IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MARIO CERAME ET AL., *Plaintiffs*, v. CHRISTOPHER SLACK ET AL., *Defendants*.	: : : : : : :	No. 3:21-cv-01502-OAW AUGUST 1, 2025

REPLY IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Plaintiffs' Opposition highlights the problems with seeking to enjoin state judicial machinery. The United States Supreme Court in *Whole Woman's Health* identified important factors to consider when determining that a particular state official is acting in an adjudicatory capacity—and carrying out a judicial function—so that federal courts do not interfere in state court operations. There is no bright line rule. Thoughtful analysis is required. It requires consideration of the role of the state actor, whether the state actor is adverse to the aggrieved party, and the remedy available to the aggrieved party. Defendants, Statewide Bar Counsel and Chair of the Statewide Grievance Committee, act as part of Connecticut's judicial machinery that regulates the practice of law by adjudicating grievances—they act as an arm of the Superior Court, neutrally rule on grievance complaints litigated by others, and their rulings are subject to appeal. Nothing in Plaintiffs' Opposition proves otherwise. They fail to perform the nuanced analysis that is required. *See* Part I.

Plaintiffs' reliance on *Supreme Court v. Consumers Union of United States*, 446 U.S. 719 (1980) also bolsters Defendants' arguments. *Consumers Union* involved a

state statute that expressly delegated enforcement of the Virginia rules of professional conduct to the Virginia courts. Here, no such statutory delegation exists, so Connecticut courts lack the enforcement authority that was squarely at issue in *Consumers Union*. *See* Part II.

Plaintiffs' other main case, *Courthouse News Serv. v. Gilmer*, 48 F.4th 908 (8th Cir. 2022), also supports Defendants—not Plaintiffs—based on the factors enumerated in *Whole Woman's Health* as applied in that case. The Eighth Circuit considered the adversity of the "parties" and the "remedy" at issue. When the parties are not adverse, and when the remedy is appeal, the state actor is part of the judicial machinery and, thus, entitled to Eleventh Amendment immunity. Defendants fit that mold. *See* Part III.

Finally, Plaintiffs completely ignore the practical effects that an injunction would have on the state judiciary, and how it would halt proceedings over which the state judiciary would otherwise readily exercise jurisdiction. *See* Part IV.

I. Defendants enjoy Eleventh Amendment Immunity because of the adjudicatory roles they play in the grievance process

A state official's employment in the judicial branch does not, alone, trigger Eleventh Amendment immunity. (ECF No. 49 at 19). Rather, immunity turns on whether the official is acting in an adjudicatory capacity and, consequently, whether an injunction would interfere with the state judicial machinery. *See Gilmer*, 48 F.4th at 912 (explaining that *Whole Woman's Health* made clear that the "*Ex parte Young's* no-injunctions rule extend[s] to [] state-court officials" in addition to judges).

An injunction of either Defendant Slack or Defendant Berger here would plainly grind adjudication of attorney grievances to a halt—a major disruption of the state judicial machinery. *See Statewide Grievance Comm. v. Presnick*, 215 Conn. 162, 166-67 (1990). In their opening brief, Defendants described in great detail the grievance resolution process that the Connecticut Superior Court judges adopted and delegated. (ECF No. 45-1 at 6-9). In sum, any person can file a grievance complaint. Conn. Prac. Bk. § 2-32. The complaint is first reviewed for dismissal. *Id.* at § 2-32(a)(2). If dismissed, the complainant can appeal to a reviewing committee. *Id.* at § 2-32(c). If not dismissed, a grievance panel determines probable cause. *Id.* If probable cause is found, the Statewide Grievance Committee ("SGC") or the reviewing committee must hold a public hearing on the complaint. *Id.* at § 2-35(c).

If the reviewing committee finds clear and convincing evidence of certain types of misconduct, the committee can impose sanctions under § 2-37, such as a reprimand. When the committee imposes a sanction, the attorney can challenge that order by requesting a record review by the full SGC and appeal in Superior Court. *Id.* at §§ 2-35(k), 2-38.

For more serious misconduct deserving of more serious punishment, the SGC can order presentment in Superior Court. *Id.* at §§ 2-35(i), 2-47. Presentment can also be mandatory due to prior disciplinary history. *Id.* at § 2-47(d). If so, the presentment functions more like a sentencing—the Superior Court only decides the discipline to be imposed. *Id.* at § 2-47(b), (d)(1). All Superior Court proceedings are subject to appellate review.

Within that scheme, the judges delegated the following responsibilities to Defendant Slack: receive complaints filed by any person, *id.* § 2-32(a); review complaints, *id.*; forward complaints to the relevant judicial district grievance panel, *id.* at § 2-32(a)(1); refer complaints to the SGC for dismissal on the grounds enumerated in Practice Book § 2-32(a)(2), if deemed appropriate; notify complainants and respondents of complaints thereby dismissed, allowing the complainant an opportunity to appeal, *id.* at § 2-32(c); keep records of complaints; *id.*, § 2-32(d); and report and maintain disciplinary information nationally, *id.* at § 2-34(b). So, at all times, Defendant Slack acts as an adjudicator. He does so by express delegation when he is reviewing and dismissing complaints. And, at all other relevant times, he does so by facilitating adjudication by the SGC or Superior Court, akin to a clerk.

Defendant Berger is no different. He acts as the Chair by designation of the Superior Court judges. *Id.* at § 2-33. In that role he reviews complaints, *id.* at § 2-32(a), and dismisses complaints on grounds enumerated in the Practice Book, *id.* at § 2-32(a)(2). If a grievance panel finds probable cause, the Chair and other SGC members conduct hearings and issue decisions, assisted by attorneys in the Bar Counsel's Office. *Id.* at §§ 2-34(b)(5), 2-35. Once again, those responsibilities mean that Defendant Berger is acting as an adjudicator by applying law to facts.

Inevitably, enjoining Defendants from performing any of these functions would disrupt the grievance process, which is a critical part of state judicial machinery.

Plaintiffs concede that Defendants bear those responsibilities, but raise two arguments in opposition. First, Plaintiffs argue that Defendants' roles as judicial

employees do not entitle them to Eleventh Amendment immunity. (ECF No. 49 at 19). Defendants agree. It is not *employment* by a particular branch that entitles a state official to Eleventh Amendment immunity—it is the *function*, the *source of authority*, and the potential for *interference with the state judicial machinery*. Here, Defendants perform adjudicatory functions for the judicial branch, with authority delegated by the Superior Court, as an arm of the court.

Plaintiffs attempt to avoid that conclusion with their second argument—that Defendants either themselves, or through their "subordinates," "oversee" and "prosecute alleged attorney misconduct," thus playing "central roles in the enforcement of Connecticut's Rules of Professional Conduct." (ECF No. 49 at 11-12, 17; *see also id.* at 25-27) (emphasis omitted). But Plaintiffs identify no authority showing that Defendants actually perform these tasks in the enforcement process.

Instead, Plaintiffs appear to conflate two distinct portions of the disciplinary process: (1) proceedings before grievance panels or the SGC and (2) presentments before the Superior Court. Plaintiffs primarily address presentments under §§ 2-34A(b)(7), 2-35(i), 2-37(a), 2-37(c), 2-47(c), 2-47(d)(1), or 2-47(d)(2). (E.g., ECF No. 49 at 26). Upon inspection, none of these provisions task *Defendants* with enforcing or overseeing presentments. Certainly, following review, the SGC can direct others to file a presentment—but that is simply a mechanism to transfer adjudicatory authority from the SGC to Superior Court; a jurisdictional transfer to the venue that affords attorneys the most process of any part of the grievance proceedings. The transfer of jurisdiction out of the SGC and into Superior Court only occurs for the

most serious offenses, which makes sense in order to afford the most procedural protections to attorneys faced with the most serious consequences for the most serious misconduct. Transfer does not constitute enforcement.

Plaintiffs further argue that Defendants are properly named because they can file a grievance complaint just like any other member of the public. (ECF No. 49 at 27). True enough that Defendants could file a grievance complaint individually. But *Whole Woman's Health* forecloses Plaintiffs' argument since it would be an attempt to obtain "an injunction against any and all unnamed private persons who might seek to bring a [complaint under Rule 8.4(7)]. . . . [N]o court may lawfully enjoin the world at large. . . ." 595 U.S. at 44 (citations and internal quotation marks omitted).

II. *Consumers Union* supports Defendants because there, state statute directed enforcement authority to the state court

Plaintiffs argues that *Consumers Union* "expressly rejected an identical judicial immunity claim." (ECF No. 49 at 20). Not so. Plaintiffs misunderstand the basis of the Virgina Court's enforcement authority (unlike Connecticut, Virginia law specifically required state courts to take enforcement action) and mischaracterize the Supreme Court's holding (the Court did *not* address judicial immunity).

In *Consumers Union*, the United States Supreme Court analyzed a state statute that required Virginia courts to enforce its rules of professional conduct. 446 U.S. at 723-24. The statute provided: "If the Supreme Court of Virginia . . . observes . . . malpractice or . . . any unlawful or dishonest or unworthy or corrupt or unprofessional conduct on the part of any attorney, or that any person practicing law is not duly licensed to practice in this state, such court shall . . . issue a rule against

such attorney or other person to show cause why his license to practice law shall not be revoked or suspended." *Id.* at 723 n.4. That statute, according to the Court, provided Virginia Courts with "additional enforcement authority" beyond that of a typical state court. *Id.* at 724. It "expressly provides that if the Virginia Court or any other court of record observes any act of unprofessional conduct, it may itself, without any complaint being filed by the State Bar or by any third party, issue a rule to show cause against the offending attorney." *Id.* Such authority is "beyond that of adjudicating complaints . . . and beyond the normal authority of the courts to punish attorneys for contempt." *Id.*

Connecticut's Rules of Professional Conduct do not expressly delegate similar enforcement authority to Defendants. That makes *Consumers Union* relevant, only to the extent that it provides the counter-example of what express delegation would have to look like for Defendants to be proper defendants in this action.

For similar reasons, Plaintiffs also mischaracterize the holding in *Consumers Union*, arguing that the case "expressly rejected an identical judicial immunity claim." (ECF No. 49 at 20). The Court need look no further than the block quote in Plaintiffs' own brief. Unequivocally, the Supreme Court declined to "decide whether judicial immunity would bar prospective relief." *Id.* (quoting *Consumers Union*, 446 U.S. at 736). That was because, as described above, the Virgina Court was acting in "an enforcement capacit[y]." *Id.* (quoting *Consumers Union*, 446 U.S. at 736). As a pre-*Whole Woman's Health* 1980 case, *Consumers Union* simply has no bearing if the defendants are acting as adjudicators.

III. *Gilmer's* thoughtful analysis under *Whole Woman's Health* also proves Defendants' arguments

Plaintiffs endorse the Eighth Circuit's analysis in *Gilmer*, 48 F.4th 908—a case that thoughtfully analyzes *Whole Woman's Health* and supports Defendants' arguments. *Gilmer* considered whether state court officials running an e-filing system enjoy Eleventh Amendment immunity under *Whole Woman's Health*. *Gilmer*, 48 F. 4th at 910. The *Gilmer* court noted that *Whole Woman's Health* did not "lay[] out an absolute rule," but instead, considered "important qualifiers" for immunity. *Gilmer*, 48 F. 4th at 912. First, whether the state official holds an office "squarely within the judicial branch," such that enjoining the official would enjoin the court from exercising jurisdiction. *Id.* at 911-12. In that case, the answer was no because managing an e-filing system was "administrative." *Id.* at 912. Here, the answer is yes. Plaintiffs ask this Court to enjoin Defendants from processing any complaints filed that allege a violation of Rule 8.4(7), and from engaging in the SGC hearing and adjudication process. (ECF No. 1 at 23). This would require a substantive analysis of a complaint to determine if it implicates Rule 8.4(7). If implicated, the entire grievance resolution process—a judicial function—would halt. Connecticut Superior Courts would lose their ability to exercise jurisdiction.

Second, *Gilmer* looked at the remedy available. If the remedy is an appeal, then the conduct is adjudicatory and the official is immune. In *Gilmer*, no reasonable appeal existed for decisions made under Missouri's e-filing system. *Id.* at 912. But here, the grievance process indisputably contains many layers of review and appeal.

Third, *Gilmer* looked at the adversity of the parties. *Id.* at 913. There, the plaintiff (a national news service that wanted e-filing available faster) was adverse to the defendants (state-court officials who did not want to "make newly filed petitions available more quickly"). *Id.* at 913. Unlike in *Gilmer*, Plaintiffs are not adverse to Defendants. As described above, they perform neutral judge- and clerk-like tasks. At no point do Defendants present evidence, cross-examine witnesses, or make argument. Their obligation is orderly resolution of grievance complaints.[1]

IV. Plaintiffs cannot write the Eleventh Amendment out of existence

Plaintiffs argue federal courts must vindicate federal rights. But they ignore exceptions to that rule existing, namely, under the Eleventh Amendment: "The Judicial power of the United States shall not be construed to extend to any suit . . . commenced or prosecuted against one of the United States by . . . Citizens. . . ." U.S. Const. amend. XI. This "represents a real limitation on a federal court's federal-question jurisdiction" and protects "the real interests" of states. *Idaho v. Coeur D'Alene Tribe*, 521 U.S. 261, 270 (1997).

So what "interests" give rise to immunity?[2] First, affording states the dignity to operate their judicial machinery and adjudicate controversies. *Whole Woman's Health* and *Gilmer* discuss that interest. *Gilmer*, 48 F.4th at 915. "[I]mportant considerations of federalism . . . [can] weigh against an injunction" that could involve

[1] Plaintiffs propose curing their Complaint by amending to name different defendants. (ECF No. 49 at 27 n.3). Defendants object and reserve their right to brief that issue if properly presented to this Court. Fed. R. Civ. P. 15(a).

[2] Plaintiffs' discussion of *Piper* and *White* provides no guidance because those cases do not analyze Eleventh Amendment immunity. (ECF No. 49 at 31-32).

"excessive interference by federal courts in state-court business." *Id.* (alterations and internal quotations marks omitted) (citing *Rizzo v. Goode*, 423 U.S. 362 (1976)). *Ex parte Young* "express[ly] teach[es] against enjoining the 'machinery' of courts." *Whole Woman's Health*, 595 U.S. at 41 (citation and internal quotation marks omitted).

An injunction here would prohibit Defendants from receiving, evaluating, forwarding, and adjudicating complaints that allege violations of Rule 8.4(7)—core Connecticut court machinery. Defendants asked questions about how Plaintiffs' relief could avoid interfering with Connecticut's scheme. (ECF No. 45-1 at 21) (citing to similar questions raised in *Whole Woman's Health*). Plaintiffs answer none.

A second important interest concerns immunity for pre-enforcement challenges that do not present imminent harm. *Whole Woman's Health*, 595 U.S. at 48; *Goodspeed Airport, LLC, v. East Haddam Inland Wetlands & Watercourses Comm'n*, 632 F. Supp. 2d 185, 189 (D. Conn. 2009) *aff'd* 634 F.3d 206 (2d Cir. 2011). No "unqualified right to pre-enforcement review of constitutional claims in federal court" exists. *Whole Woman's Health*, 595 U.S. at 49. Even "the chilling effect" may not always "justify federal intervention in a pre-enforcement suit." *Id.* at 50 (internal quotation marks omitted) (citing *Younger v. Harris*, 401 U.S. 37, 42 (1971)). That concept applies to free speech chill challenges as well. *Whole Woman's Health*, 595 U.S. at 50.[3]

This Court should dismiss for lack of jurisdiction.

[3] Plaintiffs do not appear to object to Defendants' position that if this Court determines the Eleventh Amendment does not apply, it should abstain or certify a question to the Connecticut Supreme Court. (ECF No. 45-1 at 24 n.4).

Respectfully submitted,

DEFENDANTS CHRISTOPHER SLACK AND MATTHEW BERGER

WILLIAM TONG
ATTORNEY GENERAL

BY: */s/ Emily Adams Gait*
Emily Adams Gait (ct31186)
Michael Rondon (ct31022)
Assistant Attorneys General
Office of the Attorney General
165 Capitol Ave
Hartford, CT 06106
860-808-5020 (phone)
Emily.Gait@ct.gov
Michael.Rondon@ct.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 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/ Emily Adams Gait
Emily Adams Gait
Assistant Attorney General