Rel: June 30, 2023
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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-0897

Aaron Johnson, Nancy Williams, Derek Bateman, Jack Ficaro, Dashonda Bennett, Latisha Kali, Quinton Lee, Esta Glass, Joyce Jones, Deja Bush, Jarvis Dean, Taja Penn, Lisa Cormier, Mia Brand, Tammy Cowart, John Young, Mark Johnson, Latara Jackson, Senata Waters, Raymond Williams, Cynthia Hawkins, Crystal Harris, Rashunda Williams, and Mary Blackerby

v.

Alabama Secretary of Labor Fitzgerald Washington

Appeal from Montgomery Circuit Court
(CV-22-900134)

MITCHELL, Justice.

With the onset of COVID-19, the Alabama Department of Labor received a record number of applications for unemployment benefits. To be precise, Alabamians filed nearly 1.5 million such applications with the Department between April 2020 and March 2022, far above the 737 applications that had been filed in May 2019, before the onset of COVID-19. Unsurprisingly, the Department struggled to process the additional million-plus applications in a timely fashion. The plaintiffs-appellants in this case, whom we refer to simply as "the plaintiffs,"[1] are among the many individuals who experienced delays in the handling of their applications. Early last year, they brought this lawsuit in the Montgomery Circuit Court in an effort to jumpstart the administrative-approval process. In their operative joint complaint, each plaintiff has

[1]The plaintiffs are Aaron Johnson, Nancy Williams, Derek Bateman, Jack Ficaro, Dashonda Bennett, Latisha Kali, Quinton Lee, Esta Glass, Joyce Jones, Deja Bush, Jarvis Dean, Taja Penn, Lisa Cormier, Mia Brand, Tammy Cowart, John Young, Mark Johnson, Latara Jackson, Senata Waters, Raymond Williams, Cynthia Hawkins, Crystal Harris, Rashunda Williams, and Mary Blackerby. This list does not include 2 of the original 26 plaintiffs, Christin Burnett and Michael Dailey, because both individuals appear to have dropped out of the case and are not listed as parties to this appeal; accordingly, their claims are not before us now.

raised multiple claims for relief, all of which seek to compel the Alabama Secretary of Labor, Fitzgerald Washington, to improve the speed and manner in which the Department processes their applications for unemployment benefits.

Secretary Washington responded to the suit by asking the circuit court to dismiss all claims against him, arguing (among other things) that the circuit court lacked jurisdiction over the suit because the plaintiffs had not yet exhausted mandatory administrative remedies. After the circuit court granted that motion, the plaintiffs appealed to this Court. For the reasons given below, we agree with Secretary Washington that the Legislature has prohibited courts from exercising jurisdiction over the plaintiffs' claims at this stage. We therefore affirm the circuit court's judgment of dismissal.

Facts and Procedural History

This suit began when 26 plaintiffs filed a complaint and motion for injunctive relief against Secretary Washington and the Department, with each plaintiff pleading numerous claims related to the Department's handling of their unemployment-benefits applications. In essence, each of the plaintiffs had filed one or more applications for benefits and was

unsatisfied with how the Department handled (or failed to handle) those applications. After Secretary Washington and the Department moved to dismiss the complaint against them, the plaintiffs filed an amended complaint, which dropped several of their initial claims and also dropped the Department as a defendant.

The surviving counts -- all of which are federal claims brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983 -- alleged that Secretary Washington's "policies, practices, and procedures" related to "unemployment compensation applications" violated the Social Security Act of 1935, 42 U.S.C. § 503(a)(1), as well as the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Each plaintiff demanded several forms of relief, including: (1) a permanent injunction directing Secretary Washington to "promptly make decisions on all applications" for unemployment compensation; (2) a preliminary injunction directing Secretary Washington to "issue an initial nonmonetary decision within the next ten days to every plaintiff who has not yet received a decision"; (3) a permanent injunction directing Secretary Washington to "pay every [unemployment-benefit] claim that has been approved within two days of the date of approval"; (4) a

permanent injunction requiring Secretary Washington to provide any claimants who request a hearing confirmation of the request and to "schedule a date not more than 90 days later than the request for the hearing"; (5) a preliminary injunction directing Secretary Washington to "provide within ten days a hearing date for each of the plaintiffs who have requested a hearing"; (6) a permanent injunction directing Secretary Washington to provide "all information about the unemployment compensation program and all notices to claimants using language and format making them easily read and understood by people with an eighth grade education"; (7) a preliminary injunction compelling Secretary Washington "within two weeks to file a plan for rewriting notices and information sheets to ensure that they can be easily read and understood by people with an eighth grade education"; and (8) an order awarding the plaintiffs attorney fees.

Secretary Washington again moved to dismiss, arguing that the circuit court lacked subject-matter jurisdiction (on a variety of theories), that the plaintiffs lacked a private cause of action, and that the plaintiffs' claims were substantively meritless. The circuit court granted Secretary Washington's motion without specifying the ground on which it based its

dismissal. The plaintiffs promptly filed a motion to alter, amend, or vacate the judgment of dismissal, which the circuit court denied. The plaintiffs then timely appealed to this Court.

Standard of Review

We review a circuit court's judgment of dismissal de novo, regardless of whether the judgment was entered under Rule 12(b)(1), Ala. R. Civ. P., for lack of subject-matter jurisdiction, or under Rule 12(b)(6), Ala. R. Civ. P., for failure to state a claim. See DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011); Bay Lines, Inc. v. Stoughton Trailers, Inc., 838 So. 2d 1013, 1017-18 (Ala. 2002).

Analysis

The parties' positions in this appeal largely track their arguments before the circuit court. Namely, Secretary Washington argues that this Court and the circuit court lack subject-matter jurisdiction over the claims listed in the amended complaint because, he contends: several of those claims have become moot in the time since the suit was filed; the Social Security Act claims are barred by the doctrine of State immunity; some of the plaintiffs lack standing (for various reasons) to seek the type of relief demanded in the amended complaint; and the Alabama

Legislature has prohibited courts from hearing claims related to the making of determinations for unemployment-compensation benefits unless the claimants have first exhausted the Department of Labor's internal administrative-review process. He further maintains that the plaintiffs lack a private cause of action to enforce their Social Security Act claims and that -- even leaving aside the private-cause-of-action issue -- all the plaintiffs' claims fail on the merits as a matter of law. The plaintiffs, for their part, dispute each of these contentions and argue that the circuit court committed reversible error by accepting any of them.

We address the jurisdictional disputes first because, absent subject-matter jurisdiction, we have no authority to reach the merits. See McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017). While we must resolve all jurisdictional questions before any merits issues, id., in situations where we are faced with multiple jurisdictional questions at once, we may choose to decide them in any order, see Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999); Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 100 n.3 (1998). In this case, we begin by asking whether the Legislature has prohibited courts from exercising jurisdiction over unexhausted claims related to a plaintiff's pursuit of

unemployment-compensation benefits, because that is the only jurisdictional question that applies to all the claims brought by all the plaintiffs. And because we ultimately agree with Secretary Washington that the Legislature has prohibited courts from exercising jurisdiction over such claims, we end our inquiry there as well.

To understand how and why the Legislature has barred State courts from exercising jurisdiction over the types of claims at issue here, it helps to understand how unemployment-compensation benefits developed in this State. Alabama's unemployment-compensation scheme was first enacted in 1935. Tennessee Coal, Iron & R.R. Co. v. Martin, 251 Ala. 153, 154, 36 So. 2d 547, 548 (1948). At the time, there was little precedent for such a program; indeed, Alabama was among the first States in the nation to experiment with one. See id. (describing Wisconsin as the only State to have adopted an unemployment-compensation scheme prior to Alabama's). Unemployment compensation is thus "a creature of statute" alone; it does not correspond to any

traditional private right and was "unknown at common law."[2] Quick v. Utotem of Alabama, Inc., 365 So. 2d 1245, 1247 (Ala. Civ. App. 1979).

When the Legislature creates a new type of claim in derogation of the common law -- as it has done with unemployment compensation -- the procedure for pursuing such a claim is "completely governed by statute." Quick, 365 So. 2d at 1247 (citing Ex parte Miles, 248 Ala. 386, 27 So. 2d 777 (1946)). A related principle is that when a statutory scheme gives rise to entitlements or other franchises unknown at common law, the ordinary presumption in favor of judicial review for claims related to those benefits does not apply -- which is why courts in such contexts typically construe jurisdictional grants narrowly and jurisdictional limitations broadly. See Birmingham Elec. Co. v. Alabama Pub. Serv. Comm'n, 254 Ala. 119, 125, 47 So. 2d 449, 452 (1950). Those complementary principles guide our analysis in this case.

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[2]The traditional "absolute" private rights recognized at common law are the rights to life, liberty, and property. 3 William Blackstone, Commentaries on the Laws of England *119. In contrast, unvested benefits that the government chooses to bestow on individuals -- a category that now includes unemployment compensation -- were understood to be "privileges" or "franchises" that did not implicate core private rights. See Caleb Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 567-69 (2007).

As relevant here, when the Legislature enacted the statutory scheme creating unemployment benefits for Alabamians, it specified that anyone seeking such benefits must file an application with the Department and then await "determination … by an examiner designated by the [S]ecretary [of Labor]." § 25-4-91, Ala. Code 1975; see also § 25-4-90, Ala. Code 1975. If a claimant objects to the examiner's determination, he or she must "present[]" that objection to one of the Department's internal "appeals tribunals," which have the power to adjudicate all "disputed claims and other due process cases" involving the examiner's administration of unemployment benefits. § 25-4-92(a) and (b), Ala. Code 1975. Only after the appeals tribunal has issued a final "decision allowing or disallowing a claim for benefits" can the losing party appeal that decision to a circuit court. § 25-4-95, Ala. Code 1975.

The Legislature further specified that the procedure outlined above is the "exclusive" mechanism for seeking, challenging, or appealing from any "determinations with respect to claims for unemployment compensation benefits." § 25-4-96, Ala. Code 1975. The Court of Civil Appeals held in Quick that this statutory language bars State courts from hearing any suit "pursuing an unemployment compensation claim" if the

plaintiff-claimant has not first gone through the requisite administrative procedures. 365 So. 2d at 1247.

Secretary Washington argues that, in keeping with the logic of Quick and the text of the unemployment-compensation statutes, all the claims in this case are barred. As he points out, every claim listed in the plaintiffs' amended complaint attacks some aspect of the process for making "determinations with respect to claims for unemployment compensation benefits," § 25-4-96 -- yet none of those claims have made their way through the mandatory administrative-review process set out in §§ 25-5-90 through -97. Instead, the plaintiffs filed an original action in the circuit court, bypassing much of the administrative-review process entirely.

The plaintiffs, for their part, do not dispute that all of their claims ultimately demand relief with respect to the administration of unemployment benefits, nor do they argue that they have exhausted their administrative remedies. Instead, they argue that the administrative-exhaustion requirement does not apply to them because, they say, that requirement attaches only to "substantive" challenges to the administration of benefits (that is, actions challenging a final decision

on whether to approve or deny a claim for benefits), not to "procedural" ones (that is, objections challenging some aspect of the process by which unemployment-compensation applications are adjudicated). Plaintiffs' brief at 37-38.

The most fundamental problem with the substantive-procedural distinction posited by the plaintiffs is that the plaintiffs make no attempt to ground that distinction in statutory text. Indeed, the plaintiffs' brief ignores the statutory language cited above, which empowers the Department's appeals tribunals to adjudicate all "disputed claims and other due process cases," § 25-4-92(a) (emphasis added), and which further provides that such adjudication shall be the "exclusive" mechanism for securing relief, § 25-4-96. Secretary Washington, however, highlights this language in his response brief and argues that §§ 25-4-92(a) and 25-4-96, taken together, establish that the Legislature endowed appeals tribunals with the exclusive authority to hear procedural challenges related to the administration of unemployment-compensation benefits in addition to substantive challenges regarding the decision to award (or not award) those benefits. As he points out, it would make little sense for the plaintiffs to contend,

as they do in their brief, that their lawsuit "is based solely on the [Department's] failure to timely process claims and provide claimants with due process," plaintiffs' brief at 9, while simultaneously taking the position that their suit does not fall under the category of "disputed claims and other due process cases" for purposes of § 25-4-92(a).

When confronted with the statutory language in §§ 25-4-92(a) and 25-4-96, the plaintiffs' only response is to insist that procedural administrative-exhaustion requirements, such as those contained in § 25-4-96, have been "categorically rejected by the United States Supreme Court" and therefore, under principles of vertical stare decisis, cannot be enforced by this Court either. Plaintiffs' reply brief at 16. In particular, the plaintiffs rely on language from Patsy v. Board of Regents of the State of Florida, 457 U.S. 496, 516 (1992), in which the United States Supreme Court held that "'exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983.'" Plaintiffs' reply brief at 16.

But Patsy does not sweep nearly as broadly as the plaintiffs suggest. Patsy held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement. It did not interpret the text of

any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional.

Even if it were true, as the plaintiffs seem to believe, that § 1983 preempts any and all independent exhaustion requirements found in State law, that preemption would at most allow the plaintiffs to bring their unexhausted claims in federal court. It would not allow them to compel State courts to adjudicate federal claims that lie outside the State courts' jurisdiction. See Alden v. Maine, 527 U.S. 706, 749 (1999) (holding that the national government has no "power to press a State's own courts into federal service" by compelling them to exercise jurisdiction in contravention of their own State's laws, and emphasizing that any "[s]uch plenary federal control of state governmental processes" would unconstitutionally "denigrate[] the separate sovereignty of the States").

In light of all this, we agree with Secretary Washington that the plaintiffs failed to validly invoke the circuit court's jurisdiction. All of their claims, in substance, seek relief related to "the making of determinations with respect to [their] claims for unemployment

compensation benefits," § 25-4-96, yet none of those claims has been administratively exhausted. As a result, the circuit court and this Court have no power to address the merits of those claims. We therefore affirm the circuit court's judgment of dismissal.

AFFIRMED.

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

Sellers, J., concurs specially, with opinion.

Parker, C.J., concurs in the result.

Cook, J., dissents, with opinion.

Wise, J., recuses herself.

SELLERS, Justice (concurring specially).

I agree that the trial court properly dismissed the plaintiffs' complaint on the basis that the circuit court lacked subject-matter jurisdiction. See Rule 12(b)(1), Ala. R. Civ. P. Here, the legislature expressly conditioned jurisdiction upon the exhaustion of administrative remedies. I write specially to highlight that, even in the absence of such an express condition, administrative exhaustion is generally mandatory as a "'judicially imposed prudential limitation.'" Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002) (quoting Budget Inn of Daphne, Inc. v. City of Daphne, 789 So. 2d 154, 157 (Ala. 2000)).

When rules and regulations are promulgated, administrative guidance establishes procedures that must be followed to receive the benefit of an agency's action. Under the administrative-exhaustion requirement, those rules, regulations, and guidance generally cannot be challenged in state court until the plaintiff has exhausted all available administrative remedies. Requiring parties to follow the administrative process allows the agency to cure any departure from the proper application of its rules and regulations. Even when an agency's actions implicate constitutional issues, those issues should generally be first

raised within the agency's procedural framework. The administrative-exhaustion requirement not only promotes judicial economy, but also permits an administrative agency to apply its own expertise to a particular matter. I thus specially concur, because I believe that the exhaustion of administrative remedies is generally a prerequisite to seeking judicial review of complaints about the actions or inactions of state agencies.

COOK, Justice (dissenting).

I respectfully dissent. The main opinion holds that the plaintiffs failed to validly invoke the circuit court's jurisdiction because they did not exhaust all administrative remedies with the Department of Labor as required by § 25-4-95, Ala. Code 1975. However, the plaintiffs are not requesting that Alabama courts decide (or even review) their claims for unemployment-compensation benefits. Instead, they are requesting (primarily) an order directing Alabama Secretary of Labor Fitzgerald Washington to have the Department decide their unemployment-compensation claims. They contend that federal law requires the Department to make a decision -- any decision -- on their claims. As the main opinion recognizes, the plaintiffs brought this lawsuit "in an effort to jumpstart the administrative-approval process." ____ So. 3d at ____ (emphasis added). Their request is simple and seeks procedural relief. There is no administrative remedy to exhaust for such a procedural request because the relief that they are seeking here is not governed by § 25-4-95. It is for this and other reasons stated below, that I would reverse the judgment of dismissal and remand the case for further proceedings.

The text of § 25-4-95, which contains the administrative-exhaustion requirement, demonstrates my point:

> "No circuit court shall permit an appeal from a decision allowing or disallowing a claim for benefits unless the decision sought to be reviewed is that of an appeals tribunal or of the board of appeals and unless the person filing such appeal has exhausted his administrative remedies as provided by this chapter [i.e., Title 25, Chapter 4]."

(Emphasis added.) The plaintiffs are not asking for this court to "allow[]" their "claim[s] for benefits" and are not appealing from a decision "allowing or disallowing a claim." Instead, the plaintiffs are complaining that there has not been a "decision." By its terms, this jurisdiction-stripping/exhaustion statute does not apply.

The main opinion also cites § 25-4-96, Ala. Code 1975, in support of its conclusion that exhaustion of administrative remedies is required. That Code section states: "The procedure provided in this article [i.e., Title 25, Chapter 4, Article 5] for the making of determinations with respect to claims for unemployment compensation benefits and for appealing from such determinations shall be exclusive." (Emphasis added.) However, the Department's delay in initially deciding a claim is not "the making of [a] determination[]" under § 25-4-96; it is the absence of the making of a determination. Likewise, an action seeking to remedy

such a delay is not an "appeal[] from such [a] determination[]" as contemplated in either § 25-4-95 or § 25-4-96 because there has not yet been any determination. Again, this action seeks an order directing Secretary Washington to have the Department follow Alabama law and make a determination -- any determination -- on the plaintiffs' pending unemployment-compensation claims. Under these circumstances, I see no reason why this Court cannot reach the merits, reverse the judgment of dismissal, and remand the case so that the circuit court could grant the plaintiffs' requested relief.

By way of analogy, I note that this Court has granted mandamus relief when a trial court simply fails to rule in a case or on a motion for an extended period even though the petitioner has not yet exhausted his or her remedies at the trial level.[3] In fact, the Court of Civil Appeals has

[3]For instance, this Court has previously recognized that a trial court has a duty to hear and decide a controversy and that the trial court exceeds its discretion by failing to do so. Ex parte Jim Walter Res., Inc., 91 So. 3d 50, 51 (Ala. 2012) (ordering probate court to record certain documents; "'"[t]he writ of mandamus will lie from a superior to an inferior or subordinate court, in a proper case, to compel it to hear and decide a controversy of which it has jurisdiction"'" (quoting State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972))). This Court has also recognized that the refusal to rule on a motion in an effort to encourage the parties to reach a settlement agreement has been found to be an abuse of discretion. Ex parte Ford Motor Credit Co., 607 So. 2d 169, 170

written that mandamus is an appropriate procedure to follow when an agency fails to act. In Vance v. Montgomery County Department of Human Resources, 693 So. 2d 493, 495 (Ala. Civ. App. 1997), the plaintiff filed suit in an adoption case, allegedly appealing under the Alabama Administrative Procedure Act, see § 41-22-1, Ala. Code 1975, et seq. The circuit court dismissed the case. On appeal, the Court of Civil Appeals rejected the appeal because it was not a mandamus petition and wrote: "The Vances argue that DHR is intentionally delaying its decision on their application to become adoptive parents. In that situation, a petition for a writ of mandamus to compel DHR to make its decision would be appropriate." 693 So. 2d at 495 (emphasis added); id. at 496 ("The language in the Vances' petition to the …Circuit Court cannot reasonably be construed as a petition for the necessary extraordinary relief.").

(Ala. 1992) (ordering trial court to rule on a motion for writ of seizure sought pursuant to Rule 64, Ala. R. Civ. P.: "Ford has complied with the requirements of Rule 64 and there appears to be no reasonable basis for the trial judge's continuing delay in ruling on the motion"). Likewise, a trial court's refusal to rule on a Rule 60(b), Ala. R. Civ. P., motion has also been found to be an abuse of discretion. Ex parte Gamble, 709 So. 2d 67, 69 (Ala. Civ. App. 1998). Even the failure to enter a divorce judgment within six months of the filing of the complaint has caused mandamus to issue. Ex parte Lamar, 265 So. 3d 306, 308 (Ala. Civ. App. 2018).

In addition, the main opinion cites § 25-4-92, Ala. Code 1975, for the proposition that the interconnection and structure of Article 5 of Alabama's unemployment-compensation statutes includes an administrative-exhaustion requirement. In part, § 25-4-92(a) provides that the Department shall appoint appeals tribunals "[t]o hear and decide disputed claims and other due process cases …." (Emphasis added.) Once again, however, the claims the plaintiffs are pursuing in this action are not the type of claims an appeals tribunal must "hear and decide"; the plaintiffs are asking that we order Secretary Washington to have the Department follow the procedures laid out in Alabama's unemployment-compensation statutes and actually decide their unemployment-compensation claims. While the main opinion concludes that the phrase "other due process cases" should be construed to encompass procedural requests for injunctive relief like the one made in this action, this language must be read in harmony with §§ 25-4-95 and 25-4-96. Those are the statutes that actually restrict jurisdiction and § 25-4-92 merely provides for an appeals tribunal. For instance, § 25-4-95 restricts the jurisdiction of the circuit court to only decisions of the Department "allowing or disallowing a claim for benefits." Likewise, 25-

4-96 makes the procedures of the Department exclusive only as to the "making of determinations with respect to claims for unemployment compensation benefits…." Further, neither Secretary Washington nor the main opinion point to any authority indicating that the appeals tribunals have jurisdiction to determine claims arising under 42 U.S.C. § 1983.

Even if I were to agree that the administrative-exhaustion requirement in § 25-4-95 did apply by its terms or that, as Justice Sellers suggests in his special concurrence, that a common-law administrative-exhaustion requirement exists,[4] I nevertheless believe that the plaintiffs' 42 U.S.C. § 1983 claims must be heard. As noted by the plaintiffs and the main opinion, in Patsy v. Board of Regents of the State of Florida, 457 U.S. 496, 516 (1992), the United States Supreme Court held that "exhaustion of state administrative remedies should not be required as a

[4]Assuming without deciding that Justice Sellers is correct that, in Alabama, a common-law administrative-exhaustion requirement exists in addition to the requirement found in § 25-4-95, that does not mean that the Department is excused from following its own "established procedures," which require it to actually decide the plaintiffs' unemployment-compensation claims.

prerequisite to bringing an action pursuant to § 1983." (Emphasis added.)

Although this language is very broad and, on its face, includes no exceptions, the main opinion nevertheless contends that Patsy "held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement" and is, thus, inapplicable here because it "did not interpret the text of any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional." ____ So. 3d at ____.

However, as noted above, the text of § 25-4-95 does not require administrative remedies to be exhausted before a party can bring a § 1983 claim. Instead, it specifically provides that "[n]o circuit court shall permit an appeal from a decision allowing or disallowing a claim for benefits …." (Emphasis added.) The main opinion provides no explanation for why Patsy's direct and broad holding should be overridden without, at least, express statutory language stripping jurisdiction from Alabama courts.

Even if § 25-4-95 had attempted to strip jurisdiction from Alabama's circuit courts for § 1983 claims (or any other federal claims), I

am not convinced that it could do so. And, even if that Code section could strip such jurisdiction, it could not do so without, at the very least, express statutory language saying so. The main opinion cites Alden v. Main, 527 U.S. 706 (1999), in support of the proposition that a state can strip its courts of jurisdiction over federal claims. However, that case involved the question whether the federal government could force a state to waive sovereign immunity in its own courts and is thus inapplicable here.[5]

Moreover, the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit have recently upheld the principle from Patsy that exhaustion of state administrative remedies is not a prerequisite to an action under § 1983. Pakdel v. City & Cnty. of

[5]As Secretary Washington acknowledges in his response brief, immunity under Art. I, § 14, of the Alabama Constitution (that is, sovereign immunity) does not apply to suits "brought to compel State officials to perform their legal duties" -- like the one now before us. Ex parte Moulton, 116 So. 3d 1119, 1131 (Ala. 2013) (citations and quotation marks omitted). This is consistent with the authorization to seek prospective injunctive relief provided in Ex parte Young, 209 U.S. 123 (1908), which is what is being sought here. See also Bedsole v. Clark, 33 So. 3d 9, 13 (Ala. Civ. App. 2009) (holding that the sovereign immunity, arising pursuant to the Alabama Constitution of 1901, Art. I § 14, provides no protection to the defendants because "[s]ection 14 immunity has no applicability to federal-law claims").

San Francisco, California, 594 U.S. ____, ____, 141 S. Ct. 2226, 2230 (2021); Beaulieu v. City of Alabaster, 454 F.3d 1219, 1226 (11th Cir. 2006) ("The Supreme Court and this Court have held that there is no requirement that a plaintiff exhaust his administrative remedies before filing suit under § 1983.").

Additionally, in light of Patsy, appellate courts in our own state have recognized that the exhaustion of state administrative remedies is not a prerequisite to bringing an action pursuant to 42 U.S.C. § 1983. See Hall v. City of Dothan, 539 So. 2d 286 (Ala. Civ. App. 1988) (recognizing that, pursuant to Patsy, exhaustion of state administrative remedies is not a prerequisite to an action pursuant to 42 U.S.C. § 1983).

Finally, there are a number of other state and federal courts that have similarly held that a plaintiff who brings a § 1983 action in state court need not first initiate or exhaust state administrative remedies. See, e.g., Clark v. McDermott, 410 Mont. 174, 182, 518 P.3d 76, 82 (2022) (noting that the Supreme Court of the United States has held in Patsy, 457 U.S. at 516, that "'exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983'" and stating that the Montana Supreme Court's precedent

regarding § 1983 and principles of exhaustion is consistent with this ruling); Mangiafico v. Town of Farmington, 331 Conn. 404, 408, 204 A.3d 1138, 1142 (2019) (holding that a "plaintiff is not required to exhaust administrative remedies prior to filing a § 1983 claim in state court, regardless of the type of relief sought"); RBG Bush Planes, LLC v. Kirk, 340 P.3d 1056 (Alaska 2015) (holding that plaintiff was not required to exhaust state administrative remedies before filing a federal § 1983 claim in state court but was required to exhaust state administrative remedies before filing state constitutional claims); Prager v. State, Dep't of Revenue, 271 Kan. 1, 16, 20 P.3d 39, 52 (2001) (recognizing that Patsy and subsequent United States Supreme Court caselaw establishes a broad no-exhaustion rule for § 1983 actions whether brought in state or federal court); State v. Golden's Concrete Co., 962 P.2d 919, 925 (Colo. 1998) (recognizing that, "[g]enerally," a person does not need to exhaust administrative remedies to file a claim under 42 U.S.C. § 1983, but finding an exception for tax cases); and Diedrich v. City of Ketchikan, 805 P.2d 362, 369 (Alaska 1991) (holding that § 1983 plaintiff need not exhaust state administrative remedies).

Aside from the above, I note that the basic principles of due process warrant relief in this case. The detailed facts alleged by the 24 remaining plaintiffs in their complaint are troubling.[6] The complaint alleges that the Department went months, and, in some cases, over a year, without making initial decisions on the plaintiffs' claims for unemployment-compensation benefits. It is taking at least that long to schedule hearings that the plaintiffs say they have requested (and even longer for appeal determinations). Additionally, the Department has allegedly denied or stopped some of the plaintiffs' benefits without sending any notice whatsoever. When the Department has sent such notice, the notice has allegedly been woefully inadequate and confusing. To quote the plaintiffs' brief:

> "The plaintiffs have experienced extreme delays at every step of the unemployment compensation process, including

[6]Secretary Washington argues that the unemployment-compensation claims of 17 of the plaintiffs have been decided and that, therefore, the claims of those plaintiffs are now moot. Such questions are factual and should be handled, in the first instance, by the circuit court. It should also be noted that, in their complaint and in their appellate briefs, the plaintiffs act as if this action was a class action; however, they have not sought class treatment. Therefore, any relief would be limited to these particular plaintiffs, and there is reason to doubt their ability to claim some of their broad requested relief absent class treatment (for instance, their request for certain formatting of Department documents).

> waiting many months -- often more than a year -- for [a Department] claims examiner to determine their initial eligibility, for information about termination of benefits, and for their appeals to be scheduled for hearing."[7]

Plaintiffs' brief at 5.

Both Alabama's statutes governing unemployment-compensation claims and the federal statutes and regulations governing such claims make clear that unemployment-compensation decisions must be made "promptly." For example, § 25-4-91(a) provides:

> "A determination upon a claim filed pursuant to Section 25-4-

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[7]The plaintiffs' brief further states:

> "From the beginning of the pandemic and to this day, [the Department] has failed to issue initial decisions and decisions on continuing eligibility for months. (C. 208). The claimants in this suit demonstrate this. Plaintiffs Lisa Cormier, Crystal Harris and Latisha Bell all applied in 2020 but never received an initial written decision. (C. 20-21; 219-221; 26; 226; 248-250 …). Plaintiff Mia Brand never received any decision on her May 2021 recertification. (C. 21-22; 221). Plaintiffs Nancy Williams, Joyce Jones and Cynthia Hawkins received benefits for some time, but [the Department] stopped all their benefits without sending any notice of termination. (C. 13-14; 211-212; 238-240; 17; 216; 25-26; 225-226; 248-250). Derek Bateman, Latisha Kali, Joyce Jones and Jarvis Dean all received lump sum payments without any notice explaining what weeks were being paid and why other weeks were not paid. (C. 14; 212-213;15-16; 214-215; 17; 216; 18-19; 217-218)."

Plaintiffs' brief at 5-6.

> 90[, Ala. Code 1975,] shall be made promptly by an examiner designated by the secretary, and shall include a statement as to whether and in what amount a claimant is entitled to benefits and, in the event of denial, shall state the reasons therefor …."

(Emphasis added.)[8]

Of course, as noted by the main opinion and Secretary Washington, the Department has received a record number of applications for unemployment-compensation benefits since the onset of the COVID-19 pandemic. Further, the complaint is only one side of the story. I also agree with the argument made by Secretary Washington that even federal law provides that extraordinary circumstances like the onset of the COVID-19 pandemic must be considered in determining whether a violation of § 1983 has occurred and, if so, what the proper remedy should be. See, e.g., 20 C.F.R. § 640.3(a) (requiring "such methods of

[8]Certainly, if the Department simply publicly announced that it would no longer process unemployment-compensation claims in contravention of federal and state law, a plaintiff would be able to bring claims like those in this action regarding the failure of the agency to follow federal and state requirements to determine the plaintiffs' unemployment-compensation claim. How is a delay of many months or even years different than such a public statement? And, it bears recognizing that our unemployment-compensation system is designed to provide expeditious and prompt relief to persons who are without any income. Years of delay can mean, in large part, that the point of the benefit is lost.

administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible" (emphasis added)). However, those determinations should be made by the circuit court after factual development; the plaintiffs' complaint should not have been dismissed at the pleading stage based on their alleged failure to exhaust their administrative remedies.

It is for all of these reasons that I respectfully dissent and would reverse the judgment of dismissal as to certain claims and remand the case for further proceedings.[9]

[9]Specifically, for the reasons discussed above, I would reverse the judgment insofar as it dismisses all claims related to providing (1) timely claims processing, (2) timely appeals, and (3) actual notices of decisions. However, I would not reverse the judgment as to the remaining claims in the complaint because the plaintiffs have not provided a sufficient explanation as to why jurisdiction might exist for those claims.