IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

INDIGO WILLIAMS, *ET AL.*

commits clear error by failing to apply the Eleventh Amendment's *Ex parte Young*[2] exception to the Plaintiffs' request for prospective declaratory relief.

Under *Ex parte Young*, the Eleventh Amendment is inapplicable where the "relief sought" is "declaratory or injunctive in nature and prospective in effect."[3] The Plaintiffs sought precisely that type of relief in their Complaint: [1] a declaration that Section 201 of the Mississippi Constitution currently violates the Readmission Act and [2] that the Defendants are currently obligated (and are obligated going forward) to provide, *inter alia*, a uniform system of public schools as required by federal law.[4]

In its Opinion and Order, this Court concluded that the Plaintiffs' claims were barred by the Eleventh Amendment for two reasons: "First, Plaintiffs have not requested any injunctive relief," and "[s]econd, the relief requested by Plaintiffs does not seek to dictate future conduct" (*i.e.*, the relief is retrospective, not prospective).[5] Respectfully, both of these conclusions are manifest errors of law.[6]

First, *Ex parte Young* applies to all requests for equitable relief – including declarations, not just injunctions. Accordingly, the Supreme Court and the Fifth Circuit

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[2] *Ex parte Young*, 209 U.S. 123 (1908).

[3] *Aguilar v. Tex. Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998).

[4] *See, e.g.*, Complaint [Docket No. 1] at ¶2.1 ("This case seeks to bring the State of Mississippi into compliance with its federal obligation under the Readmission Act to protect the 'school rights and privileges' of its children."); ¶2.15 ("[T]his lawsuit requests a declaration . . . that the requirements of Article VIII, Section 1 of the 1868 Constitution remain legally binding and in full force and effect today."); ¶7.1(a) (requesting "[a] declaratory judgment finding . . . that the requirements of Article VIII, Section 1 of the Constitution of 1868 remain legally binding on the Defendants, their employees, their agents, and their successors[.]").

[5] Opinion and Order [Docket No. 31] at 8.

[6] *See, e.g.*, *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 856 (5th Cir. 2003) (Rule 59(e) should be used to correct a "manifest error of law").

routinely hold that suits seeking declaratory relief are entitled to go forward, provided the declaration would operate prospectively.[7]

Second, the relief sought by the Plaintiffs is prospective. Although the Complaint references the fact that Mississippi has, in one way or another, been violating the Readmission Act for nearly 130 years, the Complaint does not seek a remedy for those historical violations.[8] As in many legal complaints, the Plaintiffs included historical information — not to petition the Court to correct those historical wrongs, but to provide context for ongoing violations of federal law.[9] The Plaintiffs merely seek a declaration that the current version of the Mississippi Constitution violates federal law, and thus State officials must comply with the Readmission Act going forward. That relief is prospective, not retrospective.

The suit is entitled to proceed under *Ex parte Young*. The conclusion to the contrary was clear error.

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[7] *See, e.g.*, *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 646 (2002) (concluding "pr <</MCvJ 0.002 Tc -

2. Alternatively, the Court Should Alter the Dismissal to a Dismissal Without Prejudice and Should Grant Leave to Amend the Complaint.

a. Even if the Eleventh Amendment Applied, Dismissal Should Have Been Without Prejudice.

Alternatively, and at a minimum, the Court should alter the portion of its Final Judgment dismissing the Plaintiffs' claim with prejudice. Dismissals under the Eleventh Amendment are dismissals for lack of jurisdiction. Therefore, any such dismissal does not reach a case's merits and must be without prejudice.[10]

The Court's dismissal of the Complaint with prejudice was clear error. Therefore, even if the Court believes its dismissal under the Eleventh Amendment was proper, the Court should alter the Final Judgment so that the dismissal is without prejudice.

b. The Court Should Also Alter Its Final Judgment to Grant Leave to Amend.

After altering the Final Judgment to a dismissal without prejudice, the Court should alter its dismissal to grant leave to amend the Complaint, so that the Plaintiffs can clarify that they seek prospective declaratory relief only.[11]

amend "should freely" be granted "when justice so requires."[13] In fact, the Fifth Circuit holds that the "liberal" policies underlying Rule 15(a) create a "presumption in favor of granting parties leave to amend."[14] The Fifth Circuit has thus observed that "district courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case" with prejudice,[15] especially where (as here, should the Court continue to hold that the pleading was defective) the Plaintiffs "might [be] able by appropriate amendments[ ] to cure the jurisdictional defects."[16]

suffer no prejudice if the Plaintiffs are granted leave to amend.[20] By contrast, the Plaintiffs would be severely prejudiced if leave to amend is not granted.[21]

Finally, amendment would not be futile.[22] A review of the Plaintiffs' Proposed First Amended Complaint shows that the relief requested is not barred by the Eleventh Amendment. Plaintiffs have stricken all references to past violations of the Readmission Act to focus the Proposed First Amended Complaint on the Defendants' current, ongoing violation of the Readmission Act. It leaves no room for doubt that the Plaintiffs' case satisfies the *Ex parte Young* exception to the Eleventh Amendment.[23]

4. Conclusion.

The Final Judgment reflects two clear errors of law that warrant Rule 59 relief. Because the Complaint's claim satisfies the Eleventh Amendment's *Ex parte Young* exception, the Final Judgment should be vacated, and the State Defendants' Motion to Dismiss should be denied.

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CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, simultaneous with this Memorandum's filing, I have served true and correct copies of the same on all counsel of record via the Court's electronic filing system.

SO CERTIFIED this Eleventh day of April 2018.

/s/ *Will Bardwell*
Will Bardwell
Counsel for the Plaintiffs