, according to Taylor, demonstrate Pinkard's malice. We need not decide whether each of these alleged facts supports a plausible inference of malice; under our precedents, the first allegation on its own is enough.

We have held that a jury can infer malicious intent based on evidence that the State agent knowingly lied to charge the plaintiff with a crime, and that is precisely what Taylor says happened here.[9] *See, e.g., Ex parte Tuskegee*, 932 So.2d 895, 907-08 (Ala. 2005) (holding that a plaintiff can prove malice by showing that officers fabricated evidence

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against him); *Williams v. Aguirre*, 965 F.3d 1147, 1170 (11th Cir. 2020) (Pryor, C.J.) (explaining that, under Alabama law, evidence that "officers lied" about the plaintiff's conduct triggers the malice exception). Taylor insisted throughout his conversation with Pinkard that he never added anything to the fire, that he did not destroy evidence or allow evidence to be destroyed, and that the only reason the barrel was on the structure at all is because Taylor had brought it there to use as a cleaning bin weeks

after the fire had died out. Yet Pinkard's investigative report told prosecutors that "Taylor ... admit[ted] that he threw the barrel into the house after the structure had caught on fire" and that "Taylor ... admitted to adding the barrel onto the structure with extra fuel items to burn maintaining the fire and destroying evidence."

In sum, Taylor has put forth evidence that Pinkard misrepresented his denials as a confession. While we do not rule out the possibility of an innocent explanation for this discrepancy, [10] a reasonable jury could

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conclude that Pinkard's misrepresentations were malicious. The trial court was correct to deny summary judgment.

Conclusion

We deny Pinkard's petition for a writ of mandamus. Taylor's suit against Pinkard as an individual is not in effect a suit against the State, so State immunity does not preclude jurisdiction over Taylor's claims. And, because the record contains evidence from which a reasonable factfinder could infer malice, Pinkard is not entitled to summary judgment on State-agent-immunity grounds.

PETITION DENIED.

Bryan, Mendheim, and Stewart, JJ., concur.

Parker, C.J., concurs specially, with opinion. Mitchell, J., concurs specially, with opinion, which Parker, C.J., joins.

Bolin, J., concurs in the result.

Shaw, J., concurs in the result, with opinion, which Sellers, J., joins.

Wise, J., recuses herself.

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PARKER, Chief Justice (concurring specially).

I fully concur in the main opinion. I write only to highlight one of the mistakes that this Court made in *Barnhart v. Ingalls*, 275 So.3d 1112 (Ala. 2018) -- misconstruing the phrase "the nature of the action and the relief sought" -- in the hope that we will never repeat it.

Before *Barnhart*, the most straightforward test for whether a claim against a State agent was de facto against the State had long been whether a judgment for the plaintiff would directly affect a contract or property right of the State. See, e.g., *Southall v. Stricos Corp.*, 275 Ala. 156, 158, 153 So.2d 234, 235 (1963); *Aland v. Graham*, 287 Ala. 226, 229, 250 So.2d 677, 679 (1971); *First State Bank of Altoona v. Bass*, 406 So.2d 896, 897 (Ala. 1981); *Mitchell v. Davis*, 598 So.2d 801, 806 (Ala. 1992); *Ex parte Walley*, 950 So.2d 1172, 1179 (Ala. 2006). The main opinion now corrects our course back to that well-established and sound test. And I believe that that test is generally what this Court has ultimately been alluding to (however elliptically) when we have said that the State-immunity analysis depends on "the nature of the action and the relief sought."

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In substance, this Court's use of this phrase originated in our 1942 decision in *Curry v. Woodstock Slag Corp.*, 242 Ala. 379, 6 So.2d 379 (1942). There, a taxpayer sued the Alabama Commissioner of Revenue, seeking a declaratory judgment as to whether a sales tax applied to particular facts. The taxpayer did not seek an injunction or any "other relief which affect[ed] the rights of the State." 242 Ala. at 380, 6 So.2d at 480. We concluded that State immunity did not apply because the nature of the suit was only for declaratory relief and did not directly affect the State's contract or property rights:

> "When such a controversy arises between [a State officer] and an individual the Declaratory Judgments Act furnishes the remedy for or against him. When it is only sought to construe the law and direct the parties, whether individuals or State officers, what it

> requires of them under a given state of facts, to that extent it does not violate section 14, Constitution. ...
>
> "....
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> "All the cases on which [the Commissioner] relies have other elements in addition to a declaration of rights under the law, which were held to *affect the interests of the State in a direct way*: Such as those seeking an injunction of the collection of taxes and a suit which seeks to enjoin a prosecution of an indictable offense[.]
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> "This section of the Constitution prohibits a suit against the State by an indirection as by setting up a board and

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> allowing it to be sued *for the State's contract or other liabilities when the effect is to fasten a claim against the State's resources*.
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> "It also prohibits a personal action against the State Tax Commission to recover money paid as a license tax under protest.
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> "....
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> "Considering *the true nature of a suit which is declaratory of controversial rights and seeks no other relief*, but only prays for guidance both to complainant and the State officers trying to enforce the law so as to prevent them from making injurious mistakes through an honest interpretation of the law, and thereby control the individual conduct of the parties, albeit some of them may be acting for the State, it is our opinion that a suit between such parties *for such relief alone* does not violate section 14 of the Constitution."

242 Ala. at 381, 6 So.2d at 480-81 (citations omitted; emphasis added). Thus, when we said "the true nature of the suit which ... seeks no other relief," our focus was on the type of remedy sought (a declaratory judgment).

The specific phrase "the nature of the suit or relief demanded," was first used in *Glass v. Prudential Insurance Co. of America*, 246 Ala. 579, 22 So.2d 13 (1945), where we borrowed it from an American Jurisprudence section. That case involved an insurance company that

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sued the State superintendent of insurance, asserting that a business-license tax was unconstitutional. The company sought a declaratory judgment and an injunction prohibiting the superintendent from canceling its business license because of failure to pay the tax. This Court, relying on *Curry*, held that the suit was not barred by State immunity. We explained:

> "There is no judgment rendered against the State or against the officer collecting the money. It is in substance and effect the same as a declaratory judgment, which was declared available to the taxpayer in the *Curry* case. The one is in advance while the other is after the tax is due. The matters looking to a refund of the money call only for performance of ministerial duties and it will be assumed, of course, that the officer will perform his duty, but if he fails to do so, a writ of mandamus would be available."

246 Ala. at 585, 22 So.2d at 18. We later summarized:

> "As pointed out by the decisions in 49 Am. Jur. p. 307 et seq., it is *the nature of the suit or relief demanded* which the courts consider in determining whether a suit against a

> State officer is in fact one against the State within the rule of immunity referred to, and it is not the character of the office of the person against whom the suit is brought. Illustrative of this limitation is our *Curry* case, to which we have referred."

246 Ala. at 586, 22 So.2d at 19 (emphasis added). Thus, our first use of the phrase "the nature of the suit or relief demanded" similarly reflected an emphasis on the type of remedy the plaintiff sought.

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The same generally continued to be connected to our use of the phrase in the decades that immediately followed, mostly in tax-refund cases. See, e.g., *Horn v. Dunn Bros.*, 262 Ala. 404, 408, 410, 79 So.2d 11, 15, 17 (1955) ("We have pointed out that it is the nature of the suit or the relief demanded which the courts consider in determining whether an action against a State officer is in fact a suit against the State in violation of the Constitutional prohibition." "What, then, was the nature of the relief demanded? The [subject order] only required the Commissioner to perform an established duty. [¶] No judgment against the State was sought or granted. True, the decree may ultimately touch the State treasury. Yet, the State treasury suffers no more than it would, had the Commissioner initially performed his clear bounden duty."); *State v. Norman Tobacco Co.*, 273 Ala. 420, 423, 424, 142 So.2d 873, 876, 877 (1962) ("In determining whether action against a state officer is a suit against the State in violation of constitutional prohibition, the court considers the nature of the suit or relief demanded." "[I]njunctive relief granted pendente lite, solely to preserve the status of the appellee before the court from irreparable damage until a final determination of the issues, is not a suit against the State within the meaning of § 14 of Art.

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1 of the State Constitution."); *Southall v. Stricos Corp.*, 275 Ala. 156, 158-59, 153 So.2d 234, 235-36 (1963) ("[I]t is the nature of the suit or the relief demanded which the courts consider in determining whether an action against a State officer or agency is in fact a suit against the State in violation of the constitutional prohibition. [¶] In the present case no judgment is asked which will take away any property of the State, or fasten a lien on it, or interfere with the disposition of funds in the treasury, or compel the State, indirectly, by controlling its officers and employees, to perform any contract or to pay any debt. [¶] We hold that this is not a suit against the State within the meaning of § 14 of the Constitution." (citations omitted)); *Wallace v. Malone*, 279 Ala. 93, 96-97, 97, 182 So.2d 360, 362, 363 (1964) ("'[I]t is the nature of the suit or relief demanded which the courts consider on determining whether a suit against a state officer [or board] is in fact one against the state within the rule of immunity of the state from suit ....'" "The suit here is one to redress breach of contract by the State and for that reason cannot be maintained." (citation omitted)); *Owen v. West Alabama Butane Co.*, 278 Ala. 406, 409, 178 So.2d 636, 638, 638-39 (1965) (" '[I]t is the nature of the suit or relief demanded which the courts consider on determining

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whether a suit against a state officer [or board] is in fact one against the state within the rule of immunity of the state from suit ....'" "We do think it must be regarded as settled that a taxpayer may, without violating Section 14 of the Constitution of 1901, maintain a bill for declaratory decree against a state official to construe a taxing statute when a justiciable controversy exists. We are of opinion and hold that the instant suit for declaratory relief is not one against the state which is prohibited by Section 14 of the Constitution." (citations omitted)).

Indeed, *Barnhart* itself recognized that this Court had closely linked the phrase "the nature of the action and the relief sought" to our focus on whether a claim sought payment from State coffers. 275 So.3d at 1125-26. But in *Barnhart*

we simply brushed aside that link in favor of homing in on the ill-defined words "the nature of th[e] claims," breathing into them a life they never should have had. By overruling *Barnhart*, we now restore that vital link and inter the short-lived "nature of the claim" test.

Moreover, in recent decades the phrase "the nature of the action or the relief sought" has often been used alongside other formulations such as "whether a judgment against the officer would directly affect the

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financial status of the State treasury" and "whether the defendant is simply a conduit through which the plaintiff seeks recovery of damages from the State." E.g., *Mitchell*, 598 So.2d at 806; *Lyons v. River Rd. Constr., Inc.*, 858 So.2d 257, 261 (Ala. 2003); *Haley v. Barbour Cnty.*, 885 So.2d 783, 788 (Ala. 2004). We have sometimes referred to these various phrases as "factors" in the test for State immunity. See, e.g., *Phillips v. Thomas*, 555 So.2d 81, 83 (Ala. 1989); *Haley*, 885 So.2d at 788. But on the face of their own language, they are not factors, at least not in the ordinary jurisprudential sense of nonelement points that must be collectively considered and weighed in determining a particular legal issue. Rather, they are simply different ways of articulating the same substantive test -- the historic contract/property-right test. Similarly, "the nature of the action" and "the relief sought" are not separate "factors" that each provide some kind of independent basis for State immunity, contra *Barnhart*, 275 So.3d at 1125-26. The phrase is to be taken as a whole: "The nature of the action [and/or] the relief sought" is merely (unhelpfully nebulous) shorthand for the historic test -- whether a judgment in favor of the plaintiff would directly affect a contract or property right of the State.

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Specifically, the words "the nature of the action" do not signal that some claims against State agents that do not directly affect a State contract/property right are nevertheless subject to State immunity. This Court has long warned against applying § 14 to such claims:

> "[N]o person can commit a wrong upon the property or person of another, and escape liability, upon the theory that he was acting for and in the name of the government[,] which is immune from suit ....
>
> "... If [the state] is not responsible for the torts of her servants, and they have no authority to bind her for their torts, then a mere averment that they were committed in her behalf does not render the suit one against the state."

Elmore v. Fields, 153 Ala. 345, 350-51, 45 So. 66, 67 (1907), limited in part on other grounds, *Ex parte Walker*, 188 So.3d 633, 639 (Ala. 2015).

> "[T]hough the state cannot be sued (section 14, Constitution), its immunity from suit does not relieve the officers of the state from their responsibility for an illegal trespass or tort on the rights of an individual .... [T]he rule is universal that an agent is not excused from personal liability for a tort which he commits for and in the name of his principal, whether the principal is liable to suit or not.
>
> "... The officers are sued, not because the state has committed a wrong, but because they personally, though acting as officers, have done so."

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Finnell v. Pitts, 222 Ala. 290, 292-93, 132 So. 2, 4 (1930), limited in part on other grounds, *Taylor v. Shoemaker*, 605 So.2d 828 (Ala. 1992). "The immunity from suit extended by the Constitution to the state does not protect an agent who commits a trespass to the hurt of another." *J.B. McCrary Co. v. Phillips*, 222 Ala. 117, 119, 130 So. 805, 807 (1930).

Accordingly, the phrase "the nature of the action and the relief sought" ought not be a seen as a loophole that allows an end-run around the historic contract/property-right test. We fell prey to that error in *Barnhart*, and we should not do so again.

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MITCHELL, Justice (concurring specially).

> I concur with the main opinion, which I authored. I write

separately to explain in more detail why I believe that *Barnhart v. Ingalls*, 275 So.3d 1112 (Ala. 2018), and several of our precedents leading up to it incorrectly interpreted Art. I, § 14, Ala. Const. 1901 (Off. Recomp.). I ground my analysis, as always, in our Constitution's "text, structure, and history." *Ex parte Venture Express, Inc.*, [Ms. 1200351, May 7, 2021] So. 3d, (Mitchell, J., concurring specially). In this case, I focus on the history: to understand what § 14 of our Constitution means when it provides "[t]hat the State of Alabama shall never be made a defendant in any court of law or equity," we must understand the historical backdrop against which that provision was ratified. *See Barnett v. Jones*, [Ms. 1190470, May 14, 2021] So. 3d, (Mitchell, J., concurring specially) ("courts should interpret the Alabama Constitution of 1901 in accordance with its original public meaning").

The history is somewhat complicated. As detailed below, two approaches to States' sovereign immunity[11] competed for dominance in

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the decades leading up to our Constitution's ratification. Under one approach, rooted in Chief Justice Marshall's seminal opinion in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), State immunity was understood to bar a claim only if the plaintiff explicitly named the State as a defendant "on the record" (including by naming State agencies or State officers in their "official" capacities). Under the other approach, which flowered in the aftermath of the Civil War, State immunity was understood more broadly as barring all claims in which the State was a "real party in interest" -- in other words, claims that directly attacked a State property or contractual right, even if the State was not a named defendant. The weight of the historical evidence indicates that the latter approach predominated at the time of § 14's ratification in 1901.

Neither approach, however, supports the notion that § 14 bars individual-capacity claims that seek damages only from State agents' *personal* assets. In such suits, the State is neither a nominal party (because it is not named as a defendant on the record) nor a real party

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(because the relief sought does not come from the State). Nevertheless, for the past half century, this Court has haphazardly held that § 14 applies to certain individual-capacity claims. While *Barnhart* and its progeny are the latest iteration of this error, they are not the first instance of it. And if this Court is not vigilant about policing the original public meaning of § 14, they may not be the last.

A. Origins of States' Sovereign Immunity and the "Defendant on the Record" Rule

Sovereign immunity has been a fixture of American law since the Founding. It came to this country from England, where it was sometimes justified by the maxim that "[t]he king can do no wrong." 1 William Blackstone, *Commentaries on the Laws of England* *238. Although the Founding Fathers dispensed with the Crown, they retained the axiom that "[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." The Federalist No. 81 at 487 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (emphasis omitted). Of course, American States waived some aspects of their sovereign immunity when they ratified the Constitution and joined the Union -- for example, they made themselves vulnerable to suits by the

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federal government, *see United States v. Texas*, 143 U.S. 621, 646 (1892) -- but they kept their immunity from suits by individuals.

The full ramifications of that principle depend on the test used to determine whether a suit is one against a State. In *Osborn*, the United States Supreme Court endorsed the simplest possible test: whether a State is named as a defendant "on the record." 22 U.S. (9 Wheat.) at 857. If the plaintiff named a State as a defendant, State immunity barred the suit and the reviewing court had no choice but to dismiss the claims against the State for lack of subject-matter jurisdiction. But if the State was not explicitly named as a defendant, State immunity was no obstacle -- and this was true even if the State was the only entity that had an actual or "real" interest in the subject of the suit. *Id.* at 856-57.

The Supreme Court refined this doctrine a few years later in *Governor of Georgia v. Madrazo*, 26 U.S. (1 Pet.) 110, 123 (1828), which clarified that official-capacity claims -- that is, claims naming a government officer as a party "by his title" -- were suits against the State "on the record." This result followed from the understanding that official-capacity suits were "not against the officer, but rather against the office, [whoever] might be the incumbent." David E. Engdahl, *Immunity and*

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Accountability for Positive Governmental Wrongs, 44 U. Colo. L. Rev. 1, 35 (1972); *see Madrazo*, 26 U.S. (1 Pet.) at 123.

But suits against officers personally -- known as "individual capacity" suits -- were not barred by State immunity. Thus, the viability of individual-capacity suits against officers depended not on the jurisdictional doctrine of State immunity, but simply on the merits of the plaintiff's claim under applicable law. Breach-of-contract claims, for example, were governed by different liability rules than tort claims, and these differences mattered a great deal in suits against government agents.

Start with breach-of-contract claims. Under common-law rules of agency, an agent who signed a contract on behalf of a principal was not personally responsible for fulfilling the terms of the contract; only the principal was. Engdahl, *supra*, at 15, 20. Thus, if a State official (the agent) contracted with a private company to purchase equipment on behalf of the State (the principal), and the State later reneged on that agreement, the State alone would be legally responsible for the breach (even though State immunity shielded the State from being sued absent its consent). Engdahl, *supra*, at 15-16. At common law, then, a claim

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against a State agent for breach of a government contract would have failed not because the agent was "immune" from suit, but simply because the plaintiff lacked a cause of action against him.

Tort claims were different. Under longstanding common-law rules, if an agent tortiously injured someone while acting within the scope of his employment by a principal, both the agent and the principal would be understood to have committed a legal wrong (the well-known doctrine of respondeat superior). *See* Engdahl, *supra*, at 16-17. Thus, if a State officer wronged a person while acting for the State, both the officer and the State were responsible under substantive tort law. Of course, State immunity would pose a jurisdictional bar to the injured person haling the State into court (absent the State's consent) to answer for the officer's wrongdoing. But State immunity would not bar that person from suing the officer himself, even if the conduct giving rise to the suit came about only because the officer was performing his official duties.

B. The Rise of the "Real Party in Interest" Rule

Courts began moving away from *Osborn*'s defendant-on-the-record rule in the aftermath of the Civil War, when many States, barely solvent and laden with war debts, began searching for

new ways to insulate

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themselves from lawsuits. States that had long consented to citizen suits began to repeal those consents. *See* Engdahl, *supra*, at 21. Some States, including this one, even passed a constitutional amendment barring the legislature from ever consenting to suit. *See* Ala. Const. 1875, Art. I, § 15. In addition, government attorneys began urging courts to adopt a more robust view of State immunity. Engdahl, *supra*, at 20-21.

The United States Supreme Court responded to the pressure of these "fiscal exigencies" by embracing a wider view of State-sovereign immunity in a series of 1880s cases involving State debts. *Id.* at 21. In the first of these cases, *Louisiana v. Jumel*, 107 U.S. 711 (1883), the plaintiffs sought to compel members of the Louisiana Board of Liquidation to pay the originally-agreed-upon interest rate on outstanding State bonds after Louisiana amended its constitution to reduce the interest rate. The suit named the board members as defendants but did not name the State itself. The Supreme Court held that State immunity barred the suit, justifying its decision by explaining that only the State of Louisiana, not the individual board members, had a contractual obligation to pay interest on the bonds, and thus the State itself was the real party in interest. *Id.* at 723.

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According to *Jumel* and several other bond cases that followed it, State-sovereign immunity barred not only suits in which the State was a nominal party, but also suits in which the State was a substantial or "real" party defendant. *See id.*; *see also id.* at 735-36 (Field, J., dissenting) (criticizing the majority for abandoning *Osborn*'s defendant-on-the-record rule in favor of the "real party in interest" rule that *Osborn* had rejected); *Ex parte Ayers*, 123 U.S. 443 (1887) (holding that State immunity barred bondholders' request for restraining order against Virginia's attorney general because the State was "the actual party" even though "not named as a party defendant"); *Hagood v. Southern*, 117 U.S. 52 (1886) (similar). Under this line of cases, a State was considered to be the real-party defendant if a claim sought to access money in the State treasury or otherwise attacked a State property right. *See Jumel*, 107 U.S. at 720; *Ayers*, 123 U.S. at 181-82.

But even under this expanded doctrine, actions against individual officers were still permitted outside the narrow realm of suits -- typically breach-of-contract suits or similar actions involving government accounts -- that demanded payment from the State treasury, specific performance of a State contractual obligation, or otherwise directly assailed a State

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property right. Claims naming and demanding payment from individual officers -- such as virtually all tort claims filed against State officials --remained untouched. *See Ayers*, 123 U.S. at 181-83 (emphasizing the "obvious" distinction between contract and tort actions against State officials and explaining that only the former were barred by State immunity). It did not matter how much an individual-capacity claim against an officer might "incidentally and consequentially affect the interests of a State, or the operations of its government" -- so long as the claim did not demand relief from the State itself, State immunity was no obstacle. *Poindexter v. Greenhow*, 114 U.S. 270, 297 (1885). Further, whatever defense a defendant might draw from his official authority was well understood to be a merits defense, not a jurisdictional barrier like State immunity. *See, e.g., Hopkins v. Clemson Agric. Coll. of South Carolina*, 221 U.S. 636, 643 (1911); *Cunningham v. Macon & Brunswick R.R. Co.*, 109 U.S. 446, 452 (1883).

C. State-Sovereign Immunity in Alabama

Alabama's constitutional codification of sovereign immunity was ratified in the midst of this doctrinal shift. When Alabama first joined the Union in 1819, the People of this State gave the Legislature the power

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to waive the State's immunity from suit. Ala. Const. 1819, Art. VI, § 9. That power persisted in our second, third, and fourth constitutions. *See* Ala. Const. 1861, Art. VI, § 9; Ala. Const. 1865, Art. I, § 15; Ala. Const. 1868, Art. I, § 16. But in 1875, a decade after the end of the Civil War, Alabamians approved a constitution that absolutely prohibited suits against the State, meaning that the Legislature could not consent to suit even if it wanted to. *See* Ala. Const. 1875, Art. I, § 15. That provision was reenacted in our current Constitution, the Constitution of 1901. It reads: "[T]he State of Alabama shall never be made a defendant in any court of law or equity." Ala. Const. 1901, Art. I, § 14.

As the main opinion notes, the text of § 14 undoubtedly prohibits courts from entertaining suits in which the State is named as a defendant on the record. It also seems likely, considering the doctrinal shift discussed above, that the ratifying public in 1901 would have understood § 14 to bar any claim in which the State is a "real party" defendant.

The earliest Alabama cases dealing with State immunity buttress this conclusion. In *Comer v. Bankhead*, 70 Ala. 493, 496-97 (1881), this Court's first major decision applying the language that now appears in § 14, it was apparently undisputed that the defendant was sued in his

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official capacity, making the suit one against the State under a straightforward application of *Madrazo*. But several aspects of *Comer*'s reasoning show an affinity with the real-party doctrine embraced two years later in *Jumel*. *See id.* at 495-96 (reasoning, as in *Jumel*, that the suit was against the State because the State, not the defendant, was the real counterparty to the contract the plaintiff sought to enforce); *id.* at 498 (Stone, J., concurring) (similar).

The leading cases in subsequent decades were simple individual-capacity tort suits against government agents, which did not call for a decision between the party-on-the-record and real-party doctrines, because State immunity would not apply either way. *See Elmore v. Fields*, 153 Ala. 345, 45 So. 66 (1907); *Morgan Hill Paving Co. v. Fonville*, 218 Ala. 566, 119 So. 610 (1928); *Finnell v. Pitts*, 222 Ala. 290, 132 So. 2 (1930); *J.B. McCrary Co. v. Phillips*, 222 Ala. 117, 130 So. 805 (1930). Nevertheless, dicta in those cases likewise reveal an affinity for the real-party doctrine. *See Elmore*, 153 Ala. at 351, 45 So. at 66 (suggesting that *Comer*'s result was based on the State's substantive, rather than nominal, obligations to the plaintiff); *Morgan Hill Paving Co.*, 218 Ala. at 574, 119 So. at 617 (favorably quoting federal cases advancing the real-

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party-in-interest rule); *Finnell*, 222 Ala. at 294-95, 132 So. at 6 (Thomas, J., dissenting) (noting that then-contemporaneous "general authorities" endorsed the real-party view).

It was not until the middle of the 20th century that this Court began to expressly endorse and apply the "real party in interest" rule. *Wallace v. Malone*, 279 Ala. 93, 97, 182 So.2d 360, 362-63 (1964). When this Court did endorse the real-party doctrine, however, it correctly discerned that the doctrine did not mean that *all* claims affecting a State interest were barred. Rather, the State was the real party in interest for purposes of § 14 only when a complaint sought to "take away any property of the State, or fasten a lien on it, or interfere with disposition of funds in the treasury, or compel the State, indirectly, by controlling its officers or employees, to perform any contract or to pay any debt." 279 Ala. at 98, 182 So.2d at 363. Suits that named and sought damages from an officer's personal assets remained outside the ambit of § 14.

But that crucial distinction collapsed in *Milton v. Espey*, 356 So.2d 1201 (Ala. 1978), in which this Court held -- apparently for the first time -- that breach-of-contract claims filed against an officer in his personal capacity, and which sought money damages from the officer himself

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rather than from the State, were barred by § 14. *Id.* at 1202-03. The plaintiff in that case, Robert Milton, was an ex-employee of the University of Alabama, who sued his supervisor, Melford Espey (also a State employee), alleging that Espey had failed to uphold the terms of Milton's employment contract with the University. Milton's complaint did not name the University as a defendant and sought damages only from Espey's personal assets. Nevertheless, this Court held that Milton's contract-based claims were barred by § 14 because, "in employing Milton, Espey was acting in his official capacity as an agent of the University" and because Milton's employment contract "was in fact with the University of Alabama." *Id. Milton* cited *Comer* and *Wallace* in support of this result, *id.* at 1203, but without explanation and apparently without realizing that *Wallace*'s articulation of the real-party rule did not apply where (as in *Milton*) the plaintiff sought payment from the defendant's personal assets rather than from the State fisc. In short, the State was neither a named party nor a real party in *Milton*, so State immunity should have played no role in the Court's analysis.

It is sometimes said that hard cases make bad law, but *Milton* shows how easy cases can make bad law too. The Court correctly

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understood that Milton's individual-capacity suit against Espey had no legs given that Espey, in his individual capacity, did not owe any duties to Milton. But Milton's failure to identify any legal duty owed by Espey personally was a *merits* defect, not a *jurisdictional* one. The *Milton* Court failed to appreciate that distinction, so it erroneously dismissed Milton's individual-capacity claim for lack of subject-matter jurisdiction (under § 14) instead of on the merits (for failure to state a claim).

The same year *Milton* was decided, this Court further muddied the waters with *Gill v. Sewell*, 356 So.2d 1196 (Ala. 1978), which held that a tort claim against a State officer "in an individual capacity," seeking damages from him personally, was "barred by Section 14" as long as the officer was acting in conformity with his statutory authority. *Id.* at 1198. In other words, *Gill* held that § 14's grant of sovereign immunity to the State of Alabama also constitutionalized State-*agent* immunity for officers sued in their individual capacities. The Court cited no authority for this novel conclusion, which was directly contrary to long-settled law. *See, e.g., Morgan Hill Paving Co.*, 218 Ala. at 574, 119 So. at 617.

The Court eventually cut back on *Gill*'s error, but only in part. In subsequent cases, the Court purported to uphold *Gill*'s "rationale" while

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nonetheless acknowledging that State-agent immunity was a merits defense, not a jurisdictional bar like § 14. *DeStafney v. University of Alabama*, 413 So.2d 391, 393-95 (Ala. 1981); *see also Barnes v. Dale*, 530 So.2d 770, 783-85 (Ala. 1988) (emphasizing that State-agent immunity is a "substantive" defense, whereas State-sovereign immunity is a jurisdictional one). Yet, despite this acknowledgment, many of this Court's later decisions continued to conflate the affirmative defense of State-agent immunity with § 14 sovereign immunity.[12] Even the

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influential restatement of State-agent immunity in *Ex parte Cranman*, 792 So.2d 392 (Ala. 2000), combined its invocation of common-law tort principles with an oblique reliance on § 14. *See id.* at 401 (plurality opinion) (acknowledging that "§ 14 is, by its terms, restricted to prohibiting lawsuits against the State" and does not address individual-capacity suits against officers, yet still insisting that it plays some unspecified role in grounding State-agent immunity); *id.* at 406 (Johnstone, J., concurring specially) (joining in the plurality's restatement of State-agent immunity, but with the reservation that the immunity flows from common-law tort principles and not § 14).[13]

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To the Court's credit, our recent cases usually recognize, at least in broad outline, the conceptual distinction between "State-*agent* immunity under *Cranman*" or § 36-1-12, Ala. Code 1975, [14] and "*State* immunity under § 14." *Ex parte Cooper*, [Ms. 1200269, Sept. 30, 2021] So. 3d, (Ala. 2021). Yet the rationale of our decision in *Barnhart* -- which expanded § 14 to cloak agents of the State with State-sovereign immunity for individual-capacity claims alleging breach of an official duty -- is just another version of the error we first committed in *Milton* and *Gill*. *Barnhart*, 275 So.3d at 1126. Like *Milton* and *Gill* before it, *Barnhart* conflated a merits defect with a jurisdictional one, and it did so without reasoned analysis or historical support. It is possible that *Barnhart* viewed itself as simply applying *Milton*'s holding -- namely, that the State is the real-party defendant in all claims alleging breach of

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government contractual obligations -- but that reading is cold comfort given that *Milton* itself misunderstood the real-party doctrine on which it was ostensibly based.

In any event, *Barnhart* ventured beyond *Milton*'s narrow breach-of-contract rationale by prohibiting *any* claim, including individual-capacity tort claims, where "the duties allegedly breached by the … officers were owed to the [plaintiff] only because of the positions the … officers held." *Barnhart*, 275 So.3d at 1126 (emphasis omitted). We almost immediately began applying this holding outside the government-contract context. For example, in *Meadows v. Shaver*, 327 So.3d 213 (Ala. 2020), a plurality of this Court held that *Barnhart*'s rule barred individual-capacity claims against a circuit clerk for failing to transmit a criminal sentence-status transcript even though the plaintiff's claims did not sound in contract or financial accounts at all, but instead alleged the torts of negligence, wantonness, and false imprisonment. Likewise, in *Ex parte Cooper*, [Ms. 1200269, Sept. 30, 2021] So.3d _ (Ala. 2021), we held that personal-injury claims brought against the director of the Alabama Department of Transportation for allegedly breaching his duty to keep roadways in good repair were barred by § 14 even though

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the claims against him sounded in tort rather than contract. While I joined the main opinions in *Meadows* and *Cooper* -- which I viewed as involving faithful applications of the reasoning in *Barnhart*, a decision that the parties in those cases did not ask us to overrule -- my subsequent analysis of the historical record has persuaded me that those decisions were incorrect as an original matter. I therefore join the Court in holding that they must be overruled. *See Gamble v. United States*, U.S.,, 139 S.Ct. 1960, 1981 (2019) (Thomas, J., concurring) (explaining that the doctrine of *stare decisis* does not authorize judges to "elevate[] demonstrably erroneous decisions … over the text of the Constitution" or duly enacted statutes).

* * * The historical record reveals that § 14's grant of sovereign immunity to "the State of Alabama" prohibits, at most, (1) claims that name the State as a defendant (including by naming a State agency or a State officer in his official capacity) and (2) claims in which the State is the real party in interest. It does not bar claims that name and seek relief from individual officers in their personal capacity. Those claims are neither nominally nor substantively against the State, and that is

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true even if those claims relate to the officer's performance of his official duties. Such claims might still fail on the merits for any number of reasons -- including the plaintiff's failure to plead a valid cause of action or to overcome the affirmative defense of State-agent immunity -- but they are not barred by § 14. Parker, C.J., concurs.

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SHAW, Justice (concurring in the result).

I concur in the result.

> State employees, both in their official capacities and individually, are immune from suit when an action is, in effect, one against the State. *Ex parte Moulton*, 116 So.3d 1119, 1141 (Ala. 2013).
>
> " 'In determining whether an action against a state officer or employee is, in fact, one against the State, [a] [c]ourt will consider such factors as *the nature of the action and the relief sought*.' *Phillips v. Thomas*, 555 So.2d 81, 83 (Ala. 1989). Such factors include whether 'a result favorable to the plaintiff would directly affect a contract or property right of the State,' *Mitchell [v. Davis*], 598 So.2d [801,] 806 [(Ala. 1992)], whether the defendant is simply a 'conduit' through which the plaintiff seeks recovery of damages from the State, *Barnes v. Dale*, 530 So.2d 770, 784 (Ala. 1988), and whether 'a judgment against the officer would directly affect the financial status of the State treasury,' *Lyons [v. River Rd. Constr., Inc*.], 858 So.2d [257,] 261 [(Ala. 2003)]."

Haley v. Barbour Cnty., 885 So.2d 783, 788 (Ala. 2004) (emphasis added).

In determining whether the action is, in effect, one against the State, I do not believe that the only focus is whether the State might ultimately be required to pay money, i.e., "the relief sought," or whether the contract or property rights of the State might be impacted. The "nature" of the action itself, *id*., although alleged against a State

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employee individually, may nonetheless be deemed, in substance, to be directed against the State, if not its coffers, property, or contracts.

In *Barnhart v. Ingalls*, 275 So.3d 1112 (Ala. 2018), the plaintiffs, among other things, sought the payment of State-employment benefits that were owed by the State. A suit against the State, or its employees in their official capacities, to pay those benefits as damages would be forbidden by § 14. But the action sought those State-employment benefits to be personally paid as damages by certain State employees who allegedly had a ministerial duty to disburse those benefits on the State's behalf. As the main opinion notes, those State employees "obviously owed no duty in their individual capacities to pay" the benefits. So.3d at . The claim's *nature* was a barred official-capacity claim for damages masquerading as an individual-capacity claim.[15]

I believe that, in the context of immunity, this Court may recognize such claims for what they are. Any articulation in *Barnhart* of a standard

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to do so may have been overbroad, and the decision may be due to be overruled in that regard. But § 14 is not a mere rule of procedure simply forbidding the State from being named in a complaint. If so, artful pleading could result in State employees personally shouldering litigation of otherwise barred claims. And if § 14 does not bar suits alleging that State employees are personally liable for the debts of the State when they are not, such suits will certainly have an effect on the State, given that all acts of the State are performed by its employees. I do not believe that § 14 can never bar suits against individual State employees that purport to seek damages only from a State employee's personal assets.

Nevertheless, I do not believe that the claims against the petitioner, Greg Pinkard, implicate § 14 immunity or that State-agent immunity as set out in *Ex parte Cranman*, 792 So.2d 392 (Ala. 2000) (plurality opinion), and adopted in *Ex parte Butts*, 775 So.2d 173 (Ala. 2000), applies in this case. Thus, the petition is due to be denied, and I concur in the result.

Sellers, J., concurs.

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Notes:

[1]For purposes of resolving this petition, we must view the facts in the light most favorable to Taylor and resolve factual conflicts and ambiguities in his favor to the greatest reasonable extent. *See Ex parte Covington Pike Dodge, Inc.*, 904 So.2d 226, 229-30 (Ala. 2004). The description that follows reflects this principle and assumes -- without deciding -- that Taylor's version of events is the correct one.

[2]Grand-jury proceedings are sealed, but Taylor alleges that Pinkard disclosed certain aspects of his grand-jury testimony when he was asked about that testimony during a deposition. At this stage, we do not address (because the parties have not raised) the questions whether evidence of Pinkard's grand-jury testimony is admissible and whether Taylor's characterization of that testimony is accurate.

[3]State immunity has sometimes been referred to as "§ 14 immunity," "sovereign immunity," or "State-sovereign immunity," though this Court's recent jurisprudence does not favor these terms.

[4]For purposes of this case, we do not distinguish between "officers," "employees," and "agents"; those terms are used interchangeably in this opinion.

[5]As we later explained, *Barnhart* did not actually analyze whether the Commission is "a State agency for purposes of State immunity under § 14." *Ex parte Space Race, LLC*, [Ms. 1200685, Dec. 30, 2021] ___So. 3d___, ___ (Ala. 2021).

[6]We allowed the employees' pleaded *official*-capacity claim (which effectively sought specific performance of the State's payment obligations) to proceed because we held that that claim fell within a recognized carveout to State immunity for suits seeking to compel the performance of a bare "ministerial act." *Barnhart*, 275 So.3d at 1121-25.

[7]*See Anthony v. Datcher*, 321 So.3d 643 (Ala. 2020); *Meadows*, 327 So.3d 213; *Cooper*, So.3d _.

[8]State-agent immunity has sometimes been referred to as "official immunity," "discretionary-function immunity," or "qualified immunity," though this Court's current jurisprudence does not favor these terms.

[9]In his briefing before this Court, Pinkard contends that he had "arguable probable cause" to suspect Taylor of arson and that the presence of arguable probable cause precludes a jury from finding that he acted maliciously. But Pinkard did not raise this theory before the trial court, so we do not address it here. *See Ex parte Volvo Trucks N. Am., Inc.*, 954 So.2d 583, 587 (Ala. 2006). We also do not address Pinkard's contention, raised for the first time in oral argument, that Pinkard's testimony to the grand jury is shielded by the common-law doctrine of absolute witness immunity, which (as the name suggests) protects testifying witnesses from civil liability for testimony given under oath. *See Rehberg v. Paulk*, 566 U.S. 356, 367 (2012).

[10]Pinkard's reply brief appears to argue that the report was inartfully drafted, but not intentionally misleading. According to Pinkard, the report was intended to convey only that Taylor admitted to adding the barrel *at some unspecified time after the fire began*; the reader was supposed to infer that it was Pinkard's "conclusion" that the barrel was added while the structure was still burning to destroy evidence. While it is possible that a jury would believe Pinkard on this point, we see no reason why it would *have* to.

[11]"State immunity," "State-sovereign immunity" and "sovereign immunity" are synonymous for purposes of this special writing. Recent Alabama cases favor the term "State immunity," while federal cases, older State cases, and scholars often use the broader term "sovereign immunity." In keeping with this Court's current practice, I favor "State immunity" when appropriate.

[12]*See, e.g., Rutledge v. Baldwin Cnty. Comm'n*,

495 So.2d 49, 53 (Ala. 1986) ("officials and employees enjoy the immunity of Section 14 of the Constitution" so long as they are properly carrying out a "function [that] is specified by statute"); *White v. Birchfield*, 582 So.2d 1085, 1088 (Ala. 1991) (tort claims premised on the theory of respondeat superior are "barred by the absolute immunity of Article I, § 14"); *Pack v. Blankenship*, 612 So.2d 399, 402-03 (Ala. 1992) (even if a suit against an officer "is not an action against the State," the individual officer might still be "entitled to qualified immunity under Section 14"); *Lennon v. Petersen*, 624 So.2d 171, 173 (Ala. 1993) (describing State-agent immunity as falling within "the scope" of State immunity under § 14); *Louviere v. Mobile Cnty. Bd. of Educ.*, 670 So.2d 873, 877 (Ala. 1995) ("A person who acts as a State agent may also share in the State's sovereign immunity if the agent's act complained of was committed while that person was performing a discretionary act."); *L.S.B. v. Howard*, 659 So.2d 43, 44 (Ala. 1995) ("[Section 14] is the constitutional basis for the doctrine of sovereign immunity. This immunity may attach to an individual who, while acting as an agent of the State, is engaged in the exercise of a discretionary function."); *Carroll ex rel. Slaught v. Hammett*, 744 So.2d 906, 910 (Ala. 1999) ("a person who acts as an agent of a county board of education shares in the State's sovereign immunity if the act complained of was committed while that person was performing a discretionary act").

[13]When the Court formally adopted the *Cranman* restatement in a majority opinion, it did not expressly pick between the constitutional and the common-law rationales for State-agent immunity, though it seems to have taken for granted that § 14 applies only to official-capacity claims. *See Ex parte Butts*, 775 So.2d 173, 177-78 (Ala. 2000). Similarly, it appears that the Legislature also distinguished between official-capacity immunity "pursuant to ... Section 14" on the one hand, *see* § 36-1-12(b), Ala. Code 1975, and individual-capacity immunity under the merits defense of State-agent immunity on the other hand, *see* § 36-1-12(c), Ala. Code 1975, when it essentially codified the *Cranman* restatement in 2014.

[14]Some of our recent cases cite the plurality opinion in *Cranman* as if that opinion were the only source of immunity for State agents. But the Legislature codified *Cranman*'s restatement of State-agent immunity when it enacted § 36-1-12. As a result, the statute is now an independent source of State-agent immunity. The distinction matters because while this Court has "the inherent power" to alter common-law rules, it has no power to alter statutes. *Golden v. McCurry*, 392 So.2d 815, 817 (Ala. 1980); *see also Ex parte Carlton*, 867 So.2d 332, 338 (Ala. 2003) ("[T]his Court is not at liberty to rewrite statutes or to substitute its judgment for that of the Legislature.").

[15]See also *Milton v. Espey*, 356 So.2d 1201, 1202 (Ala. 1978) (holding that a State employee "was merely the conduit through which the [State] contracted with [the plaintiff]. Thus, a suit seeking money damages for breach of contract, although nominally against [the State employee] individually, comes within the prohibition of Section 14 as a suit against the State.").
