IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RYAN A. MERGL, ESQ.,	)	
	)	
Plaintiff,	)	
	)	2:21-cv-1335
v.	)	
	)	Chief Judge Mark R. Hornak
THE HONORABLE DANIEL WALLACE; THE COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Defendants.	)	

OPINION

Mark R. Hornak, Chief United States District Judge

The background of this litigation is set forth at length in the Court's Opinion dated September 30, 2022 (ECF No. 23), so the Court will not recount it again here except as may be necessary to explain the Court's reasoning. The Court also omits discussion of procedural history postdating that Opinion which is not relevant to the disposition of the instant Motion.

The long and the short of it is that the Plaintiff, a local lawyer, brings disability discrimination and retaliation claims against Pennsylvania Court of Common Pleas Judge Daniel Wallace ("Wallace") of Mercer County, in his official capacity, based on how Plaintiff asserts Wallace dealt with him in court. He also sued the Commonwealth of Pennsylvania, in essence as being responsible for Wallace's actions. In Pennsylvania, while designated to one or more of Pennsylvania's 67 counties, each Court of Common Pleas is part and parcel of the Commonwealth's unified state judicial system. *See Pennsylvania Courts of Common Pleas*, Unified Jud. Sys. Pa., https://www.pacourts.us/courts/courts-of-common-pleas (last visited Sept. 25, 2023).

The Court previously granted Defendants' Motion to Dismiss without prejudice and granted Plaintiff leave to file an Amended Complaint. (*See* ECF No. 23, 24.) Plaintiff filed an Amended Complaint (ECF No. 30). Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 32). That current Motion, filed on behalf Judge Wallace and the Commonwealth itself, has been fully briefed and is now ripe for disposition. (*See* ECF No. 33, 37, 39.)

I. LEGAL STANDARD

When evaluating a Motion to Dismiss, the Court must accept all non-conclusory allegations in the complaint as true, and the non-moving party "must be given the benefit of every favorable inference." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011) (quoting *Kulwicki v. Dawson*, 969 F.2d 1454, 1462 (3d Cir. 1992)). "[A]lthough a plaintiff is entitled to all reasonable inferences from the facts alleged, 'a plaintiff's legal conclusions are not entitled to deference, and the Court is 'not bound to accept as true a legal conclusion couched as a factual allegation.'" *Chaleplis v. Karloutsos,* 579 F. Supp. 3d 685, 699 (E.D. Pa. 2022) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The Court is to "disregard threadbare recitals of the elements of a cause of action, legal conclusions, and conclusory statements." *City of Cambridge Ret. Sys. v. Altisource Asset Mgmt. Corp.*, 908 F.3d 872, 878–79 (3d Cir. 2018) (quoting *James v. City of Wilkes-Barre*, 700 F.3d 675, 681 (3d Cir. 2012)).

To state a plausible claim for relief, the non-moving party's factual allegations must "raise a right to relief above the speculative level," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and must do more than "plead[] facts that are 'merely consistent with' a defendant's liability." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *id.* at 557). A mere "formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

II. DISCUSSION

In this Court's prior Opinion, the Court concluded that Plaintiff's original Complaint (ECF No. 1) failed to state claims under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq.*, and the Rehabilitation Act ("RA"), 29 U.S.C. § 794. In doing so, the Court examined each of five separate instances of asserted conduct of the Defendant Wallace that allegedly constituted violations of the ADA and RA before also examining whether the instances considered together and as a whole gave rise to plausible violations of those statutes. (*See* ECF No. 23, at 13–22).

To determine whether the Amended Complaint (ECF No. 30) passes muster in this iteration, the Court now focuses primarily on the manner in which the Amended Complaint differs from the original Complaint and whether those differences allow the Amended Complaint to survive the new Motion to Dismiss under the relevant legal standards. The Court will first re-examine the relevant legal standards before analyzing the Amended Complaint.

a. ADA and RA Legal Standards

As set forth in the Court's prior Opinion, the relief available under the ADA and RA is "coextensive" and "the analysis governing each statute is the same except that the [RA] includes as an additional element the receipt of federal funds." *Jaros v. Ill. Dep't Corrs.*, 684 F.3d 667, 671 (7th Cir. 2012); *see also Disability Rts. N.J., Inc. v. Comm'r, N.J. Dep't of Hum. Servs.*, 796 F.3d 293, 301 n.3 (3d Cir. 2015) ("[T]he statutes' core provisions are substantively identical[.]"). Pursuant to Congress's desire for the "two acts' standards. . . [to] be harmonized," the Court, for shorthand purposes, refers to the ADA in discussing the arguments of the parties. *Durham v. Kelley*, No. 21-3187, 2023 WL 6108591, at *3 (3d Cir. Sept. 19, 2023); *New Directions Treatment*

Servs.. v. City of Reading, 490 F.3d 293, 302 (3d Cir. 2007) (internal citations and quotations omitted).

i. Discrimination

Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To state a claim under Title II of the ADA, a Plaintiff must plead that "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or who was subjected to discrimination by such an entity; (4) by reason of his disability." *Geness v. Admin. Off. Pa. Cts.*, 974 F.3d 263, 273–74 (3d Cir. 2020).

The third element is at issue here. That element of the ADA test can be broken into two distinct parts: the Plaintiff must sufficiently allege that he was either denied the benefits of the services, programs, or activities of a public entity, *or* was subjected to discrimination by such an entity.

The denial of benefits portion of the third element is understood "broadly to 'encompass[] virtually everything a public entity does.'" *Haberle v. Troxell*, 885 F.3d 170, 180 (3d Cir. 2018) (quoting *Babcock v. Michigan*, 812 F.3d 531, 540 (6th Cir. 2016)). The anti-discrimination portion of the third *Geness* element is a "catch-all" that prohibits "all discrimination by a public entity, regardless of the context." *Id.* (quoting *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1085 (11th Cir. 2007)).

The anti-discrimination requirement "encompasses not only adverse actions motivated by prejudice and fear of disabilities, but also includes failing to make reasonable accommodations."

Id. (quoting *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999)); *see also Berardelli v. Allied Servs. Inst. Rehab. Med.*, 900 F.3d 104, 117–18 (3d Cir. 2018) ("An essential feature of [the ADA's] prohibition on discrimination is . . . the duty to make reasonable accommodations and reasonable modifications.") (internal quotation marks omitted). In other contexts, plaintiffs alleging unlawful harassment must plead that the defendant's conduct was so "severe and pervasive" that it effectively deprived them of a statutory right. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (stating that harassment under Title VII includes not just "economic" or "tangible" discrimination, but also harassment "that is *sufficiently severe or pervasive* to alter the *conditions of the victim's employment*") (emphasis added); *Hall v. Millersville Univ.*, 22 F.4th 397, 408 (3d Cir. 2022) (to prevail on a Title IX harassment claim, plaintiff must allege that harassment was "so *severe, pervasive, and objectively offensive* that it *deprive[s]* [plaintiff] of [] *access* to the educational opportunities or benefits provided by the school") (emphasis added). Thus, under either prong, a denial of a public service or benefit or an adverse action is required to make out a claim.

ii. Retaliation

Under the ADA, it is unlawful to retaliate against an individual because they have "opposed any act or practice made unlawful by the chapter" or "made a charge . . . or participated in any manner in any investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a). Thus, to establish a prima facie case of retaliation, a plaintiff must allege that "(1) he engaged in protected activity, (2) he suffered an adverse action after or contemporaneous with the protected activity, and (3) [there is] a causal connection between the protected activity and the adverse action." *Snider v. Pa. Dep't Corrs.*, 505 F. Supp. 3d 360, 420 (M.D. Pa. 2020).

iii. Heightened standard for compensatory damages

Compensatory damages—the only relief, besides counsel fees and costs, sought in this case, (ECF No. 30, ¶¶ 120–23)—are not available under the ADA absent proof of "intentional discrimination." *Haberle*, 885 F.3d at 181 (citing *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 261 (3d Cir. 2013)); *Durham*, 2023 WL 6108591, at *3 ("The elements of a claim under the RA are the same [as the elements of an ADA claim], except that the plaintiff must also show that the program in question received federal dollars."). To properly plead intentional discrimination, "an ADA claimant must prove at least deliberate indifference, . . . and to plead deliberate indifference[,] a plaintiff must allege '(1) knowledge that a federally protected right is substantially likely to be violated . . . and (2) failure to act despite that knowledge.'" *Haberle*, 885 F.3d at 181 (citing *Durrell*, 729 F.3d at 265). The knowledge requirement of the first prong is governed by a subjective standard; fulfilling the deliberate indifference requirement requires a showing of "actual knowledge." *Durell*, 729 F.3d at 266 n.26. While a finding that the adverse party should have known of the risk of the violation of the federally protected right is insufficient, the factfinder may infer that an adverse party "knew of a substantial risk from the very fact that the risk was obvious." *Bistrian v. Levi*, 696 F.3d 352, 367 (3d Cir. 2012), *abrogated on other grounds by Ziglar v. Abbasi*, 582 U.S. 120 (2017).

iv. Sovereign Immunity and the ADA[1]

Before diving into the merits of the case, the Court must consider whether sovereign immunity bars Plaintiff's ADA claim. The Eleventh Amendment imposes a jurisdictional bar against "individuals bringing suit against a state or its agencies in federal court, or against a state official in his or her official capacity." *Durham*, 2023 WL 6108591, at *5. A state may consent to

[1] The sovereign immunity analysis in this section is specific to Plaintiff's ADA claim. The sovereign immunity bar with respect to Plaintiff's standalone Equal Protection Claim is a different matter that is discussed later in this Opinion.

suit in federal court, or Congress may abrogate the immunity shield. In *Tennessee v. Lane*, the Supreme Court held that, "'as applied to 'the accessibility of judicial services,' Title II validly abrogates sovereign immunity through Congress's power under § 5 of the Fourteenth Amendment." *Id.* (quoting 541 U.S. 509, 531 (2004)). State officers can thus be sued for damages in their official capacities for purposes of the ADA where plaintiffs allege a companion Fourteenth Amendment claim.[2] *Id.* at *6.

Here, Plaintiff appears to allege an Equal Protection Claim in conjunction with his ADA and RA claims. The alleged and plausible Equal Protection Claim insulates his ADA claim from sovereign immunity's jurisdictional bar. Thus, sovereign immunity does not bar Plaintiff's ADA claim.

b. Analysis

With the relevant statutory standards identified and sovereign immunity dispatched as to the ADA claim, the Court will now consider whether the Amended Complaint survives Defendants' Motion to Dismiss.

i. Incident 1: February 11, 2020

The first incident at issue stems from Plaintiff's in-court appearance before Wallace on February 11, 2020. Plaintiff had triple booked his own calendar and was scheduled to appear in three state court courtrooms at the same time. Plaintiff was scheduled to appear before Judge Ronald D. Amrhein, also of the Court of Common Pleas of Mercer County, and when Plaintiff reached out to Judge Amrhein to rectify this conflict, Plaintiff was given permission to appear late. Plaintiff pleads that he was under the impression that Judge Amrhein's staff would inform Wallace

[2] Whether claims may be brought against government officers in their individual capacities under Title II of the ADA remains an open question. *Durham*, 2023 WL 6108591, at *2 n.12. The claims here as to Wallace are against him only in his official capacity. (ECF No. 30, ¶ 19).

that he would be appearing late. But when Plaintiff proceeded to Defendant's courtroom, he was scolded by Wallace. Wallace went so far as to threaten him with a contempt hearing if Plaintiff were late in the future. (ECF No. 30, ¶ 41).

This incident does not constitute denial of access to a public benefit or discrimination. Plaintiff's Amended Complaint does not significantly differ from his original Complaint. Plaintiff only adds, in a conclusory fashion, that Wallace does not treat non-disabled attorneys appearing late in the same fashion. (*Id.* ¶ 39). And the Amended Complaint admits that the entire episode had its genesis in Plaintiff's triple-booking his own calendar, stating no connection between that scheduling choice by Plaintiff and any disability. Plaintiff does not plead facts plausibly showing that he was denied access to the courts through this incident, and Wallace's comment about potential future events cannot be fairly read to allege either deliberate indifference to ADA rights, nor can it be considered "severe and pervasive." The Amended Complaint facially indicates that any determination about how Wallace would treat future events was not made then, but would be made in the future, and the Amended Complaint itself demonstrates that at no future time was Plaintiff actually denied access to a public service (as set out below). Therefore, this incident alone fails to support a statutory claim.

ii. Incident 2: March 11, 2020

On March 11, 2020, Plaintiff had double booked his own calendar once again. Plaintiff requested a continuance as to a judicial proceeding before Wallace, but Wallace denied this motion. Plaintiff then arranged for what he described to be a "qualified attorney" to represent his client before Wallace because of the conflict rather than appearing himself, but Wallace responded by ordering a Rule to Show Cause why Plaintiff should not be held in contempt for his failure to

appear personally. Wallace later dismissed the Rule to Show Cause without taking any adverse action against Plaintiff.

Plaintiff fails to plead a statutory violation as to this incident. Again, Plaintiff's Amended Complaint does not greatly differ from his original Complaint. Plaintiff only adds, again in conclusory fashion, that Wallace does not treat non-disabled attorneys in similar circumstances this way. (*Id.* ¶ 53). Plaintiff was not denied access to the courts, and the Amended Complaint itself reveals that Plaintiff's asserted disability was wholly unrelated to his self-generated conflict in his own schedule. (*Id.* ¶ 48). There is no connection stated between any disability and Plaintiff's scheduling choices. Importantly, Wallace dismissed the Rule to Show Cause without utilizing that proceeding to take any adverse action against Plaintiff. The putative harm alleged here, then, is limited to Plaintiff being required to attend what was effectively the start of a contempt proceeding that ultimately went nowhere. While this experience may have been uncomfortable for Plaintiff, it does not rise to the level of an ADA violation under Title II because of the demonstrated lack of a connection to an underlying disability, and more critically, it cannot be fairly assessed as being either "deliberately indifferent" or "severe and pervasive." There is no reasonable inference of a statutory violation to be drawn in Plaintiff's favor by a judge conducting a proceeding to examine Plaintiff's compliance with the court's own orders, and Plaintiff was, in any event, not denied access to any public service.

iii. Incident 3: August 3, 2020

Plaintiff was involved in a car accident on July 9, 2020. This accident left Plaintiff with a variety of injuries, including blurred vision, memory problems, and headaches. Because of these ailments, he was advised to limit himself to a maximum of three hours of cognitive activity per day.

On August 3, 2020, Plaintiff had a status conference in a pending case before Wallace, and Wallace allegedly stated during the conference that he (Wallace) had received a "disturbing email" notifying Wallace that Plaintiff had requested a continuance of a hearing in front of another judge. In response to learning about this email, Wallace allegedly scolded Plaintiff, suggesting that Plaintiff should be held in contempt for requesting the continuance. When Plaintiff tried to explain the car accident and its aftereffects, Wallace stated, "I don't care" and left the room. (*Id.* ¶ 62).

Incident 3 also does not state a claim for relief under the ADA. While Wallace's remarks were not kind, there is no connection between Wallace's unfriendly dialogue and Plaintiff's ability to access the courts. Per his own Amended Complaint, Plaintiff was not denied access to the courts in the case before Wallace, nor in the case he had before a different judge. And there is no indication in the Amended Complaint that Wallace actually denied Plaintiff any requested accommodation. Wallace's unfriendly behavior, resulting in no limitation on Plaintiff appearing as a lawyer in any Court, does not rise to a level that would support a plausible claim under the ADA.

iv. Incident 4: August 10, 2020

Plaintiff appeared in front of Wallace on August 10, 2020 for a pretrial status conference in a pending court case. Plaintiff requested a thirty-day continuance for a trial, which was scheduled to begin the very next day. Wallace initially denied the request, and an oral back and forth between Plaintiff and Wallace ensued. Wallace allegedly scolded Plaintiff, stating that (1) Plaintiff's medical documentation was not sufficient because it had not been signed by "a real doctor;" (2) Plaintiff appeared "fine" to Wallace; (3) Plaintiff was "milking" his disability; (4) Plaintiff's client should get his money back; and (5) Wallace would not provide an accommodation until Plaintiff provided medical documentation that Wallace personally deemed satisfactory. (*Id.*

¶¶ 75.1–75.14). Wallace also asked Plaintiff "[w]hy [he wasn't] treating around here like the rest of us?" (*Id.* ¶ 74.6). Plaintiff's Amended Complaint adds that Plaintiff's client was next to him during this exchange and asserts in conclusory fashion that Wallace generally does not treat other attorneys under similar circumstances in the same manner. (*Id.* ¶ 78–81).

But critically for these purposes, Wallace *granted* the very continuance that Plaintiff was seeking. (ECF No. 32-1). *Durham* makes clear that, to state a claim under the ADA, there has to be a denial of an accommodation or an underlying service. *Durham*, 2023 WL 6108591, at *4. There, the Third Circuit found that Durham stated a plausible ADA claim because "[h]e made numerous prison officials aware that he had a cane, needed a cane to walk, and was in severe pain without it. Despite this, he was continuously denied his cane and shower accommodations." *Id.* Conversely, here, Plaintiff purportedly made Wallace aware of his disability, asked for an accommodation in the form of a continuance, and got that continuance.

The granting of this continuance ensured that Plaintiff was not denied a benefit or service of the courts based on his disability, and despite the comments Plaintiff says that he had to endure, to the extent his request for a continuance was based on a covered disability or anything else, his disability was actually accommodated. Thus, despite Wallace's allegedly confrontational language, there was no harm stemming from this incident that is connected to Plaintiff's ability to access the courts or receive a service or benefit from the courts—Plaintiff asked for a thirty-day continuance, and he got it. Therefore, this incident also fails to support a claim under the ADA.

v. Incident 5: August 24, 2020

On August 24, 2020, Plaintiff filed a Complaint against Wallace with the United States Department of Justice ("DOJ"). On September 2, 2020, Plaintiff filed a motion asking Wallace to recuse himself from all of Plaintiff's cases because of the pending Complaint with the DOJ.

Wallace refused to recuse himself from these cases and issued an Order of Court without a hearing. (ECF No. 30, ¶ 85). The Amended Complaint fails to set out the topic or content of that Order.

It is not altogether clear whether Plaintiff still seeks relief relative to this incident, as the Amended Complaint states in conclusory fashion that "this is not a collateral attack on [Wallace's recusal decision]." (*Id.* ¶ 89). Yet Plaintiff's third asserted Cause of Action still notes that Wallace "retaliated" against Plaintiff by refusing to recuse himself and issuing an Order of Court without a hearing. (*Compare* ECF No. 1, ¶ 79 *with* ECF No. 30, ¶¶ 114–17). So no matter how Plaintiff brands it, this claim appears to be a straightforward attack on Wallace's alleged refusal to recuse in cases involving the Plaintiff. And as laid out in the Court's prior Opinion, review of Incident 5 by this federal court remains jurisdictionally barred by the *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine prohibits federal courts from conducting what is effectively appellate review over state court decisions. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) (internal marks omitted); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("The jurisdiction possessed by the District Courts is strictly original."). The Third Circuit has set forth a four-part test to determine whether the *Rooker-Feldman* doctrine deprives federal courts of subject matter jurisdiction: A district court must dismiss a claim for relief under the *Rooker-Feldman* doctrine where: "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complains of injuries caused by the state-court's judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010) (quoting *Exxon Mobil*, 544 U.S. at 284); *see also Grossberger v. Superior Ct. of Essex Cnty.*, No. 22-3110, 2023 WL 3773672, at *1 (3d Cir. June 2, 2023) ("The *Rooker-Feldman* doctrine is narrow, limited to cases where the complained-of injury stems directly from

the state court's proceedings."); *Merritts v. Richards*, 62 F.4th 764, 774 (3d Cir. 2023) ("The *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to [the Supreme] Court. . . .") (quoting *Verizon Md., Inc. v. Pub. Serv. Comm'n Md.*, 535 U.S. 635, 644 n.3 (2002)); *Lee v. Gallina Mecca*, No. 22-2871, 2023 WL 5814783, at *4 (3d Cir. Sept. 8, 2023) (barring federal review of a state court judge's conclusions in a divorce proceeding under *Rooker-Feldman*).

In laying out this test, the *Great Western Mining* court cited the Sixth Circuit's decision in *Fieger v. Ferry* with approval. *See* 471 F.3d 637 (6th Cir. 2006). In *Fieger*, the plaintiff alleged that several Michigan Supreme Court Justices violated his constitutional rights when the justices refused to recuse themselves because of "acrimonious and well-publicized dialogue between Fieger . . . and several justices of the Michigan Supreme Court." *Id.* at 639–40. The court concluded that *Rooker-Feldman* precluded it from reviewing the justices' past recusal decisions. *Id.* at 644.

Like in *Fieger*, Plaintiff seeks review of an injury allegedly caused by a judge's recusal decision, or more precisely, a judge's decision to not recuse. Given that (1) Plaintiff lost on his recusal motion in state court; (2) this loss allegedly caused Plaintiff an injury of which he seeks relief in this Court; (3) this decision occurred before the federal suit was filed; and (4) Plaintiff invites the court to review and reject this decision insofar as that decision violates the ADA, *Rooker-Feldman* and *Great Western Mining* preclude review of this incident in this Court. As such, Plaintiff's claims based on Wallace's non-recusal are barred.

vi. Incident 6: Events Post-filing of the Original Complaint in this Court,

New to Plaintiff's Amended Complaint is Incident 6. Plaintiff's allegations here are, generously described, very barebones, noting without elaboration only that Wallace allegedly told

Plaintiff's clients and other professionals that Plaintiff "is not allowed in [his] courtroom." (ECF No. 30, ¶ 94). Plaintiff, in spite of plainly being in a position to know, sets forth no details as to such matters, including the identity of those involved.

As with the other incidents, Plaintiff does not allege an actual denial of a service or benefit of the courts. If Wallace had acted upon this remark, Plaintiff may have been able to state a claim for denial of access to the courts, but as with the other incidents, it appears that Wallace did not actually take any affirmative, negative actions against Plaintiff, such as barring Plaintiff from appearing before him. According to the Amended Complaint, Wallace made negative comments about Plaintiff, and while the nature of these comments may be troubling, the comments in and of themselves do not rise to the level of ADA discrimination as there is nothing pled that Plaintiff was actually denied any access to a public service.

Additionally, insofar as Plaintiff claims that this incident amounted to retaliation under the ADA, Plaintiff has not shown that he suffered any adverse action in connection with his making a claim against or about Wallace. *Snider*, 505 F. Supp. 3d at 420. That is, there is no indication that (1) Wallace actually barred Plaintiff from entering his courtroom, (2) any potential client declined to retain Plaintiff, or (3) any client discharged Plaintiff based on this incident. Plaintiff's conclusory and generalized assertions, (ECF No. 30, ¶ 94), of a remark allegedly made by Wallace at some unspecified time to an unspecified audience that resulted in no loss of access to a public service or benefit cannot plausibly constitute retaliation under the ADA.

vii. Considering the Incidents as a Whole

As discussed above and in the Court's prior Opinion, the Court is not aware of, nor do the parties cite to, a case holding that general harassment can support a discrimination claim under Title II of the ADA. But with the Third Circuit's command that the "catch-all" provision of Title

II be broadly interpreted in mind, the Court assumes without deciding that Title II could support such a cause of action. *Haberle*, 885 F.3d at 180.

As noted in Part II(a)(i), *supra*, "[t]he 'subjected to discrimination' phrase in Title II is 'a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context.'" *Id.* (quoting *Bircoll*, 480 F.3d at 1085). Discrimination under this provision "encompasses not only adverse actions motivated by prejudice and fear of disabilities, but also includes failing to make reasonable accommodations for a plaintiff's disabilities." *Id.* (citing *Taylor*, 184 F.3d at 306). In conducting this inquiry, courts are to look to the "totality of the circumstances," including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with [the underlying right at issue]." *Miller v. Thomas Jefferson Univ. Hosp.*, 565 F. App'x 88, 93 (3d Cir. 2014) (quoting *Harris*, 510 U.S. at 23).

But in making to this inquiry, courts are not to turn anti-discrimination statutes into "civility code[s]." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998) ("Title VII does not prohibit all verbal or physical harassment in the workplace."). Courts have thus been reluctant to hold defendants liable for discrimination unless the claimed discrimination leads to the actual denial of a statutory or constitutional right or benefit. *See e.g.*, *Davis v. Monroe Cnty. Bd. Educ.*, 526 U.S. 629, 650 (1999) ("The most obvious example of student-on-student sexual harassment capable of triggering a damages claim [under Title IX] would thus involve the overt, physical deprivation of access to school resources."); *Hall*, 22 F.4th at 408. In the Title II sphere, plaintiffs must demonstrate that the harassment "was sufficiently severe or pervasive that it altered the" conditions of or relationship with the underlying public service. *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 454 (6th Cir.

2008); *K.M. ex rel. D.G. v. Hyde Park Cent. Sch. Dist.*, 381 F. Supp. 2d 343, 360 (S.D.N.Y. 2005) (concluding that the plaintiff's deprivation of "access to the school's resources and opportunities" stated a claim under Title II); *see also Durham*, 2023 WL 6108591, at *4 ("Durham alleges several instances when he complained of his pain and was ignored."); *id.* (stating that ignoring these complaints prevented Durham from accessing the same services that other inmates received).

The totality of the incidents Plaintiff complains of do not state a claim for harassment under ADA Title II's catch-all provision, if such a claim exists. Though Wallace's alleged caustic remarks were asserted to be repetitive, the Amended Complaint fails to plausibly show that Plaintiff's interactions with Wallace fundamentally altered the nature of his (Plaintiff's) relationship with the Pennsylvania judicial system. Several of the incidents Plaintiff references occurred because Plaintiff admittedly double or triple booked his own calendar, with such scheduling detached from any disability. And in those and the other incidents, Plaintiff did not actually suffer an adverse procedural outcome akin to the actual or constructive denial of a government service. Nor does the Amended Complaint assert that the Plaintiff sought an accommodation for a covered disability that was actually denied. As pled, Plaintiff received every accommodation he sought and was at worst met with a series of "mere offensive utterance[s]," not a systemic denial of access to the services provided by the Pennsylvania judicial system. *Miller*, 565 F. App'x at 93.

viii. Intentional Discrimination

Even if Plaintiff were to state a claim under ADA Title II, to obtain compensatory damages—the only relief sought here—Plaintiff must allege intentional discrimination. *Haberle*, 885 F.3d at 181. As discussed above, a showing of intentional discrimination requires at least "deliberate indifference, . . . and to plead deliberate indifference a plaintiff must allege '(1)

knowledge that a federally protected right is substantially likely to be violated . . . and (2) failure to act despite that knowledge.'" *Id.* (citing *Durrell*, 729 F.3d at 265). The first prong is a subjective standard; a defendant must have actual knowledge that a federally protected right is likely to be violated. *Durell*, 729 F.3d at 266 n.26.

The Amended Complaint does not plausibly demonstrate that Wallace actually knew that a federally protected right was likely to be violated by his statements or actions. While Plaintiff makes the conclusory allegation that Wallace had actual knowledge that he was violating Plaintiff's federally protected rights, (ECF No. 30, ¶ 80), nothing in the Amended Complaint plausibly shows that Wallace had engaged in a pattern of endangering the federally protected rights of others or that the risk of harm was "so great and so obvious" that failing to provide Plaintiff an accommodation constituted deliberate indifference. *Haberle*, 885 F.3d at 182. And again, Wallace's dismissal of the Rule to Show Cause and his decision to grant all of the Plaintiff's continuances shows that Plaintiff was not ultimately harmed in any tangible fashion. Accordingly, Plaintiff has not plausibly pled, as opposed to asserting with only threadbare conclusions, that Wallace acted with deliberate indifference.

c. Equal Protection Claim

Plaintiff incorporates a Fourteenth Amendment Equal Protection Claim as part of his amended ADA claim, seemingly in an effort to defeat Wallace's arguments advancing sovereign immunity. *See United States v. Georgia*, 546 U.S. 151, 159 (2006) (holding that Congress only abrogated Eleventh Amendment Immunity under Title II insofar as the alleged conduct "*actually* violates the Fourteenth Amendment"). While, as an analytical matter, the Court need not consider Plaintiff's Equal Protection Claim against the background of Eleventh Amendment immunity since Plaintiff has not stated a plausible claim under Title II of the ADA, it strikes the Court that a

plausible alternate reading of the Amended Complaint is that Wallace allegedly violated the Equal Protection Clause on a standalone basis by virtue of his interactions with Plaintiff.[3] The Court will thus conduct an Equal Protection analysis independent of Plaintiff's ADA claims.

i. Classification Based on a Disability

"The Equal Protection Clause of the Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the laws[.]" *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (internal marks and citations omitted). This command is "essentially a direction that all persons similarly situated should be treated alike." *Id.* (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). When a classification is made based on an individual's disability, the differential treatment associated with that classification is subject to rational basis review. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 366 (2001). The relevant standard under this scope of review is whether there is some "rational relationship between the disparity of treatment and some legitimate governmental purpose." *Id.* at 367 (citations omitted). A facially discriminatory classification will not survive an Equal Protection challenge if that classification is based on a "bare desire to harm a politically unpopular group or 'a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.'" *New Directions Treatment Servs.*, 490 F.3d at 301 (quoting *City of Cleburne*, 473 U.S. at 446).

However, the deference associated with rational basis review and the relatively relaxed standard of judicial consideration of the plausibility of a claim conducted at the motion to dismiss

[3] Because the Court is not analyzing the Equal Protection Claim against the backdrop of Wallace's Eleventh Amendment Immunity argument, the Court need not decide whether Plaintiff plausibly stated an access to the courts claim. *Georgia*, 546 U.S. at 159. This is because the fundamental right of access to the courts is protected by the Due Process Clause, not the Equal Protection Clause. *Tennessee v. Lane*, 541 U.S. 509, 523 (2006) ("These rights include some, like the right of access to the courts at issue in this case, that are protected by the Due Process Clause of the Fourteenth Amendment."). Because Plaintiff only alleges a violation of the Equal Protection Clause, the Court will proceed to analyze the underlying facts under disability and class of one theories.

stage are in tension. That is, the disposition of Plaintiff's Equal Protection claim at this stage of the litigation turns on the burden placed on the Plaintiff to demonstrate that Wallace's conduct did not serve a legitimate purpose.

At the summary judgment stage, courts have ruled that "the State need not articulate its reasoning at the moment a particular decision is made. Rather, the burden is upon the challenging party to negative 'any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Garrett*, 531 U.S. at 367 (quoting *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993) (citations omitted)); *see also New Directions Treatment Servs.*, 490 F.3d at 301 ("[I]n an as applied or facial equal protection challenge, the plaintiff bears the burden of negating all conceivable rational justifications for the allegedly discriminatory action or statute.").

However, the Third Circuit has not appeared to yet rule as to whether this standard also applies to the consideration of a motion to dismiss. Some of the other courts of appeals addressing this question have held that the standard at summary judgment also applies at the motion to dismiss stage. *See, e.g.*, *Davis v. Prison Health Servs.*, 679 F.3d 433, 438 (6th Cir. 2012) (stating that plaintiffs must negate "every conceivable basis" which might support the defendant's conduct); *Mahone v. Addicks Utility Dist.*, 836 F.2d 921, 936 (5th Cir. 1998) ("Going outside the complaint to hypothesize a purpose will not conflict with the requirement that, when reviewing a complaint dismissed under Rule 12(b)(6), we accept as true all well-pleaded facts."), *overruled on other grounds, Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012) (stating that a classification and the differential treatment stemming therefrom will be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification").

Other federal courts have been reluctant to require plaintiffs suing under the Equal Protection Clause to negate all possible justifications for the defendant's conduct at this procedural stage. Some courts lean into *Bell Atlantic* and *Twombly's* holdings, requiring only that "a plaintiff . . . plead sufficient facts to demonstrate plausibly that he was treated differently from others who were similarly situated and that the unequal treatment was the result of discriminatory animus." *Equity in Athletics, Inc. v. Dep't of Educ.*, 639 F.3d 91, 108 (4th Cir. 2011). One such court concluded that the more exacting standards some courts apply to rational basis review at the motion to dismiss stage is "perplexing" before concluding that "[t]he rational basis standard, of course, cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). If rational basis deference were allowed to triumph over the benefits of the 12(b)(6) standard, "allegations of equal protection violations would rarely, if ever, make it past the pleading stage." *Cox v. Med. Coll. of Wis. Inc.*, No. 22-CV-553, 2023 WL 199216, at *19 (E.D. Wis. Jan. 17, 2023).

While the Third Circuit has yet to rule on this precise question, in related contexts, that court has been cautious in upholding dismissals prior to discovery. *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 246 (3d Cir. 2008) ("Standards of pleading are not the same as standards of proof."); *Silla v. Holdings Acquisition Co LP*, No. 20-3556, 2021 WL 4206169, at *2 (3d Cir. Sept. 16, 2021) (concluding that the District Court erred in applying a rebuttable presumption that favored defendants at the motion to dismiss stage). Given that the Third Circuit has differentiated pleading standards from standards of proof, the Court concludes that the latter line of cases set out above is more persuasive. That means that the Plaintiff must only plausibly demonstrate that he was treated differently from those similarly situated and that the relationship between such differential treatment and the underlying governmental purpose plausibly appears irrational. *New Directions*

Treatment Servs., 490 F.3d at 301. Plaintiff need not negate all possible bases for Defendants' conduct at this stage, as he must do at summary judgment, or at trial.

Applying this standard to the facts here, Plaintiff plausibly (but barely) pleads a standalone Equal Protection Claim. Plaintiff alleges repeated instances of differential treatment from Wallace in the form of verbal abuse and the imposition of what is arguably a separate set of rules applicable to him in the form of requiring Plaintiff to attend (once) what are effectively the start of contempt proceedings and to be prepared to provide rather complex explanations for any anticipated absences. Plaintiff repeatedly asserts that this treatment is "differential" by alleging that Wallace does not treat attorneys who do not have a disability (whether it be diabetes or concussion-related injuries) in the same manner, but does so with no elaboration. While Wallace ultimately granted Plaintiff the relief he sought at each proceeding, or dismissed potentially adverse actions, Wallace's treatment of Plaintiff could plausibly constitute a differential classification.

As for whether there is a rational basis for this differential treatment, the Court notes at the outset that Wallace's Brief in Support of his Motion to Dismiss only focuses on whether Plaintiff was denied access to the courts—Wallace does not advance a legitimate government purpose for his conduct because he does not address a rational basis review at all. (*See* ECF No. 33, at 14–16). While other courts may be inclined to "read in" a conceivable basis for Wallace's conduct, as set forth above, this Court concludes that it is not obligated to (or even should) do so at this procedural juncture. Yet even if the Court were to try to justify Wallace's conduct based on his desire to efficiently move through court proceedings, the repeated threats of contempt and allegedly repetitive verbal abuse (all during court proceedings) are, as pled, plausibly attenuated from that goal. Wallace's treatment of Plaintiff, as pled in the Amended Complaint, plausibly can be seen as evidencing a "bare desire" to demean, belittle, and harass Plaintiff; there is no indicia of its

advancing the efficiency of Wallace's judicial proceedings. As pled, the factual circumstances underlying Plaintiff's Equal Protection Claim could demonstrate that Wallace's conduct is not rationally related to a legitimate government purpose, at least for the purposes of stating a valid claim for relief. Therefore, the Court will not dismiss Plaintiff's standalone Equal Protection Claim.

Because Plaintiff failed to plausibly state a claim under the ADA because he was not actually denied any public service, it might be argued that a claim considered under Equal Protection's deferential rational basis review is similarly doomed. But any such argument fails to consider the current procedural stage of the litigation and that Wallace's alleged conduct extends beyond mere verbal harassment, as Wallace allegedly threatened Plaintiff with contempt proceedings.

First, as noted above, the Third Circuit enforces differential standards at the pleading stage and at post-discovery stages of litigation. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 214 (3d Cir. 2009); *Durham*, 2023 WL 6108591, at *4 (stating that the complaint must be construed "liberally" and that analyzing the complaint through this lens does not "express an opinion on whether [the plaintiff] will ultimately be able to prove his claims"). The inquiry here is thus not whether Plaintiff will ultimately be able to succeed on his Equal Protection Claim at trial. Rather, the inquiry is whether the Amended Complaint, when construed liberally, alleges a plausible claim under the Equal Protection Clause.

Second, the varying legal standards articulated by the Third Circuit answer why Plaintiff Equal Protection Claim can persist but the ADA claim cannot. This is because, even construed liberally, a violation tied to Title II of the ADA must be tied to the actual denial of an underlying service. *See Hyde Park Cent. Sch. Dist.*, 381 F. Supp. 2d at 360. Even construed liberally, Plaintiff

has not been denied any service of the courts and received the relief he requested of Wallace at each turn.[4] Even when viewed an expansive manner, the ADA simply does not provide a cause of action under the circumstances as pled.

Conversely, an Equal Protection Claim does not need to be tied to the actual denial of a service or benefit of a government entity. While verbal harassment alone fails to state a claim under the Equal Protection Clause, *Ortiz v. Cicchitello*, No. 23-CV-264, 2023 WL 3044603, at *2 (M.D. Pa. Apr. 21, 2023), where there is an associated threat of injury, a plaintiff does state a plausible claim for relief. *Id.* (acknowledging that an "injury or threat thereof" would constitute a plausible Equal Protection Claim); *Graham v. Main*, No. 10-CV-5027, 2011 WL 2412998, at *25 (D.N.J. June 9, 2011) (concluding that verbal harassment alone failed to state a claim under the Equal Protection Clause only without "an accompanying violation" of the law). The alleged conduct here goes beyond harassment, as Wallace purportedly instituted a separate set of "rules" that were allegedly based on Plaintiff's disability. (ECF No. 30, ¶ 41 (stating that Plaintiff would have to "prove" his disability to Wallace)); (*id.* ¶ 51 (scheduling a contempt proceeding when Plaintiff sent another attorney in his place)); (*id.* ¶ 61 (stating that Plaintiff should be held in contempt for requesting a continuance due to his disability)). Plaintiff's Amended Complaint plausibly demonstrates that Wallace's conduct violated the Equal Protection Clause because Wallace applied a different set of procedures to Plaintiff because of his disability. While the ADA does not provide relief for the imposition of these procedures because Plaintiff was never denied a public service or benefit of the courts, such differential treatment plausibly states a claim, when viewed liberally, under the Equal Protection Clause.

[4] Excluding Wallace's non-recusal decision, which may not be considered in this Court due to the *Rooker-Feldman* bar.

ii. Class of One

In addition to stating a claim pursuant to a status-based classification, under the Supreme Court's decision in *Village of Willowbrook v. Olech*, a plaintiff may state an Equal Protection Claim under a "class-of-one" theory. 528 U.S. 562 (2000). To do so, a plaintiff must plead that "(1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment." *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006). When given the benefit of every reasonable inference, as the Court is bound to provide at the motion to dismiss stage, the Plaintiff has stated a plausible claim for relief under this Equal Protection theory.

As to the first element, Plaintiff alleges that Wallace does not treat other similarly situated attorneys in the same manner. (ECF No. 30, ¶¶ 23, 43, 46, 53, 63–65, 77–79). More particularly, verbal pushback of the sort that allegedly occurred during Incident 4 is alleged to be outside of the expectations for interactions between attorneys and judges. Plaintiff plausibly states that Wallace's "nontraditional" procedures applied to him despite the fact that Wallace has not engaged in similar conduct with other individuals. Whether that animus was based on Plaintiff's disabilities or a personal disdain for Plaintiff, Plaintiff plausibly pleads that Wallace treated him differently from other litigants appearing before the court.[5]

As to the second element, Plaintiff alleges that Wallace's differential treatment was intentional. Plaintiff says that he informed Wallace of his diabetes and his subsequent concussion, both orally and via email. (*Id.* ¶¶ 30–31, 46–48). Thus, for these purposes, the Court must treat

[5] While Wallace may argue that Plaintiff did not point out specific instances in which Wallace treated others differently, doing so is not necessary as to this Equal Protection Claim at this stage of the litigation. *Phillips*, 515 F.3d at 245 ("We note that the *Olech* decision does not establish a requirement that a plaintiff identify in the complaint specific instances where others have been treated differently for the purposes of equal protection."). For now, and for this claim (as opposed to the ADA claims) it is enough that Plaintiff plausibly alleges that Wallace generally does not treat other attorneys in the manner that he treated Plaintiff.

Wallace's differential treatment of Plaintiff as being done with actual knowledge of Plaintiff's alleged disabilities. While Wallace might argue that this element is not satisfied since the intent requirement under the ADA's compensatory damages inquiry was not satisfied, such an argument misses the mark. The inquiry under the ADA is whether a defendant is aware that a federally protected right is likely to be violated. Here, the inquiry is much less exacting—it is only whether a defendant's allegedly disparate treatment of a plaintiff was intentional and whether treatment of plaintiff was done with knowledge of and, in part, because of plaintiff's disabilities. (*See id.* ¶ 75 (questioning the legitimacy of Plaintiff's disabilities)). And critically, to the extent that Wallace's treatment of Plaintiff was not related to Plaintiff's disabilities, the treatment could plausibly be seen to stem from a personal disdain of Plaintiff. This differentiates the analysis of this claims as opposed to the ADA claims addressed above. Therefore, this element is also satisfied.

The third element, like the general disability categorization described in the preceding section, turns on the standard of review at this stage of the litigation. As set forth above, Wallace does not advance a legitimate government purpose for his treatment of Plaintiff, and the Court need not conjure one up for him. But in any event, Wallace's alleged persistent verbal poking at the Plaintiff and the alleged threats of contempt plausibly show a discriminatory animus that is removed from a legitimate government interest. Thus, Plaintiff plausibly pleads that Wallace's conduct lacks a rational basis.

iii. Relief Available Under the Equal Protection Clause

a. Money Damages

Despite Plaintiff having plausibly pled a standalone claim under the Equal Protection Clause, for the reasons set forth below, there is no compensable remedy available to Plaintiff.

Plaintiff pleads that he sues Wallace only in Wallace's official capacity. To the extent Plaintiff's Equal Protection Claim would be alleged against Wallace in his personal capacity, when a judge performs judicial actions in their personal capacity, that judge is absolutely immune from a suit for money damages. *Mireles v. Waco*, 502 U.S. 9, 9 (1991) (per curiam). This immunity does not stem from Eleventh Amendment immunity—judicial immunity is a prudential doctrine in place "for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences." *Pierson v. Ray*, 386 U.S. 547, 554 (1967), *overruled on other grounds*, *Monell v. Dep't Soc. Servs. N.Y.*, 436 U.S. 658 (1978). This immunity applies even in the face of malicious or erroneous actions. *Stump v. Sparkman*, 435 U.S. 349, 356 (1978).

Judicial immunity is only overcome if (1) the underlying actions at issue are nonjudicial; or (2) the judge's actions are taken "in the complete absence of all jurisdiction." *Waco*, 502 U.S. at 9. "Factors which determine whether an act is a 'judicial act' 'relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectation of the parties, i.e., whether they dealt with the judge in his judicial capacity.'" *Figueroa v. Blackburn*, 208 F.3d 435, 443 (3d Cir. 2000) (quoting *Stump*, 435 U.S. at 362). "[H]olding an individual in contempt is an act normally performed by a judge." *Id.* (citations omitted). An "act does not become nonjudicial because it was wrong." *Id.*; *see also Waco*, 502 U.S. at 11 ("[J]udicial immunity is not overcome by allegations of bad faith or malice."). And whether an act is judicial in nature may be determined, even at the motion to dismiss stage, based on the allegations contained in the complaint. *See Lee*, 2023 WL 5814783, at *4 (looking to the assertions in the complaint in determining whether a judge's actions were judicial).

Here, Plaintiff's Equal Protection claim against Wallace, insofar as such claim is viewed as being brought against Wallace in his individual capacity, is facially barred by judicial immunity. Plaintiff does not allege that Wallace was acting outside of his jurisdiction, and Plaintiff does not allege that Wallace's actions were nonjudicial. And based on what Plaintiff pleads in his Amended Complaint, he could plausibly allege neither. Each incident, as stated in the Amended Complaint, was in some way directly and intimately connected to a judicial proceeding; all of Plaintiff's negative interactions with Wallace involve a status conference, a contempt proceeding, a request for a continuance, or a recusal decision. All of these interactions involve "a function normally performed by a judge," and there is no question that Wallace was acting "in his judicial capacity." *Figueroa*, 208 F.3d at 443. Thus, on the face of the Amended Complaint, Wallace's actions were performed in his judicial capacity and within his judicial jurisdiction. The Court therefore concludes that judicial immunity applies, and a suit for money damages against Wallace in his personal capacity is barred.

To the extent that Plaintiff's claim is against Wallace in his official capacity, such a claim is effectively a suit against the Commonwealth. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). The Eleventh Amendment bars suits for money damages against states where those states do not consent to suit. U.S. Const. amend. XI; *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). As set forth above, Congress may abrogate this immunity when it acts pursuant to § 5 of the Fourteenth Amendment. U.S. Const. amend. XIV, § 5; *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976). While Congress has the power to abrogate sovereign immunity when violations of the Fourteenth Amendment are at issue, its intent to do so must be "unmistakably clear." *Seminole Tribe Fla. v. Fla.*, 517 U.S. 44, 56 (1996) (citations omitted); *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 246 (1985) ("A general authorization for suit in federal court is not the kind of unequivocal

statutory language sufficient to abrogate the Eleventh Amendment."). And although Pennsylvania itself may waive sovereign immunity by consent, it has not done so in this area. *See Chittister v. Dep't Cmty. & Econ. Dev.*, 226 F.3d 223, 226–27 (3d Cir. 2000) ("[The Commonwealth] has waived immunity only for certain specified tort claims in suits for damages in state court.") (citing 42 Pa. Cons. Stat. § 8522).

Here, Plaintiff alleges his Equal Protection Claim hand in hand with his ADA claim. As noted above, however, the Court concludes that Plaintiff had not plausibly pled an ADA claim and therefore must treat his Equal Protection Claim as freestanding. There is no underlying statute at issue by which Congress has abrogated Eleventh Amendment immunity as to that claim. *Queren v. Jordan*, 440 U.S. 332, 342 (1979) (holding that 42 U.S.C. § 1983 does not abrogate Eleventh Amendment Immunity). Consequently, Congress has not provided an unmistakably clear intention to abrogate sovereign immunity in this area, and Plaintiff cannot obtain money damages against the Defendant Commonwealth, either as the Commonwealth itself, or indirectly via a suit against Wallace in Wallace's official capacity. Thus, all claims for money damages against each Defendant are barred.

b. Injunctive Relief

Plaintiff may not successfully seek prospective injunctive relief, either. Under the principles of *Ex Parte Young*, a plaintiff can obtain prospective relief against a state official acting in their official capacity to stop an ongoing violation of federal law. 209 U.S. 123, 155–56 (1908); *Green v. Mansour*, 474 U.S. 64, 68 (1985) ("Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law."). However, while other state officers may be enjoined for violating federal law, issuing an injunction upon a judge is a different matter. In *Whole Women's Health v. Jackson*, the Supreme Court held

that *Ex Parte Young* does not permit the inclusion of state court judges (and state court clerks) as defendants as to such relief. 595 U.S. 30, 39–44 (2021); *see also Ex Parte Young*, 209 U.S. at 180 ("[A]n injunction against a state court would be a violation of the whole scheme of our government."). Though it could be argued that the *Jackson* Court suggested that *Pulliam v. Allen* provides a path to enjoin state court judges, *Pulliam* concerned a litigant being incarcerated for what was ultimately a non-incarcerable offense. *Jackson*, 595 U.S. at 42; *Pulliam v. Allen*, 466 U.S. 522, 525 (1970). Such conduct is not at issue here. *Pulliam* ultimately did permit an action to obtain injunctive relief against the involved state court judge, but Congress abrogated *Pulliam* by amending 42 U.S.C. § 1983 to generally prohibit a suit for injunctive relief against a judicial officer. Federal Courts Improvement Act of 1996, § 309(c), Pub. L. 104-317, Stat. 3853, 42 U.S.C. § 1983 (Oct. 19, 1996). The Third Circuit has interpreted the Federal Courts Improvement Act as overruling *Pulliam*. *Allen v. DeBello*, 861 F.3d 433, 439 (3d Cir. 2017); *see also* Gallina Mecca, 2023 WL 5814783, at *3 (concluding that *Ex Parte Young* did not permit a litigant to enjoin a state court judge's adverse action).[6]

Though none of the referenced cases or statutes are directly in congruence with the facts pled in this case, the central takeaway is that a state judicial officer generally may not be enjoined by a federal court as to acts taken or to be taken in their judicial capacity. Such an act would upset the core mechanics of our federal system, and the *Ex Parte Young* and *Jackson* Courts expressly sought to avoid that outcome. As established in the Amended Complaint, at all times relevant to the present litigation, Wallace was alleged to be acting in his judicial capacity. This Court enjoining Wallace for judicial actions, even when those actions may be plausibly viewed as

[6] This statute references declaratory relief, which is not sought in this case. In any event, "[t]he language [of the amended statute] is not an express authorization of declaratory relief, but simply a recognition of its availability or unavailability, depending on the circumstances, which the statute does not delineate." *Brandon E. ex rel. Listenbee v. Reynolds*, 201 F.3d 194,198 (3d Cir. 2000)

personally vindicative to Plaintiff, would upset the balance relied upon by the *Jackson* and *Ex Parte Young* Courts. Therefore, this Court may not directly enjoin Wallace to remedy his alleged in-court misconduct.

Finally, the question remains of whether Plaintiff could indirectly seek to enjoin Wallace's conduct by this Court enjoining the Commonwealth itself. The Eleventh Amendment not only bars actions for money damages against a State. It also bars injunctive actions:

> The dissent mischaracterizes *Edelman* as asserting that the Eleventh Amendment bars "only" suits seeking money damages. . . . *Edelman* recognized the rule "that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment," [*Edelman v. Jordan*, 415 U.S. 651, 663 (1974)], but never asserted that such suits were the only ones so barred.

Cory v. White, 457 U.S. 85, 90 n.2 (1982). "It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought." *Id.* at 90. The Eleventh Amendment prohibits suing a state unless some exception applies, and as previously discussed, no exception is applicable here. *Alabama v. Pugh*, 438 U.S. 781, 781–82 (1978) (per curiam) ("Among the claims raised here by petitioners is that the issuance of a mandatory injunction against the State of Alabama and the Alabama Board of Corrections is unconstitutional because the Eleventh Amendment prohibits federal courts from entertaining suits by private parties against States and their agencies. . . . There can be no doubt, however, that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama has consented to the filing of such a suit."); *Waterfront Comm'n N.Y. Harbor v. Governor of New Jersey*, 961 F.3d 234, 238, 241 (3d Cir. 2020) (concluding that the *Ex Parte Young* exception to sovereign immunity did not apply because the state was the "real, substantial party in interest"). Therefore, this Court may not directly enjoin the Commonwealth in

order to address Wallace's alleged conduct. Thus, without any viable avenue for relief, Plaintiff's Equal Protection Claim must be dismissed.

III. CONCLUSION

In summary, Plaintiff failed to plausibly plead an ADA claim because he was never denied a public service. Though Plaintiff validly pled a standalone Equal Protection Claim under "discrimination" and "class of one theories," sovereign immunity and judicial immunity bar both monetary and injunctive relief against each Defendant. Therefore, Plaintiff has not pled a plausible claim for relief or an asserted avenue to obtain relief.

The Court therefore GRANTS Defendants' Motion to Dismiss (ECF No. 32) with prejudice, the Court concluding that any further amendment would be futile.

An appropriate order will issue.

s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

Dated: September 29, 2023
cc: All counsel of record.