IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TRANSOURCE PENNSYLVANIA, LLC, *Plaintiff*, v. GLADYS BROWN DUTRIEUILLE, Chairman, Pennsylvania Public Utility Commission, DAVID W. SWEET, Vice Chairman, Pennsylvania Public Utility Commission, JOHN F. COLEMAN, JR. and RALPH V. YANORA, Commissioners, Pennsylvania Public Utility Commission, all in their official capacities, and the PENNSYLVANIA PUBLIC UTILITY COMMISSION, *Defendants*.	Case No. 1:21-cv-01101-JPW (Judge Jennifer P. Wilson)

TRANSOURCE PENNSYLVANIA, LLC'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

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INTRODUCTION

Months after the parties completed briefing on cross-motions for summary judgment, Defendants have belatedly moved for judgment on the pleadings. *See* ECF No. 174 ("Motion"). Defendants' motion is untimely and contrary to this Court's instruction that all dispositive issues be raised in the summary judgment briefing. In any case, Defendants' arguments lack merit. This complaint was brought under Section 1983 and *Ex parte Young* and seeks prospective declaratory and injunctive relief against state officials in their official capacity. Under longstanding Supreme Court and Third Circuit precedent, such suits are not barred by any of the defenses that Defendants raise. *See, e.g.*, *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989); *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). The Court should deny Defendants' motion.

BACKGROUND

The Federal Energy Regulatory Commission ("FERC") exercised its authority over interstate electric transmission planning to approve a specific method to determine whether a new transmission line is needed to reduce congestion on the interstate grid, so that wholesale electricity prices remain just and reasonable for all customers. The multistate grid operator, PJM Interconnection, L.L.C. ("PJM"), applied that federally approved method and determined that a transmission project developed by Plaintiff Transource Pennsylvania, LLC ("Transource") was needed

to alleviate grid congestion harming customers in Virginia, Maryland, and Washington D.C. ECF No. 158 at 3-10. When Transource applied to the Pennsylvania Public Utility Commission ("PUC") for permission to site the new lines, however, the PUC denied approval based on its disagreement with the FERC-approved method used to assess whether the lines were needed to reduce congestion. As a result, Transource continues to be unable to develop the line and remains at risk of breaching its contractual obligations to PJM.

In June 2021, Transource challenged the PUC's order denying approval by suing the PUC and its individual commissioners in their official capacity in this Court. ECF No. 1 ("Compl."). Transource raised two claims. First, Transource brought a preemption claim pursuant to *Ex parte Young*. Transource alleged that federal law preempted the PUC from blocking development of a transmission line based on the PUC's own view, in conflict with FERC's, about whether and under what circumstances congestion on the interstate grid should be addressed. Second, Transource brought a dormant Commerce Clause claim under 42 U.S.C. § 1983 alleging that the PUC impermissibly blocked an instrumentality of interstate commerce (two interstate transmission lines) to maintain lower wholesale energy prices in Pennsylvania. For relief, Transource sought a declaration that the PUC order was unlawful and without force and effect, and an injunction restraining from the PUC and its Commissioners from enforcing the order, including the rescission

of its provisional Certificate of Public Convenience that allowed Transource to take certain preparatory steps toward the line's construction pending resolution of its application in a manner consistent with the United States Constitution. Compl. at 40–41 (Request for Relief).

Transource initially moved for summary judgment. *See* ECF No. 23. Defendants opposed the motion, including on the ground that the PUC's sovereign immunity barred Transource's complaint, *see* ECF No. 61, and also moved to dismiss the complaint, *see* ECF No. 58.

In August 2021, the Court denied Defendants' motion to dismiss to the extent it argued Transource lacked standing, and otherwise abstained under the *Brillhart/Wilton* doctrine pending the resolution of state-court litigation raising state-law claims. ECF No. 82. After the state court declined to consider the federal issues that Transource had reserved in this Court, *see* ECF No. 90-1 at 17-18 n.12, this Court lifted its stay, *see* ECF No. 91. The parties engaged in supplemental briefing on both pending motions. *See* ECF Nos. 97, 99, 105, 108, 109, 113. The Court then held that Defendants were entitled to discovery prior to the resolution of any motion for summary judgment, *see* ECF No. 114, and denied the remainder of Defendants' motion to dismiss without prejudice to reraising arguments "at the summary judgment stage of this case." *See* ECF No. 118 at 12. Defendants answered the Complaint in August 2022, asserting certain affirmative defenses. *See* ECF No. 124.

The Court ultimately entered a case management order under which the deadline for "[d]ispositive motions and supporting briefs" was February 15, 2023. ECF No. 123 at 1. In the scheduling conference preceding that order, the Court stated that "what I'm clearly trying to convey to you, and now I will say expressly, is that I would like all of the issues in this case addressed in the summary judgment motions" so that the Court could "resolve all of the legal and factual disputes in this case, hopefully, on summary judgment." ECF No. 168-1 at 12:22-13:6. The deadline for Defendants' "dispositive motion[] and supporting brief[]" was subsequently extended to March 8, 2023. *See* ECF No. 145 at 1.

Defendants filed a motion for summary judgment on March 7, 2023, arguing that Transource's preemption and dormant commerce clause claims fail as a matter of law and are barred by claim preclusion. ECF No. 148. Transource opposed this motion and cross-moved for summary judgment on March 29, 2023. ECF No. 158.

Despite the parties completing briefing on cross-motions for summary judgment months ago, and despite the Court's directive to raise all dispositive issues in those motions, Defendants now move belatedly for judgment on the pleadings on three grounds: (1) that the PUC is not a "person" for purposes of §1983; (2) that all Defendants are entitled to quasi-judicial immunity; and (3) that the Eleventh Amendment affords Defendants immunity from suit.

LEGAL STANDARD

A Rule 12(c) motion for judgment on the pleadings is analyzed "under the same standards that apply to a Rule 12(b)(6) motion." *Wolfington v. Reconstructive Orthopaedic Assocs. II PC*, 935 F.3d 187, 195 (3d Cir. 2019) (internal quotation marks omitted). Thus, a "court must accept all of the allegations in the pleadings of the party against whom the motion is addressed as true and draw all reasonable inferences in favor of the non-moving party." *Allstate Prop. & Cas. Ins. Co. v. Squires*, 667 F.3d 388, 390 (3d Cir. 2012). The motion may be granted "if, on the basis of the pleadings, the movant is entitled to judgment as a matter of law." *Fed Cetera, LLC v. Nat'l Credit Servs., Inc.*, 938 F.3d 466, 469 n.7 (3d Cir. 2019) (cleaned up).

ARGUMENT

I. Defendants' Motion for Judgment on the Pleadings Is Untimely.

As an initial matter, Defendants' motion should be rejected as untimely. Under Federal Rule of Civil Procedure 16(b), a court is required to issue a scheduling order that must "limit the time to … file motions." Fed. R. Civ. P. 16(b)(3)(A). This schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Here, the Court set a deadline for dispositive motions that passed nearly six months ago. Defendants' motion for judgment on the pleadings is unquestionably a dispositive motion. *See, e.g.*, *Dymnioski v. Crown Equip. Corp.*,

No. 11-cv-3696, 2012 WL 3095333, at *2 (D.N.J. July 30, 2012); *Desir v. Austin*, No. 13-cv-912, 2015 WL 9412542, at *4 (E.D.N.Y. Dec. 21, 2015).

What is more, the Court specifically instructed the parties that their summary judgment motions should address "all of the issues in this case." ECF No. 168-1 at 12:22-13:6. If Defendants had filed their Rule 12(c) motion at the same time as their summary judgment motion, it plainly would have been regarded as an inappropriate attempt to circumvent the page and word limits that applied to the summary judgment briefing. Defendants' decision to wait four months before filing it only makes the motion less appropriate.

It makes no difference that Rule 12(c) provides that a party may file a motion for judgment on the pleadings if doing so will not "delay trial." Fed. R. Civ. P. 12(c). Courts across the nation have recognized that a party must *also* show good cause for not complying with scheduling orders issued by the Court, *in addition to* showing that the motion will not delay trial as required by Rule 12(c). *Riggins v. Walter*, 279 F.3d 422, 427-28 (7th Cir. 1995); *Argo v. Woods*, 399 F. App'x 1, 2-3 (5th Cir. 2010); *accord, e.g.*, *Bland v. Messinger*, No. 20-cv-0051, 2022 WL 1478106, at *2-3 (E.D. Cal. Apr. 26, 2022); *Frontczak v. City of Detroit*, No. 18-cv-13781, 2021 WL 1736954, at *2 (E.D. Mich. May 3, 2021); *Kuvedina, LLC v. Pai*, No. 11-cv-2282, 2013 WL 5097411, at *1 (C.D. Ill. Sept. 12, 2013). This is especially so where a party gives "no reason why they could not have filed their motion for judgment on

the pleadings" before a dispositive motion deadline. *Sullivan v. Sabharwal*, No. 16-cv-21, 2018 WL 5316171, at *3 (D.V.I. Oct. 26, 2018); *see B.H. ex rel. L.H. v. Obion Cnty. Bd. of Educ.*, No. 18-cv-1086, 2021 WL 3432891, at *2 (W.D. Tenn. Aug. 5, 2021). The Court should therefore deny Defendants' motion as untimely, particularly where Defendants have offered "no explanation for the tardiness of [their] motion." *Taylor v. Shields*, 744 F. App'x 83, 87 (3d Cir. 2018) (affirming dismissal of motion as untimely).

II. Defendants' Arguments Do Not Support Judgment on the Pleadings.

Even if Defendants' arguments were properly before the Court, they would fail on the merits.

A. The Court Need Not Address Whether the PUC Is a "Person" for Purposes of Section 1983.

Defendants' first argument is that the PUC is not a "person" for purposes of Section 1983 and that "[a]ll Section 1983 claims asserted against the PUC must, therefore, be dismissed with prejudice." Motion at 7. As an initial matter, Defendants mistakenly assert that Transource's preemption and dormant Commerce Clause claims are "both [brought] pursuant to Section 1983." *Id.* at 2. In fact, the complaint is clear that the preemption count is brought pursuant to *Ex parte Young* and does not rely on Section 1983. *See* Compl. at 32 (Count I). The only Section 1983 claim in this suit is the dormant Commerce Clause claim. *Cf. Dennis v.*

Higgins, 498 U.S. 439, 448-51 (1991) (recognizing that suits for violations of the dormant Commerce Clause may be brought under Section 1983).

In any event, dismissal of the PUC as a defendant would have no practical effect on this litigation. That is because Transource has also sued the individual PUC commissioners in their official capacities for prospective declaratory and injunctive relief. *See* Compl. at 5–6 (¶¶ 9-10), 40–41 (Request for Relief). There is no question that state officials are "persons" for Section 1983 purposes in such circumstances—as Defendants' own primary case makes clear: "Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official capacity actions for prospective relief are not treated as actions against the State.'" *Will*, 491 U.S. at 71 n.10 (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)).

The Third Circuit, too, has repeatedly recognized that state officials in their official capacity are proper Section 1983 defendants in suits seeking prospective relief. *See, e.g.*, *Iles v. de Jongh*, 638 F.3d 169, 177 (3d Cir. 2011) ("*Will* makes clear that a state employee may be sued in his official capacity . . . for 'prospective' injunctive relief."); *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 240-41 (3d Cir. 2010) (permitting plaintiffs to "seek prospective injunctive relief" against state employees in their official capacities). Defendants' first argument has no

meaningful effect on Transource's ability to win complete relief with respect to both claims in the complaint.

Thus, there is no need for the Court to reach the question of whether the PUC is a "person" for purposes of Section 1983. To the extent the Court nevertheless does consider that issue, Defendants have failed to establish that the PUC is not a proper Section 1983 defendant. That question turns on whether the PUC can be considered the State, such that it shares the State's sovereign immunity under the Eleventh Amendment. *Cf. Will*, 491 U.S. at 70 ("[O]ur holding . . . applies only to States or governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes."). The Third Circuit "employ[s] a fact-intensive, three-step balancing test to ascertain whether a state-affiliated entity is an 'arm of the State,'" which requires examining the nature of the defendant's funding, status under state law, and autonomy from state control. *Maliandi v. Montclair State Univ.*, 845 F.3d 77, 83 (3d Cir. 2016); *see also Christy v. Pa. Turnpike Comm'n*, 54 F.3d 1140, 1144 (3d Cir. 1995). The "party asserting Eleventh Amendment immunity bears the burden of proving its applicability." *Christy*, 54 F.3d at 1144.

Defendants have not met their burden here. They do not analyze the relevant factors. Nor do they acknowledge case law from this Circuit discussing these factors with specific reference to the PUC, which makes clear that it remains an open question whether the PUC qualifies as an "arm of the State." *See Nat'l R.R.*

Passenger Corp. v. Pa. Pub. Util. Comm'n, No. 86-cv-5357, 1997 WL 597963, at *6-10 (E.D. Pa. Sept. 15, 1997); *Erie CPR v. Pa. Dep't of Transp.*, 343 F. Supp. 3d 531, 558 (W.D. Pa. 2018); *Chase v. Pub. Util. Comm'n of Pa.*, No. 05-cv-2375, 2006 WL 8451164, at *3 (M.D. Pa. Nov. 14, 2006) (all declining to dismissing claims against the PUC on immunity grounds); *but see Smart v. Pa. Pub. Util. Comm'n*, No. 96-cv-3586, 1996 WL 442618, at *3 (E.D. Pa. Aug. 2, 1996) (reaching the opposite conclusion without analysis).

Instead, Defendants cite cases holding that *different* state entities have been found not to be "persons" for Section 1983 purposes, and state cases holding that the PUC qualifies as a Commonwealth agency for *different* purposes. *See Mercury Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 55 A.3d 1056, 1068 n.4 (Pa. 2012) (Commonwealth agency for purposes of the Commonwealth Court's jurisdiction); *Pa. Pub. Util. Comm'n v. Delaware Valley Reg'l Econ. Dev. Fund*, 255 A.3d 602, 618 (Pa. Commw. 2021) (Commonwealth agency for purposes of sovereign immunity under state law). And the recent case that Defendants elsewhere emphasize with respect to quasi-judicial immunity in fact confirms that the status of the PUC remains an open question. *See Hatchigian v. PECO/Exelon*, No. 22-cv-2170, 2023 WL 4494161, at *5 (E.D. Pa. July 12, 2023) (noting that this determination requires analyzing the three *Christy* factors).

Given Defendants' failure to meet their fact-intensive burden to show that the PUC is an arm of the state, and the lack of any practical need to answer this question since Transource has also named the Commissioners in their official capacities as Defendants, the Court should not dismiss Transource's Section 1983 claim against the PUC on this basis. *See id.* (holding that because the "PUC Defendants do not brief these factors," the "Court declines to speculate as to each and will not dismiss the claims against PUC Defendants on this basis"); *Erie*, 343 F. Supp. 3d at 558 ("[B]ecause the Eleventh Amendment immunity analysis is generally fact-intensive, and because the State Defendants have made no showing relative to PA PUC's entitlement to Eleventh Amendment immunity, the Court declines to dismiss Plaintiffs' § 1983 claims against PA PUC on immunity grounds" (internal quotation marks and citations omitted)).

B. Defendants Are Not Entitled to Quasi-Judicial Immunity.

Next, Defendants advance the novel argument that "both the PUC and the PUC Commissioners are entitled to quasi-judicial immunity" because they "are sued for adjudicatory actions taken to hear and resolve a matter in a quasi-judicial proceeding." Motion at 9-10.

Defendants fundamentally misunderstand the nature of quasi-judicial immunity. Quasi-judicial immunity is an individual immunity invoked to bar suits against defendants in their *personal* capacities. The leading case is *Butz v.*

Economou, which "concern[ed] the personal immunity of federal officials in the Executive branch from claims for damages arising from their violations of citizens' constitutional rights." 438 U.S. 478, 480 (1978); *see also Cleavinger v. Saxner*, 474 U.S. 193, 194 (1985) (considering "immunity from personal damages liability").

Defendants' Third Circuit cases explicitly recognize this limitation: each involves a suit against state officials in their *individual* capacities. *See, e.g.*, *Dotzel v. Ashbridge*, 438 F.3d 320, 327 (3d Cir. 2006) ("The Board members here were acting in a quasi-judicial capacity, and are absolutely immune from suit in their individual capacities."); *Keystone Redevelopment Partners, LLC v. Decker*, 631 F.3d 89, 91 (3d Cir. 2011) ("In this appeal, we consider whether the former members of the Pennsylvania Gaming Control Board are immune from suits brought against them in their individual capacities….").[1]

Any quasi-judicial immunity enjoyed by the Commissioners therefore would have no bearing on this suit against the Commissioners in their *official* capacities. *Cf. Dotzel*, 438 F.3d at 327 n.5 (holding that the constitutional claim against the

[1] Defendants highlight the recent decision in *Hatchigian*, 2023 WL 4494161, at *6. While that decision dismissed a *pro se* complaint against individual PUC commissioners on quasi-judicial immunity grounds, it did so in a single, unreasoned paragraph that purported to rely on *Keystone* but did not consider the crucial distinction between personal and official capacity suits, nor assess whether PUC commissioners qualify as "quasi-judicial" under the *Butz* factors. The decision is not persuasive authority.

"Board members in their official capacities is not affected by our decision in this appeal").

Indeed, courts routinely hear *Ex parte Young* and Section 1983 suits seeking declaratory and injunctive relief against state commissioners in their official capacities concerning adjudicative determinations, without any suggestion that these commissioners are entitled to quasi-judicial immunity. For example, in *Verizon Maryland*, the Supreme Court considered a suit brought by Verizon seeking review of an adjudicatory order of the Maryland Public Service Commission that (as here) "nam[ed] as defendants the Commission[and] its individual members in their official capacities." *Verizon Md.*, 535 U.S. at 640. The complaint (as here) "sought declaratory and injunctive relief from the Commission's order." *Id.* Far from concluding that suit was barred by quasi-judicial immunity, the Court instead recognized that it had "approved injunction suits against state regulatory commissioners in like contexts." *Id.* at 645-46 (citing *Prentis v. Atl. Coast Line Co.*, 211 U.S. 230 (1908); *Ala. Pub. Serv. Comm'n v. S. Ry. Co.*, 341 U.S. 341, 344 n.4 (1951); *McNeill v. S. Ry. Co.*, 202 U.S. 543 (1906); *Smyth v. Ames*, 169 U.S. 466 (1898); *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362 (1894)). And for good reason: *Ex parte Young* "permits . . . suit to go forward against the state commissioners in their official capacities" and thereby provides a mechanism for parties to seek relief from state action that injures them in violation of federal law.

Id. at 648; *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 76 (2013) (confirming that federal courts have jurisdiction over a "federal-court challenge to a state administrative adjudication" involving preemption).

Contrary to Defendants' insinuation that Transource is impermissibly "attempt[ing] to insert this court" into the appeals process provided for by state law, Motion at 10, Transource is simply seeking review of the PUC's action in accordance with a procedure established more than a century ago in *Ex parte Young*. Cases entertaining similar claims are legion. *See, e.g.*, *Town of Barnstable v. O'Connor*, 786 F.3d 130, 138-41 (1st Cir. 2015) (applying *Ex parte Young* to Department of Public Utilities officials' enforcement of power purchase agreement following hearings and order approving agreement); *Telespectrum, Inc. v. Pub. Serv. Comm'n of Ky.*, 227 F.3d 414, 419-20 (6th Cir. 2000) (applying *Ex parte Young* to case involving denial of certificate of public convenience); *Planned Parenthood Gulf Coast, Inc. v. Phillips*, 24 F.4th 442, 450-53 (5th Cir. 2022) (applying *Ex parte Young* to Department of Health official's constructive denial of permit); *see also, e.g.*, *Bierley v. Abate*, 661 F. App'x 208, 209 n.3 (3d Cir. 2016) (recognizing suit may be barred against state judge sued in his individual capacity on immunity grounds, but that valid claim for prospective relief against state judge in his official capacity would not be barred).

C. The Individual Defendants Are Not Entitled to Eleventh Amendment Immunity.

Finally, Defendants argue (1) that "all claims asserted against the PUC are barred as a matter of law under the Eleventh Amendment," and (2) "to the extent that [Transource] seeks retrospective relief against Individual Defendants, as they are state officials and sued in their official capacities only, *Ex parte Young* would not apply and they would be entitled to Eleventh Amendment immunity." Motion at 12.

The "principle which emerges from *Young* and its progeny" is that the Eleventh Amendment "does not bar" a suit in which "a state official [is] sued in his official capacity for prospective injunctive relief." *Hindes v. FDIC*, 137 F.3d 148, 165-66 (3d Cir. 1998). While "[a]s a general rule, federal courts may not entertain a private person's suit against a State unless the State has waived its immunity or Congress has permissibly abrogated it," *Ex parte Young* "is an important exception to this general rule," according to which a "plaintiff may bring a federal suit against state *officials*" who are "stripped of their official or representative character and thereby deprived of the State's immunity when they commit an ongoing violation of federal law." *Del. River Joint Toll Bridge Comm'n v. Sec'y Pa. Dep't of Labor & Indus.*, 985 F.3d 189, 193 (3d Cir. 2021); *Kentucky v. Graham*, 473 U.S. 159, 167

n.14 (1985) ("[O]fficial-capacity actions for prospective relief are not treated as actions against the State.").

Thus, with respect to Defendants' first argument, dismissing the PUC as a defendant would have no practical effect on this litigation because Transource has also sued the commissioners in their official capacities for prospective relief. Because Transource's suit is undeniably proper with respect to the individual commissioners, the Court "need not decide" whether the state commission itself is immune under the Eleventh Amendment. *Verizon Md.*, 535 U.S. at 645.

With respect to the second argument—presented in a single sentence in Defendants' brief—Defendants do not explain how the requested relief is in any sense "retroactive." *Cf.* Motion at 12 (stating only that "*to the extent* that [Transource] seeks retroactive declaratory relief" from the individual commissioners in their official capacity, it would be barred under the Eleventh Amendment).

As *Verizon Maryland* explains, to determine whether a complaint "avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective'" against individual officers sued in their official capacities. 535 U.S. at 645 (citation omitted). Just as in *Verizon Maryland*, Transource seeks a declaration that the PUC's decision violates federal law and an injunction against the prospective enforcement of that decision, which in

turn would permit Transource to continue moving ahead with its project under a provisional Certificate of Public Convenience while the PUC considers its application in a manner consistent with federal law. *See* Compl. 40-41 (Request for Relief).

The fact that the PUC's order was issued in the past is irrelevant; *Verizon Maryland* holds that even where the plaintiff "seeks a declaration of the *past*, as well as the *future*, ineffectiveness of [a state regulatory commission's] action," the suit is not barred by the Eleventh Amendment if it does not implicate the "past liability of the State" or "impose upon the State a 'monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials.'" 535 U.S. at 646 (quoting *Edelman v. Jordan*, 415 U.S. 652, 668 (1974)). As the First Circuit has explained: "The fact that [the challenged state commission order] occurred in the past … does not itself push the complaint outside the confines of the *Ex parte Young* doctrine. Logic supports this conclusion: most unconstitutional agency determinations will have occurred in the past by the time a lawsuit is brought; sovereign immunity does not necessarily prevent suits against such state actions when the alleged violation they spur is ongoing and no raid on the state treasury will result." *Town of Barnstable*, 786 F.3d at 141.

Here, Transource does not seek to impose any such financial liability on the State; it seeks only to address the ongoing, prospective effect of the PUC's order on

Transource's ability to proceed with its project. This case presents a paradigmatic request for prospective relief. Accordingly, the Eleventh Amendment imposes no bar.

CONCLUSION

The Court should deny the motion for judgment on the pleadings.

September 11, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Local Rule 7.8(b)(2) because it contains 4,066 words, as measured by the word-count feature of Microsoft Word 2016, excluding the Caption, Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.

/s/ *Matthew E. Price*
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2023, I electronically filed the foregoing Response to Defendants' Motion for Judgment on the Pleadings with the Clerk of the Court and with counsel of record for Defendants by using the CM/ECF system.

/s/ Matthew E. Price
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