

**Shentel Hawkins, Ashlee Lindsey, Jimmie
George, and Christina Fox**

v.

**Governor Kay Ivey and Secretary of Labor
Fitzgerald Washington**

No. 1200847

Supreme Court of Alabama

March 18, 2022

Appeal from Montgomery Circuit Court
(CV-21-900863)

MITCHELL, JUSTICE

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In response to economic conditions related to the spread of COVID-19, Congress established several programs that made additional federal funds available to the states for providing enhanced unemployment-compensation benefits to eligible individuals ("the programs"). Alabama elected to participate in the programs, and Shentel Hawkins, Ashlee Lindsey, Jimmie George, and Christina Fox ("the claimants") were among the Alabamians who received the enhanced benefits.

As the spread of COVID-19 waned, Governor Kay Ivey announced that Alabama would be ending its participation in the programs. When Alabama did so, the claimants received reduced unemployment-compensation benefits or, depending on their particular circumstances, no benefits at all. Two months later, the claimants sued Governor Ivey and Secretary of the Alabama Department of Labor Fitzgerald Washington in their official capacities, alleging that Alabama law did not permit them to opt Alabama out of the programs. After the Montgomery Circuit Court dismissed the claimants' lawsuit based on the doctrine of State immunity, *see* Ala. Const. 1901 (Off. Recomp.), Art. I, § 14, the claimants filed this appeal. We affirm the judgment of the trial court.

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Standard of Review

In *Munza v. Ivey*, [Ms. 1200003, Mar. 19, 2021] ___ So. 3d ___ (Ala. 2021), this Court reviewed the dismissal of another action filed against Governor Ivey and a member of her cabinet challenging decisions they had made related to the spread of COVID-19. As in this case, the State defendants in *Munza* moved the trial court to dismiss that action under Rule 12(b)(1), Ala. R. Civ. P., arguing, among other things, that the court lacked subject-matter jurisdiction to hear the action because § 14 barred the asserted claims. ___ So.3d at ___. *See also* *Butler v. Parks*, [Ms. 1190043, Jan. 22, 2021] ___ So. 3d ___, ___ (Ala. 2021) (explaining that, when State immunity applies, the trial court is divested of subject-matter jurisdiction). We stated in *Munza* that "[a] ruling on a motion to dismiss is reviewed without a presumption of correctness" and that "[m]atters of subject-matter jurisdiction are subject to de novo review." ___ So.3d at ___ (citations omitted). We apply this same standard of review here.¹¹

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Analysis

The Alabama Constitution provides "[t]hat the State of Alabama shall never be made a defendant in any court of law or equity." Ala. Const. 1901 (Off. Recomp.), Art. I, § 14. "This Court, construing Section 14, has held almost every conceivable type of suit to be within the constitutional prohibition." *Hutchinson v. Board of Trs. of Univ. of Alabama*, 288 Ala. 20, 23, 256 So.2d 281, 283 (1971). We have further clarified that the immunity provided by § 14 bars not only actions expressly naming the State of Alabama as a defendant, but also actions against State officers or agents in their official capacities. *Patterson v. Gladwin Corp.*, 835 So.2d 137, 142 (Ala. 2002). *See also* *Burgoon v. Alabama State Dep't of Hum. Res.*, 835 So.2d 131, 133 (Ala. 2002) ("A suit against a State agency, or against State agents in their *official* capacities, is a suit against the State.").

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But, while "[t]he wall of immunity erected by § 14 is nearly impregnable," *Patterson*, 835 So.2d at 142, it "is not absolute; there are actions that are not barred by the general rule of immunity." *Ex parte Hampton*, 189 So.3d 14, 17 (Ala. 2015). In *Ex parte Moulton*, 116 So.3d 1119, 1131 (Ala. 2013), this Court discussed the limited circumstances in which actions against State officers in their official capacities are *not* barred by § 14. Those permissible categories of actions include cases in which a plaintiff seeks injunctive relief compelling State officers to perform their legal duties. *Id.* See also *Stark v. Troy State Univ.*, 514 So.2d 46, 50 (Ala. 1987) (explaining that "an action seeking to compel [State officials] to perform their legal duties will not be barred by [§ 14] of the Alabama Constitution"). The claimants invoke this so-called exception to the doctrine of State immunity here. In doing so, they argue that the trial court erred by dismissing their action on § 14 grounds because, they say, Governor Ivey and Secretary Washington have a legal duty "to fully participate in unemployment-compensation programs offered by the federal government." The claimants' brief at p. 10. Although the claimants offer two statutes in support of their argument, nothing in the

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language of either statute compels Alabama to participate in the programs.

A. § 36-13-8, Ala. Code 1975

Title 36 of the Alabama Code generally addresses the rights and responsibilities of public officers and employees. Chapter 13 specifically discusses the office of Governor, and § 36-13-8 addresses the Governor's authority and power to accept federal grants and funds:

"The Governor is hereby authorized and empowered to accept from the federal government or any

agency or instrumentality thereof, in the name of and for the State of Alabama, grants and advances of funds and real or other personal property for any purpose of the state government not contrary to the Constitution of Alabama.

"The Governor is further authorized and empowered, insofar as is not specifically prohibited by the constitution and the then existing statutes, to meet and to require, by his executive order, any other agency or instrumentality of the state government to meet the terms and conditions imposed on such grants and advances in acts of the Congress of the United States, executive orders of the President of the United States or any rule, regulation or order of any other agency or instrumentality of the federal government, it being the intent of this section to permit the State of Alabama to participate fully in grants and advances made available to it by the federal government."

(Emphasis added.)

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The claimants argue in conclusory fashion that § 36-13-8 requires Governor Ivey to continue Alabama's participation in the programs.^[2] The claimants are wrong. Section 36-13-8 states that it is "the intent of this section to *permit* the State of Alabama to participate fully in grants and advances made available to it by the federal government." (Emphasis added.) To this end, the statute provides that the Governor is "authorized and empowered" to accept federal funds on behalf of Alabama and to direct State agencies and instrumentalities to comply with the terms and conditions that the federal government places upon the receipt of such funds. But § 36-13-8 does not *require* the Governor to accept all federal funds that might be made available to Alabama. Embedded in § 36-13-8 is the Governor's discretion to decide whether and when it is wise to accept available federal funds.

As the second paragraph of § 36-13-8 recognizes, federal grants and funds are often accompanied by terms and conditions. *See South Dakota v. Dole*, 483 U.S. 203, 210 (1987) (recognizing the federal government's

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general power to require states to comply with conditions attached to federal funds and the states' authority to decline those funds if they find the conditions to be overly onerous). Thus, if the Governor decides that accepting specific funds and complying with federally mandated terms and conditions would benefit Alabama, the Governor is authorized and empowered by § 36-13-8 to accept those funds. But if the Governor decides that those terms and conditions are too burdensome, there is nothing in § 36-13-8 that requires her to accept the funds.

Put simply, the plain text of § 36-13-8 *permits* the Governor to accept funds made available to Alabama under a federal program; it does not *require* the Governor to do so. The claimants' argument that § 36-13-8 required Governor Ivey to have Alabama participate in the programs is not supported by the text of the statute. We therefore reject it.

B. § 25-4-118, Ala. Code 1975

The statutes governing Alabama's unemployment-compensation program are found in Chapter 4 of Title 25 of the Alabama Code. Article 6 of Chapter 4 addresses the administration of the program and the rights and responsibilities of the Secretary of the Alabama Department of Labor

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("the secretary") in that program. Within that chapter, § 25-4-118(a) provides in part that, "[i]n the administration of this chapter, the secretary shall cooperate to the fullest extent consistent with the provisions of this chapter with the U.S. Secretary of Labor" The claimants argue that this language imposed a duty on Secretary Washington to continue Alabama's participation in the programs. Governor Ivey and Secretary Washington say that the full context of § 25-4-118(a) makes clear that the statute does no such thing. Rather than imposing an affirmative duty to participate in federal programs, they argue that subsection (a) merely concerns the secretary's administrative duty to file reports and to comply with federal regulations governing those federal unemployment programs that already exist under Title III of the Social Security Act.^[3]

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It is ultimately unnecessary for us to delineate the extent of Secretary Washington's duty to cooperate with the federal government under § 25-4-118(a). As explained, § 36-13-8 authorizes and empowers *the Governor* -- not the secretary or any other State official -- to accept federal grants and funds "in the name of and for the State of Alabama." The claimants have identified no authority indicating that Secretary Washington has power equal to or exceeding Governor Ivey in this sphere, and there is certainly nothing in § 25-4-118(a) to suggest that he would. Indeed, Governor Ivey and Secretary Washington state that the Alabama

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Constitution and our caselaw affirmatively refute the notion that another State official would have the power to overrule the Governor's decision. See Ala. Const. 1901 (Off. Recomp.), Art. V, § 113 ("The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Alabama.'"); *Tyson v. Jones*, 60 So.3d 831, 849 (Ala. 2010) ("Generally, where the governor is authorized to act he or she is not subject to any other executive officer.").

Thus, regardless of what duties may be imposed on Secretary Washington by § 25-4-118(a), that statute -- which makes no mention of the Governor -- does not provide any basis for requiring Governor Ivey to continue Alabama's participation in the programs. Section 36-13-8 identifies only the Governor as being "authorized and empowered" to accept federal funds "in the name of and for the State of Alabama," and Secretary Washington's duty to cooperate with the federal government under § 25-4-118(a) has no bearing on Governor Ivey's discretion to decide whether to accept federal grants and funds under § 36-13-8. Stated another way, Secretary Washington had no ability to "cooperate" with the federal government to provide enhanced unemployment-compensation

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benefits to Alabamians under the programs once Governor Ivey terminated Alabama's participation in them. The claimants have not shown that § 25-4-118(a) -- either by itself⁴¹ or in conjunction with § 36-13-8 -- imposes any legal duty on Governor Ivey or Secretary Washington that would place this action beyond the jurisdictional bar of § 14.

Conclusion

The claimants sued Governor Ivey and Secretary Washington, alleging that state law did not permit Alabama to opt out of the programs that provided funds for the claimants to receive enhanced unemployment-compensation benefits. The trial court dismissed the action, concluding

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that it lacked subject-matter jurisdiction under § 14 of the Alabama Constitution. The trial court was correct, and its judgment dismissing the action is hereby affirmed.⁵¹

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Bryan, Mendheim, and Stewart, JJ., concur.

Sellers, J., concurs in the result.

Wise, J., recuses herself.

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Notes:

¹¹In *Hare v. Mack*, [Ms. 1200562, Jan. 21, 2022] ___ So. 3d ___, ___ (Ala. 2022), we clarified that, when an appellate court considers a judgment dismissing an action for lack of subject-matter jurisdiction under Rule 12(b)(1), the appellate court reviews the trial court's legal conclusions de novo, but reviews its jurisdictional findings of fact for clear error. But, like in *Hare*, that distinction makes no difference in this case because the essential facts are undisputed.

²¹Nowhere in the claimants' brief do they quote any portion of § 36-13-8 or make specific arguments about its text.

³¹In its entirety, § 25-4-118(a) states:

"In the administration of this chapter, the secretary shall cooperate to the fullest extent consistent with the provisions of this chapter with the U.S. Secretary of Labor and his successors, and the Federal Internal Revenue Service, and, notwithstanding any other provisions of this chapter, shall make such reports in such form and containing such information as either may from time to time require, and shall comply with such provisions as the U.S. Secretary of Labor, or his successors, or the Federal Internal Revenue Service may from time to time find necessary to insure the correctness and verification of such reports, and shall comply with the regulations prescribed by the U.S. Secretary of Labor, and his successors, governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social

Security Act for the purpose of assisting in the administration of this chapter. Upon request therefor the secretary shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter."

^[4]The claimants note that plaintiffs in other states that have statutory language arguably similar to § 25-4-118(a) have met with some success in court challenges to those states' decisions to stop participating in the programs. See *Armstrong v. Hutchinson*, No. CV 2021-4507 (Ark. Cir. Ct., Pulaski Cnty., July 28, 2021); *D.A. v. Hogan*, No. 24-

C-21-002988, and *Harp v. Hogan*, No. 24-C-21-002999 (combined) (Md. Cir. Ct., Baltimore City, July 3, 2021) *State ex rel. Bowling v. DeWine*, No. 21CVH07-4469 (Ohio Ct. C.P., Franklin Cnty., Aug. 24, 2021); *Owens v. Zumwalt*, No. CV-21-1703 (Okla. Dist. Ct., Oklahoma Cnty., Aug. 9, 2021). Of course, even if the statutory language used by those states is identical to § 25-4-118(a), those courts' decisions do not bind this Court. *Walls v. Alpharma USPD, Inc.*, 887 So.2d 881, 884 (Ala. 2004). And none of those cases address the doctrine of State immunity under Alabama's Constitution, on which this case turns.

^[5]Our conclusion that the trial court correctly dismissed this action on the basis of § 14 obviates the need to consider any of the other issues raised by the parties.
