

IN THE ALABAMA COURT OF CIVIL APPEALS

IESHIA SMITH,

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Appellant,

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*

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v.

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Docket No. 2180304

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RENTER'S REALTY,

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Appellee.

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ON APPEAL FROM THE CIRCUIT COURT
OF MADISON COUNTY, ALABAMA, NO: CV 2018-000069.00
TRIAL JUDGE: DENNIS O' DELL

**BRIEF AMICUS CURIAE OF ALABAMA COMMUNITY AND HUMAN RIGHTS
GROUPS AND NATIONAL CONSUMER RIGHTS ORGANIZATIONS**

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STATEMENT REGARDING ORAL ARGUMENT

This appeal asks this Court to uphold the constitutional right of Alabamians to continually protect up to \$1000 of wages from execution and garnishment. The appellee's arguments to the contrary are based on the relatively recently enacted Ala. Code Section 6-10-6.1, which unconstitutionally attempts to redefine the term "personal property" to exclude wages. Because that code section is an unconstitutional legislative overreach into the judicial branch of our government and conflicts with the plain language of the Constitution and Alabama case law, this Court must ignore that statutory amendment and affirm its prior decisions on this issue.

The *amici* Alabama human rights groups and national consumer rights organizations work with numerous Alabama residents who are faced or threatened with garnishments, as well as the attorneys who represent them. These Alabamians rely on the wage protections that their Constitution provides them, and which the Legislature has attempted to take away without following the process for properly amending Alabama's Constitution.

Nearly a million of Alabama's 4.8 million residents live near or below the poverty line, and many more live

paycheck to paycheck. In some counties, up to 40% of the population live at or below poverty levels. The wages that working people earn are absolutely crucial to the well-being of their families and indeed, our society as a whole.

The *amici* believe that the property protections of Article X, Section 204 of the Alabama Constitution are immune to the Legislature's attempts to redefine them out of existence, and ask this Court to so hold. Indeed the *amici* believe that the law is well-settled and therefore that oral argument is not necessary in this case.

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INTEREST OF THE AMICI CURIAE

Alabama Appleseed Center for Law & Justice ("Alabama Appleseed") was started in 1999 in order to advocate for local solutions to issues affecting low-income Alabamians. Alabama Appleseed's mission is to achieve justice and equity for all Alabamians, including tenants. Alabama Appleseed is a non-profit, non-partisan public interest advocacy organization. Alabama Appleseed has a special interest in this matter because one of its major goals is to ensure equal justice under the law, which requires a justice system that provides a level playing field, regardless of one's ability to pay. To achieve this objective, Alabama Appleseed seeks adequate resources for low-income tenants to protect their rights.

Alabama Arise is a statewide nonprofit advocacy organization formed in 1988. Alabama Arise is a nonpartisan coalition of 150 congregations and community groups and hundreds of individuals that promotes state policies that improve the lives of low-income people. Arise brings together groups and individuals to promote state policies that improve the lives of low-income Alabamians. In a state that by many measures is the worst place for poor people to live in the United States,

Alabama Arise works to improve state policies regarding its most vulnerable citizens.

The National Association of Consumer Advocates ("NACA") is a non-profit association of attorneys and consumer advocates committed to representing consumers' interests. Its members are private and public sector attorneys, legal services attorneys, law professors and law students whose primary focus is the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information sharing among consumer advocates across the country, particularly regarding legal issues, and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers.

According to Alabama Rule of Appellate Procedure 29, *amici* state as follows concerning their interests in this petition and the reasons why their brief is desirable, and will assist this Court in deciding this appeal. Ala. R. App. P. 29. *Amici*, therefore, state as follows:

1. As organizations that represent or work with low income individuals and consumers in Alabama, *amici* have a

firsthand knowledge of the issues being raised in this case.

2. *Amici* have a strong interest in ensuring compliance with Art. X, Section 204 of the Alabama Constitution and in the resolution of this case.

3. The *amici* believe that they can assist the court in understanding the legal, historical, and social implications raised by the issues in this appeal.

4. *Amici* contend that upholding the trial court's decision could have long-term negative effects on large numbers of Alabamians and that it is vital that that their interest be heard in this matter.

SUMMARY OF THE ARGUMENT

For much of human history, workers' wages have been sacrosanct. The Bible, for example, is rife with protections for the poor and their wages. See, e.g. *Deuteronomy 24:6* "No one shall take a hand mill or even its upper stone a pledge for debt;" *Deuteronomy 24:14* "You shall pay him each day's wages before sundown on the day itself, since he is poor and looks forward to them;" *Leviticus 19:13* "You shall not withhold overnight the wages of your day laborer." Similarly, Hammurabi's Code prescribed minimum wage laws for day laborers and a variety of tradesmen. See, e.g. *Hammurabi's Code, Law 273*.

The State of Alabama has continued this ancient tradition. In the 1868 Alabama Constitution, residents were allowed to claim any type of personalty as exempt from judicial process, up to the value of \$1,000. Ala. Const. (1868) art. XIV, §1. This protection was extended in the 1901 Constitution, whose personal property exemption is located at Article X, Section 204: "personal property of any resident of this state to the value of one thousand dollars, to be selected by such resident, shall be exempt from sale or execution, or other process

of any court, issued for the collection of any debt contracted..." Ala. Const. (1901) art. X, §204.

As this Court and the Supreme Court have decided previously, the Alabama Constitution provides a clear and unambiguous floor below which a worker's wages are not to be taken. This broad reading of the Constitutional personal property exemption is confirmed by case law, history, and common sense. In spite of the clarity and ease of application of the \$1,000 constitutional exemption, the Legislature attempted in 2015 to declare that wages were not "personal property" for the purposes of the constitutional exemption. This represented a radical departure from over a century of precedent and an unconstitutional redefinition of a legal term so basic as to have not needed definition in the 1901 Constitution. It is upon this dubious foundation that the appellee's position rests, and as such, the Court should flatly reject the Legislature's attempt to usurp the proper constitutional amendment process.

ARGUMENT

In 2015, the Alabama Legislature added a new subsection to the part of the Alabama Code addressing exemptions from execution: Ala. Code §6-10-6.1. This section stated "Wages, salaries, or other compensation of a resident are not personal property for the purposes of exemption from garnishment, levy, sale under execution, or other processes for the collection of debt," and that the Legislature's intention in passing this law was to limit the constitutional exemption of Ala. Const. (1901) art. X, §204. Ala. Code §6-10-6.1. In other words, the Legislature admittedly attempted to redefine a constitutional term -"personal property"- without following the proper process for amending Alabama's Constitution. This Court should declare this law unconstitutional.

Section 204 of the Alabama Constitution is clear: Alabama residents can select up to \$1,000 of personal property to be exempt from execution, sale, or garnishment. The property that is exempt is "to be selected by such resident," and not by the state Legislature or the resident's creditors. Ala. Const.

(1901) art. X, §204. This protection of a person's property is a longstanding constitutional right dating back nearly 150 years. See Ala. Const. (1868) Art. XIV, §1; Ala. Const. (1875) art. X. §1. Wages are money; money is personal property. Ergo, wages are exempt.

However, the legislature decided that the framers of the 1901 Constitution had made a bad decision, and rather than rectify via constitutional amendment - the only way they can legally change the Constitution - they decided to make an end run around the amendment process by simply re-defining the exemption out of existence. The result was Ala. Code §6-10-6.1. The appellee hopes to convince this Court that such a radical legislative overreach was authorized by Section 92 of the 1901 Constitution, which authorizes the Legislature to make laws "to ascertain the value of real and personal property exempted **from sale** under legal process by this Constitution." Ala. Const. Art. §92 (emphasis added). They are wrong because Section 92 is limited in application to situations where property is to be sold, which necessarily involves a determination of a property's value. A garnishment or execution of cash or a liquidated debt (like a bank account or wages

in the hands of an employer) needs no valuation and involves no sale.

The appellee also argues that depriving Alabamians of their constitutional property rights is necessary to keep a functioning economy. They are wrong, because dozens of other states have similar, or stronger protections of worker wages and have suffered no adverse economic consequences as a result.

I. The Legislature Cannot Eradicate the Constitutional Exemption By Redefining "Personal Property" to Exclude Wages Outside of the Constitutional Amendment Process

As it indicated in Ala. Code §6-10-6.1(b), the Legislature's intention in passing §6-10-6.1 was to re-define the term "personal property" as written in Section 204 of the Alabama Constitution. Specifically, they said that the term "wages" - which is money owed to an employee by his employer - were not "personal property."

The implications of allowing the Legislature to redefine the term as elementary as "personal property" raise serious concerns. If they can redefine it to exclude wages, they can redefine it to exclude other forms of money and debt such as bank accounts, stocks,

treasury bonds, or retirement accounts. Like wages, a bank account is simply a debt - one that is owed by a bank to its depositor. First National Bank of Mobile v. Pope, 149 So.2d 781 (Ala. 1963). If this Court holds that 6-10-6.1 can redefine the constitutional meaning of "personal property," then money in a debtor's bank account could just as easily be excluded from the personal property exemption provided by the Constitution. In other words, allowing the redefinition to stand would enable the Legislature to effectively erase Section 204 of the Alabama Constitution without going through the amendment process.

The Constitution's \$1,000 personal property exemption provides a simple "minimum exemption below which the legislature may not go." Trimble v. Greater Gadsden Hous. Auth., 603 So. 2d 1102, 1104 (Ala. Civ. App. 1992).

A. Ala. Code §6-10-6.1 is Invalid and Unconstitutional Because it Violates Separation of Powers.

Section 204 of the Alabama Constitution gives Alabamians not only the right to claim \$1,000 of personal property as exempt, but also "the largest latitude of discretion in making a selection of this property." Enzor & McNeill v. Hurt, 76 Ala. 595, 597 (1884). And under decades of our case law, this property does include wages. Merrida v. Credit Acceptance Corp., No. 2160188, 2017 WL 1967738, at 3.

The intention of the legislature in enacting Ala. Code §6-10-6.1 was to deprive debtors of this right to claim wages as the sort of personal property that had been, for nearly 150 years, exempt under the Constitutional Exemption. Ala. Code §6-10-6.1(b). As appellee correctly argues, the Legislature is free to define its own *statutory* exemptions like Ala. Code §6-10-6, 6-10-7-, or 6-10-2. And, in enacting such statutes, it is free to go above the constitutionally protected minimum of \$1,000, which it has. Ala. Code (1975) §6-10-6. What the Legislature giveth, the Legislature may taketh away. Not so with rights endowed by the Constitution. City of Birmingham v. Graffeo, 551 So. 2d 357, 363. ("Undeniably, the legislature cannot enact a statute that conflicts with the Constitution, that is,

that prohibits that which is permitted by the Constitution...").

The Appellee argues that 6-10-6.1 was adopted in accordance with our separation of powers doctrines because the Legislature is allowed to enact laws that enhance or affect existing constitutional rights. However, it is clear that the legislature can expand rights beyond what is guaranteed in the Constitution - but they cannot take those rights away.

In City of Mobile v. Bolden, 466 U.S. 55 (1980), the U.S. Supreme Court held that an election system that effectively, but not intentionally, disenfranchised black voters, was not a per se violation of the Fourteenth or Fifteenth Amendments to the U.S. Constitution. Bolden, at 80. In response, Congress amended the Voting Rights Act of 1965 "to forbid not only those voting practices directly prohibited by the Fifteenth Amendment but also any practice 'imposed or applied...in a manner which results in a denial or abridgement of the right...to vote on account of race or color...' United States v. Marengo County Commission, 731 F. 2d 1546, 1553 (11th Cir. 1984). , quoting 42 U.S.C.A. §1973(a). This, the Eleventh Circuit correctly held, was perfectly fine, because the

new amendment to the Voting Rights Act was designed to apply to vote dilution claims, and that amendment was enacted pursuant to Congress' "necessary and proper" clause power to enforce the Fifteenth Amendment. Id., 1557. In other words, the statute at issue in the Marengo County Commission case was one that *bestowed* rights *above* the Constitutional minimum, whereas 6-10-6.1 seeks to *deprive* the citizenry of rights that the Constitution gives them. This is something the Legislature cannot do. The Constitutional personal property exemption rights "secure benefits to the residents of this State, which cannot be taken away or impaired by the Legislature. The benefits secured by [the constitutional exemptions] are absolute, and irrepealable." Miller v. Marx, 55 Ala. 322, 333. (Ala. 1876).

Similarly, in In re Young, 141 F.3d 854 (8th Cir. 1998), the court was again faced not with a legislative redefinition of a constitutional term, but with a statute that *expanded* individual rights above the constitutional floor. Congress had enacted the Religious Freedom Restoration Act in part as a response to the U.S. Supreme Court's holding in Employment Div., Dept. of Human

Resources v. Smith, 494 U.S. 872 (1990). One of the things RFRA did was to “effectively amen[d] the Bankruptcy Code, and has engrafted the additional clause to §548(a)(2)(A)” to limit the power of the Bankruptcy Trustee to avoid an otherwise avoidable transfer made to religious institution. Young, at 861.¹ When the government challenged the Religious Freedom Restoration Act’s additional protections to bankrupt debtors, the Act was upheld as constitutional. The Young decision was premised on the fact that “Congress has often provided statutory protection of individual liberties that exceed the Supreme Court’s interpretation of constitutional protection.” Young, at 860. (emphasis added). And as Young itself said, “Congress cannot, through ordinary legislation, amend the Court’s authoritative interpretation of the Constitution...” Id. Yet that is what the Alabama Legislature has attempted with 6-10-6.1. Thus, 6-10-6.1 is unconstitutional.

B. Section 6-10-6.1 Flatly Contradicts the Plain

Language of the Constitutional Personal Property

¹ This judicial interpretation upholding religious donation rights of debtors was added to the Bankruptcy Code in 1998, and exists as the current version of 11 U.S.C. §548(a)(2).

Exemption.

This is not a case of a legislative act susceptible to multiple meanings, some of which could be consistent with the Constitution. Section 6-10-6.1 is a statute that directly contradicts the plain language of the Alabama Constitution. Personal property is defined as "everything that is the subject of ownership, not coming under demonination of real estate." *Black's Law Dictionary*, 6th ed., p. 1217. Appellee does not argue that wages are real property.

"In ordinary parlance of familiar use by lay, as well as professional, persons, the term "personal property" includes in its signification money, goods, chattels, etc. In re Bruckman's Estate, 195 Pa. 363, 368, 45 A. 1078; Underbill's law of Wills §308 and citations made in note 5 thereto; Bromberg v. McArdle, 172 Ala. 270, 22 So. 805, and the term also includes choses in action." Sims v. Moore, 264 So.2d 484 (Ala. 1972). Alabama's judicial definition of "personal property" was nothing new, either. It was the same definition that was applied by Blackstone in his *Commentaries on the Laws of England*:

"The objects of dominion or property are things, as contradistinguished from persons; and things are by the law of England distributed into two kinds: things real and things personal. Things real are such as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements; things personal are goods, money, and all other movables; which may attend the owner's person wherever he thinks proper to go."

William Blackstone, *Commentaries* (Book 2) at 401. And according to our most basic canons of construction, "[t]he age-old principle" is that an undefined term is "interpreted and applied according to] its "common-law meaning." Antonin Scalia and Bryan A. Garner, *Reading Law*, 56 (2012).

Section 6-10-6.1 purports to say that wages are not "personal property," that is, that wages are not "money, goods, chattels, etc." This illogical position ignores the plain text of the Constitution and the common law that preceded it. The fact is that in enacting Ala. Code §6-10-6.1, the Legislature attempted a feat of Orwellian anti-sense: to say that a thing is not what it clearly is. It is the duty of this Court to reject the Legislature's overreach, and to reverse the decision of the trial court.

C. Ala. Const. §92 Does not Authorize Legislature to Deprive Alabamians of Constitutional Exemption Rights

Section 92 of the Alabama Constitution merely provides the Legislature with authority to "prescribe such rules and regulations as may be necessary to ascertain the value of real and personal property **exempted from sale** under legal process by this Constitution, and to secure the same to the claimant thereof as selected." (emphasis added) Ala. Const. (1901) art. X, §204. Whereas Section 204 says "[T]he personal property of any resident of this state to the value of one thousand dollars, to be selected by such resident, shall be **exempt from sale or execution, or other process of any court**, issued for the collection of any debt..." (emphasis added). Ala. Const. (1901) art. IV, §92.

The omission of "execution, or other process" from Section 92 is important, because "the courts may not, by construction, insert words or phrases in a statute, or supply a casus omissus by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the law." Pace v. Armstrong

World Industries, Inc., 578 So.2d at 284. (Ala. 1991), (quoting 73 Am.Jur.2d Statutes § 203) (1974). See also State v. Calumet & Hecla Consol. Copper Co., 66 So.2d 726 (Ala. 1953). Applying basic rules of statutory construction to the language of Ala. Const. §92 and §204, we urge the Court not to ignore the fact that Section 204 applies to garnishments, which involve no sales, while Section 92 merely authorizes the legislature to create a mechanism for answering questions of valuation of property subject to sale.

Because a garnishment is not a sale. **"Garnishment.** A proceeding whereby a plaintiff creditor, *i.e.* garnishor, seeks to subject to his or her claim the property or money of a third party, *i.e.* garnishee, owed by such party to defendant debtor, *i.e.* principal defendant." *Black's Law Dictionary*, 6th ed., p. 680. "Garnishment is a proceeding of purely statutory creation, unknown to the common law." Tennessee Coal, Iron & R. Co. v. Warner, 153 So. 640 (Ala. 1934). Our garnishment statute defines it as "process to reach and subject money or effects of a defendant in attachment, in a judgment or in a pending action commenced in the ordinary form in the possession or under the control of a

third person, or debts owing such defendant or liabilities to him on contracts for the delivery of personal property, on contracts for the payment of money which may be discharged by the delivery of personal property or on contracts payable in personal property; and such third person is called the garnishee." Ala. Code (1975) §6-6-370.

Wage garnishments, therefore, by definition involve the seizure of money, which is already liquid and cannot be sold. Attempting to redefine "personal property" to exclude wages has utterly no effect on the value of such wages, nor could it ever have any impact on any sale of potentially exempt property. As such, Section 92 simply does not apply to garnishments and cannot be the basis of legislative authority to alter the fundamental nature of wages as a species of personal property.

II. The Constitutional Exemption Provides a Clear, Unambiguous, and Beneficial System of Wage Protection

The constitutional wage exemption scheme, which was upheld by this Court in Merrida and by the trial court below, is elegantly simple: if a worker doesn't accumulate more than \$1,000 of wages at any given time,

those wages are exempt. It is literally that simple. Yet the Appellee have somehow come to the conclusion that this simple scheme is impossibly unworkable.

The protection of workers' wages from garnishment - even for legitimate debts and torts - is not unique to Alabama, nor is it some risky new legal trend. Some states - Pennsylvania, South Carolina, and Texas - do not allow wage garnishments for consumer debts at all. 23 Pa. Cons. Stat. §3703; 42 Pa. Cons. Stat. §8127; S.C. Code Ann. §§15-39-410, 15-39-420; Tex. Const. Art. 16 §28, Tex. Prop. Code Ann. §42.001 (West). North Carolina completely exempts wages of the head of the household to the extent necessary for family support. N.C. Gen. Stat. §1-362. Some states protect more wages than the federal 25% exemption. See, e.g. N.H. Rev. Stat. Ann. §512:21(II) (New Hampshire); Mass Gen. Laws. ch. 246, §28 (Massachusetts); 735 Ill. Comp. Stat. §5/12-803 (Illinois).

In systems remarkable for their similarity to Alabama's constitutional exemption, Alaska exempts \$473 of weekly net earnings or \$743 "when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the

individual's household," and Florida protects "[a]ll of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$750 a week." Alaska Stat. §§09.38.030, 09.38.050; Fla. Stat. §222.11(2)(a).

Other states allow wage garnishments, but limit them in cases of hardship. California exempts "the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family..." Cal Civ. Proc. Code §706.051 (West). Arizona restricts garnishments to 15% in case of "extreme economic hardship." Ariz. Stat. Ann. §12-1598.10. Vermont allows an exemption to be increased if the debtor shows that weekly expenses "reasonably incurred" for the support of the debtor's family exceed the statutory exemption amount. Vt. Stat. Ann. Tit.12, §3170(b)(3). In other states, court case law provides trial judges with discretion to limit garnishment amounts. See, e.g. Hillcrest Med. Ctr. v. Monroy, 38 P.3d 931 (Okla. Civ. App. 2001) (Oklahoma law).

Appellee's position would imply that neither consumer lending nor judicial systems function in Texas,

Pennsylvania, North Carolina, South Carolina, Florida, Alaska, New Hampshire, Massachusetts, Illinois, California, Arizona, Oklahoma, and Vermont. Obviously, this is just not true.

On the issue of workability, even here in Alabama, federal bankruptcy courts wrestle with questions of disposability of income and reasonableness of expenditures on a daily basis. Yet the bankruptcy courts show no sign of grinding to a halt.

Appellee argues that there is no support for the position that the availability of the constitutional exemption turns on the debtor's pay period. The "accumulation" rule, they say, causes strange and unfair results because a debtor paid weekly has less chance of his employer accumulating more than \$1,000 of unpaid wages at any given time than a debtor paid monthly. This could indeed be true in some cases. Wages are nothing more than a money debt owed by an employer to his employee. If the value of that debt never rises above \$1,000, then according to the Court's ruling in Merrida, those wages would be exempt from garnishment, possibly forever. This, of course, is the result that is mandated by the clear language of the Constitution. If this Court

upholds the clear constitutional exemption, then employers and employees concerned with avoiding garnishments - which employers dislike almost as much as employees - can factor that exemption into negotiations regarding pay frequency.

However, this Court is not bound to link the availability of the constitutional exemption to the precise amount listed on a debtor's paycheck. In the opinion of the Alabama human rights and community organization *amici*, the better view is that a debtor's wages are protected both before and after they move from the hands of the employer to the employee, and that so long as more than \$1,000 of such money does not accumulate in the hands of the debtor or others (i.e. a bank), that money should be protected. This accords with the Court's precedent explained in Merrida, which should not be overturned.

As discussed above, several other states have exemption schemes very similar to that of Ala. Const. (1901) §204, and none of them have problems allowing trial judges to decide whether or not a debtor's income falls below the threshold or whether a debtor's expenditures are reasonably necessary for the maintenance

of the debtor and his/her family. There are countless ways that such a determination could be made in a fair and expeditious manner. The Supreme Court could prescribe a form that could be made available on Alacourt.gov. Trial judges could simply conduct a hearing on a motion to quash a garnishment - just like they do currently. The precise mechanism that the courts choose, however, has nothing to do with whether or not the constitutional exemption exists after the enactment of 6-10-6.1.

There is also no support for the position that allowing judgment debtors to claim constitutional exemption would hurt the credit industry. Subprime lending has boomed in recent years, even in states where garnishments are limited or nonexistent.² The vast majority of debts are collected without resort to garnishment, and lenders can choose to simply apply other

² *Gabrielle Coppola, New U.S. Subprime Boom, Same Old Sins: Auto Defaults are Soaring*, Bloomberg Businessweek, July 17, 2017.
<https://www.bloomberg.com/news/articles/2017-07-17/new-u-s-subprime-boom-same-old-sins-auto-defaults-are-soaring>

See also James R. Koren, *As auto sales cool, there are great deals to be had - and worries of a lending bubble*, *The Los Angeles Times*, April 21, 2017, <http://www.latimes.com/business/la-fi-auto-sales-20170411-story.html>.

forms of pressure to obtain repayment.³ They can report adverse items to consumer reporting agencies. They can refer matters to collection agencies or law firms. They can garnish bank accounts, place liens on real property, or execute on automobiles, boats, RVs, or an iPhone 6. They can request collateral and, if a debtor defaults, repossess it.

The appellee acts as if garnishments are a good thing. They aren't. Garnishments put families under severe strain and increase the number of avoidable bankruptcies. And debtors aren't the only ones harmed. Garnishments place administrative burdens and legal costs upon employers, which dampens the job market and harms the economy as a whole.⁴

³ In a survey conducted in 2014 and 2015, the Consumer Financial Protection Bureau determined that, of all consumers with a credit record, only 32% had been contacted by someone seeking to collect a debt within the past year. Only 15% of that 32% of consumers with a debt collection experience reported having been sued during the past year. Thus, less than 5% of adults with a credit records were found to have been sued during the study period. Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection*, pp. 13 & 27, (2017). Available at http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf

⁴ ADP Research Institute, *Garnishment: The Untold Story*, 2014, <https://www.adp.com/tools-and-resources/adp-research-institute/insights/~media/RI/pdf/Garnishment-whitepaper.ashx> ("Moreover, pay seizures appear to be rising quickly in certain states, as the

Finally, Appellee's position ignores the right of selection inherent in the constitutional exemption. What matters in this case is not whether debtors would benefit from choosing to exercise their constitutional rights under Ala. Const. (1901) §204 or their statutory rights under Ala. Code §6-10-6, but whether those constitutional rights exist at all. The answer is affirmative.

Certainly, some debtors may make a bad decision that results in non-wage property being subject to levy and execution, allowing a creditor to seek a writ of possession from the circuit court and conduct a sheriff's sale of everything the debtor owns. Such a result, while possibly harmful to that particular sort of debtor, would be wholly within the prescriptions of the law. Even if this Court continues to uphold Merrida, plenty of amply aggressive collection tactics will remain in the arsenal of lenders seeking to get paid.

In light of the numerous remedies elsewhere available to judgment creditors, to allow the Legislature to additionally deprive Alabamians who never accumulate \$1,000 of wages of their constitutional exemption rights would be fundamentally unfair, and contrary to the economic downturn has produced a significant increase in the number of debtors.")

"spirit of humanity and benevolence" with which our exemption laws were founded. Enzor, at 597. Most importantly, 6-10-6.1 is contrary to the plain text of the Constitution. This Court should continue to honor that constitutional right that has been consistently upheld through the years, and reverse the decision of the trial court.

CONCLUSION

Accordingly, and for the reasons explained above, Amici respectfully submit that this Court should reverse the circuit court's dismissal of the claim of exemptions.

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CERTIFICATE OF SERVICE

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