Rel: May 14, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1200213

Cary Reagan, Jr.

v.

Alabama Alcoholic Beverage Control Board; Mac H. Gipson, individually and in his official capacity as administrator for the Alabama Alcoholic Beverage Control Board; Robert W. Lee, individually and in his official capacity as chairman of the Alabama Alcoholic Beverage Control Board; Samuetta H. Drew, individually and in her official capacity as a member of the Alabama Alcoholic Beverage Control Board; Michael Ingram, M.D., individually and in his official capacity as a member of the Alabama Alcoholic Beverage Control Board; Alabama Department of Revenue; and City of Tuscaloosa

Appeal from Montgomery Circuit Court
(CV-18-901991)

SELLERS, Justice.

Cary Reagan, Jr., appeals from a judgment of the Montgomery Circuit Court dismissing his action against the Alabama Department of Revenue ("the Department"); the Alabama Alcoholic Beverage Control Board ("the Board"); the members of the Board, including its chairman; the administrator of the Board; and the City of Tuscaloosa.[1] The defendants' motions to dismiss were based principally on the doctrine of sovereign or State immunity. We affirm the trial court's judgment.

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[1]Reagan did not name either the Department or the City of Tuscaloosa as a defendant in his complaint. Those parties, however, intervened as additional defendants. The Department is an interested party because it is charged with "administering" the sales taxes at issue in this case and receives a portion of those taxes after they are collected from customers. The City of Tuscaloosa is an interested party because it, along with other municipalities in this State, receives a portion of the taxes collected.

The individual defendants were identified in Reagan's complaint as follows: "Mac H. Gipson, in his official capacity as Administrator for the Alabama Alcoholic Beverage Control Board and individually"; "Robert W. Lee, in his official capacity as Chairman of the Alabama Alcoholic Beverage Control Board and individually"; "Samuetta H. Drew, in her official capacity as Board Member of the Alabama Alcoholic Beverage Control Board and individually"; and "Michael Ingram, M.D., in his official capacity as Board Member of the Alabama Alcoholic Beverage Control Board and individually."

Reagan claims that the Board and the Department have been improperly calculating and collecting sales taxes from customers of retail liquor stores operated by the Board. He asked the trial court to certify a class consisting of himself and other customers of the Board's stores and to direct the defendants to deposit the allegedly overpaid taxes into a court-approved account for the benefit of the class members, to be administered by the trial court and from which attorney fees presumably would be paid.

Multiple tax statutes apply to the Board's sale of spirituous and vinous liquors. Sections 28-3-200 through 28-3-205, Ala. Code 1975, impose taxes in the total amount of 56% of "the selling price" of such liquors ("the state liquor taxes"). In addition, § 40-23-2(1), Ala. Code 1975, Alabama's general sales-tax statute, applies to retail sales of tangible personal property in Alabama (including sales by the Board), and imposes a 4% tax on "the gross proceeds of sales." Finally, § 28-3-280, Ala. Code 1975, imposes "an additional state sales tax in the amount of two percent of the retail price, excluding taxes, on the sales of alcoholic beverages sold at retail" by the Board.

Reagan asserts that the Board and the Department have been improperly calculating the amount owed under the 2% tax imposed by § 28-3-280 and the 4% tax imposed by § 40-23-2(1). Specifically, Reagan asserts that the Board and the Department calculate the amounts owed pursuant to those statutes by adding a total of 6% to an amount customers are charged that already includes the 56% state liquor taxes imposed under §§ 28-3-200 through 28-3-205. According to Reagan, the 4% tax and the 2% tax should be calculated using a tax base that excludes the state liquor taxes. In other words, he asserts that the Board should collect from customers a total of 6% of only the amount the Board pays to purchase a product from its suppliers plus the retail markup added by the Board.[2]

In his complaint, Reagan sought a judgment declaring that the sales taxes in question have been, and are being, improperly calculated. He also asserted causes of action alleging fraud and "misfeasance, malfeasance and nonfeasance of duty" on the part of the individual

[2]In his complaint, Reagan asserted alternatively that the 4% sales tax imposed by § 40-23-2(1) does not apply at all to sales by the Board at its retail stores. He appears to have abandoned that assertion on appeal.

defendants. He asked the trial court to direct the defendants to deposit the allegedly excessive taxes they have collected into a court-approved account "until such funds are returned to [Reagan] and class members." He also asked the trial court to "[e]stablish a procedure by which purchasers ... from [Board] retail stores can make a request for the monies illegally, improperly and wrongfully collected." Finally, he sought an award of attorney fees.

The defendants filed motions to dismiss, which the trial court granted. Reagan appealed. The applicable standard of review requires us to view the allegations of Reagan's complaint most strongly in his favor and to determine whether, based on those allegations, Reagan can prove any set of circumstances that would entitle him to relief. Birmingham Broad. (WVTM-TV) LLC v. Hill, 303 So. 3d 1148, 1155 (Ala. 2020); Lyons v. River Road Constr., Inc., 858 So. 2d 257, 260 (Ala. 2003).

Initially, we note that Reagan argues on appeal that the operative complaint in this case is an amended complaint he filed in the trial court, in which he added a claim asserting that the defendants had violated the Alabama Administrative Procedure Act, Ala. Code 1975, § 41-22-1 et seq.

The amended complaint was filed nearly a year and a half after this action was commenced and after the parties had submitted substantial briefing and had provided oral arguments in support of, and opposition to, the defendants' motions to dismiss the original complaint. Rule 15(a), Ala. R. Civ. P., provides that a pleading may be amended without leave of court "at any time more than forty-two (42) days before the first setting of the case for trial." After that window closes, "a party may amend a pleading only by leave of court, and leave shall be given only upon a showing of good cause." Id. The first trial date set in this action was August 26, 2019. Reagan attempted to amend his complaint in April 2020, obviously well after expiration of the deadline set out in Rule 15(a).

Reagan requested leave of the trial court to amend his complaint; however, the trial court dismissed the action without ruling on Reagan's motion for leave to amend, thus effectively denying it. Reagan made no attempt to establish good cause for his delay or to otherwise establish good cause for allowing the amendment. He has not demonstrated on appeal that the trial court erred in refusing to grant him leave to amend. See generally Ex parte Liberty Nat'l Life Ins. Co., 858 So. 2d 950, 953

(Ala. 2003) (indicating that, if an amended pleading is filed after the 42-day deadline in Rule 15(a) expires, "the trial court is free to deny a party leave to amend ... unless the party can demonstrate 'good cause' "); Blackmon v. Nexity Fin. Corp., 953 So. 2d 1180, 1189 (Ala. 2006) ("[A]n unexplained undue delay in filing an amendment when the party has had sufficient opportunity to discover the facts necessary to file the amendment earlier is also sufficient grounds upon which to deny the amendment."). Accordingly, we consider only Reagan's original complaint in evaluating the propriety of the trial court's order granting the defendants' motions to dismiss.

In support of their motions, the defendants argued principally that this action is barred by sovereign immunity. They relied primarily on this Court's decision in Patterson v. Gladwin Corp., 835 So. 2d 137 (Ala. 2002). In Patterson, the plaintiffs sought to represent a class of foreign corporations that had paid Alabama franchise taxes under what were eventually determined to be unconstitutional tax statutes. They sought tax refunds from the Department of up to $1 billion. The trial court in Patterson certified the requested class, and the commissioner of the

Department appealed, arguing that the action was barred by sovereign immunity.

As the Court in Patterson noted art. I, § 14 Ala. Const. 1901 (Off. Recomp.), provides that " 'the State of Alabama shall never be made a defendant in any court of law or equity.' " 835 So. 2d at 142. For purposes of § 14, "[a]n action is one against the state when a favorable result for the plaintiff would directly affect a contract or property right of the State, or would result in the plaintiff's recovery of money from the state." Shoals Cmty. Coll. v. Colagross, 674 So. 2d 1311, 1314 (Ala. Civ. App. 1995). "The wall of immunity erected by § 14 is nearly impregnable." Patterson, 835 So. 2d at 142. That wall cannot be bypassed indirectly by " 'suing [the state's] officers or agents in their official capacity, when a result favorable to [the] plaintiff would be directly to affect the financial status of the state treasury.' " Id. (quoting State Docks Comm'n v. Barnes, 225 Ala. 403, 405, 143 So. 581, 582 (1932)). An action against the State within the meaning of § 14 "presents a question of subject-matter jurisdiction, which cannot be waived or conferred by consent." Patterson, 835 So. 2d at 142-43.

The Court in Patterson concluded that "a judgment in favor of the class, which seeks tax refunds totaling approximately $1 billion, would 'affect the financial status of the state treasury.' " 835 So. 2d at 143 (quoting State Docks Comm'n, 225 Ala. at 405, 143 So. at 582)). Thus, the Court held, the plaintiffs' claims in Patterson were barred by sovereign immunity and the trial court therefore never acquired subject-matter jurisdiction over the action. 835 So. 2d at 154 ("[W]e hold that the Taxpayers' class action seeking a refund of franchise taxes paid pursuant to Alabama's invalid statutory scheme is an action against the State as that concept is expressed in § 14. ... Because the circuit court was without jurisdiction to entertain this action, we vacate the trial court's class-certification order and dismiss the action.").[3]

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[3]The Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act ("the TBOR"), § 40-2A-1 et seq., Ala Code 1975, provides taxpayers with a means by which to seek tax refunds from the Department. Patterson, 835 So. 2d at 141. See also Ex parte State Dep't of Revenue, 247 So. 3d 378, 387 (Ala. Civ. App. 2016) (opinion on application for rehearing) ("The TBOR constitutes the exclusive means for obtaining a tax refund."). In Patterson, the Court suggested that, had the taxpayers in that case sought, and been denied, a tax refund pursuant to the administrative procedures set out in the TBOR, then the trial court could have obtained subject-matter jurisdiction over an appeal from the

In the present case, the defendants correctly argued in support of their motions to dismiss that, like the plaintiffs in Patterson, Reagan seeks to represent a class of taxpayers in order to pursue refunds of taxes paid to the State. Thus, they asserted, if Reagan prevails, this action clearly will affect the financial status of the treasury and is therefore barred by sovereign immunity.

The defendants acknowledged in their motions to dismiss that Reagan's complaint requests a judgment declaring that the referenced taxes have been improperly collected, and they conceded that sovereign immunity does not necessarily bar a claim for a declaratory judgment. See Aland v. Graham, 287 Ala. 226, 230, 250 So. 2d 677, 679 (1971) (noting that sovereign immunity does not bar "[a]ctions brought under the Declaratory Judgments Act ... seeking construction of a statute and how it should be applied in a given situation"). According to the defendants,

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adverse administrative decision. 835 So. 2d at 141. The taxpayers in Patterson, however, had failed to properly invoke the TBOR and, instead, had attempted to prosecute a direct action for a tax refund in the circuit court. Likewise, Reagan, to his detriment, did not avail himself of the remedies set out in the TBOR before commencing this action.

however, the "true nature" of Reagan's action is a suit seeking a monetary award that will affect the State treasury. They argued to the trial court that, in essence, Reagan merely requests a refund of sales taxes he alleges were improperly calculated and collected.

In support of their argument, the defendants directed the trial court to Curry v. Woodstock Slag Corp., 242 Ala. 379, 6 So. 2d 479 (1942), and Lyons v. River Road Construction, Inc., 858 So. 2d 257 (Ala. 2003). In Curry, the Court acknowledged that a declaratory-judgment action is not barred by sovereign immunity if it seeks only guidance as to how the law should be interpreted and applied:

> "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 481 (emphasis added). The defendants in the present case assert that Reagan seeks more than guidance regarding how

the tax statutes at issue should be interpreted; rather, they assert, he seeks to recover funds from the State.

In Lyons, the Court held that an action against the director of the Alabama State Port Authority ("the Port Authority") was barred by sovereign immunity even though the action was framed as one requesting a declaratory judgment. The plaintiff in Lyons, a subcontractor, had contracted with a general contractor to perform dredging work in connection with the general contractor's construction of a terminal at the Port of Mobile. In preparing its bid for the proposed project, the plaintiff relied on a report that had been commissioned by the Port Authority, which indicated that the work would require the dredging of only sand and clay. After beginning the job, however, the plaintiff encountered a substantial amount of rock that had to be removed, which increased costs significantly. The plaintiff sued the director of the Port Authority, seeking compensation for the increased costs.

In response to an argument that the action in Lyons was barred by sovereign immunity, the plaintiff asserted that it merely sought a declaratory judgment determining "its rights relative to the statutory

powers granted the port authority and its director in the applicable sections of Title 33, Code of Alabama 1975." 858 So. 2d at 263. This Court, however, concluded that the plaintiff was "attempting to characterize its claim as a declaratory-judgment action[] when it [was] nothing more than an action for damages." Id.

Reagan, in addition to seeking a declaration of rights, also seeks payment of funds from the State treasury in the form of tax refunds and attorney fees. According to the Department's motion to dismiss, "[b]ecause [Reagan's] complaint seeks monetary relief in addition to seeking declaratory relief, it constitutes an action that impermissibly seeks funds from the state treasury." Reagan's complaint, in asking for a judgment declaring that the Department and the Board have been improperly calculating the sales taxes owed on purchases from the Board's retail stores, also asked the trial court to direct the defendants to deposit the allegedly over-collected taxes into a court-approved bank account "until such funds are returned to [Reagan] and class members." Later in his complaint, Reagan asked the trial court to "[e]stablish a procedure by which purchasers of liquors and vinous liquors from [the Board's] retail

stores can make a request for the monies illegally, improperly and wrongfully collected." In addition, as the Department and the City of Tuscaloosa point out in their brief to this Court, Reagan later filed a motion asking the trial court to issue an order directing the defendants to hold disputed sales-tax revenue in trust pending resolution of this action.

As the appellant, Reagan has the burden of demonstrating that the trial court erred to reversal by concluding that Reagan's action is barred by sovereign immunity. Johnson v. Life Ins. Co. of Alabama, 581 So. 2d 438, 444 (Ala. 1991). He has failed to satisfy that burden. In his briefs to this Court, Reagan makes no mention of Patterson, which the defendants relied on in arguing to the trial court that Reagan's direct action seeking a tax refund implicates sovereign immunity. In his opening brief, Reagan simply provides a quotation from Ex parte Moulton, 116 So. 3d 1119 (Ala. 2013), which lists certain "exceptions" to sovereign immunity, including requests for declaratory judgments. Reagan, however, provides no detailed discussion of those "exceptions."[4]

[4]The "exceptions" to sovereign immunity noted in Moulton are better described as actions that are not against the State for purposes of

Nor does Reagan clearly address the defendants' argument to the trial court that, even though his complaint requests a declaratory judgment, the "true nature" of his action is one for the recovery of a monetary award against the State. He does not cite or discuss Lyons, on which the defendants relied in arguing that Reagan essentially has recast an action seeking a money judgment as a declaratory-judgment action.[5]

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sovereign immunity. Moulton, 116 So. 3d at 1132.

[5]In support of their motions to dismiss, the defendants also relied on Ex parte Alabama Department of Transportation, 978 So. 2d 17, 25 (Ala. 2007), for the proposition that sovereign immunity does not bar a declaratory-judgment action, but only if it "seeks no relief other than" how a statute should be interpreted and applied, and Moody v. University of Alabama, 405 So. 2d 714, 717 (Ala. Civ. App. 1981), for the proposition that,

> "while an action for declaratory judgment against the state or its agencies which seeks the interpretation of a statute is generally not prohibited, Druid City Hospital Board v. Epperson, [378 So. 2d 696 (Ala. 1979)], such an action is prohibited when, as here, a result favorable to the plaintiff would directly affect a contract or property right of the state."

The defendants also pointed to precedent indicating that a claim for attorney fees, to be paid from the State treasury, is barred by sovereign immunity. See Ex parte Bentley, 116 So. 3d 201, 204 (Ala. 2012). In his briefs to this Court, Reagan does not discuss Ex parte Alabama Department of Transportation, Druid City Hospital Board, or Bentley.

As for any other "exception" to sovereign immunity that might apply in this case, such as, for example, actions brought to compel State officials to perform their legal duties or to enjoin them from engaging in fraudulent acts, Reagan simply identifies those "exceptions" by quoting Moulton and does not provide persuasive argument in support of their application to this case.[6]

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[6]In his reply brief, Reagan suggests that his complaint does not seek tax refunds at all. Rather, he claims, he only requested the trial court "to set funds aside and to set up a system to return funds to the purchasers who had inappropriately paid the funds," who could then "submit a request for [a] refund." According to Reagan, "[t]he [trial court] might decide to proceed through a TBOR type procedure or some other fair procedure." First, Reagan did not articulate this argument in his opening brief on appeal, and this Court will not reverse a trial court's judgment based on grounds presented to us for the first time in a reply brief. Melton v. Harbor Pointe, LLC, 57 So. 3d 695, 696 n.1 (Ala. 2010). Second, Reagan does not provide sufficient discussion or legal authority in support of his argument that asking the trial court to direct the defendants to deposit State-owned funds into a court-approved bank account, which could then be doled out by the trial court, is not an action for a tax refund that, like Patterson, implicates sovereign immunity. As a final matter, we note that Reagan purported to sue the members of the Board and the administrator of the Board in their individual, as well as their official, capacities. He does not, however, expressly discuss or articulate a persuasive argument regarding how his suing the individual defendants in their individual capacities affects the application of sovereign-immunity principles to his claims. We note that it does not appear that Reagan seeks to recover any funds from the members of the Board and its

In sum, Reagan fails to acknowledge that the TBOR provides the exclusive means of seeking a refund of taxes without violating principles of sovereign immunity. Patterson. And, he has not established that his request for a declaratory judgment is anything more than a claim for a refund of sales taxes and an attempt to mask the substance of the monetary relief he seeks. Thus, he has not demonstrated that the trial court erred by concluding that this action is barred by sovereign immunity, and, therefore, we affirm the trial court's judgment. See generally City of Wetumpka v. Alabama Power Co., 297 So. 3d 367, 372 (Ala. 2019) (affirming a trial court's dismissal of an action because the trial court lacked subject-matter jurisdiction over that action); First State Bank of Altoona v. Bass, 406 So. 2d 896, 897 (Ala. 1981) (affirming a trial court's dismissal of an action because the action was barred by sovereign immunity).

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administrator personally; the monetary award he seeks is solely from the State.

AFFIRMED.

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

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

Parker, C.J., and Wise, J., concur in the result in part and dissent in part.

SHAW, Justice (concurring in the result).

I concur in the result. I do not believe that the appellant, Cary Reagan, Jr., has demonstrated that the trial court erred in dismissing his action challenging the collection of various taxes on alcoholic beverages.

There are numerous opinions discussing the strict and absolute immunity provided to the State and State officials by Ala. Const. 1901 (Off. Recomp.), art. I, § 14, which states: "That the State of Alabama shall never be made a defendant in any court of law or equity." There is no need to repeat the analysis in those cases here. It is instead sufficient to note that § 14 provides a high bar, and the exceptions to the section are narrow.[7]

To the extent that the trial court held that Reagan's action as to the City of Tuscaloosa was barred by State or sovereign immunity, I note that municipalities are usually not afforded immunity under § 14. Health Care

[7]Certain categories of actions are described as "exceptions" to § 14 immunity; however, those actions are not actually exceptions to § 14 immunity, which is absolute, but are instead not considered to be actions against the State for purposes of § 14. Alabama Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 840 (Ala. 2008).

Auth. for Baptist Health v. Davis, 158 So. 3d 397, 408-09 (Ala. 2013) ("[N]either counties nor municipalities nor private entities are part of the State or enjoy State immunity."). However, a municipality might be entitled to § 14 immunity if it acts as an agent of the State. Ex parte Tuscaloosa Cnty., 796 So. 2d 1100, 1103 (Ala. 2000) ("[W]hen a county or municipality acts as an agent of the state, it is entitled to share in the state's absolute immunity."). Reagan does not specifically address whether § 14 applies to the City of Tuscaloosa; therefore, any error on this issue is waived. Blevins v. Hillwood Office Ctr. Owners' Ass'n, 51 So. 3d 317, 322 (Ala. 2010).[8]

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[8]Further, State agencies are absolutely immune from suit, and the various exceptions to State immunity do not apply to actions against those agencies:

> "[A] State agency [] is absolutely immune from suit. Ex parte Alabama Dep't of Transp., 978 So. 2d 718, 721 (Ala. 2007) ('ALDOT is a State agency ... and, therefore, is absolutely immune from suit ....'). Generally, 'any exceptions to that immunity extend only to suits naming the proper State official in his or her representative capacity.' Ex parte Alabama Dep't of Transp., 978 So. 2d 17, 22 (Ala. 2007) (emphasis added)."

Alabama Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 840 (Ala. 2008). Thus, it would appear that Reagan could allege no claims against

Despite the immunity provided by § 14, in certain limited circumstances State officials can be compelled by a court to pay to plaintiffs money held by the State treasury:

> "[T]he trial court can generally, by writ of mandamus, order State officers in certain situations to pay liquidated damages or contractually specified debts. The payment of these certain, liquidated amounts would be only a ministerial act that State officers do not have the discretion to avoid. [Alabama Agric. & Mech. Univ. v.] Jones, 895 So. 2d [867] at 878-79 [(Ala. 2004)]; [State Bd. of Admin. v.] Roquemore, 218 Ala. [120] at 124, 117 So. [757] at 760 [(1928)]. Furthermore, although the payment of the funds 'may ultimately touch the State treasury,' Horn v. Dunn Bros., 262 Ala. 404, 410, 79 So. 2d 11, 17 (1955), the payment does not 'affect the financial status of the State treasury,' Lyons [v. River Road Constr., Inc.], 858 So. 2d [257] at 261 [(Ala. 2003)], because the funds 'do not belong to the State,' Alabama Dep't of Envtl. Mgmt. v. Lowndesboro, 950 So. 2d 1180, 1190 n.6 (Ala. Civ. App. 2005) (two-judge opinion), and the State treasury 'suffers no more than it would' had the State officers originally performed their duties and paid the debts. Horn, 262 Ala. at 410, 79 So. 2d at 17. The trial court may not, however, award retroactive relief in the nature of unliquidated damages or compensatory damages, because such relief affects a property or contract right of the State. Stark [v. Troy State Univ., 514 So. 2d 46 (Ala. 1987)]; Williams [v. Hank's Ambulance Serv., Inc., 699 So. 2d 1230 (Ala. 1997)]; Roquemore; J.B. McCrary Co. v. Brunson, 204 Ala. 85, 86, 85 So. 396, 396 (1920) ('mandamus will not lie to compel the

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the Alabama Alcoholic Beverage Control Board.

> payment of unliquidated claims'); and Vaughan [v. Sibley, 709 So. 2d 482 (Ala. Civ. App. 1997)]."

Alabama Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 845-46 (Ala. 2008). Thus, § 14 does not per se bar all relief that requires disbursement of money by the State. One such circumstance includes when State officials are required by statute to pay certain sums and have no discretion to do otherwise. Ex parte Bessemer Bd. of Educ., 68 So. 3d 782, 790 (Ala. 2011) (holding that an action seeking to require State officials to adhere to a statutorily prescribed salary was not barred by § 14; the amount of salary required to be paid involved "obedience to the statute," did "not involve any discretion," and the legal duty to pay was a "ministerial act").

I am not convinced that, when it is clearly established that taxes have been collected in violation of statute, the amount of the funds are certain, State officials have no legal right or discretion to retain such tax funds, and the payment of a refund would be only a ministerial act required by law, an action seeking return of the funds would necessarily violate § 14. However, Reagan provides on appeal no specific analysis of

this complex issue. Therefore, to the extent that his action sought damages or the return of tax funds, I agree that § 14 barred such claims.

A declaratory-judgment claim against a State official can also fall under an exception to § 14 immunity.[9]

> "State immunity does not bar '[a]ctions brought under the Declaratory Judgments Act, [§ 6-6-222 et seq., Ala. Code 1975,] seeking construction of a statute and how it should be applied in a given situation.' Aland v. Graham, 287 Ala. 226, 230, 250 So. 2d 677, 679 (1971); Curry v. Woodstock Slag Corp., 242 Ala. 379, 381, 6 So. 2d 479, 480-81 (1942) (an action seeking to construe the law and direct the parties to what is required of them under a given set of facts does not violate the doctrine of State immunity); § 6-6-222, Ala. Code 1975. ...
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> "In Curry, supra, this Court described an action seeking a declaratory judgment:
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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

[9]Again, this exception to § 14 immunity applies only in suits against State agents and not to State agencies. Harbert, 990 So. 2d at 841 ("The purpose of the so-called 'exception' to § 14 allowing declaratory-judgment actions is to give direction to State officers. Consistent with the other 'exceptions' to § 14 immunity, we hold that only State officers named in their official capacity -- and not State agencies -- may be defendants in such proceedings.").

> 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.'
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> "242 Ala. at 381, 6 So. 2d at 481."

Lyons v. River Road Constr., Inc., 858 So. 2d 257, 262-63 (Ala. 2003).

However, this exception is not unlimited:

> "Additionally, the fact that an action seeks a declaratory judgment and thus purportedly falls within an exception to § 14 does not necessarily open the doors of the State treasury to legal attack. The exception afforded declaratory-judgment actions under § 14 generally applies only when the action seeks 'construction of a statute and how it should be applied in a given situation,' Aland v. Graham, 287 Ala. 226, 230, 250 So. 2d 677, 679 (1971), and not when an action seeks other relief. Curry v. Woodstock Slag Corp., 242 Ala. 379, 6 So. 2d 479 (1942) (holding that a declaratory-judgment action that seeks only a declaration to construe the law and direct the parties, and no other relief, does not violate § 14)."

Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1211 (Ala. 2006).

Count I of Reagan's complaint seeking a declaratory judgment alleged that certain alcohol taxes were being incorrectly applied and requested that the defendants be ordered to stop imposing certain taxes,

to be prohibited from distributing collected tax funds, and to be required to deposit the collections in a special account for distribution to Reagan and purported class members. It sought more than a mere declaration of the law to guide State officials. Although Reagan's brief on appeal cites the declaratory-judgment exception to § 14 as part of a long quotation of caselaw discussing the various exceptions to § 14 immunity and states that his case was brought under the Declaratory Judgment Act, § 6-6-222 et seq., Ala. Code 1975, "seeking statutory construction of how sales tax is being applied to the sale of alcoholic beverages," he provides no authority discussing the parameters of the declaratory-judgment exception and no explanation of how his action falls within them. Given the stringent barrier to suits against the State and State officials provided by § 14, more than a simple invocation of an exception to such immunity is required to allow an action to proceed. Reagan does not pair down the impermissible portions found in Count I and recast his claim to comply with the exception, and, thus, he has not convinced me that this exception to § 14 immunity applies in this case.

Mitchell, J., concurs.

PARKER, Chief Justice (concurring in the result in part and dissenting in part).

I believe that Cary Reagan, Jr.'s request for a tax refund is barred by State or sovereign immunity. I do not believe, however, that his entire action -- including his request for declaratory and injunctive relief against State officers -- is barred.

"'"' [I]n determining whether an action against a state officer is barred by § 14, the Court considers the nature of the suit or the relief demanded ....'"'" Anthony v. Datcher, [Ms. 1190164, Sept. 4, 2020] ___ So. 3d ___, ___ (Ala. 2020) (quoting Barnhart v. Ingalls, 275 So. 3d 1112, 1122 (Ala. 2018), quoting in turn Alabama Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 839 (Ala. 2008)) (emphasis added). Requests for damages are barred, but requests for declaratory and injunctive relief are not. Thus, when a plaintiff seeks several remedies against State officers, the court must determine whether § 14 State immunity bars each remedy. See Alabama State Univ. v. Danley, 212 So. 3d 112, 124 (Ala. 2016) (holding that State immunity barred plaintiff's claims for damages but not for injunctive relief); Latham v. Department of Corr., 927 So. 2d 815, 821

(2005) (holding that State immunity barred claims for backpay but not for declaratory and injunctive relief); Ex parte Russell, 31 So. 3d 694 (Ala. Civ. App. 2009) (holding that State immunity barred claim for refund of taxes but not for declaratory and injunctive relief regarding proper calculation of taxes).[10]

In his complaint, Reagan requested not only the refund-related remedies on which the main opinion focuses, but also a judgment declaring the correct application of the alcohol taxes and an injunction requiring the State-officer defendants, in their official capacities, to follow that application going forward. State immunity does not bar that request for declaratory and injunctive relief. See Danley, supra; Latham; supra.

The State defendants, in arguing that the "true nature" of Reagan's action is solely for a refund, rely on Curry v. Woodstock Slag Corp., 242 Ala. 379, 6 So. 2d 479 (1942). In that case, the plaintiff sued only for a

[10]State immunity bars requests for injunctions against the State itself and State agencies. Ex parte Alabama Dep't of Fin., 991 So. 2d 1254, 1257 (Ala. 2008). However, § 14 does not bar requests for injunctions against State officers in their official capacities. Ex parte Moulton, 116 So. 3d 1119, 1141 (Ala. 2013).

judgment declaring whether a sales tax applied to a particular set of facts. 242 Ala. at 380, 6 So. 2d at 480. This Court held that State immunity did not apply, stating:

> "An officer is often confronted with the problem[s] of what the law means which requires certain acts on his part and [of] whether [that law] is valid. ...
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> "When such a controversy arises between him 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 ... 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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> "....
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> "All the cases on which [the plaintiff] 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 ....
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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, ... 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.

To the extent that Curry stands for the proposition that joining a request for other relief with a request for declaratory relief renders the whole action subject to State immunity, I believe that Curry has been overruled. More recent cases, for example Danley and Latham, have analyzed each request for relief separately, rather than lumping them all together. And the more recent cases do so for good reason. If all forms of relief are analyzed together for purposes of State immunity, plaintiffs who want both monetary relief and declaratory/injunctive relief will be incentivized to bring two separate lawsuits to avoid the risk that the court will deem the "true nature" of a combined suit to be for monetary relief alone. And that result will thwart an important feature of modern civil procedure: to combine in one suit all claims that arise out of the same transaction or occurrence.

The State defendants also rely on Lyons v. River Road Construction, Inc., 858 So. 2d 257 (Ala. 2003). There, this Court held that, although the action contained a request for declaratory relief, the whole action was barred by State immunity because it was, in reality, "nothing more than an action for damages." Id. at 263. But given the facts of Lyons, it does not

stand for the broad proposition that the State defendants would like it to stand for. The dredging subcontractor in Lyons sued the port-authority director for providing the subcontractor an inaccurate report on the underwater soil composition; that inaccuracy had caused the subcontractor to incur unforeseen expenses. Id. at 258. The claim was essentially for damages based on negligence. Thus, although the subcontractor tried to shoehorn the claim into one for declaratory relief, the remedy it sought was purely retrospective; the claim did not seek an interpretation of the law as to future situations or seek an injunction as to future conduct. Therefore, the essential holding of Lyons is that, when a plaintiff sues a State official in his official capacity for retrospective relief only -- monetary payment based on the official's past conduct -- it does not matter how the plaintiff titles the claim; it is generally barred by State immunity.

Here, in contrast, Reagan requested a declaration of the meaning of the alcohol-tax statutes and an injunction applying that interpretation to future tax collection. Although he also requested retrospective relief, his prospective requests for declaratory and injunctive relief had independent

significance. Even absent a refund, a judgment for Reagan would have prevented the Alabama Alcoholic Beverage Control Board from collecting future improper taxes from him and the putative class. So this case does not come within the holding of Lyons.[11]

The main opinion avoids this declaratory/injunctive-relief issue by concluding that Reagan failed to sufficiently argue it. But we have repeatedly held that State immunity is a question of subject-matter jurisdiction. Ex parte Wilcox Cnty. Bd. of Educ., 285 So. 3d 765, 774 (Ala. 2019); Woodfin v. Bender, 238 So. 3d 24, 27 (Ala. 2017); Danley, 212 So.

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[11]The defendants rely on three other cases -- Ex parte Alabama Department of Transportation, 978 So. 2d 17 (Ala. 2007), Moody v. University of Alabama, 405 So. 2d 714 (Ala. Civ. App. 1981), and Ex parte Bentley, 116 So. 3d 201 (Ala. 2012) -- for the proposition that State immunity bars declaratory relief that would affect a contract or property right of the State. Each of those cases, like Lyons, is distinguishable because the plaintiffs' requests for declaratory relief were meaningless apart from their requests for damages.

Reagan's requests for declaratory and injunctive relief were also not affected by the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act ("TBOR"), § 40-2A-1 et seq., Ala. Code 1975. TBOR sets forth the exclusive procedure for obtaining a tax refund. Ex parte State Dep't of Revenue, 247 So. 3d 378, 387 (Ala. Civ. App. 2016). But a request for declaratory relief to correct future miscalculation of taxes is appropriate in circuit court. Cf. Russell, 31 So. 3d at 694.

3d at 127. Therefore, we are obligated to decide whether and to what extent it applies, regardless of the arguments of the parties or the lack thereof. See Aland v. Graham, 287 Ala. 226, 229, 250 So. 2d 677, 678 (1971) (holding that, because State immunity is jurisdictional, this Court takes notice of it ex mero motu). If State immunity is truly jurisdictional, we cannot base our decision on a party's failure to make the right argument.

Wise, J., concurs.