No. _____

In the Supreme Court of the United States

CARVIN THOMAS AND TERRELL LAWRENCE,
ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED

Petitioners

v.

ROBERTA NEVIL KUSTOFF, ZANE DUNCAN, GARY FAULCON, TIM GOBBLE, MAE BEAVERS, BARRETT RICH, AND ROBERT WAGGONER,
AS CHAIRMAN AND MEMBERS OF THE TENNESSEE BOARD OF PAROLE

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

CORRECTED PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Does a parole applicant in Tennessee have a liberty interest based on the expectation of parole?

RELATED PROCEEDINGS

Thomas v. Montgomery, slip op. 3:23-cv-1204 (M.D. Tenn. June 17, 2024).

Thomas v. Montgomery, 140 F.4th 335 (6th Cir. 2025).

PARTIES TO THE PROCEEDING

The Petitioners are Carvin Thomas and Terrell Lawrence, the Plaintiffs.

The Respondents are Defendants Roberta Nevil Kustoff, Zane Duncan, Gary Faulcon, Tim Gobble, Mae Beavers, Barrett Rich, and Robert Waggoner. The Defendants were all sued in their capacity as the Chair and Members of the Tennessee Board of Parole, not individually.

Notably, the previous chair sued was Richard Montgomery, as named in the lower courts' captions. Now, though, Montgomery has apparently been replaced by Roberta Kustoff.[1] Therefore, this petition now substitutes her as the lead party.

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1 The board members are all listed at <https://www.tn.gov/bop/about-us/information/abtus-info-board-members.html>

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PETITION FOR CERTIORARI

After being denied parole by a computer program, inmates challenged the procedures as violating due process. The District Court dismissed the lawsuit for failure to state a claim. Later, the Sixth Circuit acknowledged the questionable nature of the computer program, but it affirmed the dismissal, saying that state law created no liberty interest in parole — in other words, no right right to due process. Nonetheless, state law provides that an applicant shall "only" be released if "the board is of the opinion that" the inmate can live lawfully and beneficially to society — very similar to the criterion used in *Board of Pardons v. Allen,* 482 U.S. 369 (1987), where this Court upheld a right to due process. Moreover, state law only denies parole based on the same four criteria laid out in *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979), where this Court upheld a right to due process. State law also requires that the Board of Parole provide a reason before denying parole, again implying a presumption of a parole grant. Finally, state law says that all these statutes must be construed so that every meritorious inmate "shall" be released on "parole," the very same language used in *Allen, supra.* By denying a liberty interest, the Sixth Circuit has flatly contradicted this Court's rulings in *Allen* and *Greenholtz*. And it has not even seemed to understand the whole point of *Allen*. To restore due process, the Court should grant certiorari.

JURISDICTION

The Court has appellate jurisdiction under 28 U.S.C. § 1254(1), which authorizes certiorari after a ruling by a federal appellate court.

The Sixth Circuit issued its opinion on June 9, 2025. (Appx. 2). Fourteen days later, the Petitioners filed for rehearing en banc. (Appx. 15-17). The court denied it on July 14, 2025. (*Id.*) This Petition is filed as of October 13, 2025, a Monday.

Notably, the Clerk asked for corrections on October 20, 2025, and this Corrected Petition is being submitted within 60 days thereafter.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment
Section 1

> . . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tenn. Code Ann. § 40-28-117(a)

Parole being a privilege and not a right, no prisoner shall be released merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board is of the opinion that there is reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society. If the board so determines, the prisoner may be paroled and if paroled shall be allowed to go upon parole outside of prison walls and enclosure upon the terms and conditions as the board shall prescribe . . . .

Tenn. Code Ann. § 40-35-503(b)

Release on parole is a privilege and not a right, and no inmate convicted shall be granted parole if the board finds that:

(1) There is a substantial risk that the incarcerated individual will not conform to the conditions of the release program;

(2) (A) The release from custody at the time would depreciate the seriousness of the crime of which the incarcerated individual stands convicted or promote disrespect for the law, except that the

board's finding shall not be the sole basis for denying parole unless the individual is serving a sentence for any of the following offenses, in which case the board may deny parole for seriousness of the offense:

[LONG LIST OF CRIMES OMITTED]

(B) If the board denies parole for the seriousness of the offense, then the board shall state in writing how the inmate can improve the inmate's chances of being released on parole at the inmate's next hearing;

(3) The release from custody at the time would have a substantially adverse effect on institutional discipline; or

(4) The incarcerated individual's continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance the incarcerated individual's capacity to lead a law-abiding life when given release status at a later time.

Tenn. Code Ann. § 40-35-503(j)

Upon declining to grant parole in any case, the board must state in writing the reason for declining parole and how the inmate can improve the inmate's chance of being released on parole in the future.

Tenn. Code Ann. § 40-28-101(a)

The purpose of this chapter is to provide a system of probation and paroles to be liberally construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs and potentialities as revealed by a case study and that such persons shall be dealt with in the community by a uniformly organized system of constructive rehabilitation under probation supervision instead of in correctional institutions or under parole supervision when a period of institutional treatment has been deemed essential whenever it appears desirable in the light of the needs of public safety and their own welfare.

STATEMENT OF THE CASE

A. Procedural Background

After getting denied parole based on the dictates of a computer program, inmates Carvin Thomas and Terrell Lawrence sued in federal court charging a violation of 42 U.S.C. § 1983. They charged that letting an unreliable computer program dictate parole outcomes violated due process — especially since the Board of Parole would not even let them challenge the program's factual assertions. (Appx. 40, Complaint). The Petitioners sued all the members of the Tennessee Board of Parole in their official capacities. (Appx. 40). The lawsuit also sought class action status. (Appx. 62-65 and 67). Nonetheless, the District Court dismissed the lawsuit on Rule 12 motion, for failure to state a claim. (Appx. 37-39).

On appeal, the Sixth Circuit expressed concern about whether the computer program could fit with due process, but in the end, it never squarely reached that question. (Appx. 25-26, Opinion). Instead, it simply held that Tennessee parole applicants have no right to due process. (*Id.*) Since the Petitioners are only seeking reversal on that question — with a remand to address the more specific issues of the computer program — this Petition will just focus on the right to due process. Namely, does Tennessee law create a liberty interest in expecting parole?

B. Relevant Tennessee Laws and Customs

Tennessee law provides the following criteria for deciding whether a prisoner shall be released on parole. First, it mentions that parole is a "privilege and not a right," and therefore "no prisoner shall be released merely" for good conduct in prison, "but only if the board is of the opinion that there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society." Tenn. Code Ann. § 40-28-117(a).

Second, elsewhere the law repeats the refrain that "Release on parole is a privilege and not a right," and therefore "no inmate convicted shall be granted parole if the board finds (1) Substantial risk of violating parole; (2) Seriousness of the offense; (3) Disciplinary problems in the prison system; or (4) Need for continued treatment or training in prison. Tenn. Code Ann. § 40-35-503(b). The exact wording is quoted at the beginning of this petition. But basically the four criteria are word-for-word the same as the four disqualifiers found in *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1972). There, the Court found a right to due process. Hence, in their Complaint, the current Petitioners focused on this similarity to argue a similar right to due process in Tennessee. (*See* Appx. 43-47).

To deny parole, the Board must provide a written reason for the denial. Tenn. Code Ann. § 40-35-503(j). Importantly, according to the allegations in the Complaint, board custom is *always* to cite one of the four disqualifiers quoted above from *Greenholtz*. (Appx. 45-46, Complaint ¶ 10). In essence, the Board *agrees* with the Petitioners that Tennessee law is equivalent to the law in *Greenholtz*.

Finally, a third statute provides that all the state's parole laws, as discussed above, must be "liberally construed to the end" that inmates "shall be dealt with in the community . . . under parole supervision . . . whenever it appears desirable in light of the needs of public safety and their own welfare. Tenn. Code Ann. § 40-28-101. Importantly, the Sixth Circuit actually quoted from this statute when denying relief, but it conspicuously left out this language. (Appx. 21).

Notwithstanding all the above laws and customs, the Sixth Circuit found no liberty interest in expecting parole. (Appx. 2-14). The Petitioners asked for rehearing en banc, to no avail. (Appx. 17).

REASONS TO GRANT CERTIORARI

The Court should grant review because Tennessee parole applicants do indeed have a right to due process. In holding otherwise, the Sixth Circuit wrongly disregarded at least two of the Court's key precedents. Notably, the Sixth Circuit did not meaningfully *recite*, or even seem to understand, this Court's ultimate holding on the issue in *Board of Pardons v. Allen*, 482 U.S. 369 (1987). In *Allen*, this Court held that it was enough to create a liberty interest where statutory language simply asserted that a meritorious inmates "shall" be paroled — even without any more specific narrowing down of the grounds for denial, as in *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979). Despite that expansion of the rule of *Greenholtz*, here the Sixth Circuit seemed to treat *Allen* as simply a repeat of *Greenholtz*. (*See* Appx. 9-10). In essence, the Sixth Circuit applied an outdated, stricter rule rather than the more lenient rule of *Allen*. But either way, even the outdated, stricter rule of *Greenholtz* it also misapplied.

A. Tennessee Law's Resemblance to that in *Greenholtz*

Going back to *Greenholtz*, 442 U.S. 1, there this Court looked at state statutory language allowing for parole denial where an inmate met at least one of four disqualifiers. The four disqualifiers were (1) Likelihood of violating parole, (2)

Depreciating the seriousness of the offense, (3) Prison disciplinary problems, or (4) Need for further treatment or training in prison. *Id.*, at 11. Ultimately, this Court held that by laying out the four specific criteria, and then by requiring a finding of at least one criterion to decline parole, the state had created an "expectancy of release" — a liberty interest "entitled to some measure of constitutional protection." *Id.* at 12. Here, similarly, Tennessee law lays out the same four disqualifiers. The statute reads, "Release on parole is a privilege and not a right, and no inmate shall be granted parole if the board finds that" any of the four *Greenholtz* disqualifiers exist. *See* Tenn. Code Ann. § 40-35-503(b). This comparison alone strongly suggests, if not outright compels, a finding of a liberty interest.

Elsewhere, the same statute even requires the Board to list a reason in writing before denying parole. Tenn. Code Ann. § 40-35-503(j). Seemingly, this subsection also creates a presumption of parole. Per *Allen*, any law that mandates release "unless" findings are made is equivalent to a presumption of parole. 482 U.S. 369, at 378. If the Board must release a prisoner *unless* it can provide a reason to avoid such outcome, then a presumption exists in favor of release.

Moreover, the Tennessee statutes imply that the four *Greenholtz* disqualifiers are indeed the *only* reasons that may justify denying parole. In fact, according to the Amended Complaint, the Board itself has also taken this view. (Since the case never

got past the Rule 12 stage, the record is unclear as to whether the Board would even try to deny it.) In other words, by custom, the Board *only* denies parole by citing at least one *Greenholtz* disqualifier. (Appx. 28, ¶ 10). On review under Rule 12 of Civil Procedure, a factually "plausible" allegation should be taken as true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Even if the statutory interpretation presented here were wrong (as the Sixth Circuit seems to hold), the widespread custom alone would create a liberty interest. By comparison, this Court has previously found a property interest — protected by due process — based solely on informal custom. *Perry v. Sindermann*, 408 U.S. 593, 602 (1972) (Professor had a property interest in his job, despite not having any formal tenure). Even the Sixth Circuit below agreed that, in theory, board customs may create a liberty interest, but it claimed that the Plaintiffs did not adequately plead customs. (Appx. 24-25) (*citing Greenholtz* and *Allen*). It suggested that a future lawsuit might get around such ruling by pleading customs more fully. (*Id.*) But the Plaintiffs really did plead it. Thus far, no one even denies the factual allegation about customs.

Regardless, even apart from any informal customs, still a close reading of the laws simply supports the Petitioners' statutory reading. Consider, for example, the doctrine *in pari materia* — that a court should read statutes together that address the same topic. Here, the statute above uses language about parole being a privilege and not a right, and then it says that inmates who fall into the four

Greenholtz categories cannot make parole. Tenn. Code Ann. § 40-35-503(b). Another statute, Tennessee Code Annotated § 40-28-117(a), also mentions that parole is a privilege and not a right, and therefore it says that only inmates who can live lawfully and can benefit society should be released. Reading both statutes together, seemingly the legislature meant that parole is privilege and not a right, *specifically in the sense that inmates who avoid the four disqualifiers will live lawfully and avoid harming society* — thereby justifying parole. Everyone agrees that if an inmate can only be denied based on the *Greenholtz* categories, then an inmate has a right to due process. *Greenholtz*, 442 U.S. 1. That is what the statutes say in Tennessee, albeit in a roundabout way. The Sixth Circuit was wrong to find otherwise.

B. Tennessee Law's Resemblance to that in *Allen*

Regardless, the test for a liberty interest got more lenient in *Board of Pardons v. Allen*, 482 U.S. 369 (1987), and that rule of law the Sixth Circuit has never squarely addressed. In *Allen*, the Court held that a statute can create a right to due process even if the parole board is *not* restricted to denials based on four criteria. Instead, there, a state statute created a liberty interest merely by saying that any 'worthy' inmate "shall" be released. The law in *Allen* read as follows:

> [T]he board shall release on parole . . . any person confined in the Montana state prison or the women's correction center . . . when in its opinion there is a reasonable probability that the prisoner can be released without detriment to the prisoner or to the community[.]
>
> . . . .
>
> Parole shall be ordered only for the best interests of society and not as a reward of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

Allen, 482 U.S. 369, at 377-78 (emphasis removed), *citing* Mont. Code Ann. § 46-23-201 (1985). In essence, an inmate's worthiness for parole was measured by societal interest, and by the interrelated criterion of his lawful character.

Although worded a little differently, Tennessee's statutes are functionally the same. They mandate the release of any worthy prisoners. To start, first Tennessee provides as follows:

> . . . [N]o prisoner shall be released merely as a reward for good conduct . . . , but only if the board is of the opinion that there is reasonable probability that the prisoner, if released, will live and remain at liberty without violating

> the law, and that the prisoner's release is not incompatible with the welfare of society.

Tenn. Code Ann. § 40-28-117(a). This Tennessee statute invokes the same criteria from *Allen* — law-abiding character, and societal welfare. And grammatically, the above sentence (in the negative) is just a roundabout way of *mandating* parole for a worthy prisoner. Saying that "no prisoner shall be released [unless]" is the same as saying "[any] prisoner shall be released . . . if." *See id.*

Regardless, a still clearer Tennessee statute provides that all the parole laws must be "liberally construed to the end" that inmates "*shall* be dealt with in the community . . . under parole supervision . . . whenever it appears desirable in light of the needs of public safety and their own welfare. Tenn. Code Ann. § 40-28-101 (emphasis added). Hence, by overtly using the word "shall," Tennessee law mandates that every worthy inmate must be released. The only condition is whether the public safety and inmate's welfare require it — the same condition(s) found in *Allen*.

According to Supreme Court Rule 10, certiorari is rarely granted where the lower court has cited the correct rule of law but simply misapplied it. But here the lower court failed even to state the correct rule of law, skimming over *Allen* and mistakenly equating it with the stricter precedent of *Greenholtz*. In reality, *Allen* was an expansion of *Greenholtz*, not a recap.

In any event, as already discussed, the Petitioners contend that the Sixth Circuit deviated from both precedents. Supreme Court Rule 10 endorses certiorari where a federal appellate court has deviated from this Court on an important issue. On that basis, the Petitioners ask for certiorari.

CONCLUSION

To resolve whether Tennessee law creates a liberty interest in expecting parole, and to address the Sixth Circuit's disregard for the Court's caselaw, the Court should grant a writ of certiorari. Moreover, the Court should reverse.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

CARVIN THOMAS AND TERRELL LAWRENCE,
on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners

v.

ROBERTA NEVIL KUSTOFF, *as Chairman of the Tennessee Board of Parole, et al.,*

Defendants-Respondents

APPENDIX TO CORRECTED PETITION

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OPINION AND JUDGMENT, United States Court of Appeals for the Sixth Circuit.....3

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-5637

FILED
June 09, 2025
KELLY L. STEPHENS, Clerk

CARVIN L. THOMAS and TERRELL LAWRENCE, on behalf of themselves and others similarly situated,

Plaintiffs - Appellants,

v.

RICHARD MONTGOMERY, as Chairman of the Tennessee Board of Parole; ZANE DUNCAN; GARY M. FAULCON; TIM GOBBLE; MAE BEAVERS; ROBERTA NEVIL KUSTOFF; BARRETT RICH, as Members of the Tennessee Board of Parole,

Defendants - Appellees.

Before: COLE, STRANCH, and READLER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0153p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CARVIN L. THOMAS and TERRELL LAWRENCE, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants, No. 24-5637

v.

RICHARD MONTGOMERY, as Chairman of the Tennessee Board of Parole; ZANE DUNCAN; GARY M. FAULCON; TIM GOBBLE; MAE BEAVERS; ROBERTA NEVIL KUSTOFF; BARRETT RICH, as Members of the Tennessee Board of Parole,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.

No. 3:23-cv-01204—William Lynn Campbell Jr., District Judge.

Argued: March 18, 2025

Decided and Filed: June 9, 2025

Before: COLE, STRANCH, and READLER, Circuit Judges.

COUNSEL

ARGUED: Drew Justice, JUSTICE LAW OFFICE, Murfreesboro, Tennessee, for Appellants. Joshua Daniel Minchin, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellees. **ON BRIEF:** Drew Justice, JUSTICE LAW OFFICE, Murfreesboro, Tennessee, for Appellants. Joshua Daniel Minchin, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellees.

OPINION

COLE, Circuit Judge. In their class-action complaint against the members of Tennessee's Board of Parole, plaintiffs allege that Tennessee's use of a computer test to determine parole eligibility violated their constitutional right to due process. The district court found that plaintiffs failed to state a plausible claim for relief because Tennessee's parole statutes do not confer a protected liberty interest in parole. We affirm.

I.

Because this appeal arises from an order granting a Rule 12(b)(6) motion to dismiss, "we recite the facts as they are alleged in the complaint." *Savel v. MetroHealth Sys.*, 96 F.4th 932, 937 (6th Cir. 2024).

A.

This case concerns how Tennessee grants parole to eligible inmates. Tennessee's parole scheme is governed by a seven-member Board of Parole. Tenn. Code Ann. § 40-28-103(a). The Board is

responsible for determining inmates' fitness for parole. *Id.* § 40-28-118(c). Inmates become parole-eligible when they have served either half of their prison sentence (for determinate sentences) or their minimum sentence (for indeterminate sentences involving a range). *Id.* § 40-28-115(a), (b)(1).

When an inmate becomes parole-eligible, the Board begins to review the inmate's fitness for parole. The Tennessee Department of Correction notifies the Board of eligible inmates, and the Board compiles and distributes a list of inmates who shall have a hearing. Tenn. Comp. R. & Regs. 1100-01-01-.08(1). The Board appoints hearing officers who conduct hearings, take testimony, and propose findings and recommendations to the Board regarding whether an inmate should be paroled. Tenn. Code Ann. § 40-28-105(d)(2). Thereafter, the Board votes to adopt, modify, or reject the hearing officer's recommendations. *Id.*; Tenn. Comp. R. & Regs. 1100-01-01-.08(2).

At issue here is how the Board determines whether an eligible inmate receives parole. The Board uses a computer test, "STRONG-R," to assess an inmate's fitness for parole. STRONG-R reviews an inmate's information and assigns a score of "Low," "Moderate," or "High" risk. Tennessee law requires that each inmate annually receives a STRONG-R

test. The test "decides whether the inmate's housing situation, family life, or mental health is problematic" and recommends prison programs to assist with any issues it identifies. (Am. Compl., R. 12, PageID 85.)

Along with prison programming, the Board uses STRONG-R as a test for determining whether an inmate receives parole. The Board interprets an assessment of "High" or "Moderate" risk as grounds for denying parole. And when the Board denies parole and advises the inmate how to improve his chances for future parole, the Board's denial notifications state only, "Complete Programming As Recommended by [STRONG-R] Assessment." (*Id.* at PageID 86–87.)

The Board's reliance on STRONG-R, however, has produced inaccurate results. Correctional employees are generally "not adequately trained to administer the [STRONG-R] test properly." (Id. at PageID 88.) For example, the test asks about the inmate's life and history, and correctional employees should relay those questions to the inmate, then enter the responses into the test on the inmate's behalf. But an inadequately trained employee may fail to gather or input the necessary information, yielding a STRONG-R score inconsistent with the inmate's true record and personal history.

The Board keeps the STRONG-R results "secret," sharing them with the inmate at only their parole hearing. The inmate cannot subpoena the detailed results from their own tests, nor can they subpoena the prison officer who inputted their information into STRONG-R. Plaintiffs allege that this policy "works to ensure that no inmate can meaningfully challenge or address the [STRONG-R] results." (*Id.* at PageID 96.) The Tennessee Department of Correction has a similar policy of refusing to release STRONG-R results, but some inmates have nonetheless successfully managed to acquire some of their STRONG-R information from prison officials.

B.

Plaintiffs Carvin Thomas and Terrell Lawrence are two parole-eligible inmates who were denied parole due to their STRONG-R scores. Their experiences with the test demonstrate STRONG-R's shortcomings. For several years, Thomas received a "Low" or "Moderate" risk score from STRONG-R assessments. When he was transferred to a different prison in 2022, however, his assessment scores began to change despite no new negative behavior or activity. His new STRONG-R results listed him as "High" risk, with a likelihood of becoming violent.

Thomas alleges that his change in risk score was due to counselors "who had inferior training about how to administer the assessment." (*Id.* at PageID 89.)

Thomas's specific results revealed several errors. They falsely reported that Thomas had been confined to a mental asylum, showed signs of mental illness, and had committed crimes in the past because of non-compliance with mental health medications. But Thomas was never confined to a mental asylum, diagnosed with a mental illness, or prescribed psychological medication. The results also stated that Thomas committed his decades-old crime "for thrill or pleasure," but Thomas states he committed those crimes to obtain money. (*Id.* at PageID 90.) And the results stated that Thomas had become addicted to drugs in the preceding six months, despite Thomas's long-term sobriety and his incarceration during that time.

Thomas attended a parole hearing in January 2023. He requested a continuance and a re-test of the STRONG-R assessment. The Board postponed his hearing, and prison officials audited Thomas's STRONG-R test result. The Board did not, however, order any retesting. During this time, Thomas alleges that the prison counselor who performed his assessment told him to cease the request for an audit

or retesting, "or that things might get 'worse.'" (*Id.* at PageID 91.)

Thomas never received the results of the audit, but the hearing officer announced at his parole hearing in May 2023 that prison officials had concluded that his "High" STRONG-R risk result was accurate. Thomas challenged the result at the hearing. One of his supporters "also sent a letter to the Board[] listing about a dozen concrete ways that Thomas's STRONG-R result was factually wrong." (*Id.* at PageID 92.) But, as is common practice, no witness testified to verify the accuracy of the STRONG-R results. The hearing officer announced a denial of parole based on the STRONG-R assessment, and the Board agreed. The Board advised Thomas that, for a higher likelihood of future parole, he should follow the STRONG-R recommendations.

Similarly, Lawrence had historically scored "Low" on STRONG-R, but despite no new issues or adverse developments, his score in the spring of 2022 rose to "High." Lawrence had completed many rehabilitative programs, including the Cognitive Behavioral Intervention Program (CBIP). The Board denied Lawrence parole, citing his STRONG-R results and the seriousness of his offense. His denial notice recommended that Lawrence could improve

his parole chances by completing CBIP, which he had already completed.

While appealing his parole decision, Lawrence was retested under STRONG-R and received a "Low" score, despite no new information. Lawrence notified the Board of his new score, and then a prison counselor inputted new data into Lawrence's test and produced a third STRONG-R score, showing Lawrence's risk as "Moderate."

C.

Plaintiffs filed a class action amended complaint on behalf of inmates who sought parole in Tennessee. They sued the seven members of the Board, all in their official capacity. Plaintiffs brought one claim for relief under 42 U.S.C. § 1983, alleging denial of procedural due process in violation of the Fourteenth Amendment. Defendants moved to dismiss plaintiffs' amended complaint, arguing that plaintiffs failed to state a claim under Federal Rule of Civil Procedure 12(b)(6).

The district court concluded that plaintiffs failed to state a claim for relief. First, the district court concluded that inmates in Tennessee "do not have a constitutionally protected liberty interest in parole." (Mem. Opinion, R. 26, PageID 235.) And it

concluded that any liberty interest in parole would not save plaintiffs' claims, as they received the required due process in their parole proceedings because the Board gave plaintiffs a chance to be heard and informed them why it denied parole.

Plaintiffs timely appealed.

II.

We review de novo a district court's dismissal of complaints under Federal Rule of Civil Procedure 12(b)(6). *Mattera v. Baffert*, 100 F.4th 734, 739 (6th Cir. 2024). We "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus., Inc.*, 648 F.3d 452, 456 (6th Cir. 2011) (internal citation and quotation marks omitted). To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must allege sufficient facts that, taken as true, state a plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint states a plausible claim for relief where its alleged facts "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

III.

The Fourteenth Amendment prohibits deprivation of "life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. A plausible Fourteenth Amendment procedural due process claim requires plaintiffs to allege "(1) that they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment [], (2) that they were deprived of this protected interest within the meaning of the Due Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest." *Cooperrider v. Woods*, 127 F.4th 1019, 1042 (6th Cir. 2025) (quoting *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999) (internal quotation marks omitted)).

"A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' . . . or it may arise from an expectation or interest created by state laws or policies[.]" *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (cleaned up). Plaintiffs asserting a liberty interest must demonstrate "more than a unilateral expectation of it." *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)). Rather, "[they] must, instead, have a

legitimate claim of entitlement to it." *Id.* And "[t]o determine whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake." *Id.* (quoting *Roth*, 408 U.S. at 570–71).

We first outline the Supreme Court's precedent on liberty interests in the context of inmates seeking parole. Then, we consider how Tennessee's parole scheme fits within that precedent. In doing so, we conclude that Tennessee's scheme does not create a constitutionally recognized entitlement to parole.

A.

The Supreme Court first addressed the liberty interests of inmates seeking parole in *Greenholtz*. There, a group of inmates sued members of the Nebraska Board of Parole, alleging that the Board denied them procedural due process in the inmates' pursuit of parole. *Id.* at 3–4. The Court granted review to determine whether the Fourteenth Amendment's Due Process Clause applied to discretionary parole-release determinations in Nebraska. *Id.* at 3. The plaintiffs advanced two primary arguments in support of a liberty interest in parole. *Id.* at 8. First, they argued that the possibility of parole creates a liberty interest. *Id.* at 9. Second,

they argued that the text of Nebraska's parole statute created a legitimate expectation of parole. *Id.* at 11.

The Court rejected the plaintiffs' first argument but accepted its second. *Id.* at 11–12. It concluded that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Id.* at 7. But, while it held that the mere possibility of parole could not create a liberty interest, it also concluded that a state *can* create a liberty interest if it conveys to an inmate a legitimate expectation of parole. *Id.* at 7, 12. So while the mere existence of a parole system itself does not establish a liberty interest in parole, a state statute can give rise to a liberty interest where it creates a legitimate expectation of parole. *Id.* The key issue is whether the state statute contains mandatory language transforming a possibility into an expectation. *See id.*

A decade later, the Court applied *Greenholtz* to Montana's parole statutes. *Bd. of Pardons v. Allen*, 482 U.S. 369, 377 (1987). In *Allen*, the Court found that Montana's statute, like the Nebraska statute in *Greenholtz*, contained mandatory language that curtailed the state board of parole's discretion. *Id.* at 377–78. The statute thus gave inmates a legitimate

expectation that they would receive parole. *Id.* at 378 n.10. In so holding, the Court reiterated that "[w]hen statutes or regulatory provisions are phrased in mandatory terms or explicitly create a presumption of release, courts find a liberty interest." *Id.* (collecting cases).

Greenholtz and Allen require us to examine Tennessee's parole system and determine whether Tennessee sufficiently constrains the Board's discretion such that inmates have a legitimate expectation that they will be paroled. *See Crump v. Lafler*, 657 F.3d 393, 399 (6th Cir. 2011) ("*Allen and Greenholtz* teach that the salient factor is whether the statute contains mandatory language that creates a presumption of release when the designated findings are made.").

B.

This is not the first time our circuit has evaluated whether Tennessee confers a liberty interest in parole. As Tennessee's parole statutes—and accompanying Board rules—have changed over time, so too have our conclusions.

In *Mayes v. Trammell*, 751 F.2d 175 (6th Cir. 1984), this court concluded that Tennessee conferred a liberty interest in parole. We determined that

"[t]he presence of the decisive language in the Board's rules" established a liberty interest. *Id.* at 179. At the time, the Rules of Tennessee Board of Parole stated, "The Board operates under the *presumption* that each resident who is eligible for parole is a worthy candidate and thus the Board presumes that he will be released on parole when he is first eligible." *Id.* at 178 (quoting Tenn. Bd. of Parole Rule 1100–1–1–.06(1)). This language "appear[ed] to create the kind of presumption that the Supreme Court found significant in *Greenholtz*." *Id.* Thus, Tennessee inmates had a legitimate expectation of parole. *Id.* at 179.

We concluded that the statutory text separate from the Board of Parole Rules, however, would not create a liberty interest. *Id.* at 177. Unlike the Nebraska statute in *Greenholtz*, the Tennessee statutes did not use "shall" or "unless," and the statutes provided for parole as a privilege, rather than a right. *Id.* at 177–78. Thus, without the Board of Parole Rules imposing a presumption of release, this court would have concluded that the inmates had no liberty interest in parole. *See id.*

A few years later, statutory amendments to Tennessee's parole system dictated a different outcome. *See Wright v. Trammell*, 810 F.2d 589, 590 (6th Cir. 1987) (per curiam). The state amended the

Rules of the Tennessee Board of Parole, removing Rule 1100-1-1-.06's reference to a presumption of parole. *Id.* at 590-91. This court determined that, by removing those words, Tennessee no longer gave inmates an expectation of parole. *Id.* And without an expectation of parole, Tennessee conferred no liberty interest. *Id.*

Tennessee most recently amended its parole statutes when it passed the Reentry Success Act of 2021. Tennessee's parole system is governed by a series of statutory provisions. The primary parole statute states:

> Parole being a privilege and not a right, no prisoner shall be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board is of the opinion that there is reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society. If the board so determines, the prisoner may be paroled[.]

Tenn. Code Ann. § 40-28-117(a)(1). Additionally, "no inmate convicted shall be granted parole if the board finds that":

> (1) There is a substantial risk that the incarcerated individual will not conform to the conditions of the release program;
>
> (2)(A) The release from custody at the time would depreciate the seriousness of the crime of which the incarcerated individual stands convicted or promote disrespect for the law[];
>
> (3) The release from custody at the time would have a substantially adverse effect on institutional discipline; or
>
> (4) The incarcerated individual's continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance the incarcerated individual's capacity to lead a law-abiding life when given release status at a later time.

Id. § 40-35-503(b). This system shall be "liberally construed" to treat inmates in accordance with their "individual characteristics, circumstances, needs and potentialities[.]" *Id.* § 40-28-101(a).

Additionally, the Board cannot deny parole to certain nonviolent inmates on the sole basis that they committed a serious crime. *Id.* § 40-35-503(b)(2)

(A). And inmates with lower-class nonviolent felonies receive an explicit presumption of parole. Id. § 40-35-503(h) ("[T]here is a presumption that an inmate convicted of a Class E or Class D nonviolent felony offense is to be released on parole upon the inmate reaching the inmate's release eligibility date unless good cause is shown as to why the inmate should not be released."). When the Board denies parole, it must state the reason for doing so in writing and advise the inmate how they can improve their chances for parole. *Id.* § 40-35-503(j).

Today's Tennessee parole scheme more closely mirrors *Wright* than *Mayes*. After the "privilege" language, the statutes state that if the Board determines the inmate "will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society[,]" he "*may* be paroled[.]" *Id.* § 40-28-117(a)(1) (emphasis added). And today's Board of Parole Rules lack the critical presumption language in *Mayes*. *See* Tenn. Comp. R. & Regs. 1100-01-01-.07(4); *Mayes*, 751 F.2d at 177–78. Thus, the statutory scheme permits parole but does not mandate it.[1]

---

1 Contrary to defendants' argument, Tennessee's "privilege and not a right" language alone would not preclude us from finding a liberty interest. *See Mayes*, 751 F.2d at 179. Rather, we must consider the statutory scheme as a whole to determine whether the Board's discretion is sufficiently constrained. *See*

Considering the statutes governing parole, we conclude that inmates in Tennessee do not have a constitutionally recognized expectation of receiving parole because the statutory scheme does not sufficiently constrain the Board's discretion to deny parole. Consequently, Tennessee does not confer a protected liberty interest on inmates.

Plaintiffs offer two arguments to the contrary. First, they argue that the parole statutes use the mandatory word "shall" and use the four key considerations in *Greenholtz*. *See* Tenn. Code Ann. § 40-35-503(b); *Greenholtz*, 442 U.S. at 11 (citing Neb. Rev. Stat. § 83-1,114(1) (1976)). Although the statutes use words like "shall," the use of "shall" serves the opposite effect as in *Greenholtz*. *See* 442 U.S. at 11 ("[T]he Board of Parole . . . shall order [an inmate's] release unless it is of the opinion that his release should be deferred because [conditions are met.]"). Here, the four *Greenholtz* considerations are grounds for mandatory denial of parole, not the

Crump, 657 F.3d at 399 ("*Allen* and *Greenholtz* teach that the salient factor is whether the statute contains mandatory language that creates a presumption of release when the designated findings are made. . . . The mandatory language may be found in a statute, a regulation, or even 'policy statements . . . or other official promulgations' by parole or prison officials." (citations omitted)). That the court in *Mayes* found a liberty interest despite the "privilege and not a right" language shows that such language is not dispositive.

mandatory grant of parole. See Tenn. Code Ann. § 40-35-503(b) ("[N]o inmate . . . shall be granted parole if [one of the conditions is present.]"); § 40-28-117(a)(1) ("[N]o prisoner shall be released . . . but only if [conditions are met]. If the board so determines, the prisoner *may* be paroled[.]" (emphasis added)); Tenn. Comp. R. & Regs. 1100-01-01-.07(4) ("[T]he Board shall deny the inmate's release on parole if it determines that [one of the conditions is present.]"). Dictating when the Board shall deny parole is different from dictating when it shall grant it.

Second, plaintiffs argue that the Board's customs in granting and denying parole creates a liberty interest. Plaintiffs cite no caselaw where a parole board's customs—rather than policies and state statutes—created an expectation of parole sufficient to establish a liberty interest.

Though we have typically conducted a statutory analysis, *see Crump*, 657 F.3d at 399, the Supreme Court has suggested that a parole board's practices could confer a liberty interest. *See Greenholtz*, 442 U.S. at 4 ("The procedures used by the Board to determine whether to grant or deny discretionary parole arise partly from statutory provisions and partly from the Board's practices."); see also *Allen*, 482 U.S. at 373 n.3 ("There is far more

to liberty than interests conferred by language in state statutes."). A future case may present allegations that demonstrate practices conferring a liberty interest in parole, even where the state's statute does not contain the presumption language in *Greenholtz* or *Allen*. But plaintiffs do not develop this argument or include plausible allegations of customs that create a legitimate expectation of parole. Accordingly, plaintiffs' customs-based arguments do not demonstrate a protected liberty interest.

Although plaintiffs do not demonstrate a protected liberty interest, they identify serious issues with STRONG-R. Recognizing that STRONG-R is a new technology that continues to be refined, we nonetheless remind the Board, in its oversight role regarding the state parole system, of the Tennessee legislature's instruction that the Board consider an inmate's "individual characteristics, circumstances, needs and potentialities" in making parole decisions. *See* Tenn. Code Ann. § 40-28-101(a) (2025); Zachary Hamilton, et al., *Never Going to Let You Down: Preventing Predictive Shrinkage via the STRONG-R Assessment Method*, Just. Q. 3 (Aug. 7, 2024). Relatedly, the lack of opportunity to address the inaccuracies with STRONG-R could demonstrate a lack of due process. Supreme Court precedent, however, precludes us from reaching those due process concerns. Tennessee's statutes do not confer

a liberty interest, regardless of plaintiffs' legitimate belief that had their STRONG-R results been accurate, they would have received parole. *See Greenholtz*, 442 U.S. at 30 (Marshall, J., dissenting) ("[I]n light of the role that parole has assumed in the sentencing process, I believe the Court misapplies its own test . . . by refusing to acknowledge that inmates have a legitimate expectation of release whenever the government establishes a parole system.").

Finally, defendants raise a litany of issues on appeal that they did not raise below, likely forfeiting those issues for this appeal of the district court's Rule 12(b)(6) order. *See Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1011 (6th Cir. 2022) ("A forfeiture occurs when a party fails to timely assert a claim, even if the party does so unintentionally[.]"). In any case, because we conclude that the district court correctly dismissed plaintiffs' claim for failure to state a claim, we need not address defendants' remaining arguments.

IV.

For these reasons, we affirm the district court's determination that plaintiffs fail to plead a plausible liberty interest in parole.

APPENDIX B

General Docket
United States Court of Appeals
for the Sixth Circuit

Court of Appeals Docket #: 24-5637

Docketed:
07/16/2024
Termed:
06/09/2025

Nature of Suit: 3550 Prisoner: Civil Rights
Carvin Thomas, et al v. Richard Montgomery, et al
Appeal From: Middle District of Tennessee at Nashville
Fee Status: fee paid

Case Type Information:

1) Prisoner
2) State
3) Prisoner Civil Rights

Originating Court Information:

District: 0650-3 : 3-23-CV-01204
Trial Judge: William Lynn Campbell, Junior, U.S. District Judge

Date Filed: 11/15/2023
Date Order/Judgment:
06/17/2024

Date NOA Filed:
07/17/2024

[. . . .]

06/09/2025 33 OPINION and JUDGMENT filed : AFFIRMED. Mandate to issue. Decision for publication. R. Guy Cole, Jr. (AUTHORING), Jane Branstetter Stranch, and Chad A. Readler, Circuit Judges. (CL) [Entered: 06/09/2025 03:06 PM]

06/23/2025 34 PETITION for en banc rehearing filed by Mr. Paul Andrew Justice, III for Terrell Lawrence and Carvin L. Thomas. Certificate of Service: 06/23/2025. [24-5637] (PAJ) [Entered: 06/23/2025 11:57 PM]

07/14/2025 35 ORDER filed denying petition for en banc rehearing [34] filed by Mr. Paul Andrew Justice, III. R. Guy Cole, Jr., Jane Branstetter Stranch, and Chad A. Readler, Circuit Judges. (BLH) [Entered: 07/14/2025 10:06 AM]

07/22/2025 36 MANDATE ISSUED with no costs taxed. (PJE) [Entered: 07/22/2025 07:11 AM]

APPENDIX C

No. 24-5637

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CARVIN L. THOMAS and TERRELL LAWRENCE, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

v.

O R D E R

RICHARD MONTGOMERY, as Chairman of the Tennessee Board of Parole; ZANE DUNCAN; GARY M. FAULCON; TIM GOBBLE; MAE BEAVERS; ROBERTA NEVIL KUSTOFF; BARRETT RICH, as Members of the Tennessee Board of Parole,

Defendants-Appellees.

BEFORE: COLE, STRANCH, and READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER
OF THE COURT

Kelly L. Stephens, Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CARVIN THOMAS, and TERRELL LAWRENCE, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

RICHARD MONTGOMERY, as Chairman of the Tennessee Board of Parole, et al.,

Defendants.

NO. 3:23-cv-01204
CHIEF JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSLEY

ORDER

For the reasons stated in the accompanying Memorandum, Defendants' Motion to Dismiss (Doc.

No. 14) is **GRANTED** and this case is hereby **DISMISSED**.

The Clerk is directed to close the file.

WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CARVIN THOMAS, and TERRELL LAWRENCE, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

RICHARD MONTGOMERY, as Chairman of the Tennessee Board of Parole, et al.,

Defendants.

NO. 3:23-cv-01204
CHIEF JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSLEY

MEMORANDUM

After serving "many years in prison" in the State of Tennessee, Plaintiffs Carvin Thomas and Terrell Lawrence, sought and were denied parole by the Tennessee Board of Parole. (See Am. Compl., Doc. No. 12 at ¶¶ 29, 43, 46, 50). Plaintiffs bring this

case under 42 U.S.C. § 1983 against members of the Tennessee Board of Parole, arguing that the Board of Parole's use of a risk assessment tool called "STRONG-R" and Defendants' alleged inability to challenge the STRONG-R assessment violates their due process rights under the Fourteenth Amendment. (See id. at ¶¶ 79-80). Plaintiffs seek declaratory and injunctive relief.

Now before the Court is Defendants' Motion to Dismiss (Doc No. 14) and Plaintiffs' response (Doc. No. 15). In their response, Plaintiffs stated that they both "currently have pending cases before the Davidson County Chancery Court, seeking to reverse the parole hearings on writ of certiorari." (Doc. No. 15 at 7, n. 2). The Court Ordered Plaintiffs to file copies of any petitions filed by either of them in Davidson County Chancery Court related to their parole (Doc. No. 22), which they have done (Doc. No. 23).

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) permits dismissal of a complaint for failure to state a claim upon which relief can be granted. For purposes of a motion to dismiss, a court must take all of the factual allegations in the complaint as true. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). To survive a motion to

dismiss, a complaint must contain sufficient factual allegations, accepted as true, to state a claim for relief that is plausible on its face. *Id.* at 678. A claim has facial plausibility when the plaintiff pleads facts that allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* In reviewing a motion to dismiss, the Court construes the complaint in the light most favorable to the plaintiff, accepts its allegations as true, and draws all reasonable inferences in favor of the plaintiff. *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). Thus, dismissal is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Guzman v. U.S. Dep't of Children's Servs.*, 679 F.3d 425, 429 (6th Cir. 2012).

In considering a Rule 12(b)(6) motion, the Court may consider the complaint and any exhibits attached thereto, public records, items appearing in the record of the case, and exhibits attached to a defendant's motion to dismiss provided they are referred to in the Complaint and are central to the claims. *Bassett v. National Collegiate Athletic Assn.*, 528 F.3d 426, 430 (6th Cir. 2008). Here the Court has considered Plaintiffs' Davidson County Chancery Court filings (Doc. No. 23), which are public records.

II. ANALYSIS

A. *Heck* Doctrine

Defendants first attack the viability of the Plaintiffs' claims under *Heck v. Humphrey*, 512 U.S. 477 (1994). In the main, *Heck* addresses "whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983." *Id.* at 478. Here, Plaintiffs do not seek monetary damages related to the process used by Defendants when making parole determinations, but instead seek injunctive relief. A more applicable and recent Supreme Court case, *Wilkinson v. Dotson*, 544 U.S. 74 (2005), looked at whether a suit seeking declaratory and injunctive relief related to state parole procedures is actionable under Section 1983. In *Wilkinson*, the Court reiterated its previous holding that a prisoner in state custody "cannot use a § 1983 action to challenge 'the fact or duration of his confinement.'" *Id.* at 78 (citations omitted). The Court continued to differentiate between Section 1983 claims that attack previous decisions related to the duration of confinement – which are prohibited under *Heck* – and claims that seek an injunction against future unconstitutional procedures – which are allowed and do not fall within the exclusive purview of habeas relief. *Id.* at 79-81.

Plaintiffs' demand for a "declaration that the Defendants have violated [Plaintiffs'] rights under the Fourteenth Amendment" based on past parole decisions cannot constitute a cognizable Section 1983 remedy under *Heck* and *Wilkinson*. *Heck* and *Wilkinson* do not, however, prohibit prospective injunctive relief against the allegedly unconstitutional practices. But that takes the Court to the second of Defendants' arguments in favor of dismissal – that Plaintiffs fail to state a Section 1983 claim for which relief can be granted.

B. Failure to State a Claim

There is no constitutional right to parole, and, because Tennessee has not created an entitlement to parole, Tennessee inmates do not have a constitutionally protected liberty interest in parole. *See Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1 (1979); *Bd. of Pardons v. Allen*, 482 U.S. 369 (1987); *Crump v. Lafler*, 657 F.3d 393, 397 (6th Cir. 2011). However, under the law of this Circuit, a Section 1983 claim based on the procedural due process afforded in the parole process can stand under limited circumstances. Specifically, due process requires only that "parole proceedings [afford] the inmate an opportunity to be heard, and, if parole is denied, the Parole Board informs the inmate of the basis upon which it denied parole."

Seagroves v. Tenn. Bd. of Probation and Parole, 86 F. App'x 45, 48 (6th Cir. 2003) (citing *Greenholtz*, 442 U.S. at 16).

Plaintiff Thomas alleges that he attended a parole hearing in January 2023 and was informed of the basis for denial of parole. (Am. Compl., Doc. No. 12 at ¶¶ 36, 43). Likewise, Plaintiff Lawrence attended a parole hearing and was advised of the denial of parole in November 2022. (Id. at ¶¶ 50-52). The Amended Complaint makes clear that the due process requirements afforded to parole hearings were followed. Plaintiffs' claim, however, challenges the information the parole officers used in making the ultimate decision of denial of parole. This Court has repeatedly held that, assuming the basic due process rights were afforded to an inmate during a parole hearing – which the Plaintiffs agree occurred here – challenges to how and why a parole decision was made cannot serve as the basis for a right to relief under Section 1983. See *Boyd v. Staggs*, No. 1:19-cv-00007, 2019 WL 295087, at * 4 (M.D. Tenn. Jan. 23, 2019); *Rucker v. Purviance*, No. 3:21-cv-00555, 2022 WL 409691, at *7-8 (M.D. Tenn. Feb. 9, 2022).

Plaintiffs are not without remedy because Tennessee law allows an inmate to seek review of decisions made by parole boards. *Greenwood v. Tenn.*

Bd. of Parole, 547 S.W.3d 207, 213 (Tenn. Ct. App. 2017). Indeed, both Plaintiffs have availed themselves of that review process. (See Doc. No. 23 (Chancery filings)). Regardless, Plaintiffs have failed to state claims for which relief can be granted under federal law.

III. CONCLUSION

For the reasons stated herein, Defendants' Motion to Dismiss (Doc. No. 14) is **GRANTED**.

An appropriate Order will enter.

WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

CARVIN THOMAS, and TERRELL LAWRENCE, *on behalf of themselves and others similarly situated,*

3:23-cv-1204

Plaintiffs

v. **District Judge Campbell**
Magistrate Judge Frensley

RICHARD MONTGOMERY, *as Chairman of the Tennessee Board of Parole*,
ZANE DUNCAN, *as a Member of the Tennessee Board of Parole*,
GARY FAULCON, *as a Member of the Tennessee Board of Parole*,
TIM GOBBLE, *as a Member of the Tennessee Board of Parole*,
MAE BEAVERS, *as a Member of the Tennessee Board of Parole*,
ROBERTA KUSTOFF, *as a Member of the Tennessee Board of Parole*, and
BARRETT RICH, *as a Member of the Tennessee Board of Parole,*

Defendants

AMENDED COMPLAINT

Plaintiffs Carvin Thomas and Terrell Lawrence, on behalf of themselves and all others similarly situated, bring amended suit as follows:[1]

INTRODUCTION

1) This lawsuit deals with the unfair and illegal procedures carried out by the Tennessee Board of Parole. Namely, the Board bases its parole decisions on a corrupt and unreliable computer program, abdicating responsibility to the algorithm to do its job of deciding whether inmates are suitable for release from prison. Worse yet, the Board then prohibits inmates from effectively challenging the computer's rulings.

THE PARTIES

2) Plaintiff Carvin Thomas is an inmate serving an effective 48-year sentence for various

1 This amendment is being filed, as of right, within 21 days of the Defendants' initial response.

crimes, all committed during two incidents in 1998. His convictions included Aggravated Robbery, Attempted Especially Aggravated Robbery, Aggravated Burglary, Especially Aggravated Kidnapping, and Possession of a Weapon.

3) Plaintiff Terrell Lawrence is another inmate serving a prison sentence in Tennessee. Although his consecutive stack also originally included very serious crimes in the past, currently he has finished all sentences — except one. Namely, he is now serving a sentence for Carjacking, a Class C felony.

4) Defendants Richard Montgomery, Zane Duncan, Gary Faulcon, Tim Gobble, Mae Beavers, Roberta Kustoff, and Barrett Rich are the Chairman and Members of the Tennessee Board of Parole. This state agency (the "Parole Board") decides when inmates gain early release from prison. These Defendants are sued in their official capacity only, as Chairman and Members of the Board. Namely, they are sued because they generally participate in all the acts of said Board.

5) At all points relevant, these Defendants have acted under color of law.

LIBERTY INTEREST

6) Tennessee law creates a liberty interest in the expectation of parole for suitable applicants. It is important to establish this point first, as otherwise the federal claim raised here (Denial of Procedural Due Process) would fail.

7) First, Tennessee law provides that "no prisoner shall be released merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board is of the opinion that there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society." Tenn. Code Ann. § 40-28-117(a). Grammatically, this statement is simply a roundabout way of saying, "[Any] prisoner shall be released . . . if the board is of [said] opinion[.]" *See id.* (emphasis added). In other words, depending on how one looks at it, the word "shall" is either outright used, or else implied. Right off the bat, the word "shall" in this context thereby suggests a liberty interest in parole. *Mayes v. Trammell*, 751 F.2d 175, 177 (6th Cir. 1984). But that is only the start.

8) More importantly, the Tennessee Code clarifies its terms and flatly restricts the Parole

Board's discretion. Curtailment of discretion is the essence of establishing a liberty interest. *Board of Pardons v. Allen*, 482 U.S. 369, 383-84 (1987) (internal citations omitted). Here, Tennessee law spells out exactly what it means to find that a prisoner will live lawfully and not endanger the societal welfare. To be clear, the *full* language of Tenn. Code Ann. § 40-28-117(a) (the law already cited above) says, "Parole being a privilege and not a right, no prisoner shall be released merely as a reward for good conduct . . . , but only if the board is of the opinion" that the inmate will live lawfully and avoid endangering society. Using the same language, a corresponding statute then defines and restricts the discretion. It says, "Release on parole is a privilege and not a right, and no inmate convicted shall be granted parole if the board finds" at least one of four criteria, which are then listed. Tenn. Code Ann. § 40-35-503(b). The four grounds for denying parole are: (1) Substantial risk of violating parole, (2) Seriousness of the offense, (3) Discipline problems in prison, or (4) The need for further education, training, or treatment in prison. *Id.* Hence, the latter statute is obviously more well-defined than the first. But under the principle of *In pari materia*, statutes on a similar topic should be read together. Here these two statutes involve the same topic, and they even use the same language (about parole being a privilege). Hence, they should be read together.

Reading them together, we learn that parole is a privilege and not a right, *specifically in the sense that* only inmates who avoid the four pitfalls listed in Tenn. Code Ann. § 40-35-503(b) are likely to live lawfully and avoid harming society. In other words, reading the two laws together, we find that inmates who avoid the four pitfalls shall be paroled.

9) The four pitfalls are taken from — or at least closely resemble — the four grounds for denying parole listed in *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 11 (1979). In that case, the Supreme Court held that where a parole board could only deny parole upon finding one of these four grounds, a meritorious inmate had a liberty interest in getting parole.

10) Modern changes in Tennessee law now expressly require that the Board not only have a *reason* for denying parole, but also that it *list* the reason in writing. Tenn. Code Ann. § 40-35-503(j). Notably, the case of *Greenholtz* emphasized the link between a right to due process, and the right to be given a reason for the denial of parole. 442 U.S. 1, at 16. To fulfill this law requiring a reason, the Tennessee Parole Board always recites at least one of the four grounds from § 40-35-503(b) as a reason on its denial notice.[2] Conversely, when none of the four

2 Arguably, subsections (c) and (g) of Tenn. Code Ann. § 40-35-503 could create two additional criteria for denying

grounds is even arguably met, then the inmate simply gets paroled.

11) Similarly, the statute Tenn. Code Ann. § 40-35-503(b)(2)(A) also requires that the Board have a reason for denying parole. And for the crimes not listed in this subsection (i.e., for all lesser crimes), even the vague ground of seriousness of the offense is insufficient to deny parole. *Id.* Some other ground, in addition to seriousness, must also be found before parole can be denied for these inmates. Hence, for the lesser crimes, discretion is narrowed still further. Rather than four potential pitfalls, effectively they become only three.

12) Hence, all in all, the Parole Board does not have — or even claim to have — any authority to deny parole *without* reason. Nor does the Board even claim to have any authority to deny parole based on extrinsic, new criteria unlisted in Tenn. Code Ann. § 40-35-503(b). Instead, Tennessee law restricts the Board to only denying parole under the four grounds listed above — the same grounds named in *Greenholtz*, 442 U.S. 1, 11 where a liberty interest

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parole, namely the failure by a sex offender to pass a psyche exam, and the failure of a prisoner to take advantage of educational opportunities. But as far as the Plaintiffs are aware, the Parole Board would simply classify these specific grounds under the broader categories of (b)(1) (Likelihood of violating parole) or (b)(4) (The need for education, training, or treatment in prison).

was present. If these four listed pitfalls are avoided, then the law is that the inmate shall be released.

13) Finally, state law further curtails discretion by specifically prohibiting the very conduct that the Board is doing here. Again, a state may create a protected liberty interest by placing substantive limitations on discretion. *Allen*, 482 U.S. 369, at 383-84 (internal citations omitted). That has occurred. As discussed further in the next section, Tennessee curtails the Board's discretion further by eliminating its authority to do the very thing charged herein — denying parole based on a risk and needs assessment. Instead, Tennessee law lays out the three purposes for which the assessment may be employed. Granting or denying parole is not among them. Tenn. Code Ann. § 41-1-126(c). Instead, in the context of parole, the assessment is statutorily supposed to be used only for crafting the rules and programs of parole — not granting or denying parole altogether. *Id.*

14) For all the above reasons, inmates in Tennessee have a liberty interest, as guaranteed by the Fourteenth Amendment. When a liberty interest arises in expecting parole, said amendment requires that the state at least administer "fair procedures" before ripping away said interest. *See Swarthout v. Cooke*, 562 U.S. 216, 131 S.Ct. 859, 862 (2011).

STRONG-R ASSESSMENT

15) The problem here, though, is that inmates have not received fair procedures. That is because the Tennessee Board of Parole has a policy — or else a widespread custom with the force of law — of judging inmates' fitness for parole using a computerized test called the "Strong-R Assessment." It is a test whose results are unauthenticated and unreliable. Yet it is also a test for which the Parole Board will tolerate no challenge.

16) The STRONG-R assessment grades inmates in multiple categories, listing areas where the inmate may need help for living rightly. For example, it decides whether the inmate's housing situation, family life, or mental health is problematic. In this way, the test purports to offer wisdom on what prison programs or other services should be offered, or what parole rules imposed, to help the inmate turn into an upstanding citizen. For these three purposes — setting prison programs, setting parole rules, and setting parole programs — Tennessee law requires that each inmate be tested on a yearly basis. Tenn. Code Ann. § 41-1-126(c).

17) If the Parole Board simply used the Strong-R for these three purposes, no one would even object — no matter how flawed the program may be. No one has any liberty interest in avoiding classes in prison, or in being picky about parole conditions. Hence, even if anyone objected to the STRONG-R test for these three areas, at least no one could sue.

18) Unfortunately, the Parole Board goes beyond the Tennessee statutory purposes. It uses the Strong-R for broader purposes. Specifically, it uses the Strong-R to decide whether an inmate gets paroled.

19) That is because, besides the aforementioned categories of "need," such as mental health or housing, the Strong-R more broadly scores an inmate's overall "risk." The risk can be "High," "Moderate," or "Low."

20) The Parole Board has engaged in a policy of equating the Strong-R's "High" risk category as grounds for *denying* parole. Upon information and belief, the Board also does the same with the "Moderate" category. Specifically, the Board simply looks at the High or Moderate risk scores, and then it equates these scores to one of the four pitfalls: "a substantial risk that the incarcerated individual will not conform to the conditions of the release program."

See Tenn. Code Ann. § 40-35-503(b)(1). In this way, the Board views the High or Moderate scores as justifying — or even mandating — denial of parole.

21) Upon any denial of parole, the Board is required to give advice to the inmate on how best to improve his chances next time. Tenn. Code Ann. § 40-35-503(j). But on every single denial notification, the Board simply gives the following line for how to improve: "Complete Programming As Recommended by Strong R Assessment."

22) All in all, the Parole Board has thus outsourced all of its discretion, and all of its duty to investigate the "substantial risk" ground for denial, over to the mechanistic judgment of a computer program.

UNRELIABILITY OF THE COMPUTER PROGRAM

23) On various occasions, Tennessee courts have noted that the Strong-R assessment is unreliable. In one case, a sentencing judge outright held the assessment neither valid nor reliable. *State v. Johnson*, M2018-01257-CCA-R3-CD slip op. at *3 (Tenn. Crim. App. April 16, 2019). In another, a sentencing judge announced that he considered the

assessment as required, but viewed it as "irrelevant," "about as worthless and insensitive to what happened here as you can get." *State v. Solomon*, M2018-00456-CCA-R3-CD slip op. at *8 (Tenn. Crim. App. Oct. 23, 2018). In another case, a judge pointed out one of the STRONG-R's many holes:

> [I]t is possible that you could have different offenses occurring over a period of time, but because of the happenstance of court scheduling and a resolution on one particular day, those are counted under the STRONG-R assessment as only one conviction. That strikes me as bizarre, but that's where it is.

State v. Gilley, E2018-00691-CCA-R3-CD slip op. at *3 (Tenn. Crim. App. March 14, 2019). Or as another judge said, "I'm not going to rely on the needs assessment provided by the Department of Corrections. I don't find it valid or in any way related to this case." *State v. McNew*, M2020-01227-CCA-R3-CD slip op. (Tenn. Crim. App. Sept. 22, 2021).

24) Generally, correctional employees are not adequately trained to administer the Strong-R test properly.

25) For example, the assessment asks numerous questions about an inmate's life and

history, and then correctional employees are supposed to answer those questions on behalf of the inmates, correctly inputting the information into the computer. Ideally, the employee will do so, accurately relaying the questions to the inmate and then accurately inputting the inmate's answers into the computer. But sometimes the employees simply fail. Other times, as addressed later with regard to Plaintiff Lawrence, sometimes the employee simply answers the questions for the inmate all on his own.

26) Still other times, the questions are subjective and do not even call for clear, concrete answers — arguably making it irrelevant who is answering them. Or the questions are simply asked in a specific way and interpreted idiosyncratically by the computer. If the employee does not understand what facts the computer means to consider, then a false result may occur simply due to the tester's misunderstanding the point of the vague question.

27) On numerous occasions, members of the Parole Board have been advised that the STRONG-R test is unreliable. Nonetheless, due to deliberate indifference to constitutional rights, the Defendants have persisted with their policy of outsourcing parole decisions to this unreliable computer program.

28) On information and belief, neither the Parole Board, nor the Department of Correction (the entity most closely involved in administering the test), nor anyone else, takes meaningful steps to validate the STRONG-R test. Instead, the Parole Board has simply taken a test that the General Assembly mandated for setting prison and parole programs, and then run with it.

CARVIN THOMAS

29) In the case of Plaintiff Carvin Thomas, who has spent many years in prison, historically his yearly STRONG-R "risk" results would come back as either "Low" or, in some cases, "Moderate."

30) But that all changed in 2022, when he got transferred to the Bledsoe County Correctional Complex. There, he interacted with different counselors, who had inferior training about how to administer the assessment.

31) Despite not developing any new drug problem, or getting into any new fights, or getting into any other recent trouble, at the Bledsoe Prison the STRONG-R result for Thomas now showed him as "High" risk, and even likely to become violent.

32) Somehow, despite the fact that the prison system and Parole Board generally keep the STRONG-R methodology a secret, Thomas managed to acquire some paperwork showing some of the more detailed factual results from his STRONG-R test.

33) Among the detailed results, many of the allegations made against Thomas were false. In fact, some were outright bizarre. For example, the STRONG-R falsely reported that Thomas had, at some point, been confined to a mental asylum. Falsely it said that he gives off signs of mental illness. Falsely it said that he had committed crimes in his past due to non-compliance with mental health medications. In reality, Thomas has never been prescribed any psychological medications, diagnosed with any mental illness, or confined to any mental institution.

34) Falsely the STRONG-R also said that Thomas had committed his crimes (decades ago) simply for thrill or pleasure, suggesting that he were a psychopath. In reality, Thomas had committed his robbery-related crimes simply because he was trying to acquire money — albeit in a foolish and violent way.

35) Falsely the STRONG-R said that Thomas had been subject to a drug addiction in the

past *six months*. Falsely it said that Thomas had specifically used cocaine in the past six months. Falsely it said that a drug or alcohol problem had, in the last six months, kept him from maintaining "pro-social" friends. Falsely it said that drug or alcohol abuse had, in the last six months, led to family strife. In reality, these allegations were all false because Thomas has been sober for many, many years.

36) After learning about the erroneous results, Thomas and his attorney attended a scheduled parole hearing in January 2023. At the start of the hearing, they asked that the Parole Board continue the hearing, and re-test Thomas, because his STRONG-R results were clearly wrong. The Board did grant a four-month continuance — required by Tennessee law, as a matter of right. But the continuance was largely useless because it refused to order any re-testing.

37) Still, upon being pressured by Thomas and his attorney, eventually the Bledsoe Prison counselors decided to "audit" Thomas's STRONG-R result.

38) While the audit was in progress, though, the prison counselor who first performed the test threatened Thomas, telling him that he simply

needed to drop the matter — or that things might get "worse."

39) Despite being asked by Thomas and his attorney for the results, ultimately the counselors never would reveal to Thomas or his attorney the results of their "audit."

40) At a follow-up parole hearing, later a hearing officer announced — based on ex parte communications from the Bledsoe Prison counselors to the Parole Board — that their audit found that they had done everything right, and that Thomas really was "High" risk.

41) Without ever getting any useful information about why the STRONG-R results were so erroneous, Thomas simply informed the Board at his May 15, 2023 hearing that his purported STRONG-R result was inaccurate. He further said that he had always tested better in the past, and that nothing had changed except for moving to a new prison. In advance of the hearing, one of Thomas's supporters also sent a letter to the Board, listing about a dozen concrete ways that Thomas's STRONG-R result was factually wrong.

42) At the hearing, no witness ever testified that the STRONG-R result was accurate. This

scenario is common, as the STRONG-R results are never authenticated in parole hearings. Instead, at Thomas's hearing, the only witnesses and (numerous) letter-writers were all supportive of Thomas, saying that he needed to be paroled.

43) Despite no showing of authenticity for the STRONG-R, and despite the clear evidence of falsity, the hearing officer announced a denial of parole based mainly on the STRONG-R. Days later, the Parole Board held the same way.

44) In denying relief, the Parole Board followed the law in giving Thomas advice about how to improve next time: It told him that he would do better next time if he followed the STRONG-R.

TERRELL LAWRENCE

45) Plaintiff Terrell Lawrence likewise began preparing for his own parole hearing, to be held on November 15, 2022. In prior years, Lawrence had scored Low on his STRONG-R risk. But in the Spring of 2022, despite experiencing no new difficulties, inexplicably he scored "High." Consequently, he began to worry about how this parole hearing would go.

46) Lawrence had served many years in prison, and as such, his only remaining sentence was for Carjacking — only a Class C felony. Consequently, according to Tenn. Code Ann. § 40-35-503(b)(2), the Parole Board would not be allowed to deny him solely based on the seriousness of the offense. Instead, he could only be denied if the Parole Board had evidence to meet one of the other three criteria.

47) Lawrence had no recent disciplinary problems, a pitfall that can sometimes interfere with getting paroled.

48) Further, after many years in the system, Lawrence had taken every rehabilitative program that the prison system had to offer. Most importantly, he had successfully completed the TDOC's best program of all — CBIP (Cognitive Behavioral Intervention Program).

49) Ominously, though, the artificial "intelligence" of the STRONG-R was giving its recommendation for a rehabilitative task that, supposedly, Lawrence still lacked: Complete CBIP.

50) At the hearing on November 15, 2022, the hearing officer denied parole. Several days later on November 19, 2022, the Parole Board agreed and

entered judgment to that effect. The Board put Lawrence off for two years.

51) Ultimately, the key ground for denying parole, as listed by the hearing officer, and later affirmed by the Board, was Lawrence's STRONG-R.

52) To be clear, the Board did also list that Lawrence was denied for the seriousness of the offense. But for Carjacking, seriousness of the offense cannot be the sole reason for denial. *See* Tenn. Code Ann. § 40-35-503(b)(1). Hence, the STRONG-R undeniably formed the deciding factor for Lawrence's denial.

53) Again, the denial notice recommended how Lawrence could improve his chances next time: Complete the programming recommended by STRONG-R (which, in this context, meant Complete CBIP, a program already completed).

54) Lawrence filed a timely administrative appeal, faulting the Parole Board for (among other things) its use of the STRONG-R.

55) While the appeal was underway, in May 2023 Lawrence was re-tested, and this time his STRONG-R actually came back "Low." Importantly, nothing noteworthy had changed in between the

previous "High" test, and the new favorable "Low." It was as though the STRONG-R results were simply random.

56) But regardless of how the new, exculpatory evidence came about, Lawrence promptly forwarded it to his attorney. On May 24, 2023, his attorney turned in a supplement to Lawrence's administrative appeal, listing the "Low" score as new, exculpatory evidence. New evidence is supposed to be one of the allowed grounds for these appeals.

57) Nonetheless, within only about one business day after the supplemental appeal was filed — notifying the Parole Board that Lawrence was now "Low" risk — a prison counselor began tampering with the score to raise it back up. Specifically, without ever asking Lawrence any questions, he began to input new data into the STRONG-R computer program, apparently in an effort to raise Lawrence's risk level. As a result, the counselor then produced a *third* score, this time showing Lawrence's risk as "Moderate."

58) Other than this tampering, the appeal was ignored for roughly another six months, and then denied without explanation.

59) Even though Lawrence had not even participated in this third STRONG-R questionnaire at all, the prison counselor then coerced him to sign the paper saying that he had been tested.

SECRECY AND OPACITY

60) Ultimately, the Parole Board has a policy of keeping the Strong-R results secret. They are kept unknown to the inmate prior to the hearing. As stated, Thomas's final "audit" result was sprung on him at the hearing, resulting from an ex parte communication. In fact, even after the hearing, the Board still keeps them confidential — as though they were records of the Central Intelligence Agency. For example, in state judicial review hearings, typically the Board will keep the STRONG-R evidence sealed, and even go so far as to *present it ex parte to the state judge while denying access to the inmate*. Due to its policy on secrecy, the Parole Board actively works to ensure that no inmate can meaningfully challenge or address the Strong-R results.

61) Officially, the Tennessee Department of Correction has a similar policy of refusing to release the Strong-R results. But as alluded to herein, the TDOC's privacy policy is less pronounced. Hence, these two lead Plaintiffs were able to acquire at least

some of their paperwork from the prison (even though it is officially against policy).

62) Nonetheless, even where an inmate protests that his Strong-R result is flawed, the Parole Board will not allow inmates to subpoena the detailed results, or subpoena the officer who input the information into the Strong-R.

63) Specifically with regard to the hearing of Thomas, Thomas attempted to subpoena the officer who input the false data, only to be denied.

64) Broadly, the Board takes the position that subpoenas in parole grant hearings are *never* allowed.

CLASS ACTION ALLEGATIONS

65) To be clear, Plaintiffs Thomas and Lawrence bring these claims not only on their own behalf. Instead, if the Court approves of the class certification pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(2), then they also would bring claims on behalf of the following Class:

> All people who are, or will be, eligible for parole and given a parole grant hearing in Tennessee.

66) Under Federal Rule of Civil Procedure 23(a), certification of a class is appropriate where: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

67) Here the precise size of the class is unknown, especially because it is forward-looking. But it is substantial, given that numerous (likely hundreds of) parole grant hearings are held each year.

68) Carvin Thomas and Terrell Lawrence are members of the Class.

69) The Class is so numerous that joinder of all members is impracticable. The proposed Class consists of easily more than one hundred persons.

70) There are questions of law and fact common to the Class that predominate over any

questions only affecting individual members. Such questions include the following:

(i) Does Tennessee law, policy, or custom with the force of law provide for a liberty interest in a parole grant hearing?

(ii) Does it violate procedural due process to base the result of a hearing on an unreliable, unauthenticated computer program?

(iii) Is the STRONG-R assessment unreliable and unauthenticated as applied to these parole grant hearings?

(iv) Does it violate procedural due process to bar an inmate from challenging the results of said computer program, such as by denying subpoenas, keeping the data secret, and ignoring testimony or protests that the program is inaccurate while failing to require any foundation that the testing is accurate in the first place?

71) The claims of Thomas and Lawrence are typical of the Class, and arise out of similar facts.

72) Thomas, Lawrence, and their counsel will adequately represent the interests of the Class.

73) Neither Thomas and Lawrence nor their counsel has any interest that would preclude them from vigorously pursuing the action.

74) The proposed class counsel has practiced law for about thirteen years, and he possesses relatively broad experience in litigating federal civil rights claims, as well as in criminal law.

75) The likelihood that other individual members of the Class will prosecute separate actions is remote, especially since they are typically incarcerated and impoverished.

JURISDICTION

76) This federal District Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the lawsuit raises a federal question.

77) This Court in Tennessee has personal jurisdiction because the Defendants are citizens of Tennessee.

78) Venue is proper in the Middle District, Nashville Division, because the Defendants reside

there, or at least the office does under which they are sued. Namely, the Parole Board makes its key decisions at its base in Nashville.

CLAIMS FOR RELIEF

COUNT I

DENIAL OF PROCEDURAL DUE PROCESS

42 U.S.C. § 1983

79) The other sections are incorporated by reference.

80) By deciding parole based on an unreliable computer program, and/or by preventing the inmates from even challenging the program's rulings — even though the inmates have a liberty interest in the parole process — all named Defendants have denied the Plaintiffs procedural due process in violation of the Fourteenth Amendment. Further, they have done so under color of law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Carvin Thomas and Terrell Lawrence, on their own behalf and on behalf of others in the proposed class, pray for the following:

i) Certification of a class under Fed. R. Civ. P. 23(a) and (b)(2), represented by named Plaintiffs Carvin Thomas and Terrell Lawrence;

ii) A declaration that the Defendants have violated Thomas's, Lawrence's, and class members' rights under the Fourteenth Amendment, as alleged herein;

iii) A temporary restraining order requiring that the various Chairman and Members of the Board grant Thomas, Lawrence, and all other class members who have already been denied parole a new and prompt parole hearing — but this time, without any consideration of the unreliable STRONG-R test;

iv) A preliminary and permanent injunction requiring the same, and

further requiring that the Board stop using the STRONG-R as a basis for denying parole going forward — unless it provides due process protections, reasonable assurance of the results' accuracy, and methods to challenge bad data;

v) Reasonable attorney's fees; and

vi) Any other reasonable relief as the Court may find appropriate, such as the taxation of costs to the Defendants.

Respectfully submitted,

/s/ Drew Justice
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Certificate of Service

The undersigned lawyer certifies that this January 23, 2024, he has delivered this complaint via

the E-Filing system to Assistant Attorney General Adam Tune, P.O. Box 20207, Nashville, TN 37207 <adam.tune@ag.tn.gov>.

/s/ Drew Justice
Drew Justice #29247