

No. 25-1276

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES EDWARD WHITE,

Plaintiff-Appellant,

v.

U.S. SUPREME COURT, named as Supreme Court of the United States
and employees c/o Chief Justice Roberts; U.S. HOUSE OF
REPRESENTATIVES, c/o Speaker Mike Johnson; EXECUTIVE
BRANCH, and employees c/o President Joe Biden, c/o Office of the
Attorney General, c/o United States Attorney,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Michigan
No. 1:23-CV-01248

BRIEF FOR APPELLEES

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary in this case because the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

STATEMENT OF JURISDICTION

On February 25, 2025, the district court entered a memorandum opinion and order granting Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). (R.45: Order, PageID.1018-1021; R.46: J., PageID.1022.) Plaintiff timely filed a notice of appeal on March 24, 2025. (R.47: Notice of Appeal, PageID.1023.); Fed. R. App. P. 4(a)(1)(B)(ii). The Court has appellate jurisdiction under 28 U.S.C. § 1291.

ISSUE PRESENTED

1. Whether the district court properly dismissed Plaintiff's claims for lack of subject-matter jurisdiction because Defendants have sovereign immunity and Plaintiff has not identified an applicable waiver.

STATEMENT OF THE CASE

Plaintiff James White was laid off by Michigan State University (“MSU”) in August 2017. (R.1: Compl., ¶ 8, PageID.7.) After his layoff, Plaintiff allegedly applied for Michigan Unemployment Insurance Benefits, and appropriately received those benefits except for the week of September 30, 2017. (*Id.*) Plaintiff pursued various administrative and state court appeals alleging that MSU improperly denied him his unemployment benefits. (*Id.* at ¶¶ 8-28, 30-51, PageID.7-26.) Dissatisfied with the result of the appeals, Plaintiff filed a Petition for a Writ of Certiorari on October 21, 2022 with the Supreme Court of the United States (“Supreme Court”), which denied it on January 9, 2023. (*Id.* at ¶¶ 29, 52, PageID.19, 26-27; R.1-2, PageID.37-68; R.1-31, PageID.223-225.) The Supreme Court also denied his subsequent Petition for Rehearing of Denial of Petition for Writ of Certiorari on February 27, 2023. (R.1: Compl., ¶¶ 29, 52, PageID.19, 26-27.) Plaintiff then petitioned various members of the United States House of Representatives (“U.S. House”) regarding the Supreme Court’s denials but allegedly received no response. (*Id.* at ¶ 58, PageID.31.) Finally, Plaintiff petitioned the Executive Branch of the United States (the

“Executive”)—namely, the President and the Attorney General—who allegedly did not respond. (*Id.* at ¶ 59, PageID.31-32.)

On November 28, 2023, Plaintiff filed the present action, alleging that the Supreme Court violated his constitutional rights by denying his Petition for a Writ of Certiorari and the corresponding request for reconsideration (*id.* at ¶¶ 4-5, 29, 52, PageID.3-7, 19, 26-27), and that the U.S. House and the Executive violated his constitutional rights by not responding to his petition letters (*id.* at ¶¶ 4-5, 58-59, PageID.3-7, 31-32). Defendants filed a motion to dismiss on March 14, 2024. (R.17: Motion, PageID.673-674; R.18: Memo. in Supp., PageID.675-687.) On January 19, 2025, the Magistrate Judge issued a Report and Recommendation, recommending that Defendants’ motion to dismiss be granted, and on February 25, 2025, the district court approved and adopted the Report and Recommendation as the Opinion of the Court. (R.39: Report and Recommendation, PageID.815-821; R.45: Opinion and Order, PageID.1018-1021.)

The district court adopted the Report and Recommendation and dismissed Plaintiff’s Complaint for lack of subject-matter jurisdiction because “the three defendants are all part of the federal government,

which is immune from suit unless Plaintiff identifies a waiver of sovereign immunity, and Plaintiff has not done so.” (R.45: Opinion and Order, PageID.1019.)

SUMMARY OF THE ARGUMENT

The Court should affirm the district court’s decision to dismiss Plaintiff’s action under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction.

Plaintiff’s action is barred by sovereign immunity. Defendants—the Supreme Court, the U.S. House, and the Executive—are each part of the federal government. “The United States, as sovereign, is immune from suit save as it consents to be sued[.]” *United States v. Sherwood*, 312 U.S. 584, 586 (1941). To sue the United States, there must be an “express, clear and unequivocal” waiver of sovereign immunity. *Reed v. Reno*, 146 F.3d 392, 398 (6th Cir. 1998). A plaintiff bears the burden of identifying an applicable waiver of sovereign immunity. *Reetz v. United States*, 224 F.3d 794, 795 (6th Cir. 2000). Plaintiff has not done so here. Consequently, the district court lacks jurisdiction over Plaintiff’s claims and properly dismissed them.

Even if the Court determines that sovereign immunity does not bar this case, Plaintiff’s claims are still subject to dismissal for other reasons under Fed. R. Civ. P. 12(b)(1). Namely, Defendants cannot be sued for Fourteenth Amendment due process violations because they are federal

entities and the Fourteenth Amendment applies only to state actors, and Defendants cannot be sued under the Ninth Amendment because the Ninth Amendment does not confer substantive rights. Plaintiff's claims are also subject to dismissal under Rule 12(b)(6) because, even construing the Complaint in the light most favorable to Plaintiff, he has failed to allege sufficient facts to support actionable claims for which he is entitled to relief.

ARGUMENT

This Court reviews a district court’s decision to dismiss a claim for lack of subject-matter jurisdiction de novo. *Haines v. Fed. Motor Carrier Safety Admin.*, 814 F.3d 417, 423 (6th Cir. 2016). Further, this Court may affirm on any grounds supported by the record, even if different from the grounds relied on by the district court. *Id.*

I. The district court lacks subject-matter jurisdiction over Plaintiff’s claims.

The district court dismissed Plaintiff’s complaint for lack of subject-matter jurisdiction because “the three defendants are all part of the federal government, which is immune from suit unless Plaintiff identifies a waiver of sovereign immunity, and Plaintiff has not done so.” (R.45: Opinion and Order, PageID.1019.) That ruling is correct.

“Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.* (internal citation omitted). If a plaintiff cannot meet his or her burden of establishing subject-matter jurisdiction, dismissal under Rule 12(b)(1) is proper. Fed. R. Civ. P. 12(b)(1); *Kokkonen*, 511

U.S. at 377; *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990).

“The United States, as sovereign, is immune from suit save as it consents to be sued . . . , and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.”¹ *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)); *Reed v. Reno*, 146 F.3d 392, 398 (6th Cir. 1998) (“[t]he United States can be sued only when it has expressly given its consent to be sued The waiver must be express, clear and unequivocal.”) (quotation and citation omitted). If the United States has not waived its sovereign immunity over a claim, then the court lacks jurisdiction to hear it. *See, e.g., Clay v. United States*, 199 F.3d 876, 879 (6th Cir. 1999); *see also Mitchell*, 445 U.S. at 538.

¹ For example, a plaintiff only has a right to a jury trial in a case against the United States where Congress has both “unequivocally waived the government’s immunity to suit under the cause of action involved” and “unambiguously granted the right to jury trials for that particular cause of action.” *Jones-Hailey v. Corp. of Tenn. Valley Auth.*, 660 F. Supp. 551, 552 (E.D. Tenn. 1987) (citing *Lehman v. Nakshian*, 453 U.S. 156, 168-69 (1981)). There is no Seventh Amendment right to a jury trial in suits against the federal government. *Id.* Thus, Plaintiff’s arguments to the contrary are unfounded. (Pl. Br. 25.)

Sovereign immunity extends to Defendants—the Supreme Court, the U.S. House, and the Executive²—all of which are part of the federal government. *Toledo v. Jackson*, 485 F.3d 836, 838 (6th Cir. 2007) (sovereign immunity extends to individual United States officials who are sued in their official capacities); *Rockefeller v. Bingaman*, 234 F. App'x 852, 855 (10th Cir. 2007) (“[s]overeign immunity forecloses . . . claims against the House of Representatives and Senate as institutions” (citations omitted)); *Wagstaff v. U.S. Dep’t of Educ.*, 509 F.3d 661, 664 (5th Cir. 2007) (there is a “longstanding principle that only Congress can waive an executive agency’s sovereign immunity.”). But Plaintiff has not identified an applicable waiver of sovereign immunity that allows him to sue Defendants.

On appeal, Plaintiff asserts that Article III of the U.S. Constitution waives sovereign immunity. (Pl. Br. 20 (“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, . . . to

² On appeal, Plaintiff appears to seek discovery to determine the identities of specific staff who may be responsible for the alleged deprivation of his rights. (Pl. Br. 13 n.8, 22-23.) But, for the reasons set forth in Defendants’ Motion to Dismiss (R.18: Memo. in Supp., PageID.683-685), discovery is not warranted because any attempt to pursue a *Bivens* claim here would be futile.

Controversies to which the United States shall be a Party . . .”) (quoting U.S. Const. art III, § 2, cl. 1), 21, 24-25.) But this reliance is misplaced. The doctrine of sovereign immunity limits Article III’s grant of federal court jurisdiction. *Alden v. Maine*, 527 U.S. 706, 749 (1999) (“It is unquestioned that the Federal Government retains its own immunity from suit . . . in its own courts.”). Only Congress can waive the federal government’s sovereign immunity. *See United States v. Clarke*, 33 U.S. 436, 443 (1834) (“As the United States are not suable of common right, the party who institutes a suit against them must bring his case within the authority of some act of congress, or the court cannot exercise jurisdiction.”); *Poffenbarger v. Kendall*, No. 24-3417, 2025 WL 1367755, at *2 (6th Cir. May 12, 2025) (“A waiver of sovereign immunity must be unequivocally expressed in statutory text.”) (internal quotation and citation omitted).

Plaintiff has not identified an applicable waiver because there is no waiver of sovereign immunity for Plaintiff’s claims. Consequently, the Court should affirm the district court’s ruling.

II. Plaintiff's claims also fail, and should be dismissed, because the federal government is not subject to the Fourteenth Amendment, he fails to state a Fifth Amendment claim, the Ninth Amendment does not confer substantive rights upon which he can bring a claim, and the Supreme Court and the President have absolute immunity.

In addition to sovereign immunity barring Plaintiff's claims, the district court's dismissal should be affirmed on several other grounds.

A. Plaintiff's due process claims fail.

Plaintiff's appeal references due process, the Fourteenth Amendment, the Fifth Amendment and equal protection. (Pl. Br. 23-24.) To the extent Plaintiff asserts such claims, they fail.

1. Any Fourteenth Amendment claim should be dismissed for lack of subject-matter jurisdiction.

Any Fourteenth Amendment claim fails under Rule 12(b)(1) because the Fourteenth Amendment does not apply to Defendants, which are federal departments. "[T]he Fourteenth Amendment applies on its face only to the states." *Harden v. Hillman*, 993 F.3d 465, 481 n.4 (6th Cir. 2021) (quotation and citation omitted). It is the Fifth Amendment's due-process and equal-protection clauses that circumscribe the federal government's actions. *Scott v. Clay Cnty., Tenn.*, 205 F.3d 867, 873 n.8 (6th Cir. 2000) ("The Fourteenth Amendment's Due Process Clause restricts the activities of the states and their instrumentalities; whereas

the Fifth Amendment's Due Process Clause circumscribes only the actions of the federal government.”); *see also United States v. Green*, 654 F.3d 637, 650-51 (6th Cir. 2011) (“[T]he Due Process Clause of the Fifth Amendment imposes equal protection constraints on the federal government.”) (citing *Bolling v. Sharpe*, 347 U.S. 497, 498-99 (1954)).

2. Any Fifth Amendment claim should be dismissed for failure to state a claim upon which relief may be granted.

Any Fifth Amendment claim fails under Rule 12(b)(6). “The elements of a procedural due process claim are: (1) a life, liberty, or property interest requiring protection under the Due Process Clause, and (2) a deprivation of that interest (3) without adequate process.” *Fields v. Henry Cnty., Tenn.*, 701 F.3d 180, 185 (6th Cir. 2012). The Complaint alleges that Defendants violated Plaintiff's constitutional rights by denying his petition for a writ of certiorari and failing to respond to his petition letters related to his alleged wrongful denial of unemployment benefits. (R.1: Compl., PageID.3-7, 19, 26-27, 31-32, ¶¶ 4-5, 29, 52, 58-59.) In doing so, Plaintiff fails to allege the required elements of a due process claim.

First, Plaintiff does not have a valid Fifth Amendment interest in being heard before the Supreme Court or receiving a response to his petition letters. *See, e.g., Minn. State Bd. For Cmty. Colleges v. Knight*, 465 U.S. 271, 283 (1984) (“The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.”); *see also Apple v. Glenn*, 183 F.3d 477, 479-80 (6th Cir. 1999) (affirming dismissal of a similar complaint because it was “totally implausible”—“[a] citizen’s right to petition the government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen’s views.”). Second, while Plaintiff may have an interest in his underlying unemployment benefits, the Complaint fails to allege how Defendants here were in any way responsible for the deprivation of that interest. Third, Plaintiff has not sufficiently alleged that he received inadequate process. Plaintiff’s allegations regarding the Supreme Court focus on his dissatisfaction with the outcome of his appeal, not the adequacy of the appeal process itself. Simply put, Plaintiff was afforded and received all the process he was due—he was able to file a petition for a writ of certiorari, which the Supreme Court denied. And with respect to the U.S. House and the

Executive, the Complaint does not specify what process he was allegedly due in response to his petition letters.

B. Plaintiff's Ninth Amendment claim fails.

Plaintiff's appeal references rights under the Ninth Amendment (Pl. Br. 20-21, 25), but any constitutional claim based on the Ninth Amendment necessarily fails. The Sixth Circuit has repeatedly held that "the ninth amendment does not confer substantive rights in addition to those conferred by other portions of our governing law." *Gibson v. Matthews*, 926 F.2d 532, 537 (6th Cir. 1991); *see also Cooper Butt ex rel. Q.T.R. v. Barr*, 954 F.3d 901, 908 (6th Cir. 2020) (holding that the defendant's actions "d[id] not violate Plaintiff's rights under the Ninth Amendment because the Ninth Amendment does not confer substantive rights.") Consequently, Plaintiff's claims asserting violations of his rights under the Ninth Amendment are meritless.

C. The Supreme Court Justices and the President have absolute immunity from Plaintiff's claims.

"[T]he Supreme Court has recognized the defense of absolute immunity for . . . judges performing judicial functions, . . . and the President of the United States in his official capacity . . ." *J.P. Silvertown Indus. L.P. v. Sohm*, 243 F. App'x 82, 87 (6th Cir. 2007) (citing *Harlow v.*

Fitzgerald, 457 U.S. 800, 807 (1982)). Plaintiff's claims against the Supreme Court fail because Supreme Court justices are absolutely immune from suits for damages based on actions they take in carrying out their judicial duties, including granting or denying certiorari petitions. See *Forrester v. White*, 484 U.S. 219, 225 (1988); *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978); *Hudson v. Tarnow*, No. 14-2298, 2015 U.S. App. LEXIS 23431, at *5 (6th Cir. Mar. 10, 2015) ("Generally, judges are absolutely immune from civil suit for monetary relief with regard to acts undertaken in their judicial capacity."); *Jones v. Supreme Court of the U.S.*, 405 F. App'x 508 (D.C. Cir. 2010) (affirming dismissal of claims for monetary damages against the Supreme Court because judges have absolute immunity from lawsuits predicated on acts taken in their judicial capacities). Likewise, the President is immune from claims arising from his official responsibilities. *Nixon v. Fitzgerald*, 457 U.S. 731, 756 (1982) (the President is absolutely immune from "damages liability for acts within the 'outer perimeter' of his official responsibility."); see also *Trump v. United States*, 603 U.S. 593, 618 (2024).

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the district court.

Respectfully submitted,

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Dated: June 9, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2025, the foregoing document was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

I further certify that a copy of the foregoing document was mailed on this date to the opposing party if he/she was not registered to receive the document by the Court's electronic filing system.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 32(a)(7) and (g) of the Federal Rules of Appellate Procedure, the undersigned certifies that this brief complies with the type-volume limitation and contains no more than 13,000 words as provided by Rule 32(a)(7)(B). A word count was made using Word 365 and the brief contains 2,629 words.

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Description of Entry	Date	Record Entry Number	Page ID Number Range
Docket Sheet	NA	NA	
Complaint	11/28/2023	1	1-614
Defendants' Motion to Dismiss	03/14/2024	17	673-674
Memorandum in Support of Defendants' Motion to Dismiss	03/14/2024	18	675-687
Report and Recommendation	01/19/2025	39	815-821
Memorandum Opinion and Order	02/25/2025	45	1018-1021
Judgment	02/25/2025	46	1022
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