APPENDIX A

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 05/29/2024.

Case Name: Quannah Harris v. Secretary of State for Tennessee, et al
Case Number: 23-5833

Docket Text:

ORDER filed : We therefore AFFIRM the district court's judgment. Mandate to issue, decision
not for publication, pursuant to FRAP 34(a)(2)(C). Eugene E. Siler, Jr., Circuit Judge; Joan L.
Larsen, Circuit Judge and Rachel Bloomekatz, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Ms. Quannah L. Harris
2195 S. Third Street
Memphis, TN 38109

A copy of this notice will be issued to:

Ms. Wendy R. Oliver
Ms. Jessica Catherine Simon

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

QUANNAH HARRIS
D/B/A LAST MINUTE CUTS,

Plaintiff,

v.

Case No. 2:22-cv-2478-MSN-tmp
JURY DEMAND

STATE OF TENNESSEE OFFICE OF THE
SECRETARY OF STATE ADMINISTRATIVE
PROCEDURES DIVISION, and
JUDGE MATTIELYN WILLIAMS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING DEFENDANTS' MOTION TO DISMISS

Before the Court is Chief Magistrate Judge Pham's Report and Recommendation (ECF No. 15, "Report"), which recommends that Defendants' Motion to Dismiss (ECF No. 10, "Motion") be granted based on Eleventh Amendment and judicial immunity and Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief (ECF No. 7, "Amended Complaint") be dismissed with prejudice; or, in the alternative, that the Motion be granted based on *Younger* abstention and Plaintiff's Amended Complaint dismissed without prejudice. (*See* ECF No. 15 at PageID 181.) Plaintiff timely filed objections to the Report (ECF No. 16), and Defendants timely responded to the objections (ECF No. 17). Plaintiff also

filed a reply to Defendants' response, without seeking leave to do so. In the interest of justice, the Court will nevertheless consider Plaintiff's unauthorized reply. For the reasons set forth below, Plaintiff's objections to the Report are **OVERRULED**, Defendant's Motion is **GRANTED**, and Plaintiff's Amended Complaint is **DISMISSED** with prejudice.

STANDARD OF REVIEW

Congress enacted 28 U.S.C. § 636 to relieve the burden on the federal judiciary by permitting the assignment of district court duties to magistrate judges. *See United States v. Curtis*, 237 F.3d 598, 602 (6th Cir. 2001) (citing *Gomez v. United States*, 490 U.S. 858, 869–70 (1989)); *see also Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). For dispositive matters, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. §636(b)(1). After reviewing the evidence, the court is free to accept, reject, or modify the magistrate judge's proposed findings or recommendations. 28 U.S.C. § 636(b)(1).

The district court is not required to review—under a *de novo* or any other standard—those aspects of the report and recommendation to which no objection is made. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). The district court should adopt the magistrate judge's findings and rulings to which no specific objection is filed. *See id.* at 151.

Objections to any part of a magistrate judge's disposition "must be clear enough to enable the district court to discern those issues that are dispositive and contentious." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *see also Arn*, 474 U.S. at 147 (stating that the purpose of the rule is to "focus attention on those issues . . . that are at the heart of the parties' dispute."). Each objection to the magistrate judge's recommendation should include how the analysis is wrong, why it was wrong, and how *de novo* review will obtain a different result on that particular issue. *See Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). A general objection, or one that merely restates the arguments previously presented and addressed by the magistrate judge, does not sufficiently identify alleged errors in the report and recommendation. *Id.* When an objection reiterates the arguments presented to the magistrate judge, the report and recommendation should be reviewed for clear error. *Verdone v. Comm'r of Soc. Sec.*, No. 16-CV-14178, 2018 WL 1516918, at *2 (E.D. Mich. Mar. 28, 2018) (citing *Ramirez v. United States*, 898 F. Supp. 2d 659, 663 (S.D.N.Y. 2012)); *Equal Employment Opportunity Comm'n v. Dolgencorp, LLC*, 277 F. Supp. 3d 932, 965 (E.D. Tenn. 2017).

FINDINGS OF FACT & BACKGROUND

Plaintiff made no objections to the Report's Proposed Findings of Fact. In fact, she copied them and included them in her objections as her "Statement of

Relevant Facts." (*See* ECF No. 16 at PageID 188–91.) The Court therefore **ADOPTS** the Report's Proposed Findings of Fact.

As a brief background, Plaintiff Quannah Harris ("Harris") is a barber in Memphis, Tennessee and owner of Last Minute Cuts School of Barbering and Cosmetology ("Last Minute Cuts"). For several years, she has been involved in a dispute regarding the licensure of Last Minute Cuts. The Tennessee Board of Cosmetology and Barbering (the "Board") first initiated administrative proceedings against Harris in 2017. These proceedings culminated in a hearing before the Board on December 6, 2021.

Following an unfavorable ruling there, Harris appealed to the Shelby County Chancery Court, naming the State of Tennessee, the Tennessee Department of Commerce and Insurance, the Office of the Secretary of State Administrative Procedures Division (the "APD"), and the Board as defendants. The Chancery Court dismissed the APD, finding that "the APD's only role in the case below was to provide an administrative judge." Less than a month later, Harris filed her initial complaint in this matter—her third federal lawsuit arising from her dispute with the Board. At the time Harris filed her initial complaint, her claims in the Chancery Court remained pending.

DISCUSSION

In the objections' introduction, Harris states that she objects to the Report on the following grounds:

(1) there is no immunity under the Eleventh Amendment because that immunity "is precluded by the Fourteenth Amendment," (*see* ECF No. 16 at PageID 183);

(2) Administrative Law Judge Williams ("ALJ Williams") is not entitled to judicial immunity because she was acting "outside [her] judicial capacity and in the complete absence of all jurisdiction," (*id.* at PageID 184);

(3) ALJ Williams is not entitled to judicial immunity because "she did not act as a disinterested judicial adjudicator," but as an "enforcer or administrator of a statue," (ECF No. 16 at PageID 184, 187, 194–96);

(4) *Younger* abstention does not apply because there were no ongoing judicial proceedings when the complaint was filed, the Chancery Court dismissed

the APD, Harris was not afforded an adequate opportunity to raise her constitutional claims, and Harris has alleged harassment (*id.* at PageID 184, 188, 197–98; *see also* ECF No. 18 at PageID 226); and

(5) Chief Magistrate Judge Pham did not apply the correct standard under Federal Rule of Civil Procedure 12(b)(6) "by failing to construe the complaint in the light most favorable to [Harris] and making reasonable inferences in favor of [Harris]" (ECF No. 16 at PageID 184, 192–93: ECF No. 18 at PageID 226). Elsewhere in her objections and reply, Harris also appears to make the following objection:

(6) the *Ex parte Young* exception to Eleventh Amendment immunity applies

to her claims, (ECF No. 16 at PageID 186, 193; ECF No. 18 at PageID 224–25).

As set forth below, after a *de novo* review of the record and each objected-to issue, the Court accepts and adopts the Report's proposed findings of fact and conclusions of law.

1. Eleventh Amendment Immunity

The Eleventh Amendment guarantees that "nonconsenting States may not be sued by private individuals in federal court." *Guertin v. State*, 912 F.3d 907, 936 (6th Cir. 2019). And "[t]he sovereign immunity guaranteed by this Amendment deprives federal courts of subject-matter jurisdiction when a citizen sues his own State." *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015). A plaintiff may sue a State for damages in federal court, however, when a State expressly consents to suit or if the case concerns a federal statute that was passed by Congress pursuant to Section 5 of the Fourteenth Amendment and expresses a clear congressional intent to abrogate sovereign immunity. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 55 (1996); *Mixon v. Ohio*, 193 F.3d 389, 397 (6th Cir. 1999).

Here, Tennessee has not waived its immunity. Tenn. Code Ann. § 20-13-102; *Berndt v. Tennessee*, 796 F.2d 879, 881 (6th Cir. 1986). Furthermore, the federal statute invoked in this case, 42 U.S.C. § 1983, did not abrogate the States' Eleventh Amendment immunity. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66–67 (1989); *Quern v. Jordan*, 440 U.S. 332, 340-41 (1979).

In sum, the APD is an agency of the State and is an entitled to immunity under the Eleventh Amendment. Plaintiff's objection is **OVERRULED**.

2. Non-Judicial Acts and Absence of Jurisdiction Exceptions to Judicial Immunity

First, the Court uses a two-prong test to determine whether the non-judicial acts exception applies, which considers (1) "whether the act in question is a function that is 'normally performed by a judge,'" and (2) "whether the parties dealt with the judge in . . . her judicial capacity." *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004) (citations omitted). Here, ALJ Williams acted in an adjudicatory capacity when she presided over the hearing before the Board, and Harris dealt with ALJ Williams in her judicial capacity. Therefore, the exception does not apply.

Second, a judge acts "in the clear absence of all jurisdiction 'only when the matter upon which [she] acts is clearly outside the subject matter of the court over which [she] presides.'" *Id.* at 623 (quoting *Johnson v. Turner*, 125 F.3d 324, 334 (6th Cir. 1997)). Here, ALJ Williams acted in accordance with the jurisdiction granted to her by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* Thus, this exception also does not apply.

For the reasons set forth above, the non-judicial acts and absence of all jurisdiction exceptions to judicial immunity do not apply. Plaintiff's objection is **OVERRULED**.

3. Judicial Immunity for Declaratory Relief

As the Report explains, whether declaratory relief is available against ALJ Williams turns on whether she was acting in an adjudicatory capacity or as an enforcer or administrator of a statute. (*See* ECF No. 15 at PageID 170–72.) Plaintiff's objections do not explain how ALJ Williams acted as an enforcer or administrator, or how the Report's analysis on this issue erred. On *de novo* review, this Court concludes that ALJ Williams acted in an adjudicatory capacity. ALJ Williams did not initiate the action against Plaintiff; the Board did. Further, ALJ Williams performed purely adjudicatory functions, such as ruling on the admissibility of evidence and procedural questions of law; swearing witnesses; and advising agency members as to the law of the case. Therefore, no case or controversy exists between Plaintiff and ALJ Williams, and this Court does not have subject-matter jurisdiction. Plaintiff's objection is therefore **OVERRULED**.

4. Standard of Review

Throughout her objections, Plaintiff alleges that the Chief Magistrate Judge "failed to follow the standard of review for a motion to dismiss" because he did not "view the facts and draw all reasonable inferences in favor" of Plaintiff. (ECF No. 16 at PageID 192–94.) Plaintiff does not, however, specifically identify (1) what facts the Chief Magistrate Judge did not accept as true, or (2) what reasonable inferences he should have drawn. The crux of her argument appears to relate to her claims against ALJ Williams because

she repeats her allegations that ALJ Williams "acted in corruption"; "failed to impartially oversee hearing"; "asked personal favors and/or special accommodations from the Board's attorney"; and "had secret meetings and or conversations regarding Harris' case." (ECF No. 16 at PageID 195.)

The Chief Magistrate Judge included Plaintiff's allegations about ALJ Williams in the Report's Proposed Findings of Fact, which this Court has adopted. Nowhere in the Report does the Chief Magistrate Judge state or otherwise imply that he has disregarded these allegations. Nor is the Report's conclusion about judicial immunity inconsistent with these allegations: Unless one of the exceptions discussed in the Report applies, judicial immunity extends even "to acts performed maliciously and corruptly as well as acts performed in bad faith or with malice as has been alleged in this case." *Brookings*, 389 F.3d at 617. Plaintiff's objection is therefore **OVERRULED**.

5. *Ex parte Young* Exception

One exception to Eleventh Amendment immunity is *Ex parte Young*, 209 U.S. 123 (1908). "Under *Ex parte Young*, 'suits against state officials seeking equitable relief for ongoing violations of federal law are not barred by the Eleventh Amendment.'" *Morgan v. Bd. of Pro. Resp. of the Supreme Ct. of Tennessee*, 63 F.4th 510, 515 (6th Cir. 2023) (quoting *Mich. Bell Tel. Co. v. Climax Tel. Co.*, 202 F.3d 862, 867 (6th Cir. 2000)). The *Ex parte Young* exception "applies only when the plaintiff sues for 'prospective [injunctive] relief to end a *continuing* violation of federal law.'" *Id.*

(citing *Diaz v. Mich. Dep't of Corr.*, 703 F.3d 956, 964 (6th Cir. 2013) (emphasis added)). It does not apply to past acts, and the complaint must clearly state the allegedly ongoing violations. *Id.* (quoting *Boler v. Earley*, 865 F.3d 391, 412 (6th Cir. 2017) and *Gean v. Hattaway*, 330 F.3d 758, 776 (6th Cir. 2003)). Plaintiff's reliance on *Ex parte Young* is misplaced.

First, as to the APD, it is immune from injunctive relief "because it is an arm of the state and the state has not waived the [APD's] sovereign immunity, nor has Congress removed it." *Morgan*, 63 F.4th at 517 (citing *Thiokol Corp.*, 987 F.2d at 381 and Tenn. Code Ann. § 20-13-102(a)).

Second, as to ALJ Williams, putting aside whether she is a state official or entitled to judicial immunity, the *Ex parte Young* exception does not apply because Plaintiff does not seek prospective injunctive relief against ALJ Williams. The Amended Complaint describes only past actions and does not clearly allege any ongoing constitutional violations committed by ALJ Williams.

Therefore, Plaintiff's objection is **OVERRULED**.

6. *Younger* Abstention

As set forth above, the Court has overruled Plaintiff's objections regarding Eleventh Amendment and judicial immunity. The Court will therefore grant the Motion on those bases and need not reach the alternative recommendation based on *Younger* abstention.

CONCLUSION

For the reasons set forth above, this Court **ADOPTS** the Report's Proposed Findings of Fact and Proposed Conclusions of Law as to Eleventh Amendment and judicial immunity. The Court therefore **GRANTS** Defendants' Motion to Dismiss (ECF No. 10), and Plaintiff's Amended Complaint for Declaratory and Injunctive Relief (ECF No. 7) is **DISMISSED** with prejudice.

IT IS SO ORDERED, this 31st day of August, 2023.

s/ Mark S. Norris

MARK S. NORRIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

QUANNAH HARRIS
D/B/A LAST MINUTE CUTS,
Plaintiff,
v. Case No. 2:22-cv-2478-MSN-tmp
JURY DEMAND

STATE OF TENNESSEE OFFICE OF THE
SECRETARY OF STATE ADMINISTRATIVE
PROCEDURES DIVISION, and
JUDGE MATTIELYN WILLIAMS,
Defendants.

JUDGMENT

JUDGMENT BY COURT. This action came before the Court on Plaintiff's *Pro Se* Complaint (ECF No. 1), filed July 25, 2022,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, in accordance with the Order Adopting Report and Recommendation and Granting Defendants' Motion to Dismiss (ECF No. 19), entered

August 31, 2023, this matter is hereby **DISMISSED WITH PREJUDICE.**

APPROVED:

s/ Mark S. Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE

August 31, 2023
Date

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

QUANNAH L. HARRIS - PETITIONER

VS.

THE SECRETARY OF STATE ET AL - RESPONDENT

ADDENDUM TO THE APPENDIX

QUANNAH L. HARRIS, Pro Se
2195 S THIRD STREET
MEMPHIS, TN 38109
(901) 603-2764

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APPENDIX A

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

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Case Name: Quannah Harris v. Secretary of State for Tennessee, et al
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2195 S. Third Street
Memphis, TN 38109

A copy of this notice will be issued to:

Ms. Wendy R. Oliver
Ms. Jessica Catherine Simon

NOT RECOMMENDED FOR PUBLICATION
No. 23-5833
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QUANNAH L. HARRIS, dba Last Minute Cuts,School of Barbering and Cosmetology, Plaintiff-Appellant,	)	ON APPEAL FROM THE UNITED STATES DISTRICT
v.	)	COURT FOR THE WESTERN
SECRETARY OF STATE FOR TENNESSEE, Administrative Procedures Division; MATTIELYNB. WILLIAMS, Administrative Law Judge, Defendants-Appellees.	)	DISTRICT OF TENNESSEE

O R D E R

Before: SILER, LARSEN, and BLOOMEKATZ,

Circuit Judges.

Quannah L. Harris, proceeding pro se, appeals a district court judgment dismissing her civil rights complaint filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a). For the following reasons, we affirm. Harris sued the Tennessee Secretary of State's Administrative Procedures Division (APD) and Administrative Law Judge Mattielyn Williams. From her

amended complaint and the prior lawsuits it references,[1] the following relevant facts emerge. Harris is a master barber instructor who owns Last Minute Cuts School of Barbering and Cosmetology. In 2017, Harris signed an Agreed Order and Statement of Understanding to resolve several administrative complaints against Last Minute Cuts. In 2018, Harris filed a civil suit in federal court against several officials of the alleging civil rights and due process violations, fraud, forgery, and extortion arising from unfavorable inspections of Last Minute Cuts. That suit was resolved in favor of the defendants. See Last Minute Cuts v. Biddle, No. 2:18-cv-2631, 2020 WL 13368797 (W.D. Tenn. July 20, 2020). In 2019, the Board filed administrative complaints against Last Minute Cuts, alleging that it was not compliant with the 2017 agreed order. However, the complaints were stayed and no annual inspections of Last Minute alleging civil rights and due process violations, fraud, forgery, and extortion arising from unfavorable inspections of Last Minute Cuts. That suit was resolved in favor of the defendants. See Last Minute Cuts v. Biddle, No. 2:18-cv-2631, 2020 WL 13368797 (W.D. Tenn. July 20, 2020). In 2019, the Board filed administrative complaints against Last Minute Cuts, alleging that it was not compliant with the Tennessee Board of Cosmetology and Barber Examiners (Board), 2017 Agreed order. However, the complaints were stayed and

[1] We may take judicial notice of court proceedings. See Lyons v. Stovall, 188 F.3d 327, 332 n.3 (6th Cir. 1999).

no annual inspections of Last Minute Cuts were conducted during the pendency of Harris's 2018 civil suit.

In 2021, after Harris's litigation ended, the Board proceeded with the 2019 administrative complaints and resumed inspections of Last Minute Cuts. The 2021 inspections resulted in another administrative complaint against Last Minute Cuts and the temporary suspension of its licenses. Those actions prompted Harris to file another civil suit in federal court against the Board and several Board officials, alleging retaliation, race discrimination, denial of procedural and substantive due process, and denial of equal protection. After a hearing on December 6, 2021, to address the pending administrative complaints against Last Minute Cuts, at which Judge Williams presided, the Board revoked the licenses of Last Minute Cuts. Harris petitioned for review of the Board's decision in the Shelby County, Tennessee Chancery Court, and that proceeding is still pending.

In her current federal lawsuit, Harris asserted claims for collusion, judicial misconduct, and double jeopardy. She alleged that, as an APD representative, Judge Williams asked for personal favors and "special accommodations from the Board's attorney," that Judge Williams's decisions were clouded by personal bias, and that Judge Williams excluded her from meetings and conversations. She also challenged Judge Williams's admission and exclusion of evidence and application of the law. She sought declaratory and injunctive relief.

The defendants moved to dismiss Harris's complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. A magistrate judge recommended granting the defendants' motion based on Eleventh Amendment immunity as to the APD and judicial immunity as to Judge Williams and alternatively based on abstention under *Younger v. Harris, 401 U.S. 37 (1971)*, as to both defendants. Over Harris's objections, the district court adopted the magistrate judge's report regarding Eleventh Amendment and judicial immunity, granted the defendants' motion, and dismissed Harris's amended complaint with prejudice, finding no need to address abstention.

On appeal, Harris challenges the dismissal of her complaint. She argues that the district court (1) did not apply the correct standard of review when addressing the defendants' motion to dismiss and did not consider exceptions to (2) Eleventh Amendment immunity, (3) judicial immunity, and (4) Younger abstention.
We review de novo the dismissal of a complaint under Rule 12(b)(1) "for lack of subject matter jurisdiction." *Skatemore, Inc. v. Whitmer*, 40 F.4th 727, 731 (6th Cir. 2022); see *Lindke v. Tomlinson,* 31 F.4th 487, 490 (6th Cir. 2022). "The Court must construe the complaint in the light most favorable to the Plaintiffs; however, the Court need 'not presume the truth of factual allegations pertaining to our jurisdiction to hear the case.'" *Skatemore*, 40 F.4th at 731-32 (quoting *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1045 (6th Cir. 2015)). "[W]e may

affirm the district court's judgment on any basis supported by the record." *Seaton v. TripAdvisor LLC*, 728 F.3d 592, 601 n.9 (6th Cir. 2013); see also *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010).

REVIEW OF MOTION TO DISMISS

Harris argues that the district court did not apply the correct standard of review when addressing the defendants' motion to dismiss. She argues that the district court neither construed the facts nor drew "all reasonable inferences" in her favor as the non-movant.

The district court rejected Harris's objection to the standard of review applied by the magistrate judge when reviewing and recommending granting the defendants' motion to dismiss. The district court found that the magistrate judge applied the correct standard and considered Harris's allegations of wrongdoing by Judge Williams. The district court further found that Harris failed to identify any alleged facts that were not accepted as true or any reasonable inferences that were not made by the magistrate judge. Harris's appellate brief suffers from the same deficiencies as her objections. She merely states that the correct standard of review was not applied without any supporting argument and has thus failed to show that her complaint was not construed in her favor. See *Skatemore*, 40 F.4th at 731-32.

CLAIMS AGAINST THE APD

Harris argues that the *Ex parte Young*[2] exception to Eleventh Amendment immunity applies because she sought prospective injunctive relief against a state official in her official capacity. But her complaint does not plausibly allege that its claims can survive under that exception.

"*Under Ex parte Young*, 'suits against state officials seeking equitable relief for ongoing violations of federal law are not barred by the Eleventh Amendment.'" *Morgan v. Bd. of Pro. Resp. of the Sup. Ct. of Tenn.*, 63 F.4th 510, 515 (6th Cir. 2023) (quoting *Mich. Bell Tel. Co. v. Climax Tel. Co.*, 202 F.3d 862, 867 (6th Cir. 2000)). The *Ex parte Young* exception "applies only when the plaintiff sues for 'prospective [injunctive] relief to end a continuing violation of federal law.'" Id. (quoting Diaz v. Mich. Dep't of Corr., 703 F.3d 956, 964 (6th Cir. 2013)).

The *Ex parte Young* exception does not apply to the APD because it is a state agency, not a state official. *See id.* The State of Tennessee has not waived its immunity to civil suits in federal courts. See *Berndt v. Tennessee*, 796 F.2d 879, 881 (6th Cir. 1986) (construing Tenn. Code Ann. § 20-13-102). And "§ 1983 does not abrogate the Eleventh Amendment." *Harrison v. Michigan*, 722 F.3d 768, 771 (6th Cir. 2013); see *Quern v. Jordan*, 440 U.S. 332, 340-41 (1979).

The *Ex parte Young* exception does not apply to an official-capacity suit against Judge Williams as a state official either because Harris does not allege that

[2] Ex parte Young, 209 U.S. 123, 159-60 (1908).

Judge Williams's purported violations of federal law might continue after the administrative hearing. *See Morgan*, 63 F.4th at 515. She did not clearly identify any continuous federal-law violations that she sought to prospectively enjoin.

CLAIMS AGAINST JUDGE WILLIAMS

Harris suggests that Judge Williams is not entitled to immunity because she acted in a non-judicial capacity and without jurisdiction and that declaratory relief is available because Judge Williams acted as an enforcer or administrator of a statute, not an adjudicator. Like her claims against the APD, Harris does not plausibly allege that her claims against Judge Williams should be excepted from judicial immunity.

The district court considered these exceptions to judicial immunity and properly concluded that they did not apply here. Accepting as true the allegations in Harris's amended complaint, see *Skatemore*, 40 F.4th at 731, Harris challenged judicial acts within the scope of Judge Williams's official duties and jurisdictional authority as an administrative law judge. Thus, Harris has failed to show that Judge Williams acted in a non-judicial capacity or without jurisdiction when presiding over the administrative proceeding that resulted in the revocation of the licenses of Last Minute Cuts. See *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)

(per curiam); *Wellman v. PNC Bank*, 508 F. App'x 440, 443 (6th Cir. 2012) (per curiam). And Harris's allegations against Judge Williams challenged Judge Williams's role as an adjudicator rather than "as an enforcer or administrator of the statute" inasmuch as Harris challenged Judge Williams's rulings in her capacity as an administrative law judge and Judge Williams did not initiate the administrative proceeding against Harris. See *Lindke*, 31 F.4th at 493. In sum, though we note that judicial immunity is not a jurisdictional doctrine that deprives a court of the power to adjudicate a claim, we conclude that the district court properly dismissed Harris's claims against Judge Williams. *See Kennedy v. City of Cleveland,* 797 F.2d 297, 300 (6th Cir. 1986); Burnham v. Friedland, 2022 WL 3046966, at *2 (6th Cir. Aug. 2, 2022) (Thapar, J., concurring) ("[J]udicial immunity isn't a jurisdictional doctrine."). Finally, while it is true that judicial immunity "does not preclude suit for prospective relief such as an injunction," *Berger v. Cuyahoga Cnty. Bar Ass'n,* 983 F.2d 718, 721 (6th Cir. 1993), as we have noted, Harris does not allege facts sufficient to plausibly demonstrate entitlement to prospective relief against Judge Williams.

YOUNGER ABSTENTION

Harris argues that the district court did not consider exceptions to Younger abstention. Because the district court granted the defendants' motion to dismiss based on Eleventh Amendment and judicial immunity, it did not address Younger

abstention as an alternative basis for dismissal. Unless exceptional circumstances are present, we "will not address issues on appeal that were not ruled upon below." *Maldonado v. Nat'l Acme Co.*, 73 F.3d 642, 648 (6th Cir. 1996). No exceptional circumstances are present in this case given the defendants' immunity.

We therefore AFFIRM the district court's judgment.

ENTERED BY ORDER OF THE COURT

ss/Kelly L. Stephens, Clerk
Kelly L. Stephens, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

QUANNAH HARRIS, d/b/a LAST MINUTE CUTS, Plaintiff,	
v.	No 22-02478-MSN-tmp
STATE OF TENNESSEE, OFFICE OF THE SECRETARY OF STATE ADMINISTRATIVE PROCEDURES DIVISION and JUDGE MATTIELYN WILLIAMS, Defendants.	

REPORT AND RECOMMENDATION

Before the court is a Motion to Dismiss filed by the Office of the Tennessee Secretary of State Administrative Procedures Division ("APD") and Administrative Law Judge Mattielyn Williams on August 29, 2022.[1] (ECF No. 10.) *Pro se* plaintiff Quannah Harris filed an Opposition to the Defendants' Motion to Dismiss on September 7, 2022. (ECF No. 11.) For the reasons below, it is recommended that defendants' motion to dismiss be granted.

I. PROPOSED FINDINGS OF FACT

Quannah Harris is a barber in Memphis, Tennessee. (ECF No. 7.) She is the master barber instructor and owner of Last Minute Cuts School of Barbering and Cosmetology ("Last Minute Cuts"). (Id.) Harris's claims in this case arise from an ongoing dispute Last Minute Cuts School of Barbering and Cosmetology ("Last Minute Cuts"). (Id.) Harris's claims in this case arise from an ongoing dispute regarding her school's licensure. This dispute has spanned across many years of state administrative proceedings and multiple federal lawsuits.

The events underlying Harris's allegations date back to 2017. That year, Harris was alleged to have violated the regulations governing barber and cosmetology schools. (ECF No. 7-1.) As a result, the Tennessee Board of Cosmetology and Barber Examiners ("Board") issued an Agreed Order and Statement of Understanding outlining a compliance plan that served as a "compromise and settlement" of the claims. (Id. at PageID 50.) Harris subsequently challenged the Board's actions in a federal lawsuit filed on September 14, 2018. Harris v. Biddle, No. 18-2631-MSN-tmp, 2019 WL 6222280, at *1 (W.D. Tenn. Oct. 18, 2019), report and recommendation adopted, 2019 WL 6219544. There, Harris alleged that inspectors had given her school unfavorable inspection reports as a

1Pursuant to Administrative Order No. 2013-05, this case has been referred to the United States magistrate judge for management and for all pretrial matters for determination or report and recommendation, as appropriate.

result of an extortion scheme involving demands for money and sexual favors. Id. The court considered her substantive due process claims and ultimately granted summary judgment in favor of the defendants. Harris v. Biddle, No. 18-2631-MSN-tmp, 2020 WL 3980816, at *1 (W.D. Tenn. Feb. 26, 2020), report and recommendation adopted, 2020 WL 1558118.

Meanwhile, adjudication of the dispute continued administratively. Between May 2018 and November 2018, and again in March 2021, inspectors reported that Harris's school exhibited numerous violations of Tennessee's cosmetology and barber regulations. (ECF No. 10-3 at Page ID 80-87.) As a result, a Notice of Hearing and Charges was filed on July 1, 2021. (Id. at PageID 77.) Harris then filed her second federal lawsuit. Harris v. Barnes, No. 21-2717-JTF-tmp, 2022 WL 2706174, at *1 (W.D. Tenn. Jan. 25, 2022), report and recommendation adopted, 2022 WL 2046106. There, she made several new allegations against both the Board and its inspectors. Id. However, the administrative adjudication of her claims remained ongoing at that point. In recognition of this, the district court ultimately abstained from hearing her claims under Younger v. Harris, 401 U.S. 37 (1971). Id. Harris's federal case was administratively closed pending the resolution of the ongoing proceedings. Id.

On December 6, 2021, the Board convened a disciplinary hearing to address the administrative complaints that had been opened against Harris's school. (ECF No. 10-3.) Administrative Law Judge ("ALJ") Mattielyn Williams, one of the

defendants in the present case, presided over the hearing. (Id.) Harris was also present. (Id.) As a result of the hearing, the Board found that Harris had violated several applicable statutes and regulations. (Id.) Consequently, it revoked Harris's cosmetology and barber school licenses. (Id.)

On February 7, 2022, Harris responded to the revocation by filing a petition for review in the Chancery Court of Shelby County. (ECF No. 10-4.) The petition named the State of Tennessee, the Tennessee Department of Commerce and Insurance, and the Board as defendants. (Id.) It also initially named the APD. (Id.) However, the Chancery Court dismissed the claim as to that defendant, finding that "the APD's only role in the case below was to provide an administrative judge" to preside over the Board's hearing. (ECF No. 10-6 at PageID 125.) Harris's claims against the other defendants remain pending in the Chancery Court. (ECF No. 10-5.) The Chancery Court's dismissal prompted the filing of Harris's third federal lawsuit, which is the subject of the present motion to dismiss. In her amended complaint, Harris names the APD and ALJ Williams as defendants. (ECF No. 7.) Her action is brought under 42 U.S.C. § 1983. (Id.) Harris claims that ALJ Williams, acting on behalf of the APD, prevented Harris from having a fair hearing on her school's licensure because she "acted in corruption" and "failed to impartially oversee a hearing." (ECF No. 7 at PageID 35.) She alleges that ALJ Williams admitted and relied on inadmissible evidence, refused to admit exculpatory evidence, and declined to hear Harris's motion. (ECF No. 7.) Additionally, Harris

writes that ALJ Williams "asked personal favors and/or special accommodations from the Board's attorney, Michael Underhill" and that she "had secret meetings and or conversations regarding Harris' case." (Id. at PageID 35-36.) For all these reasons, Harris alleges that ALJ Williams "clearly failed to make a decision free from personal bias." (Id. at PageID 35.) Harris only seeks declaratory and injunctive relief. (Id. at PageID 45-47.)

The defendants filed their motion to dismiss for lack of subject matter jurisdiction on August 29, 2022. (ECF No. 10-1.) They argue that the claims against the APD should be dismissed on Eleventh Amendment grounds and that those against ALJ Williams should be dismissed based on absolute judicial immunity. (Id.) Alternatively, they ask the court to abstain from hearing Harris's claims under Younger v. Harris due to ongoing state judicial proceedings. (Id.)

Harris filed an opposition to the defendants' motion to dismiss on September 7, 2022. (ECF No. 11.) Harris argues that ALJ Williams is not entitled to absolute judicial immunity because she acted "in a manner violative of the Federal Constitution." (ECF No. 11-1 at PageID 145.) Regarding Younger abstention, she argues that the presence of two exceptional circumstances exempt her from the doctrine's application: bad faith and harassment, and the lack of an adequate state forum. (Id. at PageID 142.) Harris does not respond to the defendants' arguments based on the Eleventh Amendment.

II. PROPOSED CONCLUSIONS OF LAW

A. Standard of Review

Defendants bring their motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). Federal courts are courts of limited subject matter jurisdiction; they can adjudicate only those claims authorized by the Constitution or an act of Congress. Chase Bank USA, N.A. v. City of Cleveland, 695 F.3d 548, 553 (6th Cir. 2012). A challenge to this court's subject matter jurisdiction can come in two forms. A facial attack accepts the material allegations of the complaint as true but insists nonetheless that the court lacks subject matter jurisdiction to hear the case. Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co., 491 F.3d 320, 330 (6th Cir. 2007). A factual attack claims that the court lacks subject matter jurisdiction regardless of what the plaintiff has pleaded and requires the trial court to weigh the evidence before it in determining whether that is the case. Id. The present case involves a facial attack on subject matter jurisdiction. "*Pro se* complaints are to be held 'to less stringent standards than formal pleadings drafted by lawyers,' and should therefore be liberally construed." Otworth v. Budnik, 594 F. App'x 859, 861 (6th Cir. 2014) (quoting Williams v. Curtin, 631 F.3d 380, 383 (6th Cir. 2011)). However, "the lenient treatment generally accorded to *pro se* litigants has limits." Pilgrim v. Littlefield, 92 F.3d 413, 416 (6th Cir. 1996) (citing Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991)). Even *pro se* plaintiffs must present fair notice of claims against

the defendants that are within the court's jurisdiction. Miller v. Countrywide Home Loans, 747 F. Supp. 2d 947, 953 (S.D. Ohio 2010).

B. Claims Against the APD

Defendants first argue that the claims against the APD must be dismissed under the Eleventh Amendment. The Eleventh Amendment proscribes "a suit in which the State or one of its agencies or departments is named as the defendant" unless the State has waived its sovereign immunity. Pennhurst State Sch. & Hosp. v. Haldernman, 465 U.S. 89, 100 (1984); see also Haertel v. Mich. Dep't of Corrs., No. 20-1904, 2021 WL 4271908, at *3 (6th Cir. May 11, 2021). This prohibition includes "all suits, whether for injunctive, declaratory or monetary relief, against the state and its departments." Id. (quoting Thiokol Corp. v. Dep't of Treasury, 987 F.2d 376, 381 (6th Cir. 1993)) (internal quotations omitted). Tennessee has not waived its sovereign immunity. Tenn. Code Ann. § 20-13-102. The Eleventh Amendment therefore bars suit against any of its agencies, such as the APD. Further, Harris's claims against the APD are brought under 42 U.S.C. § 1983, which is not applicable to states. Dulai v. Mich. Dep't of Cmty. Health, 71 F. App'x 479, 481 (6th Cir. 2003) (citing Will v. Mich. Dep't of State Police, 491 U.S. 58, 63-64 (1989) ("neither a State nor its officials acting in their official capacities are 'persons' under § 1983)). Since Harris sued a state agency under § 1983, her claims are barred by the Eleventh

Amendment and not cognizable under § 1983. It is therefore recommended that her claims against the APD be dismissed.

C. Claims Against ALJ Williams

Defendants next argue that the claims against ALJ Williams must be dismissed due to absolute judicial immunity. Preliminarily, defendants are correct in asserting that judicial immunity is available for ALJ Williams as a state administrative law judge. Absolute judicial immunity has been applied to those "who perform functions closely associated with the judicial process" including "the federal hearing examiner and administrative law judge." Cleavinger v. Saxner, 474 U.S. 193, 200 (1985). In the Sixth Circuit, this protection has also been applied to state administrative law judges. Shelly v. Johnson, 849 F.2d 228, 230 (6th Cir. 1988).

Whether judicial immunity attaches depends on the relief sought. Judges have broad immunity from suits for money damages. Brookings v. Clunk, 389 F.3d 614, 617 (6th Cir. 2004) (citing Mann v. Conlin, 22 F.3d 100, 103 (6th Cir. 1994)). This immunity is only overcome when a judge acts outside their judicial capacity or in the complete absence of all jurisdiction. Mireles v. Waco, 502 U.S. 9, 11-12 (1991). However, Harris does not seek damages; instead, she seeks both declaratory and injunctive relief. The language of § 1983 "implicitly recognizes that declaratory relief [in an action brought against a judicial officer] is available in some

circumstances." Cooper v. Rapp, 702 F. App'x 328, 333 (6th Cir. 2017) (quoting Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000)); see also Ward v. City of Norwalk, 640 F. App'x 462, 467 (6th Cir. 2016). The availability of this relief "turns on whether the judge can properly be named as a defendant." Cooper, 702 F. App'x at 333 (citing Listenbee, 201 F.3d at 198) (internal quotations omitted). Suits against judges for declaratory relief, like any other suit, must satisfy the case-or-controversy requirement of Article III, which "operates to ensure that declaratory relief is available only when a live controversy continues to exist." Id. Where there is no case or controversy, the court has no subject matter jurisdiction. Lindke v. Tomlinson, 31 F.4th 487, 493 (6th Cir. 2022) (citing Michigan v. Meese, 853 F.2d 395, 397 (6th Cir. 1988)).

In the Sixth Circuit, courts have found that the presence of a live controversy is determined by the role a judge played in the proceedings being challenged. If a judge acted as the enforcer or administrator of a statute, they may be a proper defendant in an action for declaratory relief. Lindke, 31 F.4th at 493. However, if a judge acted as a "disinterested judicial adjudicator," they are not amenable to suit for declaratory relief under § 1983. Cooper, 702 F. App'x at 333 (citing Listenbee, 201 F.3d at 201 (3d Cir. 2000); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 21 (1st Cir. 1982) (Breyer, J.)). This is because no case or controversy exists between a judge acting in an adjudicatory capacity and a litigant appearing before them. Lindke, 31 F.4th at 493.

Based on the face of the complaint, the undersigned finds that ALJ Williams acted as an adjudicator in the proceedings before the Board. Under the Tennessee Administrative Procedures Act, ALJs in contested cases are obligated to "preside at the hearing, rule on questions of the admissibility of evidence, swear witnesses, advise the agency members as to the law of the case, and ensure that the proceedings are carried out in accordance with this chapter, other applicable law and the rules of the respective agency." Tenn. Code Ann. § 4-5-301. "An administrative judge or hearing officer shall decide a procedural question of law." Id. However, ALJs are not permitted to "take part in the determination of a question of fact, unless the administrative judge or hearing officer is an agency member." Id. ALJ Williams's role in the proceedings was limited to making evidentiary and procedural determinations. This is consistent with Harris's amended complaint, which alleges that ALJ Williams declined to hear Harris's motion, allowed the Board to bring particular charges, declined to admit certain documents while admitting others, and generally allowed the Board to make its case before her. (ECF No. 7.) The undersigned finds that Harris has alleged facts consistent with ALJ Williams acting in an adjudicatory fashion. Thus, no case or controversy exists between Harris and ALJ Williams. Because there is no case or controversy, the undersigned finds that this court lacks subject matter jurisdiction to hear Harris's claims against ALJ Williams.

Harris's motion, allowed the Board to bring particular charges, declined to admit certain documents while admitting others, and generally allowed the Board to make its case before her.[2](ECF No. 7.) The undersigned finds that Harris has alleged facts consistent with ALJ Williams acting in an adjudicatory fashion. Thus, no case or controversy exists between Harris and ALJ Williams. Because there is no case or controversy ,the undersigned finds that this court lacks subject matter jurisdiction to hear Harris's claims against ALJ Williams.

The undersigned also finds that ALJ Williams is immune to suit for injunctive relief. Such relief is not available under § 1983 "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983; Cooper, 702 F. App'x at 334. Harris has not assertedthat ALJWilliams violated a declaratory decree, or that declaratory relief is unavailable. SeeCooper, 702 F. App'x at 334.Injunctive relief is therefore not available to Harris under § 1983. For these reasons, it is recommended that all claims against ALJ Williams be dismissed with prejudice.

D. Younger Abstention

Even if the APD and ALJ Williams were not immune to Harris's suit, her claims nevertheless would be dismissed under the doctrine of Younger v. Harris. Younger abstention

[2]The undersigned is aware that the amended complaint references as an exhibit a video of the entire hearing that is available on YouTube. However, Harris has not identified any aspect of the hearing that would call into question ALJ Williams's role as an adjudicator.

exists to preserve "equity and comity" between state and federal governments. Doe v. Univ. of Kentucky, 860 F.3d 365, 368 (6th Cir. 2017). Traditionally, the doctrine compelled federal courts to refrain from interfering with state criminal prosecutions, but it has since been extended to prevent interference with civil enforcement proceedings that are "akin to criminal prosecutions." Id. at 369 (quoting Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72 (2013)). Specifically, the Supreme Court has identified three types of proceedings where Younger abstention may apply: (1) ongoing state criminal prosecutions, (2) civil enforcement proceedings that are akin to criminal prosecutions, and (3) civil proceedings involving "certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." Sprint, 571 U.S. at 78 (quoting New Orleans Pub. Serv., Inc. (NOPSI) v. Council of City of New Orleans, 491 U.S. 350, 368 (1989)). Once the relevant proceeding "is found to fit into one of the three NOPSI categories listed above," courts apply a three-step analysis to determine if abstention is warranted. Doe, 860 F.3d at 369. First, "there must have been an ongoing state judicial proceeding when the complaint was filed." Youssef v. Schuette, No. 19-1225, 2019 WL 11753787, at *2 (6th Cir. Sept. 17, 2019) (citing Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432-34 (1982)). Second, that ongoing state proceeding "must involve an important state interest." Id. Finally, the proceeding must give plaintiffs an "adequate opportunity" to raise any constitutional claims they may have. Id. At this last step, it is presumed the

opportunity to raise constitutional claims exists; the plaintiff bears the burden of showing that there is a clear state-law bar to doing so. Id. (citing Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14 (1987)).

1. NOPSI Categories

The defendants argue that the state cosmetology disciplinary proceedings against Harris are the type of "civil enforcement proceedings akin to criminal prosecutions" to which Younger abstention applies. These types of proceedings typically feature "a state actor [who] is routinely a party to the state proceedings and often initiates the action" and are "initiated to sanction the federal plaintiff." Doe, 860 F.3d at 369 (quoting Sprint, 571 U.S. at 78 (internal quotation marks omitted)). Common indicators include "an investigation and formal complaint, the seriousness of consequences, the availability of a hearing, [and] the introduction of witnesses or evidence[.]" Alexander v. Morgan, 353 F. Supp. 3d 622, 627 (W.D. Ky. 2018) (citing Sprint, 571 U.S. at 81).

This court has previously determined that the Board's disciplinary process falls within this category. Barnes, 2022 WL 2706174, at *4. There, this court referred to the Sixth Circuit's previous rulings finding that similar state administrative proceedings qualified. See Youssef, 2019 WL 11753787, at *2 (state medical board licensure proceedings); Doe, 860 F.3d at 370 (state university disciplinary proceedings); Alexander v. Rosen, 804

F.3d 1203, 1207 (6th Cir. 2015) (state child custody and support hearings); Watts v. Burkhart, 854 F.2d 839, 846 (6th Cir. 1988) (state medical license suspension proceedings). In Barnes, this court noted that the proceedings here contain many of the features that Sprint contemplated these quasi-criminal proceedings would possess. 2022 WL 2706174, at *4. The disciplinary proceedings were initiated by an investigation and a formal complaint, are resolved through a hearing process where witnesses and evidence may be presented, and involve serious consequences including the loss of a business license. (ECF No. 10-3.) Based on Sixth Circuit precedent and the nature of the proceedings, as well as this court's own prior rulings, the undersigned finds that the state cosmetology disciplinary proceedings are quasi-criminal proceedings under NOPSI. Because of this finding, the undersigned must now determine whether Younger abstention applies.

2. Younger Factors

Federal courts abstain under Younger where three factors are met. First, there must be ongoing state judicial proceedings. Sun Refining & Marketing Co. v. Brennan, 921 F.2d 635, 639 (6th Cir. 1990). For purposes of this factor, "the State's trial-and-appeals process is treated as a unitary system[.]" Morgan, 353 F. Supp. 3d at 628 (citing NOPSI, 491 U.S. at 369). As the Supreme Court has stated, "a necessary concomitant of Younger is that a party wishing to contest in federal court the judgment of a state judicial tribunal must exhaust his state appellate remedies

before seeking relief in the District Court." Id. (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 608 (1975)). This factor is satisfied. Harris filed her initial complaint in this case on July 26, 2022. (ECF No. 1.) Her petition to the Shelby County Chancery Court was initiated months earlier on February 7, 2022. (ECF No. 10-5.) Although Harris's claims against the APD have been dismissed, her claims against other defendants remain active. (Id.) The requirement that proceedings be ongoing is therefore satisfied.

Second, Younger abstention applies if the ongoing state proceedings implicate an "important state interest." Youssef, 2019 WL 11753787, at *2 (citing Middlesex Cty., 457 U.S. at 432-34 (1982)). If the "state has a substantial legitimate interest in the kind of state proceeding at issue," then this factor is satisfied. Nimer v. Litchfield Tp. Bd. of Trustees, 707 F.3d 699, 701 (6th Cir. 2013). This court has previously held that the proceedings in question satisfy this requirement. Barnes, 2022 WL 2706174, at *5. In support, this court cited multiple cases that have found that states have an important interest in regulating medical licenses, legal licenses, and other professional activities. See Squire v. Coughlan, 469 F.3d 551, 556 (6th Cir. 2006) ("the state has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses"); Al-Marayati v. Univ. of Toledo, 145 F.3d 1329 (table), 1998 WL 252760, at *6 (6th Cir. 1998) ("the State certainly has an important interest in monitoring and disciplining the conduct of faculty members at institutions of higher education which are financially subsidized

by the state"); Watts, 854 F.2d at 846 (medical disciplinary proceedings); Kalniz v. Ohio State Dental Bd., 699 F. Supp. 2d 966, 972 (S.D. Ohio 2010) ("the regulation of the practice of dentistry is an important state interest"). The undersigned finds that state cosmetology board proceedings are not distinguishable from administrative proceedings involving other state-regulated, licensed professions. At least one other district court has agreed. Cornwell v. California Bd. of Barbering and Cosmetology, 962 F. Supp. 1260, 1268 (S.D. Cal. 1997) ("The state has an important interest in regulating the conduct of its professions [including cosmetology and barbering]."). The proceedings here directly bear on Tennessee's ability to regulate its cosmetology and barbering licenses and implicate an important state interest. The second element of Younger is thus satisfied. The final condition for Younger abstention requires that the state proceeding afford "an adequate opportunity for the federal plaintiffs to raise their constitutional claims." Nimer, 707 F.3d at 701. The plaintiff bears the burden of showing that "state procedural law barred presentation of their constitutional claims." Id. (citing Fed. Express Corp. v. Tenn. Pub. Serv. Comm'n, 925 F.2d 962, 969 (6th Cir. 1991)). Abstention will be appropriate unless "state law clearly bars the interposition of the constitutional claims." Squire, 469 F.3d at 556 (quoting Fieger v. Thomas, 74 F.3d 740, 745 (6th Cir. 1996)).

Although Harris alleges a "lack of an adequate state forum," she has not shown that state procedural law bars her constitutional claims. In fact, Harris has already appealed the revocation of her licensure to the Shelby County Chancery

Court. (ECF No. 10-5.) These appeals are governed by Tennessee Code Annotated § 4-5-322, which provides that the Chancery Court "may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are in violation of constitutional or statutory provisions." Tenn. Code Ann. § 4-5-322(g)-(g)(1). Tennessee procedural law thus allows Harris's constitutional claims to be heard.

With these three elements satisfied, abstention is only inappropriate if "the plaintiff[s] can show that . . . bad faith, harassment, or flagrant unconstitutionality" underlies the case against them. Squire, 469 F.3d at 556 (quoting Fieger, 74 F.3d at 750). While Harris has alleged that the charges against her were brough in bad faith as part of a pattern of harassment, she has not provided sufficient facts to demonstrate that "the [Board's] actions against [her] were motivated by bad-faith or with intent to harass." Fieger, 74 F.3d at 750. As Harris herself acknowledges, this exception only applies "where state officials initiate repeated prosecutions to harass an individual or deter his conduct, and where the officials have no intention of following through on these prosecutions." Lloyd v. Doherty, No. 18-3552, 2018 WL 6584288, at *4 (6th Cir. Nov. 27, 2018) (quoting Ken-N.K., Inc. v. Vernon Twp., 18 F. App'x 319, 324-25 n.2 (6th Cir. 2001)). To the contrary, Harris has presented evidence of only one ongoing administrative case against her schools that has been fully prosecuted. (ECF No. 7.)

Without facts indicating that the administrative proceedings are the result of state harassment, rather than genuine enforcement efforts, the court cannot deny abstention under this "rarely applied" exception. Kalniz, 699 F. Supp. 2d at 973 (finding, as of 2010, "no Sixth Circuit cases which ha[ve] ever authorized federal intervention under the bad faith or harassment exception"); see also Doe, 860 F.3d at 371 (noting that "conclusory statements" are not enough to show harassment); Video Store, Inc. v. Holcomb, 729 F. Supp. 579, 580 (S.D. Ohio 1990) (finding a "prima facie case of harassment" where plaintiffs were subjected to twelve civil enforcement actions and five criminal prosecutions by three different municipalities). As such, the undersigned finds that Younger abstention applies in this case.

In cases where Younger applies and the plaintiff does not seek damages, the proper course of action is dismissal without prejudice. Moncier v. Jones, 803 F. Supp. 2d 815, 834 (E.D. Tenn. 2011) (citing Louisville Country Club v. Ky. Comm'n on Human Rights, 221 F.3d 1335, 1335 (6th Cir. 2000)). Harris does not seek damages. The undersigned therefore finds that, in the event that the case is not dismissed with prejudice as recommended above, dismissal without prejudice under Younger is appropriate.

III. RECOMMENDATION

For the above reasons, the undersigned recommends that the defendants' motion to dismiss be granted and that the plaintiff's complaint be dismissed with prejudice based on Eleventh Amendment and judicial immunity. In the alternative, the undersigned recommends that the motion to dismiss be granted under Younger abstention and the plaintiff's complaint be dismissed without prejudice.

Respective submitted,

s/ Tu M. Pham
TU M. PHAM
Chief United States Magistrate Judge

September 27, 2022
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

QUANNAH L. HARRIS - PETITIONER

VS.

THE SECRETARY OF STATE ET AL - RESPONDENT

CERTIFICATE OF SERVICE

I, Quannah Harris, do swear or declare that on this date, the 19th day of September, 2024, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR A WRIT OF CERTIORARI and Addendum to the Appendix on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

Attorney Jessica Catherine Simon
ATTORNEY GENERAL'S OFFICE
Tax Division
P.O. Box 20207

Nashville, TN 37202-0207
615-741-3198
Email: jessica.simon@ag.tn.gov

Quannah Harris
2195 S. Third Street
Memphis, TN 38109
(901) 603-2764

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 19th day of September 2024.

Quannah Harris
2195 S. Third Street
Memphis, TN 38109
(901) 603-2764