UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

KEVIN LINDKE, MICHAEL SCHULTZ
and all those similarly situation,
Plaintiffs,

vs.

Case No. 22-cv-11767
Honorable Matthew F. Leitman

MAT KING, in his official and personal capacities, TIMOTHY DONNELLON, in his official and personal capacities, COUNTY OF ST. CLAIR, TRACY DECAUSSIN, in her official and personal capacities, and THOMAS BLISS, in his official and personal capacities,
Defendants.

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SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT ST. CLAIR COUNTY'S MOTION FOR SUMMARY JUDGMENT AS TO MATTERS TAKEN UNDER ADVISEMENT

NOW COME Defendants, County of St. Clair, the only remaining defendant, by and through its attorneys, Fletcher Fealko Shoudy & Francis, P.C., and hereby submits this supplemental brief as requested by the Court in support of the unresolved issues in their summary judgment motion taken under advisement per ECF No. 58.

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DATED: July 10, 2024

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I. INTRODUCTION

Plaintiffs Kevin Lindke and Michael Shultz filed the present Section 1983 lawsuit alleging that their rights under the United States Constitution were violated when they were denied "good time" credit available to jail inmates by Michigan Statute, specifically MCL 51.281 et seq. After limited discovery into the issues relevant to Defendants' then planned Motion for Summary Judgment, Defendants filed their motion raising several independent grounds for a dismissal of Plaintiffs' claims (see ECF No. 45).

On May 17, 2024, this Court entered an order denying in part, granting in part, and taking under advisement in part Defendants' Motion for Summary Judgment (see ECF No. 58). This Court took under advisement the arguments raised in Defendants' brief labeled "C. Plaintiffs' Claims are Barred Because They Failed to Meet the Procedural Prerequisites of the Act." (See Mot., ECF No. 45, PageID.2055-2063),

This Court asked that the parties provide supplemental briefing on the issues raised therein, and Defendant St. Clair County, the only remaining defendant, does so now (see below). As set forth in more detail below, Plaintiffs' lawsuit is barred for the following reasons:

1. Under the good time statute, the right to be released early based upon good time credit is only vested if the inmate specifically requests to be released, and, here, neither plaintiff did so until Plaintiff Lindke requested to be released on September 27, 2021.

Thus, Schultz had no entitlement to early release and Lindke only met this procedural prerequisite as to his sentences after that date.

2. Plaintiff Lindke did not have a constitutional entitlement to early release because he had several adjudicated rule violations during the course of his 2021 and 2022 sentences, both before and after September 27, 2021.

3. Because of overlapping sentences being served concurrently, there never was a time when Plaintiff Lindke was eligible for release even if he had been provided good time credit.

4. Because the right to good time credit was created by a state statute, Plaintiffs are bound by the statutory limitations of that right and, thus, are not entitled to monetary damages.

Plaintiff Schultz's claim must be dismissed because (1) he never asked to be released early as required under the statute, and (2) the right created by the state statute was limited to the equivalent of a state law writ of habeas corpus which Plaintiff Schulz never sought, and there is no right to seek monetary damages.

Plaintiff Lindke's claims must be dismissed because (1) his claims of entitlement to early release at any of the subject sentences are barred by one or more of the above failings, and (2) the right created by the state statute was limited to the equivalent of a state law writ of habeas corpus which Plaintiff Lindke sought but never obtained.

II. ARGUMENT

A. Plaintiffs Are Bound by the Limitations in the State Statute

Plaintiffs have no right to good time credit under the United States Constitution. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Nonetheless, Plaintiffs claim that they have a constitutionally protected liberty interest in good time credit based upon the Michigan Good Time Statute, MCL 51.281 et seq. Significantly, throughout this case Plaintiffs have argued that the statute gives them a right to "good time" credit, i.e., they want to rely upon the benefits of the statute, but they continually ignore the "bad" parts of the statute, i.e., all of the limitations of such benefit and the preconditions to be eligible for early release.

A state statute can, but does not always, create a sufficient interest in property or liberty to invoke the protections of the Fourteenth Amendment to the United States Constitution. Compare *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)(finding a state law created a sufficiently protected property interest) with *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-65 (1989)(finding that a state law failed to create a sufficiently protected liberty interest).

Where an interest created by a state statute is the proffered basis for the Fourteenth Amendment protections, the limits and parameters of the state statute determine whether there is a constitutional entitlement to the right and the extent of such a right. See *Roth*, 408 U.S. at 577 (a state law that grants a property interest defines the boundaries and rules or understandings of that property interest,

including claims of entitlement to those benefits); *Thompson*, 490 U.S. at 462-65 (same as to liberty claim).

In this case, Plaintiff relies upon *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974), where the United States Supreme Court held that although there is no right arising from the United States Constitution to good-time credit, Kentucky's good time statute created a sufficient right to good-time credit, and, thus, the prisoner's interest in such credit was "sufficiently embraced" within the Fourteenth Amendment protections:

> It is true that the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison. But here the State itself has not only provided a statutory right to good time but also specifies that it is to be forfeited only for serious misbehavior. Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior, and it is true that the Due Process Clause does not require a hearing "in every conceivable case of government impairment of private interest." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 894 (1961). But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

Wolff, 418 U.S. at 557.

As the United States Supreme Court later explained in *Thompson*, the fact that a state statute provides for "good time" credit is not dispositive of whether there is a constitutionally protectable right. 490 U.S. at 461. Thus, merely because the

Michigan good time statute provides for good time credit in certain circumstances does not mean that Plaintiffs have a constitutionally protectable entitlement to it. As the Supreme Court explained:

> We have held, however, that state law may create enforceable liberty interests in the prison setting. We have found, for example, that certain regulations granted inmates a protected interest in parole, *Board of Pardons v. Allen*, 482 U.S. 369 (1987); *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979), in good-time credits, *Wolff v. McDonnell*, 418 U.S., at 556-572, in freedom from involuntary transfer to a mental hospital, *Vitek v. Jones*, 445 U.S., at 487-494, and in freedom from more restrictive forms of confinement within the prison, *Hewitt v. Helms*, supra. In contrast, we have found that certain state statutes and regulations did not create a protected liberty interest in transfer to another prison. *Meachum v. Fano*, 427 U.S., at 225 (intrastate transfer); *Olim v. Wakinekona*, supra (interstate transfer). **The fact that certain state-created liberty interests have been found to be entitled to due process protection, while others have not, is not the result of this Court's judgment as to what interests are more significant than others; rather, our method of inquiry in these cases always has been to examine closely the language of the relevant statutes and regulations**.

Thompson, 490 U.S. at 461 (emphasis added).

In *Thompson*, the Supreme Court went on to explain the key issue when deciding whether there is a constitutional protectable interest created by the state statute: "Stated simply, 'a State creates a protected liberty interest by placing substantive limitations on official discretion.'" *Id.* at 462 (quoting *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). A statute state creates a liberty interest if it contains "'explicitly mandatory language' i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular

outcome must follow, in order to create a liberty interest". *Id* at 462 (citations omitted).

The Sixth Circuit has specifically held that a plaintiff "cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *Med Corp., Inc. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002); see also *Roth*, 408 U.S. at 577 (An expectation or hope is not enough, "He must, instead, have a legitimate claim of entitlement to it"); *Olim v*, 461 U.S. at 249-51(same); *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)("a benefit is not a protected entitlement if government officials may grant or deny it in their discretion"). In short, the issue of due process does not come into play unless there is an "entitlement" to the alleged benefit, in this case, an early release. *Roth*, 408 U.S. at 577; *Olim*, 461 U.S. at 250-51.

Here, the state statute at issue, the so-called "good-time" statute, MCL 51.281, contains limitations and parameters to the right to "good-time" credit, and as to the facts of this case, non-mandatory language that is insufficient to create a liberty interest. Applying these statutory limitations, as set forth in more detail below, neither Plaintiff can establish in this case that he has a constitutional right to good time credit.

1. To be eligible for early release, an inmate is required to ask to be released

The Michigan good time statute requires that an inmate inform the Sheriff or one of his deputies that he is entitled to be released based upon having sufficient good time credit to be eligible for such release. It specifically provides as follows:

> Sec. 3:
>
> . . . and **it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release**, and no sheriff shall be liable to respond to any prisoner or former prisoner in damages in any form of action, particularly false imprisonment, if any excess time up to the maximum of the original sentence without good behavior allowance be served.

MCL 51.283 (emphasis added).

Thus, one of the preconditions, or as the United Supreme Court termed it in *Thompson*, 490 U.S. at 462, the "substantive predicates" for an entitlement to good time credit, is that each Plaintiff was required to call to the attention of the Sheriff or Deputies that they were entitled to release, i.e., ask to be released.

Discovery revealed that Plaintiff Schultz never asked to be released early, and Plaintiff Lindke first asked to be released on September 27, 2021. Schultz's electronic communications show that he never raised the issue by kyte (Schultz dep., p. 17; ECF No. 45-29; PageID.2207). Because he thought he was not entitled to "good time" because of the judge's oral statement at his sentencing that he was not to get "good time" credit he cannot recall ever raising the issue with any jail

correctional officers and certainly did not ask to be released early (Id at pp. 17-18; PageID.2207-2208).

Plaintiff Lindke did so but only did so first on September 27, 2021. A record of Lindke's electronic communications while at the jail shows that he raised the good time credit issue with jail personnel on multiple occasions beginning first on September 27, 2021 and multiple times thereafter (ECF No. 45-30; PageID.2211; Lindke dep, pp. 36-37, ECF No. 45-14; PageID.2116).

In response to Defendants' argument that Plaintiffs admitted in their depositions that they failed to request to be released as required under the good time statute, both Plaintiffs submitted declarations contradicting their deposition testimony and now say they did make such a request "verbally". For example, Plaintiff Lindke admitted in his deposition that he did not raise the good time issue until September 27, 2021 and now has submitted an Affidavit saying he did so earlier in 2021 and also when he served a sentence in 2019 (see ECF No. 50-15). However, Lindke's deposition testimony was very specific and directly to the contrary:

> Q. All right. In all of your past jail stays, the good time issue never came up?
>
> A. Yeah. Because I wasn't aware at the time of, you know, MCL 51.282.
>
> Q. Okay. So September 27th is when you figure out there's this good time issue, and then you raised it by this kite, correct?
>
> A. Yeah (Pl. dep., p. 37; ECF No. 45-14; PageID.2116).

It has long been established in this Circuit that "[a] party may not create a factual issue by filing an affidavit, after a motion for summary judgment has been made, which contradicts her earlier deposition testimony." *Reid v. Sears, Roebuck and Co*., 790 F.2d 453, 460 (6th Cir. 1986). Thus, the proffered affidavits should be rejected.

Mr. Lindke was the subject of a sentencing order dated July 26, 2019 (see ECF No. 50-16, PageID.2456) and, as raised in his Complaint, sentencing orders dated March 30, 2021, June 22, 2021, and July 29, 2021 (see ¶22, ECF No. 13; PageID.1266). Not referenced in his Complaint, he was also subject to sentencing orders on March 4, 2021, September 15, 2021, October 15, 2021, and January 4, 2022 (see ECF No. 45; PageID.2031-2024, and orders cited therein). As of September 27, 2021, he was serving the July 29, 2021 ninety-three day sentence, the September 15, 2021 thirty-day sentence, and when he made subsequent requests to be released, he was later serving the October 15, 2021 and January 4, 2022 sentences.

Thus, at a minimum, Plaintiff Lindke only arguably met the "I asked to be released on good time credit" prerequisites for the last four of his sentences, the July 29, 2021, September 15, 2021, October 15, 2021, and January 4, 2022 sentences. As to the January 4, 2022 ninety-three day sentence, Plaintiff Lindke never reached the good time release date because he was release on bond on February 24, 2022, well before the earliest available date of a good time release on that sentence (see ECF No. 45; PageID.2034).

Thus, Plaintiff Schulz failed to meet this prerequisite for an early release, and the only three sentences for which Plaintiff Lindke arguably met this prerequisite for an early good time release was on the July 29, 2021 (the only of the three raised in the lawsuit), September 15, 2021, October 15, 2021 sentences.

2. Plaintiff Lindke did not have a constitutional right to good time credit because he had several adjudicated rule violations during his Jail Stay

The Michigan Good Time Statute provides that only inmates "whose record shows that there are no violations of the rules and regulations shall be entitled to [good time credit]". MCL 51.282(2). Here, during the relevant time periods, Plaintiff Lindke had numerous adjudicated jail violations, including two separate fights for which he was provided the requisite due process, and those determinations were never disputed or challenged (see ECF No. 45; PageID.2034-2035; ECF Nos. 45-24, 25, 26, 27, and 28). Thus, Plaintiff Lindke fails to meet this "substantive prerequisite" of being automatically "entitled" to good time credit under the statute, a requirement for his to be entitled to the claimed liberty interest.

Plaintiff argues that his good time credit was never "taken away" as a punishment for these rule violations, and, thus, he retains the right. However, the key question in this case is whether Plaintiff has a constitutionally enforceable right to good time credit when he has a rule violation. He does not because whether the Sheriff chooses to allow good time or not is entirely within the discretion of the

Sheriff in the case of an inmate without a clean record. The statute provides in relevant part:

> . . . The sheriff may, by general rule, subject to amendment from time to time, prescribe how much of the good time earned under this subsection a prisoner shall forfeit for any infraction of the general rules and regulations, and for any act of insubordination the sheriff may by special order take away any portion of or the whole of the good time made by any prisoner up to the date of such offense. The sheriff may as a reward for especially good conduct, in case of insubordination, restore to any prisoner the whole or any portion of the good time lost because of any minor infraction of the rules.

MCL 51.282(2).

Here, it is undisputed that the Sheriff had no such rules governing under what circumstances good time credit would be taken away or, if so, how much. It was his right under the statute to not have such rules because the statute stated such rules were optional (i.e., "may"). Thus, in the case of an adjudicated jail rule violation, there was not established "'explicitly mandatory language' i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow", which the United States Supreme Court held is necessary to create a liberty interest. See *Thompson*, 490 U.S. at 462.

In other words, whether Plaintiff was entitled to good time credit where he did not have a clean jail record is entirely up to the Sheriff with no limitations, and, thus, Plaintiff Lindke did not have a constitutional right to an early release. The United States Supreme Court has specifically held that to have an interest protectable under the constitution, a plaintiff "must . . . have a legitimate claim of entitlement to it",

and a benefit or interest is not constitutionally protected if under the "existing rules . . . that stem from . . . state law", "government officials may grant or deny it in their discretion." *Gonzales*, 545 U.S. 748, 756 (2005); see also *Thompson*, 490 U.S. at 462-65; *Olim*, 461 U.S. at 249-51.

This is far different than the circumstances present in *Wolff*, 418 U.S. at 557, where the good time statue provided an inmate would only lose good time for a "major misconduct." In that instance, the United States Supreme Court held there was sufficient limitations to invoke the constitutional protections. Here, where an inmate has any violation, he has no automatic entitlement to good time credit—it is entirely up the Sheriff.

Finally, Plaintiff argues that the Sheriff must specifically take away good time credit. That is not accurate either. On review of the statute as a whole, the right to an early release only vests when an inmate's days served reaches the level of the number of days of his sentence, as altered by using the formula in MCL 51.282(2). It is at this point that an inmate is required to ask for early release under the statute. See MCL 51.283. At that time, the Sheriff is required to review the prisoner's records (mandated under MCL 51.282), and, if the "prisoner['s] … records shows that there are no violations of the rules and regulations", then the inmate is entitled to a reduction in his sentence at the rate of 1 day for each 6 days served. MCL 51.282(1).

Thus, because Plaintiff Lindke had adjudicated jail rule violations, he had no Constitutional entitlement to good time release. As set forth above, Lindke was found guilty of violating "jail rules and regulations" on five separate occasions, and he has not had any of the five set aside. Significantly, he committed a major rule violation on October 7, 2021, while serving the July 29, 2021 sentence and before he would have otherwise have been eligible for good time credit (October 13, 2021).

3. Because of several overlapping sentences being served concurrently, there was never a time when Plaintiff Lindke was eligible for release even if he had been provided good time credit

As Judge Tomlinson recognized in his December 14, 2021 ruling (ECF No. 45-15), "Respondent's requested relief [a release from custody], under the circumstances presented in this matter, is impractical. . . ." because he was being held on other sentences and holds. In fact, there never was a time where, even if Plaintiff Lindke had earned good time credit, he was not already being held on other charges or serving other concurrent sentences that rendered him ineligible for release.

As set forth in Lindke's motion, Lindke's criminal contempt sentences and "outdates", had he been eligible for and earned good time credit, were as follows:

1. For the March 4, 2021(based upon the November 6, 2020 sentence) sixty (60) day sentence, Plaintiff's outdate with good time credit would have been April 22, 2021[1].

[1] Under the statute, a prisoner with no rule violations is "entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence". The St. Clair

2. For the March 30, 2021 ninety (90) day sentence, Plaintiff's outdate with good time credits would have been June 12, 2021.

3. For the June 22, 2021 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been September 6, 2021.

4. For the July 29, 2021 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been October 13, 2021.

5. For the September 15, 2021 thirty (30) day sentence, Plaintiff's outdate with good time credits would have been October 9, 2021.

6. For the October 15, 2021, ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been December 30, 2021.

7. For the January 4, 2022 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been March 21, 2022.

Based only upon these criminal contempt sentences, and assuming there were no other charges or sentences against Lindke, the only times Lindke could have been eligible for good time credits during the gaps in these sentences were the following:

1. June 12, 2021 to June 21, 2021, a period of ten (10) days based upon the March 30, 2021 sentence.

2. October 13, 2021 to October 14, 2021, a period of two (2) days based upon the July 29, 2021 sentence.

County Jail calculates a good time out date by dividing the length of the sentence by 6 and subtracting that number from the days of the sentence. Even though it is not required by the statute, once a sentence exceeds 5 days, the Jail also counts each fraction of a "good time" day as a full day. For example, on a sentence for 15 days, 15/6 equals 2.5 days, which is rounded up to 3 days, so the good time "outdate" is after 12 days served.

3. December 30, 2021 to January 3, 2022, a period of five (5) days based upon the October 15, 2021 sentence. However, Plaintiff did not include this sentence as one of the basis upon which he was seeking relief (see ¶22, ECF No. 13, PageID.1266).

Unfortunately for Lindke, during each of these time periods (totaling 17 days) he was also being held on other pending matters, which made him ineligible for release regardless of the good time issue. As set forth above, Lindke was being held on a $25,000 cash surety bond based upon five pending felony charges issued on December 30, 2020 (see ECF No. 45-15) and on a $10,000 cash surety bond based upon felony charges relating to his March 3, 2021 arrest (Id). Thus, during the ten (10) day period of June 12, 2021 to June 21, 2021, and the two (2) period of October 13, 2021 to October 14, 2021, Lindke was being held as a pre-trial detainee on other charges and not eligible for release regardless[2]. Moreover, as a result of a plea deal on the charges in both pending cases, on November 29, 2021, Lindke was sentenced to "time served" covering the time period of March 3, 2021 to November 29, 2021, a period of 272 days.

The same is true as to the five (5) day period of December 30, 2021 to January 3, 2022. On December 16, 2021, after finding Lindke guilty of another PPO violation, Judge Tomlinson revoked Plaintiff's $5,000 bond posted in Case No. 20-

[2] A pretrial detainee does not earn good time credit while being held pending the posting of bond. *People v. Browning*, No. 224523, 2001 Mich. App. LEXIS 2236, at *4 (Jan. 16, 2001)("Because Browning was not serving a sentence while being held in jail pending trial, he was not entitled to good time credit under the statute").

001291-PP pending the January 4, 2022 sentencing hearing due to his concern that he was a flight risk (see ECF Nos. 45-17 and 45-21). Thus, Lindke was also not eligible for release at that time either.[3]

Finally, Plaintiff also did not have a constitutional right to early release as to these sentences for other reasons set forth above. As to the June 12, 2021 to June 21, 2021 ten day gap, Plaintiff never asked to be released, as set forth above. As to the October 13, 2021 to October 14, 2021 two (2) day gap, this occurred only six days after plaintiff was found to have violated the jail rule against fighting; therefore, he did not have a clean jail record at the time.

Thus, because each of Plaintiff's claims are premised upon the theory that he was incarcerated during times he should have been released, his claim fails as a result of the undisputed facts showing otherwise.

4. Because the right specified in the good time statute is only a limited one, Plaintiffs are not entitled to <u>Monetary Damages</u>

As set forth above, there is no United States Constitutional right to good-time credit except as created by a state statute, in this case, the Michigan Good Time Credit Statute, MCL 51.281. However, when a state creates a liberty or property

[3] It should be noted that Lindke still had, at a minimum, 25 days to serve on his January 4, 2022 sentence, which he has never served, which more than offsets the 17-day period regardless.

interest, the state statute defines the parameters of such a right. See *Roth*, 408 U.S. at 577

As Defendants raised in their motion to dismiss (and the Court allowed the Defendants to re-raise by way of a motion for summary judgment) the right created by the Michigan Statute is a limited right—it allows a person who believes they are entitled to be released based upon good time credit to seek a court order to that effect—not file a damage claim after the fact. The statute expressly states that:

> . . . no sheriff shall be liable to respond to any prisoner or former prisoner in damages in any form of action, particularly false imprisonment, if any excess time up to the maximum of the original sentence without good behavior allowance be served.

MCL 51.283 (emphasis added)

Thus, the statute that created the right to good time credit created a limited right—it requires the inmate to bring the issue to the attention of the sheriff, and if the sheriff does not grant the good time credit, the remedy is limited to the state equivalent of a writ of habeas corpus or a federal writ of habeas corpus, i.e. a remedy other than a claim for monetary damages. See e.g., MCR 6.500 et seq; *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)(when an individual is challenging the "fact or duration of his confinement", the exclusive remedy is a writ of habeas corpus, not a Section 1983 claim).

Plaintiff asserts that his right to monetary damages is governed by 42 U.S.C. § 1983 because Section 1983 creates a right to damages for a constitutional violation.

However, Section 1983 merely protects the rights a person already holds, "it did not provide a right to damages where none existed before". See *Crocker v. Tennessee Secondary Sch. Athletic Ass'n*, 980 F.2d 382, 387 (6th Cir. 1992)(because damages not available under Education of the Handicapped Act ("EHA"), 20 U.S.C. § 1400 et. seq., plaintiff cannot recover damages under Section 1983 for any violation of rights secured by EHA).

Again, this is not an immunity issue and the case offered by Plaintiff, *Martinez v. Cal.*, 444 U.S. 277, 283-84 (1980), is clearly distinguishable. In *Martinez*, the Section 1983 claim was not based the rights set forth in the state statute—it was based upon the claim that plaintiff has been "deprived of a right 'secured by the Constitution and laws' of the United States" when a parolee released by the defendants killed a 15 year old girl, and the defendant was attempting to invoke a state immunity statute. In this case, the "no money" provision is in the statute that creates the alleged rights upon which the constitutional claims are based—which is a significant difference. There are no cases like the present case that have allowed the "good" part of a statute to be used to create a constitutional right, but the so-called "bad" part of the statue, the limitation on that right, to be ignored.

Again, where the state statute creates the right, that right is necessarily limited by the state statute. *Roth*, 408 U.S. at 577 In this case, the statute does not include a claim for money damages.

III. CONCLUSION

Based upon the foregoing arguments and authorities, Defendants request that this Court grant their motion for Summary Judgment and dismiss the case in its entirety.

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DATED: July10, 2024

The undersigned certifies that a copy of the foregoing instrument was served upon attorneys for Plaintiff on July 10, 2024 by electronically filing this document using the Court's ECF system.

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