

HAWKINS V. IVEY: ALABAMA SUPREME COURT HOLDS
THAT THE ALABAMA CONSTITUTION BARS SUIT
AGAINST GOVERNOR IVEY AND SECRETARY
WASHINGTON FOR DISCONTINUING FEDERAL
PANDEMIC UNEMPLOYMENT BENEFITS

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In *Hawkins v. Ivey*, the Supreme Court of Alabama addressed whether § 36-13-8 and § 25-4-118(a) of the Alabama Code legally require Governor Kay Ivey and Secretary Fitzgerald Washington to continue Alabama’s participation in federal pandemic unemployment compensation programs.¹ In light of the fact that COVID-19 prevented many workers from earning a paycheck, Congress authorized additional unemployment benefits to provide relief.² As businesses began to reopen, several states announced their intent to terminate agreements to disburse federal unemployment benefits.³ On May 10, 2021, Governor Ivey announced that Alabama would no longer disburse federal unemployment benefits in the hope that reducing unemployment benefits would combat the labor shortage and facilitate economic recovery in Alabama.⁴

As a result of this announcement, Shentel Hawkins, Ashlee Lindsey, Jimmie George, and Christina Fox (“appellants”) received a reduction in their unemployment benefits.⁵ Two months later, appellants filed suit against Governor Ivey and Secretary of the Alabama Department of Labor Fitzgerald Washington, seeking a preliminary injunction to prevent Governor Ivey and Secretary Washington from withholding federal unemployment benefits.⁶ The Circuit Court of Montgomery County dismissed the suit because “[t]he Alabama Constitution

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¹ *Hawkins v. Ivey*, ___ So. 3d ___, No. 1200847, 2022 WL 816459, at *2–3 (Ala. Mar. 18, 2022).

² *See id.* at *1.

³ *See* JULIE M. WHITTAKER & KATELIN P. ISAACS, CONG. RSCH. SERV., IN11679, STATES OPTING OUT OF COVID-19 UNEMPLOYMENT INSURANCE (UI) AGREEMENTS 2 (2021).

⁴ *See Hawkins*, 2022 WL 816459, at *1; Press Release, Office of Alabama Governor Kay Ivey, Governor Kay Ivey Announces End of Participation in All Federal Pandemic Unemployment Compensation Programs (May 10, 2021), <https://governor.alabama.gov/newsroom/2021/05/governor-kay-ivey-announces-end-of-participation-in-all-federal-pandemic-unemployment-compensation-programs/> [<https://perma.cc/5T3L-3TUE>].

⁵ *Hawkins*, 2022 WL 816459, at *1.

⁶ *Id.*; *see* Brief of Appellant at 1, *Hawkins*, 2022 WL 816459, at *1.

provides “[t]hat the State of Alabama shall never be made a defendant in any court of law or equity.”⁷ Despite the absolute language of the Alabama Constitution, plaintiffs can bring a suit for injunctive relief against the state if the injunction requires a state officer to fulfill his or her legal obligations.⁸ Consequently, appellants alleged that § 36-13-8 and § 25-4-118(a) of the Alabama Code created a legal duty that required Governor Ivey and Secretary Washington to “participate in unemployment-compensation programs offered by the federal government.”⁹

Ala. Code § 36-13-8 grants the Governor power to receive federal funds for any purpose that is not contrary to the Alabama Constitution.¹⁰ The Alabama Supreme Court focused on the permissive language in Ala. Code § 36-13-8, which states:

The Governor is . . . authorized and empowered, insofar as is not specifically prohibited by the constitution and the then existing statutes, to meet and to require, by his executive order, any other agency or instrumentality of the state government to meet the terms and conditions imposed on such grants and advances in acts of the Congress of the United States, executive orders of the President of the United States or any rule, regulation[,], or order of any other agency or instrumentality of the federal government, it being the intent of this section to permit the State of Alabama to participate fully in grants and advances made available to it by the federal government.¹¹

The court ultimately concluded that the permissive language in the statute does not place a legal obligation on the Governor to participate in federal pandemic unemployment compensation programs.¹² Far from requiring the Governor to accept all federal funds made available to the state, this provision gives the Governor the discretion to determine whether accepting federal funding, along with its attendant strings, is in Alabama’s best interest.¹³

Appellants’ second contention is that Alabama Secretary of Labor Fitzgerald Washington violated his legal duties under Ala. Code § 25-4-118(a) by refusing federal unemployment benefits.¹⁴ Section 25-4-118(a) provides that the Secretary of the Alabama Department of Labor “shall cooperate to the fullest extent consistent with the provisions of

⁷ *Hawkins*, 2022 WL 816459, at *1 (citing ALA. CONST. art. I, § 14).

⁸ *Id.* at *2 (citing *Ex parte Moulton*, 116 So. 3d 119, 1131 (Ala. 2013)).

⁹ *Id.*

¹⁰ *Id.* (citing ALA. CODE § 36-13-8).

¹¹ *Id.* (quoting ALA. CODE § 36-13-8).

¹² *Id.*

¹³ *Hawkins*, 2022 WL 816459, at *2 (citing *South Dakota v. Dole*, 483 U.S. 203, 210 (1987)).

¹⁴ *See id.* at *2–3.

this chapter with the U.S. Secretary of Labor.”¹⁵ Here, the court determined that the statute did not create a legal duty for Secretary Washington to continue accepting federal funds.¹⁶ Instead of conducting a statutory interpretation analysis of § 25-4-118(a), the Alabama Supreme Court found that, because Secretary Washington was not empowered to accept these funds under § 36-13-8, he did not violate a legal duty by failing to accept them.¹⁷ Secretary Washington lacked the power to accept federal funds because the Governor alone has this power, and Alabama’s constitution supplies no means for Secretary Washington to overrule the Governor’s decision to accept or reject federal funds.¹⁸

At the time of this suit, twenty-six states had elected to terminate their agreement to receive federal pandemic unemployment compensation, with some state courts granting temporary orders compelling continued participation.¹⁹ Consequently, appellants’ third argument was an attempt to persuade the Alabama Supreme Court by analogizing the language of the statutes in this case to several favorable state court cases involving similar statutes.²⁰ However, the Alabama Supreme Court ultimately noted that none of these cases addressed state immunity under the Alabama Constitution and were not binding upon the court.²¹

The Alabama Supreme Court affirmed the Circuit Court of Montgomery County’s dismissal.²² Because § 31-13-8 and § 25-4-118(a) did not require Governor Ivey or Secretary Washington to participate in the federal unemployment compensation program, the appellants’ complaint was not a proper exception to the state immunity provided in Article 1, § 14 of the Alabama Constitution.²³ Therefore, the trial court did not have subject matter jurisdiction over the appellants’ claim.²⁴

¹⁵ ALA. CODE § 25-4-118(a).

¹⁶ *Hawkins*, 2022 WL 816459, at *3–4.

¹⁷ *Id.* at *3–4 (“It is ultimately unnecessary for us to delineate the extent of Secretary Washington’s duty to cooperate with the federal government under § 25-4-118(a). As explained, § 36-13-8 authorizes and empowers the Governor . . . to accept federal grants and funds “in the name of and for the State of Alabama.”).

¹⁸ *Id.* at *3–4.

¹⁹ JULIE M. WHITTAKER & KATELIN P. ISAACS, CONG. RSCH. SERV., R46687, UNEMPLOYMENT INSURANCE (UI) BENEFITS: PERMANENT-LAW PROGRAMS AND THE COVID-19 PANDEMIC RESPONSE 8 (2022).

²⁰ *Hawkins*, 2022 WL 816459, at *4 n.4.

²¹ *Id.*

²² *Id.* at *4.

²³ *See id.*

²⁴ *Id.*

The Alabama Supreme Court's ruling in *Hawkins* is significant because it assists in our nation's search for the best path to economic recovery in the wake of COVID-19, and it respects Alabama's autonomy to devise its own means to achieve that end.²⁵ This decision will allow a comparison between continuing or discontinuing federal pandemic unemployment compensation, enabling states to determine a posteriori which method is more effective.²⁶ Accordingly, the adoption of different means may help the nation find the best path to economic recovery after COVID-19.²⁷

²⁵ *See id.*

²⁶ *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may . . . serve as a laboratory[] and try novel social and economic experiments without risk to the rest of the country.”).

²⁷ *See id.*