IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MARIO CERAME and **TIMOTHY C. MOYNAHAN** Plaintiffs, v. **CHRISTOPHER SLACK,** in his official capacity as Connecticut Statewide Bar Counsel; and **MATTHEW G. BERGER**, in his official capacity as Chair of the Statewide Grievance Committee, Defendants.	)	**Case No. 3:21-cv-01502-OAW** **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS

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INTRODUCTION

Plaintiffs assert a facial constitutional challenge to Rule 8.4(7), a recently adopted provision of the Connecticut Rules of Professional Conduct that took effect on January 1, 2022. The Complaint asserts, among other things, that Rule 8.4(7) violates the First and Fourteenth Amendments because it imposes content- and viewpoint-based speech restrictions and because its overly vague terms fail to provide sufficient guidance regarding what speech is prohibited.

Defendants do not currently dispute either of those constitutional claims. Indeed, they never mention the words "vagueness," "content-based," or "viewpoint-based." Instead, they assert (in serial motions to dismiss filed over the past 3½ years) that this Court lacks jurisdiction to hear the claims. Defendants contend that the suit is barred by the Eleventh Amendment and that Plaintiffs lack standing to challenge Rule 8.4(7).

The Second Circuit, reversing the district court's contrary determination, rejected Defendants' standing argument, finding that Plaintiffs' speech is "arguably proscribed by Rule 8.4(7)" and that they "face a credible threat of enforcement" under the Rule. *Cerame v. Slack*, 123 F.4th 72, 83, 85 (2d Cir. 2024). The appellate court remanded the case to provide Defendants an opportunity to re-raise their Eleventh Amendment defense. *Id*. at 88. Defendants filed their renewed Fed.R.Civ.P. 12(b)(1) motion to dismiss on June 20, 2025, reasserting that the Eleventh Amendment bars the Court from asserting subject matter jurisdiction over Plaintiffs' claims.

In light of the Rule's clear constitutional infirmities, Defendants' efforts to divert attention from the merits of Plaintiffs' claims is unsurprising. In any event, the motion to dismiss lacks merit and should be denied. It is black letter law that the Eleventh Amendment does not shield state officials charged with enforcing a challenged provision from claims alleging an ongoing violation of federal law and seeking prospective relief against such enforcement. Undeterred, Defendants assert that the Eleventh Amendment provides them with blanket protection against federal-court

lawsuits because they are situated within the judicial branch of Connecticut's government. But case law from both the Supreme Court and the Second Circuit makes clear that judicial officials enjoy no special immunity from federal-court proceedings when, as here, they are being sued for their role in administering and enforcing an unconstitutional state regulation (as opposed to adjudicating efforts by others to enforce the regulation).

Defendants' alternative argument—that "principles of federalism and comity" mandate that Plaintiffs Mario Cerame and Timothy Moynahan be required to "bring a declaratory judgment action in State court and let the State judiciary interpret the Rule in the first instance," Def. Br. 2–3, fares no better. Indeed, the rule is precisely the opposite: "federal courts have a strict ... and virtually unflagging obligation to exercise jurisdiction conferred upon them by Congress." *Courthouse News Serv. v. Corsones*, 131 F.4th 59, 77 (2d Cir. 2025) (cleaned up) (citations to controlling Supreme Court cases discussed below omitted). Defendants are, of course, permitted to issue their interpretations of Rule 8.4(7). But Defendants to date have failed to do so, and that failure has exacerbated the First Amendment injury that Plaintiffs continue to suffer.

Because of the importance of the constitutional rights at stake and the complex legal issues raised by the motion to dismiss, Plaintiffs request that the Court permit oral argument on the motion.

STATEMENT OF THE CASE

This case is before the Court on Defendants' motion to dismiss the Complaint under Fed.R.Civ.P. 12. For purposes of the motion, all factual allegations in the Complaint must be "accept[ed] … as true," and all material properly before the Court is to be considered "in the light most favorable to plaintiffs." *Melendez v. City of New York*, 16 F.4th 992, 996 (2d Cir. 2021); *Cerame*, 123 F.4th at 82 ("At the motion to dismiss stage, we draw all reasonable inferences in

[Plaintiffs'] favor."). The following rendition of well-pleaded facts is drawn directly from the Second Circuit's opinion.

Connecticut's Regulation of Attorneys. This case challenges the constitutionality of a provision of the Connecticut Rules of Professional Conduct (the "Rules"). The Connecticut Superior Court adopted the Rules to regulate the conduct of the State's licensed attorneys. Among other things, the Rules define activities constituting "professional misconduct." *See* Conn. R. Pro. Conduct 8.4 (2022). Connecticut-licensed attorneys who engage in professional misconduct (without regard to where the conduct occurs) are subject to sanction, up to and including loss of their license to practice law. *See* Conn. R. Pro. Conduct 8.5 (2022). Under Connecticut law, only licensed attorneys are authorized to practice law within the State.

The entity charged with overseeing attorney discipline in Connecticut is the 21-member Statewide Grievance Committee; Defendant Matthew G. Berger is the Chair of the Committee. Compl. ¶¶ 23–24. The Committee supervises the work of Connecticut's Statewide Bar Counsel, a position held by Defendant Christopher L. Slack since 2023. That official is charged with, among other things, reviewing all complaints alleging misconduct by a Connecticut-licensed attorney. *Id.* ¶¶ 20–22; Super. Ct. R., § 2-32(a).

The American Bar Association (ABA) has for several decades maintained "Model Rules of Professional Conduct." Many States, including Connecticut, have adopted the ABA Model Rules, in whole or substantial part. In 2016, the ABA voted to amend its Model Rules to include a new Rule 8.4(g), which reads as follows:

> It is professional misconduct for a lawyer to: ... (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Model R. Pro. Conduct R. 8.4 (ABA).

This Model Rule has proven to be highly controversial. A significant majority of the States that have considered adopting the Rule has declined to do so; many States have expressed the view that the Rule is unconstitutional. For example, the Idaho Supreme Court rejected a proposal to adopt a version of Rule 8.4(g) after concluding that the proposed rule is: (1) a content- and viewpoint-based speech regulation that violates First Amendment speech rights; and (2) unconstitutionally overbroad and vague. *In re Idaho State Bar Resol.* (Idaho, Jan. 20, 2023), available at https://isc.idaho.gov/opinions/50356.pdf.

Connecticut and a small number of other States—including Illinois, Maine, New Mexico, New York, and Vermont—have adopted a professional misconduct rule that is substantially similar to Model Rule 8.4(g). Connecticut Rule 8.4(7), which took effect on January 1, 2022, provides as follows:

> It is professional misconduct for a lawyer to: ... (7) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, sexual orientation, gender identity, gender expression or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation, or to provide advice, assistance or advocacy consistent with these rules.

Id.

The Commentary accompanying Rule 8.4(7) makes clear that the proscribed "conduct" includes spoken words as well as physical actions. It defines "discrimination" as "includ[ing] harmful verbal or physical conduct directed at an individual or individuals that manifests bias or prejudice on the basis of one or more of the protected categories." It defines "harassment" as "includ[ing] severe or pervasive derogatory or demeaning verbal or physical conduct." CT Lawyer, *Maintaining the Integrity of the Profession: Conn. R. Pro. Conduct 8.4(7)* 33 (Nov. 2021).

Before 2022, the Connecticut Rules of Professional Conduct addressed harassment/ discrimination misconduct complaints against lawyers under Rule 8.4(4), which states that it is "professional misconduct" for a lawyer to "[e]ngage in conduct that is prejudicial to the administration of justice." Compl. ¶ 27. Rule 8.4(7) expands the scope of the antidiscrimination edict considerably. Before 2022, it applied only to attorney conduct "in the course of representing a client"; Rule 8.4(7) eliminates that limitation. *Id.* ¶¶ 27, 41. Rule 8.4(4) included a strict scienter requirement. *Id.* ¶ 27 (limiting the prohibition to lawyers who "knowingly" manifest "bias or prejudice"). Rule 8.4(7) waters down the scienter requirement considerably, stating that the Rule applies to any lawyer who "knows *or reasonably should know*" that his speech/actions constitute "harassment or discrimination." *Id*. ¶ 29 (emphasis added).

When Connecticut began its consideration of Model Rule 8.4(g) in 2020, Pennsylvania was one of the small handful of States that had adopted a version of the Model Rule. *Id.* ¶ 65. In December 2020, while the Rules Committee of the Superior Court was considering adoption of proposed Rule 8.4(7), a federal district court issued a preliminary injunction against enforcement of the new Pennsylvania rule. *Greenberg v. Haggerty*, 491 F. Supp. 3d 12 (E.D. Pa. 2020). The court held, among other things, that the plaintiff had standing to bring a pre-enforcement challenge to Pennsylvania Rule 8.4(g), and that he was likely to succeed on his claims that the rule amounted

to a viewpoint-based speech restriction that violated the First Amendment and was unconstitutionally vague. Pennsylvania did not appeal from the district court's ruling, which remains in place; it opted instead to write a new rule. Compl. ¶ 67.[1] The Rules Committee and the Superior Court adopted Rule 8.4(7) without any discussion of the *Greenberg* decision or its ramifications for the constitutionality of Rule 8.4(7). *Id*. ¶ 71. Rule 8.4(7)'s restrictions on attorney speech are broader than those imposed by the enjoined Pennsylvania rule, which (unlike Rule 8.4(7)) included a strict scienter requirement: lawyers could be sanctioned only for "knowingly" engaging in harassment or discrimination. *Id.* ¶ 70.

Enforcement of the Connecticut Rules of Professional Conduct is governed by the Rules for the Superior Court. "Any person" is entitled to file a complaint alleging attorney misconduct. Super. Ct. R. § 2-32(a). The initial stage of the enforcement process is assigned to Connecticut's Statewide Bar Counsel; he must review all complaints and recommend to the Statewide Grievance Committee whether investigation of the complaint should go forward. *Id*.; Compl. ¶¶ 20–24. Thus, investigation (and subsequent prosecution) of an attorney misconduct complaint cannot proceed without the concurrence of Defendant Slack and the Statewide Grievance Committee chaired by Defendant Berger.

One option available to Defendants is to refer a misconduct complaint to a local grievance panel for further investigation. If a grievance panel to which a complaint has been referred finds probable cause that any attorney is guilty of misconduct, then it is up to Berger and the Statewide Grievance Committee to oversee both prosecution and adjudication of the charges. Compl. ¶ 25; Super. Ct. R. §§ 2-33, 2-35, 2-36. If Berger and the Statewide Grievance Panel conclude that the

[1] In 2023, the Third Circuit dismissed a First Amendment challenge to the revised version of Pennsylvania Rule 8.4(g), finding that the plaintiff lacked standing. *Greenberg v. Lehocky*, 81 F.4th 376 (3d Cir. 2023).

attorney's misconduct warrants severe sanctions, they may direct one of their subordinates, the Disciplinary Counsel, to prosecute a presentment proceeding against the attorney in Superior Court. Compl. ¶ 25; Super. Ct. R. §§ 2-37(c), 34A(b)(7). In sum, Defendants Slack and Berger play central roles in the enforcement of Connecticut's Rules of Professional Conduct.

Connecticut's Adoption of Rule 8.4(7). In the spring of 2020, two Connecticut lawyers submitted a proposal to the Rules Committee of the Connecticut Superior Court, urging adoption of Model Rule 8.4(g). Compl. ¶ 30. At its June 5, 2020 meeting, the Rules Committee tabled the proposal for three months and asked the Connecticut Bar Association (CBA) to submit recommendations regarding the proposal. *Id*. ¶ 31. On September 10, 2020, the CBA's House of Delegates voted 39-11 to support adoption of a slightly revised version of Model Rule 8.4(g). The CBA submitted that revised version in a September 11, 2020 letter to the Rules Committee (attached to the Complaint as Exhibit A). *Id.* ¶ 32.

The Rules Committee requested and received many comments, both pro and con, on the CBA's proposed version of a new Rule 8.4(7). Among the groups from which the Rules Committee requested comments was the Statewide Grievance Committee (SGC), chaired by Defendant Berger. The SGC commented on December 29, 2020 via an email submitted by the individual then serving as Statewide Bar Counsel. *Id.* ¶¶ 34–35. The email (attached to the Complaint as Exhibit B), stated:

- "The SGC acknowledged that the CBA had the best of intentions with the proposal, hence the SGC is not taking a formal position opposing it."
- "[T]he SGC had concerns over the clarity and scope of the rule and was concerned that its language may present more problems than solutions in its application."
- "In the SGC's opinion, the terms ["discrimination," "harassment," and "conduct related to the practice of law"] are not clearly defined in either the proposal or its commentary."
- "The SGC noted that the current Rules of Professional Conduct are applied robustly by

the SGC and Superior Court to limit and deter the conduct described [in] the proposal and its commentary."

- "Other than to observe that the proposal is constitutionally charged, the SGC will not comment on whether the proposal is constitutional under either the United States or Connecticut constitutions."

At its February 8, 2021 meeting, the Rules Committee voted 7-1 to recommend adoption of CBA's proposal (without revisions) and to submit the proposal to a public hearing—which it conducted on May 10, 2021. The Committee passed along its recommendation to the judges of the Superior Court, who adopted the proposed amendment by unanimous voice vote and without discussion at their annual meeting in June 2021. *Id.* ¶¶ 37–39.

The amendment also added to Rule 8.4 new Commentary, set out in ¶ 41 of the Complaint. The new Commentary provides a rationale for adopting Rule 8.4(7) and discusses some of its applications.

Plaintiffs' Speech Chilled Due to Fears of Enforcement Actions. Plaintiffs Cerame and Moynahan are Connecticut attorneys who, as part of their legal practice, regularly speak out on controversial issues. Compl. ¶¶ 2, 3, 11, 12, 18, 51. Both often speak in forceful terms when criticizing opposing points of view. Because of their use of forceful language, Cerame and Moynahan have good reason to believe that those holding opposing points of view on occasion construe their criticisms as personally derogatory or demeaning. *Id.* ¶¶ 14, 15, 19, 52.

The topics on which Cerame and Moynahan often speak forcefully include race and religion. *Id.* ¶¶ 13–16, 18, 51. Both topics are directly addressed by Rule 8.4(7), which prohibits lawyers from engaging in speech that discriminates against or harasses anyone on the basis of race or religion. If Cerame and Moynahan use forceful language in discussing those topics and a listener views such speech as derogatory or demeaning, they fear that they could be charged with violating Rule 8.4(7), which (among other things) bars "severe or pervasive derogatory or

demeaning verbal or physical conduct," and speech that "manifests bias or prejudice on the basis of" race or religion. *Id.* ¶¶ 13–16, 18, 41, 50, 51.

Cerame and Moynahan's views on race and religion can fairly be described as outside the mainstream, and recent events (including the testimony of one of the two sponsors of Rule 8.4(7)) confirm that individuals expressing outside-the-mainstream views on race, religion, or similar controversial topics can face severe sanctions, without regard to whether the speaker intends to harass or discriminate against anyone. Rule 8.4(7) is particularly worrisome to Cerame and Moynahan because it expands the scope of potential misconduct charges. While under previous versions of the Rules, a lawyer could be sanctioned only for "knowingly" engaging in misconduct, a lawyer may now be sanctioned under Rule 8.4(7) if he or she "reasonably should know" that his or her speech "is harassment or discrimination."

Because of their reasonable fear of misconduct charges, Cerame's and Moynahan's speech has been chilled; they have felt compelled to censor their own speech to reduce the chances that they will be charged. *Id*. ¶¶ 5, 6, 50, 56, 63, 75, 79. The need to limit one's speech is particularly acute because Rule 8.4(7) is so vague—it does not clearly specify what speech qualifies as "attorney misconduct." *Id*. ¶¶ 61–63. Indeed, in response to the Standing Committee's request for comments on what became Rule 8.4(7), the SGC expressed "concerns over the clarity and scope of the rule," and opined that key terms in the rule "are not clearly defined in either the proposal or its commentary." *Id*. ¶ 36. Because Cerame and Moynahan cannot determine precisely what sorts of speech would run afoul of Rule 8.4(7), they have felt compelled to err on the side of caution and refrain from making any statement that a reasonable person might consider even arguably covered by the Rule. *Id.* ¶¶ 61–63, 79.

The Second Circuit held that the Complaint alleged facts sufficient to demonstrate that

Plaintiffs Cerame and Moynahan are suffering injury-in-fact directly traceable to adoption of Rule 8.4(7). Plaintiffs' contemplated statements are "arguably proscribed by Rule 8.4(7)," *Cerame*, 123 F.4th at 83, and their decision to curb their speech is a reasonable response to "a credible threat of enforcement." *Id*. at 85. The appeals court held further that their requested injunction—barring enforcement of the Rule by Defendants Slack and Berger—would redress their claimed injury, *id.* at 88; that is, Slack and Berger play a key role in enforcement of Rule 8.4(7) such that the requested injunction would prevent the Rule from being invoked against them.

SUMMARY OF ARGUMENT

The Eleventh Amendment to the U.S. Constitution imposes strict limits on federal-court jurisdiction over suits "commenced or prosecuted against one of the United States." U.S. Const. Amend XI. That Amendment has no application here because Plaintiffs are not suing a State. Rather, they are suing two Connecticut officials to prevent them from enforcing Connecticut Rule of Professional Conduct 8.4(7), a facially unconstitutional rule adopted by the Connecticut Superior Court. The Supreme Court has long held that because States lack authority to enact provisions that (as here) violate the U.S. Constitution, unconstitutional enactments are a legal nullity—and thus that the Eleventh Amendment does not deprive federal courts of jurisdiction to enjoin state officials from enforcing the provisions. *Ex parte Young*, 209 U.S. 123 (1908).

Defendants argue that they are employed by the judicial branch of Connecticut government and that *Ex parte Young* authorizes suits against executive branch officials only. But *Ex parte Young* is not so constrained; it permits suits for prospective relief against *any* state officials who (like Defendants) are charged with enforcing an unconstitutional state law, regardless of the branch of state government into which a State has chosen to place them. *W. Mohegan Tribe and Nation v. Orange Cnty.*, 395 F.3d 18, 21 (2d Cir. 2004). (holding that "in determining whether the *Ex parte*

Young doctrine applies to avoid 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.'" (quoting *CSX Transp., Inc. v. N.Y. State Off. of Real Prop. Servs.*, 306 F.3d 87, 98 (2d Cir. 2002) (emphasis added)).

Defendants point to the Supreme Court's recent decision in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021), as support for their claim that judicial branch employees enjoy a special immunity from federal-court lawsuits. Defendants have misconstrued *Whole Woman's Health*, which specifically held that the *Ex parte Young* "exception does not *normally* permit federal courts to issue injunctions against state-court judges or clerks [because] [u]sually, those individuals *do not enforce state laws* as executive officials might." *Id.* at 39 (emphases added). However, here, the defendant judicial branch employees *do* enforce the relevant state law, and so the *Ex parte Young* exception applies with full force.

Subsequent appeals-court decisions have recognized that *Whole Woman's Health* did not intend to restrict the previously recognized broad scope of federal-court jurisdiction. *See, e.g., Courthouse News Service v. Gilmer*, 48 F.4th 908, 912–13 (8th Cir. 2022) (citing *Whole Woman's Health* and *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F. 3d 1125, 1131–32 (8th Cir. 2019), to hold that judicial branch employees engaged in non-adjudicative functions are subject to suit under *Ex parte Young*). Defendants have cited no court decisions holding that the Eleventh Amendment bars injunctive relief against state judicial branch employees responsible for enforcing allegedly unconstitutional state regulations. Reported decisions supporting the authority of federal courts to issue such injunctions are legion. *See, e.g., Supreme Court. of Virginia. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 737 (1980).

Defendants argue alternatively that Slack and Berger and the SGC have no role in

administering and enforcing Rule 8.4(7). Rather, Defendants contend, they do no more than adjudicate misconduct claims brought by others. That contention is belied by the plain terms of Connecticut's Superior Court Rules. Those Rules do not contemplate individual private citizens prosecuting misconduct complaints against attorneys; that role is filled by Defendants and their subordinate employee, the Disciplinary Counsel. Compl. ¶¶ 20–25. Defendants *prosecute* alleged attorney misconduct, and it is the Superior Court (and ultimately the Connecticut Supreme Court) that *adjudicate* the complaints (and hear any appeals from Defendants' orders). *See* Super. Ct. R. §§ 2-38(a); 2-47.

Defendants raise a second Eleventh Amendment argument, based on "principles of federalism and comity." Defs.' Mot. 2–3, 11, 22–25. They assert that Connecticut courts "are perfectly capable of protecting the same First Amendment rights Plaintiffs seek to vindicate here" and that it is "an affront to State sovereignty" to permit suits against Connecticut officials in federal court when a state forum is available because doing so suggests that Connecticut courts "will not perform their judicial task consistent with State law and the United States constitution." *Id*. at 23. That argument has been consistently rejected by the Supreme Court, which held that the availability of an adequate state-court forum has no role to play in the Eleventh Amendment analysis. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997).

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO SEEK INJUNCTIVE RELIEF IN FEDERAL COURT UNDER *EX PARTE YOUNG*

The Complaint alleges that Rule 8.4(7) is facially unconstitutional; it violates Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution. Defendants Christopher Slack and Matthew Berger are the two Connecticut officials most responsible for enforcing Rule 8.4(7). If Plaintiffs prove their allegations at trial, they are entitled to prospective

injunctive relief barring Defendants from enforcing an unconstitutional rule against them. The Eleventh Amendment, which imposes limits on suits against *States* in federal court, has no application where, as here, the defendants are *state officials* alleged to be acting in violation of federal constitutional rights. *Ex parte Young*, 209 U.S. at 159–60. Defendants' motion to dismiss on Eleventh Amendment grounds should be denied.

A. Plaintiffs Allege an Ongoing Violation of the United States Constitution

Defendants' Eleventh Amendment argument misconstrues Eleventh Amendment case law. While that amendment bars suit against a State in federal court without its consent, a suit to enjoin a state official from enforcing an unconstitutional state enactment is not barred. *Papasan v. Allain*, 478 U.S. 265, 276 (1986). If the enactment is unconstitutional and thus void, "any action by a state official that is purportedly authorized by that enactment cannot be taken in an official capacity since the state authorization for such action is a nullity"—and thus may be enjoined by a federal court. *Id.* As *Ex parte Young* explained:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the Supreme Authority of the United States.

209 U.S. at 159–60.

Defendants' contention that they are entitled to Eleventh Amendment immunity because they have not initiated enforcement proceedings under Rule 8.4(7) (Defs.' Br. 1, 11, 22) is without merit. Rule 8.4(7) took effect on January 1, 2022 and is certainly not a moribund enactment. "Courts are generally willing to presume that the government will enforce the law as long as the

relevant statute is recent and not moribund." *Cayuga Nation v. Tanner*, 824 F.3d 321, 331 (2d Cir. 2016) (cleaned up). Indeed, Defendants do not dispute that they intend to enforce Rule 8.4(7).

Under those circumstances, the Eleventh Amendment does not bar Plaintiffs' effort to enjoin enforcement of what they allege is a facially unconstitutional rule, given that (as the Second Circuit recognized) Plaintiffs adequately allege that the Rule is causing them present-day constitutional injury. And given Rule 8.4(7)'s content- and viewpoint-based speech restrictions, Defendants' intent to enforce the Rule under *any* circumstances violates the Constitution. To the extent that Defendants are alleging that the Eleventh Amendment bars suit because Plaintiffs (allegedly) have not suffered an injury, that is simply a rehash of their standing argument, which the Second Circuit decisively rejected.

B. Defendants' Status as Judicial Branch Employees Does Not Entitle Them to Eleventh Amendment Immunity

Defendants also assert that they are entitled to Eleventh Amendment immunity because they are part of the judicial branch of Connecticut government. They argue that *Ex parte Young* is inapplicable to the judicial branch. Defs.' Br. 12–15.

That argument is without merit. First, immunity attaches to the *function* not the *office*, and second, "this protection has extended no further than its justification would warrant." *See Harlow v. Fitzgerald*, 457 U.S. 800, 811 (1982). Thus, judges enjoy absolute immunity "for acts committed within their *judicial* jurisdiction," *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (emphasis added), but do not have similar protection for "administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform." *Forrester v. White*, 484 U.S. 219, 227 (1988). The *Ex parte Young* doctrine "'allows a suit for injunctive [or declaratory] relief *challenging the constitutionality of a state official's actions in enforcing state law*.'" *Goodspeed Airport, LLC v. E. Haddam Inland Wetlands and Watercourses Comm'n*, 632 F. Supp. 2d 185,

188 (D. Conn. 2009) (alterations in original) (quoting *Western Mohegan Tribe*, 395 F.3d at 21). In other words, state *enforcement* officials are proper defendants in an *Ex parte Young* proceeding, regardless of the branch of state government into which a State has chosen to place them. Defendants' contention that they are officials within Connecticut's judicial branch does not provide them with Eleventh Amendment immunity for their enforcement activity.

The Supreme Court expressly rejected an identical judicial immunity claim in *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719 (1980). *Consumers Union* was a First Amendment challenge to a rule governing attorney conduct, promulgated by the Supreme Court of Virginia, that prohibited attorney advertising. Virginia law authorized the Supreme Court of Virginia to enforce its bar rule both by initiating enforcement proceedings against allegedly noncomplying attorneys and by serving as the ultimate adjudicator of whether the rule had been violated. On the merits, the U.S. Supreme Court sided with the plaintiffs and held that the advertising ban violated the First Amendment. The Court rejected Virginia's contention that the Virginia justices were entitled to immunity from claims arising from their authority to enforce the advertising ban, stating:

> We need not decide whether judicial immunity would bar prospective relief, for we believe that the Virginia Court and its chief justice properly were held liable in their enforcement capacities. [Virginia law] gives the Virginia Court independent authority of its own to initiate proceedings against attorneys. For this reason the Virginia Court and its members were proper defendants in a suit for declaratory and injunctive relief, just as other enforcement officers and agencies were.

Id. at 736. After noting that *Ex parte Young* permits suits against prosecutors for injunctive relief despite the fact that prosecutors possess absolute immunity from damage claims, the Court reasoned that similarly the Eleventh Amendment should not bar claims against judicial officials for injunctive relief even though they enjoy absolute judicial immunity from suit for money damages. *Id*. at 737 (explaining that the potential targets of unconstitutional enforcement actions

should not have to "await the institution of state-court proceedings against them in order to assert their federal constitutional claims" and that "because of [the Virginia Supreme Court's] own inherent and statutory enforcement powers, [Eleventh Amendment] immunity does not shield the Virginia Court and its chief justice from suit in this case."). Like the members of the Virginia Supreme Court, Defendants here possess "independent authority of [their] own to initiate proceedings against attorneys." *Id*.

Defendants' reliance on *Whole Woman's Health* is misplaced. That decision held that the plaintiffs' challenge to a Texas law imposing abortion restrictions could be maintained against Texas officials arguably charged with enforcing the law, 595 U.S. at 45–48, but that other defendants, including state-court judges, were entitled to Eleventh Amendment immunity because the law did not impose any enforcement responsibilities on them. *Id.* at 38–45. In explaining why the Eleventh Amendment barred a suit to enjoin Texas judges and court clerks from issuing judgments under the abortion statute, the Court stated that *Ex parte Young* "does not *normally* permit federal courts to issue injunctions against state-court judges or clerks. Usually, *those individuals do not enforce* state laws as executive officials might; instead, they work to resolve disputes between parties." *Id.* at 39 (emphases added). In contrast, Defendants Slack and Berger *do* "enforce state laws as executive officials might" and thus *are* subject to suit in federal court under *Ex parte Young*.

The Texas statute at issue in *Whole Woman's Health*, S.B. 8, was highly unusual. Although S.B. 8 prohibited doctors from performing some types of abortions, it did not allow state officials to bring criminal prosecutions or civil actions to enforce the law. Instead, it directed enforcement through civil actions filed by individual citizens—and authorized those individual plaintiffs to seek injunctions and substantial statutory damages awards against abortion providers. Opponents

argued that S.B. 8 was unconstitutional and was causing doctors to refrain from performing abortions for fear of incurring ruinous damages judgments, but they had difficulty identifying anyone to name as a defendant in a suit challenging the statute because state officials played no role in enforcing it.

Faced with that dilemma, the plaintiffs hit upon the idea of suing state judicial officials and seeking "an order enjoining all state-court clerks from docketing S.B. 8 cases and all state-court judges from hearing them." *Whole Woman's Health*, 595 U.S. at 39. In seeking that extraordinary relief, the plaintiffs made no claim that judicial officials were charged with enforcing S.B. 8 or performed any task other than serving as impartial adjudicators of disputes between private citizens. The Supreme Court balked at the effort to expand federal court jurisdiction in this extraordinary manner. The Court noted that a century earlier, when it issued its *Ex parte Young* decision, it had explicitly stated that its decision was not intended to permit "entry of an *ex ante* injunction preventing the state court from hearing cases." *Id*. (citing *Ex parte Young*, 209 U.S. at 163). *Whole Woman's Health*'s sole focus was the prevention of injunctions that would bar state courts from adjudicating cases; it said nothing to suggest that it was imposing new limitations on *Ex parte Young*'s applicability to efforts by judicial officials to enforce statutes or rules.

Later appeals court decisions have confirmed *Whole Woman's Health*'s limited scope. For example, the Eighth Circuit in *Courthouse News Service v. Gilmer*, 48 F.4th 908 (8th Cir. 2022), was confronted with claims by a court news service that a Missouri court's delays in providing public access to newly filed civil petitions violated its First Amendment rights. The defendants (Missouri judicial officials) cited *Whole Woman's Health* in support of their contention that *Ex parte Young* is inapplicable to claims against state judicial officials and thus that the Eleventh

Amendment barred the plaintiff's claims. The Eighth Circuit rejected the defendants' Eleventh Amendment defense, explaining that *Whole Woman's Health* is inapplicable to suits in which judicial officials' challenged conduct entails enforcement/administration of the law rather than adjudication of claims:

> The problem [for the defendants] is that *Ex parte Young* had a particular type of injunction in mind: one that would "restrain a state court from acting" or from "exercising jurisdiction" in a case. The injunction here, even if Courthouse News is ultimately successful, will not prevent any Missouri court from "acting" or "exercising jurisdiction" in any case. All it will do is require [Defendant] Gilmer to release newly filed petitions earlier than she might otherwise have. This is not the type of relief that will upset "the whole scheme of ... government." *Id.*

Gilmer, 48 F.4th at 912 (8th Cir. 2022).(cleaned up).

The Eighth Circuit concluded that the news service's challenge was "more like a classic *Ex parte Young* suit brought against an executive official" than the challenge to S.B. 8 raised in *Whole Woman's Health. Id*. The court explained that "this lawsuit is about enjoining named defendants from taking specified unlawful actions, … not enjoining courts from proceeding in their own way to exercise jurisdiction." *Id*. (cleaned up).

The Second Circuit has repeatedly permitted plaintiffs to bring federal-court *Ex parte Young* claims against state judicial officials alleged to be administering/enforcing a statute/rule in a manner that violates federal law. *See, e.g.*, *Libertarian Party of Erie Cnty. v. Cuomo*, 970 F.3d 106, 117, 122–25 (2d Cir. 2020) (declining to grant blanket judicial immunity to judges engaged in enforcement of New York's firearms licensing law and instead dismissing claims against those judges on the merits), *abrogated on other grounds*, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *see also Blivens v. Hart*, 579 F.3d 204, 211 (2d Cir. 2009) (explaining that extent of judicial immunity depends on whether judicial officials are carrying out a "judicial function"—that is, issuing "a decision in relation to a particular case"). The Second Circuit has adhered to that

position in post-*Whole Woman's Health* cases, confirming that it does not view *Whole Woman's Health* as imposing new limitations on the availability of *Ex parte Young* relief. *See, e.g.*, *Courthouse News Service v. Corsones*, 131 F.4th 59 (2d Cir. 2025) (affirming in substantial part the injunctive relief granted by district court against judicial officials found to have violated the plaintiffs' First Amendment rights). *Corsones* expressly endorsed the Eighth Circuit's *Gilmer* decision (characterizing *Gilmer*'s reasoning as "persuasive") in rejecting the judicial officials' argument that "the district court should have abstained in light of principles of comity, equity, and federalism." *Id.* at 77–78; *id*. at 77 (cleaned up) (stating that "federal courts have a strict … and virtually unflagging obligation to exercise jurisdiction conferred on them by Congress").[2]

As the Supreme Court held unequivocally in *Consumers Union*, the Eleventh Amendment does not protect state judicial officials from federal-court suits seeking prospective injunctive relief when those officials are alleged to be enforcing a statute or rule in violation of federal law. Defendants make no effort to distinguish *Consumers Union*, a case that Plaintiffs have repeatedly brought to their attention. Nor have Defendants cited any case law suggesting that the Supreme Court no longer adheres to its *Consumers Union* decision. There is no support for Defendants'

[2] *Corsones* did not directly address whether the Eleventh Amendment barred the assertion of claims against the defendant judicial officials; indeed, those officials never raised an Eleventh Amendment defense. But because the Eleventh Amendment eliminates federal-court jurisdiction over claims subject to the amendment unless the defendant expressly waives his immunity, *Raygor v. Univ. of Minn.*, 534 U.S. 533, 547 (2002), the Second Circuit would have been obligated to address the issue on its own if it had had any concerns that the Eleventh Amendment foreclosed its jurisdiction. Accordingly, the Second Circuit's willingness in *Corsones* to reach the merits of the plaintiffs' claims is a strong indication that it continues post-*Whole Woman's Health* to adhere to its view that *Ex parte Young* permits federal courts to hear injunctive relief claims against state judicial officials whose administrative/enforcement actions allegedly violate federal law. That inference is particularly strong given *Corsones*'s express reliance on the "persuasive" reasoning of *Gilmer*, the Eighth Circuit decision that unequivocally rejected arguments that *Whole Woman's Health* had expanded previously recognized Eleventh Amendment protections for the judiciary in their judicial roles.

argument that they are exempt from *Ex parte Young* claims simply by virtue of Connecticut's decision to classify their enforcement jobs as a part of the State's judicial branch.

Defendants close their memorandum with a miscellany of inapposite, unreported, and/or out-of-jurisdiction cases that fail to advance reasoned consideration of these important questions. The summary order in *Idlibi v. Burghorff*, Nos. 23-838 & 23-7384, 2024 WL 3199522 (2d Cir. June 27, 2024) uncontroversially finds Eleventh Amendment immunity for a Superior Court *judge* and state judicial districts for exercise of their *judicial* functions. Likewise, in *Oliveira v. Schwartz*, No. 23-cv-07427, 2025 WL 343609 (S.D.N.Y Jan. 30, 2025), *appeal filed sub nom. Oliveira v. Cacace*, No. 25-485 (2d Cir. Mar. 3, 2025), *Ex parte Young* was doubly inapplicable because plaintiff challenged a *judicial* decision and sought retrospective relief. *Id.* at *5. The same holds true for the rest. *Albert v. Minn. Ct. App./JJ.*, No. 22-cv-02568, 2022 WL 18141658 (D. Minn. Nov. 30, 2022), *Williams v. Parikh*, 708 F. Supp. 3d 1345 (S.D. Ohio 2023), and *D'Souza v. Guerrero*, No. 24-2537, 2025 WL 636706 (9th Cir. Feb, 27, 2025) all involve frivolous challenges to the exercise of core *judicial* functions and have no relevance to this case. None of these critical distinctions are even acknowledged, much less addressed by Defendants' brief.

C. Defendants Slack and Berger Play a Major Role in Enforcing Rule 8.4(7)

Defendants argue alternatively that they are entitled to Eleventh Amendment immunity because, like the judicial branch officials in *Whole Woman's Health*, they play no role in enforcing the challenged state law but rather simply adjudicate claims arising under that law. Defs.' Br. 15–20. They liken Defendant Slack to a "clerk[]" who merely "accepts ... complaints filed by the adverse parties—complainants (the public) and respondents (lawyers)" and who acts merely as an adjudicator when he decides whether complaints warrant further investigation. *Id.* at 16–17. They contend that Defendant Berger is akin to a judge who merely "adjudicates within the grievance

process," "resolves controversies between others," and is not "adverse to [either] the complainant or the respondent." *Id.* at 19–20.

Defendants' argument is premised on a highly inaccurate account of attorney disciplinary proceedings as conducted in Connecticut. It is simply not true, as Defendants assert, that Defendants' role is to adjudicate disputes between attorneys accused of misconduct and the individuals who have made those accusations. The attorney and the complainant are not the principal adverse parties in these disciplinary proceedings; indeed, the complainant has an extremely small role in the proceedings after he files his initial complaint. At any hearing on his complaint, he is not entitled to testify, provide evidence, or cross-examine opposing witnesses; he is limited to "the opportunity to make a statement" after all evidence has been presented. Super. Ct. R., § 2-35(h). In sharp contrast, Defendants possess a great deal of control over whether an attorney is prosecuted for violating Rule 8.4(7). When a misconduct complaint is filed against an attorney, Defendants have significant authority to determine that the complaint will not be pursued. *See* Super. Ct. R., § 2-32. If the Statewide Grievance Committee (or one of its reviewing committees) ends up conducting a formal hearing on the misconduct charges, it is state officials (not the complainant) who present evidence against the respondent attorney. It is ultimately up to the Statewide Grievance Committee to determine, following a hearing, whether to seek serious disciplinary measures against the attorney, including suspension or disbarment. If it determines to do so, it "direct[s] the disciplinary counsel to file a presentment against the respondent in the Superior Court." Super. Ct. R., § 2-35(i). Those rules make plain that Defendants' roles are much more akin to those of criminal prosecutors (who possess broad discretion to determine whether to press criminal charges after complaints are brought to their attention) than to impartial adjudicators (who provide both sides to a dispute with a full and fair opportunity to present their

cases before rendering a decision).

Moreover, Defendants are not limited to reviewing complaints filed with them by the general public. "Any person" is entitled to file a written complaint. Super. Ct. R., § 2-32(a). That broad provision entitles Defendants and other officials involved in the attorney disciplinary process to file complaints on their own, and they do so on occasion. Defendants' authority to file their own attorney misconduct complaints eviscerates Defendants' claim that they merely serve as impartial adjudicators of disputes brought to them by others. Indeed, in determining that the Supreme Court of Virginia was exercising enforcement authority with respect to its attorney disciplinary rules (and thus was subject to *Ex parte Young* claims), the U.S. Supreme Court in *Consumers Union* relied heavily on evidence that the Virginia court possessed authority to initiate its own attorney misconduct complaints. *See Consumers Union*, 446 U.S. at 724, 736.[3]

II. THE ELEVENTH AMENDMENT DOES NOT REQUIRE PLAINTIFFS TO FILE THEIR FEDERAL CONSTITUTIONAL CLAIMS IN STATE COURT

Defendants argue alternatively that the Eleventh Amendment requires dismissal of the Complaint because Connecticut courts provide Plaintiffs with an adequate forum within which to raise their federal claims. Defs.' Br. 2–3, 23. They assert that "[t]he state judiciary and its machinery are perfectly capable of protecting the same First Amendment rights Plaintiffs seek to

[3] Plaintiffs chose to file suit against just two of the many state officials involved in the enforcement of the Connecticut Rules of Professional Conduct. Plaintiffs determined that their constitutional injuries could be adequately redressed by obtaining an injunction against the Statewide Bar Counsel and the Chair of Connecticut's Statewide Grievance Committee and without the need to name any of those other officials—including the Disciplinary Counsel and the other 20 members of the Statewide Grievance Committee. If for any reason the Court disagrees and concludes that the injunctive relief Plaintiffs seek is unavailable without the presence of those other individuals, Plaintiffs request that they be granted leave to amend the Complaint in order to include the Disciplinary Counsel and all other members of the Statewide Grievance Committee as additional defendants, sued in their official capacities. *See Cerame v. Lamont*, No. 3:21-cv-01508, 2022 WL 2834632, at *1 n.2 (D. Conn. July 20, 2022) (proceeding with case where amendment would moot issues of naming proper defendants.).

vindicate here." *Id.* at 23. According to Defendants, permitting Plaintiffs to opt to sue Connecticut officials in a federal forum despite the availability of a state forum is "an affront to State sovereignty" because it suggests that Connecticut courts "will not perform their judicial task consistent with State law and the United States constitution." *Id*.

Once again, Defendants' assertion is without merit. It is no sign of disrespect to Connecticut state courts for federal district courts to exercise the broad federal-question jurisdiction afforded them by 28 U.S.C. § 1331. Indeed, federal judges would be failing in their duties if they declined to exercise their jurisdiction over cases raising federal claims simply because they feared that state officials might feel disrespected if claims against state officials are heard outside of the State's own courts. Both the Supreme Court and the courts of appeals have repeatedly admonished that "federal courts have a 'strict' ... and 'virtually unflagging obligation' to exercise jurisdiction conferred upon them by Congress." *Courthouse News Service v. Corsones*, 131 F.4th 59, 77 (2d Cir. 2025) (citation omitted) (quoting *Quackenbush v. Allstate Ins. Co*., 517 U.S. 706, 716 (1996); and *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)); *accord Gilmer*, 48 F.4th at 913 (citing *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)). Defendants cite *no* case law to support their claim that "principles of federalism and comity underlying the Eleventh Amendment" require dismissal of Plaintiffs' claims. Defs.' Br. at 23.

Defendants' reliance on *Burt v. Titlow*, 571 U.S. 12, 19 (2013), is also misplaced. *Burt* was a *habeas corpus* case, had nothing to do with the Eleventh Amendment, and never stated that federal courts should decline to exercise their jurisdiction out of respect for the supposed primacy of state courts. The petitioner's murder conviction was upheld on appeal by Michigan's courts, which made a factual determination that the petitioner had received effective assistance of counsel

before and during trial. Without engaging in any additional fact-finding, the Sixth Circuit reached the opposite factual determination and overturned the conviction, without providing any deference to the state court's factual determination. The Supreme Court unanimously reversed, finding that the Sixth Circuit erred by failing to grant deference, which is required not by principles of respect or comity (words that occur nowhere in the opinion), but by a special federal statute—Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. *Burt*, 571 U.S. at 24. The Court stated that it is "a foundational principle of our federal system" that "[s]tate courts are adequate forums for the vindication of federal rights" and that there is no reason to believe that a federal judge is any more competent to make an ineffective-assistance-of-counsel determination than a state judge who has already made that determination. *Id.* at 19. However, the import of *Burt* was that "federal judges [sitting in *habeas* must not] casually *second-guess* the decisions of their state-court colleagues or defense attorneys." *Id.* at 15 (emphasis added). In other words, *Burt* merely held that decisions that a state court has already duly rendered are entitled to due respect. But contrary to Defendants' claim, *Burt* never suggested that a state forum is to be favored over federal forums in the first instance when the issue to be decided is whether state officials are complying with federal law, or that federal courts are showing disrespect to state courts when they exercise their jurisdiction to hear such claims.

Defendants' assertion that *Ex parte Young* "must be narrowly construed to 'reflect a proper understanding of its role in our federal system,'" Defs.' Br. at 2, is based on a total misreading of the Supreme Court case on which they rely in support of this argument. That Eleventh Amendment case, *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997), resulted in a badly fractured Supreme Court decision. The language quoted by Defendants, 521 U.S. at 270, comes from an opinion by Justice Kennedy that was joined by only one other justice. Justice Kennedy's thesis

was that the *Ex parte Young* exception ought to be narrowed by eliminating the nearly automatic right of those raising federal claims to seek prospective injunctive relief against state officials. Instead, Justice Kennedy advocated determining whether suits against state officials are barred by the Eleventh Amendment on the basis of a new multi-factorial test. *Id.* at 270–74. One new factor he urged the Court to adopt was whether the State provided a forum in which the plaintiff could adequately raise his federal claim; and if so, then *Ex parte Young* relief should be less readily available *Id*.

However, the Court decisively rejected Justice Kennedy's suggestion by a 7-2 vote. In a concurring opinion joined by Justices Scalia and Thomas, Justice O'Connor stated that Justice Kennedy's effort to cut back on *Ex parte Young* by favoring state forums was "flawed" and derived no support from case law. *Id.* at 288–97 (O'Connor, J., concurring in part and concurring in the judgment). Four other justices were even more critical of Justice Kennedy's approach. *Id.* at 297–319 (Souter, J., dissenting, joined by Justices Stevens, Ginsburg, and Breyer). Indeed, expressing "great satisfaction that Justice O'Connor's view is the controlling one," the dissent stated that Justice Kennedy's balancing test "would redefine the [*Ex parte Young*] doctrine, from a rule recognizing federal jurisdiction to enjoin state officers from violating federal law to a principle of equitable discretion as much at odds with *Young*'s result as with the foundational doctrine on which *Young* rests." *Id.* at 297–98. The bottom line: Defendants' argument that the Eleventh Amendment bars Plaintiffs' claim because they have an adequate state-court remedy was decisively rejected by seven of the nine Supreme Court justices in *Idaho*.

Plaintiffs also dispute Defendants' assertion that "the state judiciary and its machinery are perfectly capable of protecting the same First Amendment rights Plaintiffs seek to vindicate" in this case. Defs.' Br. 23. While it is generally true that federal constitutional claims may be heard

in state court, Plaintiffs have exercised their right to sue on a federal question in federal court to avoid glaring issues over conflict of interest and recusal. The judges of the Superior Court adopted Rule 8.4(7) by unanimous voice vote. Compl. ¶¶ 37–39. The maxim "one cannot be a judge in his own case," or *nemo judex in causa sua,* is a cornerstone of legal principles recognized in all courts to ensure fairness and impartiality in decision-making. This constitutional challenge to a rule unanimously adopted by the state judiciary should hardly be heard before a judge who voted to adopt it. Plaintiffs' choice of the federal forum protects "the parties' basic right to a fair trial in a fair tribunal." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 887 (2009).

Federal courts routinely and properly exercise jurisdiction over constitutional challenges to state rules adopted and enforced by state courts and other judicial branch officials. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 288 (1985), which originated in federal district court, ruled that the New Hampshire Supreme Court rule limiting bar admission to state residents violated the privileges and immunities clause. *Piper v. Supreme Court of New Hampshire*, 539 F. Supp. 1064, 1074–75 (D.N.H. 1982). The en banc First Circuit affirmed. *Piper v. Supreme Court of New Hampshire*, 723 F.2d 110 (1st Cir. 1983). The New Hampshire Supreme Court secured review by the U.S. Supreme Court, which also affirmed the en banc and district court's holdings that the New Hampshire Supreme Court rule violated the privileges and immunities clause. *Piper*, 470 U.S. at 288.

Also of relevance to this case, in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the Supreme Court recognized federal jurisdiction over a challenge to a state judicial canon adopted by the state supreme court and enforced by members of the judicial branch[4] restricting

[4] One of the two respondents in *White* was the "Lawyers Board," members of which are in the judicial branch. *White*, 536 U.S. at 769 n.3; *see* MINNESOTA JUDICIAL BRANCH, https://lprb.mncourts.gov/AboutUs/Pages/default.aspx (last visited July 17, 2025); MINNESOTA

the speech of judicial candidates. That decision confirmed that constitutional challenges to state judicial rules fall under federal question jurisdiction: "The Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment." *Id.* at 788.

> Minnesota may choose to have an elected judiciary. It may strive to define those characteristics that exemplify judicial excellence. It may enshrine its definitions in a code of judicial conduct. It may adopt recusal standards more rigorous than due process requires, and censure judges who violate these standards. What Minnesota may not do, however, is censor what the people hear as they undertake to decide for themselves which candidate is most likely to be an exemplary judicial officer. Deciding the relevance of candidate speech is the right of the voters, not the State. … The law in question here contradicts the principle that unabridged speech is the foundation of political freedom.

Id. at 794 (Kennedy, J., concurring) (citation omitted).

In sum, there is no merit to Defendants' argument that "principles of federalism and equity" require that Plaintiffs' claims be dismissed under the Eleventh Amendment. This Court exhibits no disrespect to the Connecticut courts by exercising its jurisdiction, as it must, over Plaintiffs' federal constitutional claims. And certainly, nothing in the Eleventh Amendment affects this Court's jurisdiction to hear this case.

LEGISLATURE, https://www.lrl.mn.gov/agencies/detail?AgencyID=929 (last visited July 17, 2025).

CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' motion to dismiss the Complaint.

July 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2025, a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Margaret A. Little
Margaret A. Little