Rel: November 20, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0166

The Armory Commission of Alabama

v.

Nearen Construction Company, LLC

Appeal from Montgomery Circuit Court
(CV-25-900081)

McCOOL, Justice.

The Armory Commission of Alabama ("the Commission") has appealed from a preliminary injunction that the Montgomery Circuit

Court issued in favor of Nearen Construction Company, LLC ("Nearen"). That injunction temporarily prohibits the Commission from making further payments toward the construction of the Huntsville Readiness Center -- a military project that, at the time the injunction was issued, was "about 60 percent complete." For reasons set forth herein, we dismiss the appeal because the preliminary injunction is void as to the Commission, and we instruct the trial court to dismiss the Commission from the case.

Facts and Procedural History

The Commission's appeal stems from a complaint that Nearen filed against it in January 2025, in which Nearen sought both a preliminary injunction and a permanent injunction. This is the second time that the parties have been before this Court in this litigation, and, in Nearen Construction Co. v. Armory Commission of Alabama, [Ms. SC-2025-0511, Dec. 12, 2025] ___ So. 3d ___ (Ala. 2025), this Court set forth the following facts and procedural history:

> "According to the allegations of the complaint, the Commission advertised sealed bids for the construction of a military project designated as the Huntsville Readiness Center ('the project'). At the prebid meeting, bidders for the project were informed that the Commission 'preferred,' among other things, two originals of the bid form. Due to an

> oversight, Nearen submitted only one bid form. The bid otherwise conformed to the requirements and preferences imposed by the Commission. In December 2024, Erich Babbitt, the contracting officer for the Commission, opened and read the sealed bids. After determining that Nearen had submitted only one bid form, Babbitt rejected the bid, completely excluded it from the bid tabulation/abstract, and refused to read it publicly. In January 2025, after unsuccessfully exhausting all available administrative remedies, Nearen commenced an action against the Commission pursuant to Ala. Code 1975, § 39-5-4, seeking to enjoin the letting or execution of the contract to construct the project and to recover its bid-preparation costs. Nearen alleged, among other things, that it was the lowest responsible and responsive bidder and that the Commission had failed to open its bid publicly and to consider its bid when its only nonconformity, i.e., failing to submit two bid forms, constituted a minor irregularity. Following a hearing, the trial court granted the Commission's motion to dismiss, pursuant to Rule 12(b)(6), Ala. R. Civ. P."

___ So. 3d at ___. Nearen appealed to this Court following the dismissal of its complaint, and, on December 12, 2025, this Court reversed the judgment of dismissal after concluding that Nearen had pleaded facts sufficient to survive a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P.

Following this Court's decision in Nearen, supra, Nearen filed a motion for an expedited hearing on its request for a preliminary injunction, alleging that "approximately 50 percent of the project funds have been disbursed under the contract" and that injunctive relief was

necessary to "ensure that no further public funds are wrongfully disbursed." Thereafter, the Commission filed a motion for a judgment on the pleadings in which it argued, for the first time, that it is an agency of the State of Alabama and is therefore entitled to sovereign immunity pursuant to Article I, § 14, of the Alabama Constitution of 2022, which provides that "the State of Alabama shall never be made a defendant in any court of law or equity." According to the Commission, "because [it] is protected by sovereign immunity," the trial court lacks subject-matter jurisdiction over the case, which, the Commission argued, means that "this lawsuit is due to be dismissed." Nearen argued in response that sovereign immunity does not apply in "cases involving competitive bid law," but it also argued that,

> "[e]ven if the [trial] court were to find that the Commission cannot be enjoined to comply with competitive bid law, Nearen has also asserted an official capacity claim against the Commission's contracting officer, Erich Babbitt, and the Commission has failed to rule out the possibility that this claim falls within an exception to sovereign immunity. In the body of its complaint, Nearen named both the Commission and Erich Babbitt in his official capacity as contracting officer, and Nearen has consistently sought that both the Commission and its officers/agents be enjoined."

The trial court held a hearing over two days in January 2026 and February 2026, and, on March 10, 2026, the court granted Nearen's

request for a preliminary injunction. Specifically, the trial court enjoined "[t]he Commission and its officers, employees, and agents, including Erich Babbitt," from "mak[ing] … further payments under the construction contract after the effective date of this injunction," which the court ordered would "remain in effect through the date of a final judgment … or until lifted by separate court order." The trial court acknowledged the Commission's argument that it is entitled to sovereign immunity, but the court stated that it was "not persuaded by the Commission's arguments at this stage," though the court indicated that it would be willing to reconsider that argument before the trial occurred.

The Commission filed a timely notice of appeal, and, two days later, it moved the trial court to stay the preliminary injunction pending the outcome of its appeal, arguing that "cessation of payments … will cause delay in the construction of this critical public works facility and result in substantial, additional costs to … the State of Alabama." The trial court granted the Commission's motion to stay on March 13, 2026.

Analysis

The Commission continues to argue on appeal that it is a State agency that is entitled to sovereign immunity and that, as a result, the

trial court "lacked jurisdiction to do anything other than dismiss the action." The Commission's brief, p. 17.

The law regarding sovereign immunity is well settled.

> "'"Section 14, Ala. Const. 1901, provides: '[T]he State of Alabama shall never be made a defendant in any court of law or equity.' (Emphasis added.) 'The wall of immunity erected by § 14 is nearly impregnable.' Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002). Indeed, as regards the State of Alabama and its agencies, the wall is absolutely impregnable. Ex parte Alabama Dep't of Human Res., 999 So. 2d 891, 895 (Ala. 2008) ('Section 14 affords absolute immunity to both the State and State agencies.'); Ex parte Jackson County Bd. of Educ., 4 So. 3d 1099, 1102 (Ala. 2008) (same); Atkinson v. State, 986 So. 2d 408, 410-11 (Ala. 2007) (same); [Ex parte Alabama Dep't of Transp.], 978 So. 2d 17 (Ala. 2007)] (same); Ex parte Alabama Dep't of Transp., 764 So. 2d 1263, 1268 (Ala. 2000) (same); Mitchell v. Davis, 598 So. 2d 801, 806 (Ala. 1992) (same). 'Absolute immunity' means just that -- the State and its agencies are not subject to suit under any theory.
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> "'"'This immunity may not be waived.' Patterson, 835 So. 2d at 142. Sovereign immunity is, therefore, not an affirmative defense, but a 'jurisdictional bar.' Ex parte Alabama Dep't of Transp., 985 So. 2d 892, 894 (Ala. 2007). The jurisdictional bar of § 14 simply 'preclud[es] a court from exercising subject-matter jurisdiction' over the State or a State agency. Lyons v. River Road Constr., Inc., 858 So. 2d 257, 261 (Ala. 2003). Thus, a complaint filed solely against the State or one of its agencies is a nullity and is void ab initio. Ex parte Alabama Dep't of Transp. (In re Russell Petroleum, Inc. v. Alabama Dep't of Transp.), 6 So. 3d 1126 (Ala. 2008) …. Any action taken by a court without subject-matter jurisdiction -- other than dismissing the action -- is void. State

> v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999)."'"

Ex parte Jefferson Cnty. Bd. of Educ., 348 So. 3d 397, 399-400 (Ala. 2021) (some emphasis added; some emphasis omitted; citations omitted). See also Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1206 (Ala. 2006) ("When an action is one against the State or a State agency, § 14 wholly removes subject-matter jurisdiction from the courts." (emphasis added)). Thus, sovereign immunity bars any action that seeks relief, including injunctive relief, against a State agency. See Ex parte Alabama Dep't of Hum. Res., 999 So. 2d 891, 898 (Ala. 2007) (holding that "sovereign immunity precludes a … request for injunctive relief against [a State agency]").

In this case, Nearen's complaint expressly names only one defendant -- the Commission.[1] The Commission was created by the

[1]The Commission is the only defendant named in both the caption of the complaint and the "PARTIES" section of the complaint. (Capitalization in original.) The factual allegations of the complaint identify Erich Babbitt, the Commission's contracting officer, as the person primarily responsible for the allegedly improper bid process, but the complaint does not expressly identify him as a defendant and does not expressly seek relief against him, though it does seek relief against the Commission's "officers, members, agents, servants, employees and attorneys."

Alabama Legislature via the enactment of § 31-4-1 et seq., Ala. Code 1975, but a body that has been created by legislative enactment does not automatically qualify as a State agency. Ex parte Board of Dental Exam'rs, 102 So. 3d 368, 374 (Ala. 2012). Rather, this Court has explained that

> "'[w]hether a lawsuit against a body created by legislative enactment is a suit against the [S]tate depends on [1] the character of power delegated to the body, [2] the relation of the body to the [S]tate, and [3] the nature of the function performed by the body. All factors in the relationship must be examined to determine whether the suit is against an arm of the [S]tate or merely against a franchisee licensed for some beneficial purpose. State Docks Commission v. Barnes, 225 Ala. 403, 406-07, 143 So. 581, 584 (1932).'"

Id. (citation omitted). However, with respect to the Commission, this Court has already addressed those factors in Armory Commission of Alabama v. Staudt, 388 So. 3d 991, 994 (Ala. 1980), and has concluded that the Commission "operates as an arm of the [S]tate" and therefore is entitled to the sovereign immunity afforded by § 14. See id. (holding that "the Constitution … prohibit[ed] [a] lawsuit" against the Commission). Thus, any complaint filed against the Commission is a complaint filed against the State, and, as noted, the only legitimate action a trial court can take in such a case is to dismiss the complaint. Stated differently,

the trial court lacked jurisdiction over the Commission and therefore lacked jurisdiction to provide injunctive relief against it.

Nearen does not dispute that the Commission is a State agency, and it does not ask this Court to reconsider its holding to that effect in Staudt, supra. Instead, Nearen argues that, even though the Commission is a State agency, sovereign immunity does not apply in this case for any one of multiple reasons.

First, Nearen suggests that sovereign immunity should not apply in "cases involving competitive bid law." Nearen's brief, p. 12. In support of that argument, Nearen cites International Telecommunications Systems v. State, 359 So. 2d 364, 365 (Ala. 1978), a case in which the plaintiff sought injunctive relief against the State of Alabama, Howard White -- a State agent -- and General Electric Corp. ("GE") "for an alleged violation of … the Competitive Bid Law[]." Nearen correctly notes that this Court did not discuss sovereign immunity in that opinion, but Nearen ignores the fact that, before the case proceeded to a final judgment, "[t]he State of Alabama was dismissed by the trial court, leaving Howard White and GE as defendants." Id. at 366. Thus, International Telecommunications does not support Nearen's suggestion

that sovereign immunity should not apply in "cases involving competitive bid law," and we reiterate that "'"the State and its agencies are not subject to suit under any theory."'" Ex parte Jefferson Cnty. Bd. of Educ., 348 So. 3d at 399 (emphasis added; citations omitted).

Second, Nearen contends that "this Court has recognized … an established exception to [sovereign] immunity [in] actions brought to force State agencies to perform their legal duties." Nearen's brief, p. 12. In support of that argument, Nearen relies on State Highway Department v. Milton Construction Co., 586 So. 2d 872 (Ala. 1991), but Nearen reads that case too broadly. Milton Construction did not hold that a plaintiff may bring an action against a State agency in an attempt to force the agency "to perform [its] legal duties." Instead, that case more narrowly held that,

> "[o]nce [a State agency] has legally contracted under state law for goods or services and accepts such goods or services, [it] also becomes legally obligated to pay for the goods or services accepted in accordance with the terms of the contract. It follows that this obligation is not subject to the doctrine of sovereign immunity and is enforceable in the courts."

Id. at 875. However, that is not the type of relief that Nearen seeks in this case. More importantly, even when a State agency is obligated to pay for goods and services that it has accepted, an action seeking

payment for those goods and services must be brought against a State agent in his or her official capacity, not the State agency itself. Indeed, in Milton Construction "the plaintiff ... named the director of the Highway Department, in his official capacity, as a party to the action, along with the Highway Department." Ex parte Alabama Dep't of Transp., 978 So. 2d 17, 23 (Ala. 2007). See id. (noting that Milton Construction "does not support" the notion that a plaintiff "has a right to sue a State agency" and emphasizing that "a State agency is absolutely immune from suit"); and Ex parte Alabama Dep't of Hum. Res., 999 So. 2d at 896 ("[A]n action against a State agency ... to compel the agency to perform its legal duties is ... barred by the doctrine of sovereign immunity.").

Third, Nearen argues that the purpose of sovereign immunity is to prohibit any action that "'impacts the State treasury and divests it of funds.'" Nearen's brief, p. 13 (quoting Ex parte Town of Lowndesboro, 950 So. 2d at 1211). Nearen then argues that "[t]he opposite situation exists here" because, it says, "[t]he State and its taxpayers would have saved almost $800,000 by accepting Nearen's bid." Id. (emphasis added). In other words, Nearen argues that its action for injunctive relief will

benefit the State treasury, rather than divest the treasury of funds, and it contends that this type of action "does not erode the concept of sovereign immunity." Id. However, although it is true that sovereign immunity protects the State treasury, it does not follow that sovereign immunity applies only to actions that will divest the State treasury of funds. Once again, the doctrine of sovereign immunity provides that "'"the State and its agencies are not subject to suit under any theory,"'" Ex parte Jefferson Cnty. Bd. of Educ., 348 So. 3d at 399 (emphasis added; citations omitted), including one that will allegedly benefit the State treasury.

Fourth, Nearen claims that it "filed this action as both a citizen taxpayer and unsuccessful bidder, so to the extent recovery of bid preparation costs are prohibited by sovereign immunity (which Nearen disputes), the action may continue as a taxpayer action." Nearen's brief, p. 14. However, Nearen cites no authority to support that argument, and we note that the doctrine of sovereign immunity hinges on whether the State or a State agency has been named as a defendant in the action, not on the classification of the plaintiff. In other words, it is irrelevant whether Nearen chooses to classify itself as a taxpayer or as an

unsuccessful bidder because the dispositive question in either scenario is whether Nearen's action is an action against a State agency, which it is. See Patterson v. Gladwin Corp., 835 So. 2d 137 (Ala. 2002) (holding that a class action that taxpayers had filed against the State was barred by the doctrine of sovereign immunity).

Finally, Nearen notes that certain types of actions may be brought against a State agent in his or her official capacity and that those actions are not actions against the State, i.e., are not barred by the doctrine of sovereign immunity. See Ex parte Alabama Dep't of Youth Servs., 401 So. 3d 276, 283 (Ala. 2024) (noting the types of actions that may be brought against a State agent). One such action is an action "'"for injunction brought against State officials in their representative capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law."'" Id. (citations omitted). As noted, Nearen contends that, in addition to seeking relief against the Commission, it "has also asserted an official capacity claim against the Commission's contracting officer," Erich Babbitt. Nearen's brief, p. 14. Babbitt is not expressly named as a defendant anywhere in Nearen's complaint, and the complaint does not expressly seek relief

against him. See note 1, supra. Nevertheless, Nearen argues that "[i]t is evident from the face of the complaint that Nearen alleges … Babbitt acted beyond his authority and/or in a mistaken interpretation of law while acting as the contracting officer" and that the complaint has "sought injunctive relief directly against … Babbitt." Nearen's brief, pp. 14, 15. Thus, Nearen argues that, regardless of the Commission's immunity, its action may proceed against Babbitt.

The problem with Nearen's argument is that it is framed as though this Court is reviewing a judgment dismissing Nearen's complaint, which was the case in Nearen's previous appeal in Nearen, supra. However, we are not reviewing a judgment of dismissal in this appeal but, instead, are reviewing a preliminary injunction against the Commission. Even if the allegations in Nearen's complaint are sufficient to identify Babbitt as a defendant in this case -- an issue on which we take no position -- that does not change the fact that the trial court lacked jurisdiction to provide injunctive relief against the Commission. Ex parte Alabama Dep't of Hum. Res., supra. In other words, the Commission is entitled to the relief it seeks in this appeal regardless of whether the complaint identifies Babbitt as a defendant in this case.

In short, the preliminary injunction against the Commission is void because the Commission is a State agency that is entitled to sovereign immunity. It is well settled that a void judgment will not support an appeal and that, as a result, any appeal from such a judgment must be dismissed. See Facebook, Inc. v. K.G.S., 294 So. 3d 122, 141 (Ala. 2019) ("Because the trial court did not have jurisdiction to enter a preliminary injunction against [the defendant], that injunction is void. Because a void judgment will not support an appeal, see Tidwell v. State Ethics Comm'n, 599 So. 2d 12 (Ala. 1992), [the defendant's] appeal is due to be dismissed."). Thus, we dismiss the Commission's appeal, and we instruct the trial court to vacate the preliminary injunction against the Commission and to dismiss the Commission from the case. See Talladega Cnty. Comm'n v. State ex rel. City of Lincoln, 303 So. 3d 476 (Ala. 2020) (dismissing an appeal because the underlying judgment was void in part but providing instructions to the trial court to vacate the void part of its judgment).

APPEAL DISMISSED.

Stewart, C.J., and Wise, Bryan, Mendheim, and Cook, JJ., concur.

Shaw and Sellers, JJ., concur in the result.

Parker, J., recuses himself.