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APPENDIX A

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

No. 17-2089

(D.C. No. 1: 17-CV-00430-NF-KHR) (D. N.M.)

[Filed November 20, 2017]

ALBERT F. CATANACH,	)
	)
Plaintiff - Appellant,	)
	)
v.	)
	)
DAVID K. THOMSON, Judge, First	)
Judicial District Court,	)
	)
Defendant – Appellee.	)

ORDER AND JUDGMENT*

* Oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). We have decided this case on the briefs.

This order and judgment is an unpublished decision, not binding precedent. 10th Cir. R. 32.1(A). Citation to unpublished decisions is not encouraged, but not prohibited. Fed. R. App. 32.1. Citation is appropriate as it relates to law of the case, issue preclusion and claim preclusion. Unpublished decisions may also be cited for their persuasive value. 10th Cir. R. 32.1(A). Citation to an order and judgment must be accompanied by an appropriate parenthetical notation B (unpublished). *Id.*

Before **LUCERO, O'BRIEN**, and **MORITZ**, Circuit Judges.

Albert Catanach's telecommunications company provides wireless internet service to customers in and around Santa Fe, New Mexico. In 2015, he applied for a permit from the City of Santa Fe (City) to remove two existing rooftop telecommunications towers at his facility and consolidate them into one ground-level tower. The City informed him he needed a waiver from the City's Planning Commission because the location of the proposed ground tower violated the minimum property setback requirements. Catanach nevertheless built the new tower. According to him, the federal Spectrum Act required the City to approve his application because the new tower did not constitute a "substantial change" under the Act and, when it did not do so within the time allowed by the Act, his application was "deemed granted." *See* 47 U.S.C. § 1455(a)(1) ("[A] State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."); *see also* 47 C.F.R. § 1.40001(c)(4) ("In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.").

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The City responded by filing a lawsuit in New Mexico state court to stop the construction. The case was assigned to the Honorable David Thomson. Catanach removed the case to federal court but the case was ultimately remanded to the state court. Once back in state court, Judge Thomson issued a preliminary injunction enjoining Catanach from performing any additional work on the tower but allowing him to continue to operate the current equipment on the tower.¹ He also denied Catanach's motion for summary judgment, motion for recusal, motion for expedited hearing, and emergency motion to stay the preliminary injunction. Trial is currently set for May 2018.

Unhappy with these rulings, Catanach filed a pro se 42 U.S.C. § 1983 complaint against Judge Thomson in his official capacity alleging the judge violated his rights to due process and equal protection. He claimed Thomson erroneously (1) denied his motions without a hearing, (2) enjoined him from the free use of his property, (3) denied his motion for summary judgment, (4) failed to grant an expedited hearing and purposely set a jury trial for May 2018 to undermine his right to the free use of his property for over 500 days, and (5) failed to require the City to issue a surety bond with its application for an injunction. He also alleged Thomson did not address the Spectrum Act and his orders violated that Act.

¹ It is unclear from the record whether Catanach completely finished building the new tower prior to the City filing suit. In his amended complaint, he states he completed it yet Judge Thomson's preliminary injunction prohibited him from performing any additional work on it.

Thomson moved to dismiss the complaint arguing, among other things, the Eleventh Amendment barred relief.² Catanach disagreed, claiming the *Ex Parte Young*

² Thomson also argued (and the district judge agreed) that, to the extent he was being sued in his individual capacity, he was entitled to judicial immunity. See *Lundahl v. Zimmer*, 296 F.3d 936, 939 (10th Cir. 2002) (“Except where a judge has acted in the clear absence of all jurisdiction, the doctrine of judicial immunity shields that judge from liability for the judge’s official adjudicative acts.”) (quotation marks omitted); see also *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1156 (10th Cir. 2011) (“Judicial immunity applies only to personal capacity claims.”). Catanach does not challenge this ruling on appeal, most likely because his complaint stated an official capacity claim only.

Thomson further argued dismissal was appropriate under the *Younger* abstention doctrine. See *Younger v. Harris*, 401 U.S. 37 (1971). In doing so, he stated: “A federal court must abstain from exercising jurisdiction when: (1) there is an ongoing state criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies.” (R. at 327 (quoting *Amanatullah v. Colo. Bd. of Med. Exam’rs*, 187 F.3d 1160, 1163 (10th Cir. 1999)). According to Thomson, *Younger* abstention was appropriate because the state court proceedings are ongoing, the state court provides an adequate forum to hear Catanach’s federal law claims, and the state proceedings implicate important states interests (zoning and property rights).

But the cases Thomson relied upon pre-date the Supreme Court’s decision in *Sprint Communications, Inc. v. Jacobs*, --- U.S. ---, 134 S. Ct. 584 (2013). In *Jacobs*, the Court significantly limited the reach of *Younger* to only ongoing (1) state criminal prosecutions, (2) civil enforcement proceedings akin to criminal prosecutions such as state-initiated disciplinary proceedings against a lawyer for violation of state ethics rules, and (3) civil proceedings implicating a State’s interest in enforcing the orders

exception to Eleventh Amendment immunity applied because he was seeking to enjoin Thomson's ongoing violation of federal law—his issuance of the preliminary injunction in violation of the Spectrum Act. *See Ex parte Young*, 209 U.S. 123 (1908). And, he claimed, that violation is ongoing because the injunction continues to prevent him from constructing the new tower without risking fines and jail time.

The district judge agreed with Thomson that Eleventh Amendment immunity applied. She rejected Catanach's attempts to frame his complaint as one seeking prospective relief for an ongoing violation of federal law. She reasoned:

Essentially, Catanach disputes the correctness of Judge Thompson's legal ruling. The relief

and judgments of its courts such as state court contempt proceedings. 134 S. Ct. at 588, 59192. It also discounted reliance on the three factors outlined above:

Divorced from their quasi-criminal context, the three . . . conditions would extend *Younger* to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest. That result is irreconcilable with our dominant instruction that, even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule.

Id. at 593 (citation and quotation marks omitted).

It is unclear whether this case involves one of the three "exceptional circumstances" in which a federal court should abstain from exercising its jurisdiction. *Id.* at 594 (quotation marks omitted). We need not decide the issue, however, because, as we will explain, dismissal was appropriate under the Eleventh Amendment and 42 U.S.C. § 1983.

requested in Catanach's Amended Complaint would require the Court to consider the merits of Judge Thompson's ruling and make a determination about whether that ruling complied with the Spectrum Act. In reality, Catanach is asking this Court to issue an appeal of Judge Thompson's grant of a preliminary injunction to the City of Santa Fe. This is not a request for prospective relief, but relief from past harms. Catanach is clearly asking this Court to provide injunctive relief based on Judge Thompson's past acts. The requested relief is anything but prospective relief. Because Catanach is seeking relief for past harms, his claims are not allowed under the *Ex parte Young* doctrine.³

(R. at 390.)

Catanach says the Eleventh Amendment does not bar his case. He insists he is not requesting damages for past wrongs or seeking to re-litigate the state court case. Rather, he seeks prospective relief for an ongoing violation of federal law—to enjoin Thomson from enforcing the preliminary injunction because that injunction violates the Spectrum Act and continues to harm him. He again relies on the *Ex parte Young* exception to Eleventh Amendment immunity.

Our review is de novo. *Reames v. Okla. ex rel. OK Health Care Auth.*, 411 F.3d 1164, 1167 (10th Cir. 2005). Because Catanach is proceeding pro se, he is entitled to a liberal construction of his pleadings. *Yang*

³ The district judge misspelled Thomson.

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v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008). We will not, however, serve as his advocate. *Id.*

“States enjoy sovereign immunity from suit under the Eleventh Amendment.” *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1166 (10th Cir. 2012). “But [that] immunity is not absolute.” *Id.* Under *Ex parte Young*, “a plaintiff may bring suit against individual state officers acting in their official capacities if the complaint alleges an ongoing violation of federal law and the plaintiff seeks prospective relief.” *Id.*; see also *Quern v. Jordan*, 440 U.S. 332, 337 (1979) (under *Ex parte Young*, “a federal court, consistent with the Eleventh Amendment, may enjoin state officials to conform their future conduct to the requirements of federal law.”). To determine whether “*Ex parte Young* 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.” *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002) (quotation marks omitted). “[T]he exception is narrow: It applies only to prospective relief, [and it] does not permit judgments against state officers declaring that they violated federal law in the past . . .” *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993).

With one exception, Catanach sought relief from past harms, i.e., relief from Thomson’s past rulings on his motions for recusal and for summary judgment and his failure to grant an expedited hearing or to require the City to issue a surety bond with its application for an injunction. The district judge was correct—these

claims do not allege an ongoing violation of federal law and the *Ex parte Young* exception to Eleventh Amendment immunity does not apply.

Thomson's issuance of the preliminary injunction, however, is different. Although it was issued in the past (November 16, 2016), its effects are ongoing. And Catanach alleges a continuing violation of federal law and seeks to enjoin Thomson from enforcing the injunction. At first blush, this seems to satisfy the "straightforward inquiry" necessary to invoke the *Ex parte Young* exception, but it can't carry the day. We need not definitively decide that issue because dismissal of this claim was appropriate on a different ground. *See Stickley v. State Farm Mut. Auto. Ins. Co.*, 505 F.3d 1070, 1076 (10th Cir. 2007) ("[W]e may affirm a district court decision on any grounds for which there is a record sufficient to permit conclusions of law, even grounds not relied upon by the district court.") (quotation marks omitted).

Section 1983 expressly disallows injunctive relief against a judicial officer "for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." *See Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011) ("Although we have previously said that a plaintiff may obtain an injunction against a state judge under 42 U.S.C. § 1983, those statements were abrogated by the Federal Courts Improvement Act of 1996, which provides that injunctive relief against a judicial officer shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.") (citations and quotation marks omitted); *see also Swain v. Seaman*, 505 F. App'x 773,

775 (10th Cir. 2012) (unpublished) (“To be sure, Mr. Swain does mention (correctly) that courts generally recognize an exception to Eleventh Amendment immunity for plaintiffs seeking prospective relief from state officials. But Mr. Swain forgets that Congress expressly disallowed injunctive relief against judicial officers unless a declaratory decree was violated or declaratory relief was unavailable.”) (citation and quotation marks omitted); *Ysais v. New Mexico*, 373 F. App’x 863, 866 (10th Cir. 2010) (unpublished) (“Judicial officers are explicitly immunized not only against damages but also against suits for injunctive relief under 42 U.S.C. § 1983.”). Catanach has not alleged Thomson violated a declaratory judgment or that

declaratory relief was unavailable.⁴ His claim for injunctive relief is barred by the statute itself.⁵

⁴ Section 1983 does not preclude declaratory relief against a judicial officer. See *Lawrence v. Kuenhold*, 271 F. App'x 763, 766 & n.6 (10th Cir. 2008) (unpublished). In addition to seeking to enjoin Thomson from enforcing the preliminary injunction, Catanach's complaint requested a ruling related to the Spectrum Act's deemed granted provision and the statute of limitations. But, in his opening brief, he explains: "While [he] . . . did request a ruling on the Spectrum Act, it was to determine if a Federal Law is being violated which would allow the court to assume jurisdiction." (Appellant's Op. Br. at 2.) And throughout his brief, he specifically states he is seeking "prospective injunctive relief" and explicitly asks that we "remand with instructions to enter a preliminary injunction on [his] behalf." (*Id.* at ix, 2, 3, 11, 16, 28, 37.) Indeed, he expends much energy in his brief arguing why he satisfies the requirements for injunctive relief and even suggests Thomson consented to the issuance of an injunction by not timely responding to his motion for preliminary injunction. Therefore, we construe his complaint as seeking injunctive relief only, which is barred under § 1983. However, even if his complaint could be construed as also seeking declaratory relief, he has waived any argument that dismissal of his request for declaratory relief was improper because he did not raise the argument in his opening brief. See *Toeus v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012) ("Arguments not clearly made in a party's opening brief are deemed waived."). We have enforced this rule even against pro se litigants like Catanach. *Id.*; see also *Rivers v. Hartmann*, 499 F. App'x 786, 789 (10th Cir. 2012) (unpublished).

⁵ The district judge relied on § 1983 in denying Catanach's motion for temporary restraining order. However, she did not rely on it in dismissing his official capacity claim against Thomson. Catanach sought reconsideration of the denial of his motion for temporary restraining order, relying on *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984) ("We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity."). However, as the judge explained, "Congress

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AFFIRMED.

Entered by the Court:

Terrence L. O'Brien
United States Circuit Judge

effectively reversed *Pulliam* with the enactment of the Federal Courts Improvement Act of 1996, Pub. L. No. 104–317, 110 Stat. 3847 (1996)” (amending 42 U.S.C. § 1983 to preclude injunctive relief against judicial officers acting in their judicial capacity unless a declaratory decree was violated or unavailable). *See Lawrence*, 271 F. App’x at 766 n.6.

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Case No: 17-CV-430-NF-KHR

[Filed June 1, 2017]

ALBERT CATANACH,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JUDGE DAVID K. THOMPSON,	)
FIRST JUDICIAL DISTRICT COURT,	)
	)
Defendant.	)

**ORDER GRANTING MOTION TO DISMISS
AMENDED COMPLAINT, DENYING MOTION
FOR HEARING AND DENYING MOTION TO
STRIKE**

This matter is before the Court on Defendant's Motion to Dismiss (Doc. 18), Defendant's Motion to Stay (Doc. 19), Plaintiff's Motion for Hearing (Doc. 15) and Plaintiff's Motion to Strike (Doc. 23). The Court has reviewed the motions, responses, replies and is fully informed in the premises. The Court FINDS and ORDERS as follows:

BACKGROUND

This dispute originally arose between the City of Santa Fe (City) and Plaintiff Albert Catanach (Catanach) regarding the building of a telecommunications tower. On April 9, 2015, Catanach filed an application with the City for a permit to consolidate two telecommunications towers on his roof to one tower 30 feet to the south of his facility. (Doc. 10 at ¶1). Catanach contends that his application was deemed accepted under Section 409 of the Middle Class Tax Relief Act of 2012 (“Spectrum Act”). Catanach waited 30 days for the City to file suit, and when it did not do so, he proceeded with his proposed modifications.

However, after he completed building the consolidated tower, the City filed a Petition for Temporary Restraining Order/Preliminary Injunction in the First Judicial District Court in Santa Fe, New Mexico on July 14, 2016 to prevent further construction on the tower, but allowing Catanach to continue to operate his current towers. (Doc. 2 at 4). Catanach removed the case to Federal Court on July 15, 2016. *City of Santa Fe v. Catanach, et al.*, 16-cv-825-MCA-KBM at Doc. 1. The City filed a motion to remand, which the Court granted on September 30, 2016. *Id.* at Doc. 15 [Memorandum Opinion and Order]. The Federal District Court found that it did not have jurisdiction over Catanach’s claim because the Petition for Injunctive Relief did not raise a federal question. First, the Court found that “[u]nder the ‘well-pleaded complaint rule’, the City’s petition does not establish that the City’s cause of action arises from federal law or rests on the resolution of a *substantial* federal

question. “*Id.* at 8 (emphasis in original). Additionally, the Federal District Court found neither the Telecommunications Act, nor the Spectrum Act, completely preempted the state cause of action. *Id.* at 9.

The case was remanded back to the State District Court, where Judge Thomson held a hearing on October 28, 2016 and issued a Preliminary Injunction against Catanach on November 15, 2016. (Doc. 2 at 19 [Exhibit 1, Preliminary Injunction]). Catanach claims that Judge Thomson has denied all of his motions and requests for hearings except one and that Judge Thomson had set the final hearing in this matter for May, 2018. (Doc. 2 at 5). Catanach filed this action in Federal Court asserting Judge Thompson had violated his Fourteenth Amendment Rights and had improperly interpreted the Spectrum Act.

DISCUSSION

Judge Thompson seeks dismissal of the case based on Eleventh Amendment immunity for claims against him in his official capacity and judicial immunity for claims against him in his individual capacity. In addition to the Motion to Dismiss, Judge Thompson also filed a motion to stay the proceedings ending the Court’s decision on the Motion to Dismiss. Catanach also filed a motion for hearing on his request for injunctive relief and a Motion to Strike Defendant’s Untimely Filing, seeking to strike Judge Thompson’s response to Catanach’s Motion for Temporary Restraining Order.

Motion to Strike

Catanach filed his Motion to Strike Defendant's Untimely Filing, asserting that Judge Thomson failed to file his response to his motion for temporary restraining order within fourteen (14) calendar days as required by the Local Civil Rules. This motion lacks merit. On April 12, 2017, the Court denied Catanach's Motion for Temporary Restraining Order (Doc. 7), after that time, the motion was no longer at issue. Additionally, the Federal Rules of Civil Procedure allow Judge Thompson twenty-one days after service of the Complaint to respond. Catanach cannot attempt to truncate that time by also filing a motion with the same allegations as the Amended Complaint. For all of these reasons, the Court finds that Catanach's Motion to Strike Defendant's Untimely Filing lacks merit and is DENIED.

Judge Thompson's Motion to Dismiss

Judge Thompson seeks dismissal of the case based on Eleventh Amendment immunity for claims against him in his official capacity and judicial immunity for claims against him in his individual capacity. Judge Thomson alternatively argues that even if the Court has jurisdiction, the Court should dismiss pursuant to the *Younger* abstention doctrine.

Standard of Review

"Because the jurisdiction of federal courts is limited, there is a presumption against our jurisdiction, and the party invoking federal jurisdiction bears the burden of proof." *Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005) (quotation marks and citation omitted). Federal courts must exercise jurisdiction only

when specifically authorized to do so. *Castenda v. INS*, 23 F.3d 1576, 1580 (10th Cir. 1994). If the court finds subject matter jurisdiction is lacking it must dismiss the plaintiff's complaint. *Bushnell, Inc. v. Brunton Co.*, F. Supp. 2d 1150, 1157 (D. Kan. 2011). A facial attack on the complaint's allegations regarding subject matter jurisdiction questions the complaint's sufficiency and requires the court to accept the allegations as true. *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

Sovereign Immunity- Official Capacity Claims

Judge Thomson seeks to dismiss the claims against him in his official capacity based on sovereign immunity. Catanach responds that his claims are not barred by sovereign immunity because he is only seeking prospective relief for an ongoing violation of federal law and therefore his claims are allowed under the *Ex parte Young* doctrine.

"The Eleventh Amendment prohibits federal courts from exercising jurisdiction over suits involving a citizen seeking damages from a state, except where Congress has specifically granted jurisdiction." *Russ v. Uppah*, 972 F.2d 300, 303 (10th Cir. 1992)(citation omitted) "The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court." *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 363 (2001)(citation omitted).

A state's immunity may be overcome in three instances: (1) the state may consent to be sued; (2) Congress may expressly abrogate a state's immunity; or (3) a party may sue a state official

seeking only prospective equitable relief for violations of federal law under the *Ex parte Young* doctrine. *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1285 (10th Cir. 1999); *Ex parte Young*, 209 U.S. 123, 159-60 (1908).

Catanach argues that his claims are proper under *Ex parte Young*, because he is seeking to prospectively enjoin a state official's ongoing violation of federal law. Catanach claims Judge Thomson's issuance of the preliminary injunction serves as a continuing violation of federal law, specifically the Spectrum Act. Catanach claims he is seeking only prospective relief.

Application of Ex Parte Young

To determine whether the *Ex parte Young* exception applies, the 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." *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)(quotations and brackets omitted). "Thus, for the *Ex parte Young* exception to apply, plaintiffs must show that they are: (1) suing state officials rather than the state itself, (2) alleging an ongoing violation of federal law, and (3) seeking prospective relief." *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012)(citations omitted). Catanach fails to show he is seeking prospective relief.

In his Amended Complaint, Catanach asserts violations of his Fourteenth Amendment Right to equal protection and due process. He also claims Judge Thompson violated the Spectrum Act. Specifically, Catanach claims Judge Thomson has sought to deny him equal protection and due process because he

denied Catanach's motions, without a hearing. (Doc. 10 at ¶¶ 25-27). He also claims that Judge Thomson has denied him free use of his property through his order for Preliminary Injunction and through setting the matter for hearing in May of 2018. (*Id.* at ¶ 29). Catanach also alleges Judge Thompson failed to properly consider the provisions of the Spectrum Act.

Essentially, Catanach disputes the correctness of Judge Thompson's legal ruling. The relief requested in Catanach's Amended Complaint would require the Court to consider the merits of Judge Thompson's ruling and make a determination about whether that ruling complied with the Spectrum Act. In reality, Catanach is asking this Court to issue an appeal of Judge Thompson's grant of a preliminary injunction to the City of Santa Fe. This is not a request for prospective relief, but relief from past harms. Catanach is clearly asking this Court to provide injunctive relief based on Judge Thompson's past acts. The requested relief is anything but prospective relief. Because Catanach is seeking relief for past harms, his claims are not allowed under the *Ex parte Young* doctrine.

Catanach makes no other argument to overcome the sovereign immunity bar to his official capacity claims against Judge Thomson. For these reasons, the Court finds sovereign immunity bars Catanach's claims against Judge Thompson in his official capacity.

Judicial Immunity- Individual Capacity

Judge Thompson also argues that any claims Catanach has against him in his individual capacity are barred by judicial immunity. Judges are absolutely immune from suits based upon actions taken in their

judicial capacity. See *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991); *Stump v. Sparkman*, 435 U.S. 49, 356-57 (1978); *Hunt v. Bennett*, 17 F.3d 1263, 1266-67 (10th Cir. 1994). “A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.” *Stump*, 435 U.S. at 359. The only two exceptions to this immunity are for nonjudicial actions and for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Id.* Neither of these exceptions is present in this case.

“Judicial officers are explicitly immunized not only against damages but also against suits for injunctive relief under 42 U.S.C. § 1983.” *Ysais v. New Mexico*, 373 F. App’x 863, 866 (10th Cir. 2010) (unpublished) (citing *Roth v. King*, 449 F.3d 1272, 1286–87 (D.C. Cir. 2006)). However, judicial immunity does not necessarily foreclose declaratory relief in the appropriate case. *Ysais*, 373 F. App’x at 866.

In this case, Catanach is not seeking prospective declaratory relief, but is seeking retroactive injunctive relief against Judge Thompson. For these reasons, the Court finds Judge Thompson is protected by judicial immunity for claims against him in his personal capacity.

CONCLUSION

For all of these reasons the Court finds Catanach’s Amended Complaint is barred by sovereign and judicial immunity and the Court lacks jurisdiction to consider these claims. The Court finds it is not necessary to consider Judge Thompson’s motion to stay, because the Court is dismissing this case.

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IT IS ORDERED that Plaintiff's Motion to Strike (Doc. 23) is DENIED.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (Doc. 18) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Hearing (Doc. 15) is DENIED as MOOT.

IT FURTHER ORDERED that Defendant's Motion to Stay (Doc. 18) is MOOT.

IT IS FINALLY ORDERED that this case is DISMISSED.

Dated this 1st day of June, 2017.

s/

NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE
DISTRICT OF WYOMING

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 17-2089

[Filed December 13, 2017]

ALBERT F. CATANACH,	)
	)
Plaintiff - Appellant,	)
	)
v.	)
	)
DAVID K. THOMSON, Judge, First	)
Judicial District Court,	)
	)
Defendant - Appellee.	)

ORDER

Before **LUCERO, O'BRIEN**, and **MORITZ**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

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Entered for the Court

s/ ELISABETH A. SHUMAKER, Clerk

