



## AlaFile E-Notice

03-CV-2021-900447.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JIM ZEIGLER ET AL V. KAY IVEY ET AL  
03-CV-2021-900447.00

The following complaint was FILED on 4/27/2021 4:53:18 PM

Notice Date: 4/27/2021 4:53:18 PM

GINA J. ISHMAN  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL, 36104

334-832-1260



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03-CV-2021-900447.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

Case

03

Date of Filing:

04/27/2021

Judge Code:

State of Alabama  
Unified Judicial System  
Form ARCiv-93 Rev. 9/18

**COVER SHEET**  
**CIRCUIT COURT - CIVIL CASE**  
(Not For Domestic Relations Cases)

**GENERAL INFORMATION**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**JIM ZEIGLER ET AL v. KAY IVEY ET AL**

**First Plaintiff:** ☐ Business ☒ Individual ☐ Government ☐ Other

**First Defendant:** ☐ Business ☒ Individual ☐ Government ☐ Other

**NATURE OF SUIT:** Select primary cause of action, by checking box (check only one) that best characterizes your action:

**TORTS: PERSONAL INJURY**

- ☐ WDEA - Wrongful Death  
☐ TONG - Negligence: General  
☐ TOMV - Negligence: Motor Vehicle  
☐ TOWA - Wantonness  
☐ TOPL - Product Liability/AEMLD  
☐ TOMM - Malpractice-Medical  
☐ TOLM - Malpractice-Legal  
☐ TOOM - Malpractice-Other  
☐ TBFM - Fraud/Bad Faith/Misrepresentation  
☐ TOXX - Other: \_\_\_\_\_

**TORTS: PERSONAL INJURY**

- ☐ TOPE - Personal Property  
☐ TORE - Real Property

**OTHER CIVIL FILINGS**

- ☐ ABAN - Abandoned Automobile  
☐ ACCT - Account & Nonmortgage  
☐ APAA - Administrative Agency Appeal  
☐ ADPA - Administrative Procedure Act  
☐ ANPS - Adults in Need of Protective Service

**OTHER CIVIL FILINGS (cont'd)**

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve  
☐ CVRT - Civil Rights  
☐ COND - Condemnation/Eminent Domain/Right-of-Way  
☐ CTMP - Contempt of Court  
☐ CONT - Contract/Ejectment/Writ of Seizure  
☐ TOCN - Conversion  
☒ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division  
☐ CVUD - Eviction Appeal/Unlawful Detainer  
☐ FORJ - Foreign Judgment  
☐ FORF - Fruits of Crime Forfeiture  
☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition  
☐ PFAB - Protection From Abuse  
☐ EPFA - Elder Protection From Abuse  
☐ QTLB - Quiet Title Land Bank  
☐ FELA - Railroad/Seaman (FELA)  
☐ RPRO - Real Property  
☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship  
☐ COMP - Workers' Compensation  
☐ CVXX - Miscellaneous Circuit Civil Case

**ORIGIN:** F ☒ **INITIAL FILING**

A ☐ **APPEAL FROM DISTRICT COURT**

O ☐ **OTHER**

R ☐ **REMANDED**

T ☐ **TRANSFERRED FROM OTHER CIRCUIT COURT**

**HAS JURY TRIAL BEEN DEMANDED?** ☐ YES ☒ NO

**Note:** Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

**RELIEF REQUESTED:** ☒ **MONETARY AWARD REQUESTED** ☐ **NO MONETARY AWARD REQUESTED**

**ATTORNEY CODE:**

MEN001

4/27/2021 4:53:12 PM

Date

/s/ KENNETH J. MENDELSON

Signature of Attorney/Party filing this form

**MEDIATION REQUESTED:** ☐ YES ☒ NO ☐ UNDECIDED

**Election to Proceed under the Alabama Rules for Expedited Civil Actions:** ☐ YES ☒ NO



**IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA**

**JIM ZEIGLER  
JOHN W. ROGERS  
LESLIE OGBURN  
KENNY GLASGOW**

**Plaintiffs,**

**V.**

**GOVERNOR KAY IVEY, in her official  
capacity as Governor of the State of Alabama,  
JEFFERSON S. DUNN, in his official capacity  
as Commissioner of the Alabama  
Department of Corrections,  
ALABAMA DEPARTMENT OF  
CORRECTIONS,  
GOVERNMENT REAL ESTATE  
SOLUTIONS OF CENTRAL ALABAMA LLC,  
GOVERNMENT REAL ESTATE  
SOLUTIONS OF SOUTH ALABAMA LLC,**

**Defendants**

**Civil Action No. CV-2021-\_\_**

**COMPLAINT**

COME NOW the Plaintiffs in this bipartisan lawsuit and request this Court issue a Declaratory Judgment and Injunctive Relief against the Defendants for entering into, and attempting to execute, a contract that violates the Alabama Constitution and Alabama law. As grounds therefor, the Plaintiffs state the following:

**PARTIES**

1. Plaintiff Jim Zeigler is a resident citizen of Mobile County, Alabama. As the elected State Auditor, Zeigler is a Constitutional Officer of the State of Alabama. He is responsible for

accounting for property owned by the State and reporting to the Governor on an annual basis.

Article 20.4 of the contract establishes audit procedures that limit and curtail his right to oversee spending by state agencies, including ADOC, and thus interfere with his ability to fulfill his duties as established by statute. Ala. Code § 36-16-1. Plaintiff Jim Zeigler also is an ex-officio member of the Alabama Board of Adjusters and will be Chairman of the Board with the authority to break a tie until January 2022.

2. Plaintiff John W. Rogers is a member of the Alabama Legislature representing the 52nd District in Jefferson County. Defendants are attempting to circumvent the Legislature in executing the Lease Agreements, rendering Representative Rogers's vote to approve or disapprove the lease a nullity.

3. Plaintiffs Zeigler and Rogers are directly affected by the Lease Agreements because the terms of the agreement impinge on their rights as elected officials.

4. Plaintiff Leslie Ogburn is a resident citizen of Elmore County. She owns property adjacent to the proposed prison site in Elmore County and is the Director of Operations at the 3 AM Growers, which is also next to the proposed site. Plaintiff Ogburn is directly affected by the Lease Agreements because construction and functioning of the Elmore County prison will harm the value of her property, interrupt the quiet enjoyment of her home and land, and harm the tree farm that she operates.

5. Plaintiff Pastor Kenny Glasgow is a resident citizen of Houston County. He is a long-time activist, civil rights leader, and the founder of T.O.P.S., an organization dedicated to defending the rights of incarcerated people. Plaintiff Glasgow is a respected civil rights activist and prison abolitionist who founded the membership organization T.O.P.S. to fight for the

human rights and dignity of incarcerated people. Advocating against the new prisons has diverted the organization's resources from voter registration and contradicts the mission of T.O.P.S. and the values of Pastor Glasgow and the organization's members.

6. Defendant Kay Ivey is the Governor of Alabama, whose official residence is Montgomery County, Alabama.

7. Defendant Jefferson Dunn is Commissioner of the Alabama Department of Corrections, whose official residence is Montgomery County, Alabama. Commissioner Jefferson Dunn is the head of ADOC and is also a signatory to the Lease Agreements.

8. The Alabama Department of Corrections ("ADOC") is an agency established by the Legislature which promulgates rules and regulations and enters into contracts within the scope of its authority. The official residence of the ADOC is Montgomery County, Alabama. The Alabama Department of Corrections ("ADOC") is an executive department and creature of statute, created by the State Legislature. See Ala. Code § 14-1-1.1 et seq. (1975).

9. Government Real Estate Solutions of Central Alabama, LLC is an Alabama foreign limited liability company that was incorporated in December 2020. It is headquartered in Tennessee with an agent in Montgomery County, Alabama.

10. Government Real Estate Solutions of South Alabama, LLC is an Alabama foreign limited liability company that was incorporated in December 2020. It is headquartered in Tennessee with an agent in Montgomery County, Alabama.

11. Zeigler, Rogers, Ogburn, and Glasgow are all Alabama taxpayers who will be harmed if and when state funds are expended illegally

## JURISDICTION AND VENUE

12. Jurisdiction and venue are proper in the Montgomery County, Alabama, Circuit Court because all the Defendants have official residences or presence in Montgomery County, Alabama.

13. This action seeks a Declaratory Judgment that Defendants Ivey, Dunn, and the ADOC have exceeded their statutory and constitutional powers, which makes it proper to bring in the Circuit Court of Montgomery. *Ala. Code* § 41-22-10.

14. This Court has jurisdiction because the Plaintiffs are raising questions regarding the interpretation of the Alabama Constitution and a statute, which is purely a question of law, and exhaustion of administrative remedies would be futile. *Ex parte Lake Forest Prop. Owners' Ass'n*, 603 So.2d 1045, 1046–47 (Ala. 1992).

15. In addition, this Court has jurisdiction because exhaustion of remedies is not required “where there is a defect in the power of the agency to act in any respect.” *Jefferson County v. Johnson*, 333 So.2d 143, 149 (Ala. 1976).

16. This Court also has jurisdiction under the Alabama Declaratory Judgment Act which empowers the judiciary to resolve conflicts regarding rights under private contracts. *Ala. Code* § 6-6-223 (2016).

## FACTS

17. The Governor and the Commissioner over the past two years have negotiated and entered into two contracts (“Lease Agreements”) under which private companies would design and build

two mega-prisons which the state would lease for 30 years at an estimated cost to Alabama taxpayers of as much as 3.6 billion dollars.

18. On February 1, 2021, the Governor signed two Lease Agreements, one with the Government Real Estate Solutions of Central Alabama and the other with Government Real Estate Solutions of South Alabama (collectively “Real Estate Solutions.”) These entities are wholly owned by CoreCivic, which in turn will subcontract to Caddell Construction; DLR Group; and R&N Systems Design to construct two prisons, one in Elmore County and the other in Escambia County.

19. The Lease Payments are to begin upon substantial completion of the prisons.

20. Under the terms of the Lease Agreements, Real Estate Solutions will design, finance, and build two mega-prisons with a total capacity of approximately 7000 beds. The ADOC will lease the prisons for at least 30 years. Twenty percent of the annual cost will be for upkeep and maintenance, an amount which will be increased every year.

21. The Lease Agreements were negotiated in secret without input from the public or the Legislature.

22. In the past, the Legislature has not agreed to issue bonds to finance the construction of new prisons. Governor Ivey's Lease Agreements with private companies overrides the Legislature's refusal to issue bonds to finance prison construction.

23. The Legislature has not approved the Lease Agreements.

24. The Legislature has provided a mechanism for the ADOC to lease facilities. The Alabama Corrections Institution Finance Authority may lease any facility it controls to any

government entity “which may be charged with the responsibility for the operation of any of the penal or correctional institutions of the state” without the legislature’s approval. *Ala. Code* § 14-2-29 (1975)

25. ACIFA is not a signatory to these Lease Agreements, nor does it have any involvement in the construction of the proposed prisons.

26. ACIFA is prohibited from entering into a lease that lasts longer than a fiscal year. *Ala. Code* § 14-2-29(a) (1975)

27. Under the Lease Agreements, ADOC is obligated to pay lease and maintenance costs for 30 years, funds which it does not have and must obtain from the legislature every year – in essence, incurring debt for the State of Alabama.

## CLAIMS

### *The Lease Agreements Violate the Alabama Constitution*

28. The Alabama Constitution expressly provides that “no new debt shall be created against, or incurred by this state, or its authority” except to “repel invasion or suppress insurrection” and then only if two-thirds of legislature approve. Otherwise, “any act creating or incurring any new debt against this state, except as herein provided for, shall be absolutely void[.]” *Alabama Const.* Sec. 213.

29. The Lease Agreements “create a new debt” that the State would be responsible for, because it would be paid from taxes that have heretofore been designated to go to the State Treasury. Section § 213 of the Constitution prohibits the diversion of existing taxes, which



would otherwise be payable to the state treasury, for the payment of a public authority's obligations[.] *Opinion of the Justices.*, 692 So. 2d 825, 827 (Ala. 1997)

30. Under the terms of the Lease Agreements, Alabama is obligated to lease the two prisons for 30 years, incurring an obligation to pay Real Estate Solutions for decades for lease and maintenance costs that could total as much as 3.6 billion dollars.

31. In addition, the Lease Agreements obligate the state to pay interest on the bonds that will be issued to finance the construction of the prisons, another long-term debt that violates the Alabama Constitution.

32. The Governor negotiated the Lease Agreements in secret without consulting the legislature, exceeding her authority under the Alabama Constitution.

33. Section 4.7.1. of the Lease Agreement allows Real Estate Solutions to vacate the prison premises if the Legislature fails to appropriate the lease and debt payments they demand. ADOC and Governor Ivey do not have the power to bind the Legislature to appropriate funds for three decades under the threat of leaving thousands of people in the custody of the ADOC without any care or supervision.

### ***The Lease Agreements Violate State Law***

34. ADOC has “all of the duties, responsibilities, authority, power, assets, liabilities, property, funds, appropriations, contractual rights and obligations, property rights and personnel, whether accruing or vested, by operation or by law and which are not in conflict with this section and Sections 14-1-1.2 through 14-1-1.5.” *Ala. Code* § 14-1-1.1 (1975).

35. This statute emphasizes that the ADOC is “the administrative department responsible for administering and exercising the direct and effective control over penal and corrections institutions throughout this state.” *Ala. Code* § 14-1-1.2(1975).

36. To maintain the necessary control, the statute provides that “An institution over which the department exercises control may not be leased, transferred, or placed under the supervision or management of any nongovernmental entity without first obtaining the consent of the Legislature through the passage of legislation by a majority vote of the membership of each house.” *Ala. Code* § 14-1-1.2 (1975).

37. When the Alabama Legislature passed *Ala. Code* § 14-1-1.2 into law, it intended, as stated in preamble, “to amend Section 14-1-1.2 of the Code of Alabama 1975, relating to the Department of Corrections, to require the consent of the Legislature before a penal or corrections institution is leased, transferred, or placed under the management of a nongovernmental entity.”

38. The clear meaning of the law is to prohibit the ADOC from entering a lease without permission from the Legislature.

39. Real Estate Solutions are private, non-governmental entities. They will have unimpeded access to the prisons in order to provide maintenance (Section 8.2.3)., ADOC will therefore not have “direct and effective control” over the prisons because Real Estate Solutions will have rights of access under the Lease Agreements and property interests as the lessor.

40. The Lease Agreements contain numerous provisions under which Real Estate Solutions can dispute ADOC’s orders regarding construction and maintenance standards that can result either in ADOC agreeing to Real Estate Solutions preferred method of construction or maintenance and/or incur additional costs for the State. This dispute resolution process will

impede ADOC from having “direct and effective control” over the proposed prisons because ADOC will have to negotiation, rather than determine, how the buildings are constructed and maintained.

41. The Lease Agreements reference Section 14-1-1.2 by stating the “Lessee shall at all times retain control and management over its Inmate population.” (Section 8.7) (emphasis added). The statute does not limit ADOC’s responsibility to the people in its custody but mandates that the ADOC must have exclusive control over institutions.

42. The Lease Agreements mischaracterize Alabama law in order to create the misleading impression that its terms are legal. The Lease Agreements supplant ACIFA as the leasing authority for the ADOC as provided for in Alabama law. ACIFA is not involved in the construction of the prisons. ACIFA cannot enter a lease that lasts more than a year. It could not be a signatory to the Lease Agreements which obligates the ADOC to lease the facilities for 30 years, which directly violates Section 14-2-29(a).

43. The Lease Agreements between Governor Ivey, Commissioner Dunn, ADOC and Real Estate Solutions exceed the power of the Governor and the Commissioner of Prisons, who do not have the power to enter into an illegal contract.

### ***The Lease Agreements Violate ADOC Regulations***

44. The Alabama Administrative Procedure Act (“AAPA”) governs all state agencies having express statutory authority to adopt rules and regulations. *Ala. Code* § 41-22-1-2 (1975).

45. The Alabama Department of Corrections is governed by the AAPA. *See, Ala. Code* §§ 41- 22-2 and 41-22-3.

46. The ADOC has a Regulation that commits it “to operate within the duties and responsibilities established by the Code of Alabama 1975 as amended.” *ADOC Administrative Regulation 2-II*.

47. ADOC Regulations also commit the Department “to prepare and execute public contracts and lease agreements in accordance with applicable Federal and State laws.” *ADOC Administrative Regulation 14-II*.

48. Every lease or contract involving the ADOC must be reviewed by the Deputy Commissioner of Administration and the ADOC Legal Department. The final document must be returned to the Deputy Commissioner of Administrative Services for final review, revision, and approval before it is sent to the Commissioner for signature. *ADOC Administrative Regulation 14-V*.

49. The Lease Agreements do not indicate that these procedures were followed. Conversely, ADOC leasing and contracting regulations do not allow the Governor to negotiate a private deal on its behalf, bypassing competitive bidding regulations and the ADOC approval process.

## COUNT I DECLARATORY JUDGMENT

50. The Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

51. The Alabama Declaratory Judgment Act allows any person whose rights are affected by a contract to seek a declaration regarding the validity of the contract and his or her “rights, status, or other legal relations thereunder.” *Ala. Code* § 6-6-223 (2016).

52. The mechanism of declaratory judgment was designed to resolve controversies in which injured parties maintain that the acts of public officials and public agencies that harm them are illegal. *Gibbs v. Cochran*, 281 Ala. 22, 198 So.2d 607 (Ala.1967).

53. The Lease Agreements injure the Plaintiffs both individually and as Alabama taxpayers.

54. The Lease Agreements are illegal because they force the state to incur debt, which is forbidden by the Alabama Constitution. In addition, the terms of the Lease Agreements violate Alabama law.

55. Plaintiffs request that this Court declare the Lease Agreements null and void.

## **COUNT II PRELIMINARY INJUNCTION**

56. The Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

57. Defendants are not immune from suit because they are state officers who are acting under a mistaken interpretation of the law to commit acts beyond their authority which injure the rights of others. *Wallace v. Bd. of Educ.*, 197 So. 2d 428, 431 (1967).

58. If an officer's powers are limited by statute, "his actions beyond those limitations . . . are ultra vires his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689 (1949).

59. A preliminary injunction should be issued when the party seeking an injunction demonstrates: "(1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the [party

opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction]." *Colbert Cty. Bd. of Educ. v. James*, 83 So. 3d 473, 478 (Ala. 2011).

60. Here, the Governor and the Commissioner of the ADOC are under the mistaken belief that they have the authority to enter into a 30-year Lease Agreements with private entities for two prisons without going through proper contracting procedures and obtaining permission from the Legislature.

61. The Plaintiffs' only remedy is to seek injunctive relief with this Court to suspend implementation of the Governor's illegal Lease Agreements, which violate the Alabama Constitution and Alabama law, specifically Code Section 14-1-1.2.

62. Plaintiffs are entitled to injunctive relief because the prison construction, financing, and leasing will "be an expensive undertaking" and therefore "should be addressed before citizens' money is expended." *Martin v. City of Linden*, 667 So. 2d 732, 737 (Ala. 1995).

63. If the Lease Agreements are executed without the required legislative approval, Plaintiff Rogers will be irreparably injured because his right to vote to approve or disapprove the Lease Agreements will be denied and thus his voting power will be a nullity.

64. The Defendants attempt to implement the Lease Agreements, will injure Plaintiff Zeigler because he will not have the unimpeded access he needs to the prisons' books and records to fulfill his duties to the Governor under the Alabama Constitution and Code and the citizens of Alabama.

65. The Plaintiffs have a reasonable chance of success on the merits of this case because the Lease Agreements violate the Alabama Constitution and Code, as set forth in the preceding paragraphs of this complaint.

66. The Governor will suffer no hardship should this Court grant the Plaintiff's request for preliminary injunction. She may, at any time, ask the Legislature to approve the Lease Agreements and issue bonds to pay for them.

### **COUNT III PERMANENT INJUNCTIVE RELIEF**

67. The Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

68. The Plaintiffs' rights have been injured, and will continue to be injured, until this Court issues an order permanently enjoining the Defendants from taking any act in executing the Lease Agreements and fulfilling their terms.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs request this Court:

- a) Declare the Lease Agreements to be null and void;
- b) Issue a Preliminary Injunction enjoining the Defendants from executing the terms of the Lease Agreements;
- c) After a full hearing on this matter, permanently enjoin the Defendants from executing the terms of the Lease Agreements;
- d) Tax the costs against the Defendants;
- e) Award expenses and attorneys' fees allowed by law; and
- f) Award any and all other relief for which the Plaintiffs may be entitled to.

Respectfully submitted this 27th day of April, 2021.

By: /s/Kenneth J. Mendelsohn  
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DEFENDANTS MAY BE SERVED AS FOLLOWS:

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Montgomery, AL 36104

ALABAMA DEPARTMENT OF CORRECTIONS  
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