

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CLAIRE BALL;	)	
SCOTT SCHLUTER,	)	
	)	
Plaintiffs,	)	Case No. 15-cv-10441
	)	Judge John Z. Lee
v.	)	Magistrate Daniel G. Martin
	)	
LISA M. MADIGAN, Attorney General	)	
of Illinois, et al.,	)	
	)	
Defendants.	)	

**RESPONSE TO DEFENDANTS' PARTIAL MOTION TO DISMISS**

Defendants Lisa M. Madigan, Charles W. Scholz, Ernest L. Gowen, Betty J. Coffrin, Casandra B. Watson, William J. Cadigan, Andrew K. Carruthers, William M. McGuffage, and John R. Keith have filed a partial motion to dismiss (Doc. 17) raising three arguments: (1) that the Eleventh Amendment bars Plaintiffs Claire Ball and Scott Schluter's state constitutional claim; (2) that the Eleventh Amendment also prohibits the Court from granting Plaintiffs' request for nominal damages of one dollar; and (3) that 42 U.S.C. § 1983 does not create a damages remedy against a State. Plaintiffs respond as follows.

*First*, Plaintiffs recognize that this Court must dismiss their state constitutional claim because the Court is bound by the Supreme Court's decision in *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984), which held that, in the absence of consent, the Eleventh Amendment prohibits a federal court from exercising even supplemental jurisdiction over state constitutional claims against state officials sued in their official capacities. Plaintiffs therefore object to dismissal of their state constitutional claim only to preserve this issue for appeal on the ground that *Pennhurst* was wrongly decided and should be overturned for the reasons stated by

the dissenting opinions in that case. *See Pennhurst*, 465 U.S. at 125-26 (Brennan, J., dissenting); *id.* at 126-67 (Stevens, J., dissenting).

*Second*, Plaintiffs acknowledge that this Court is bound by Supreme Court precedent holding that the Eleventh Amendment bars damage claims against state officials sued in their official capacities in federal court. *See Kentucky v. Graham*, 473 U.S. 159, 169 (1985). That precedent does not, however, warrant dismissal of any of Plaintiffs' claims. Plaintiffs' request for damages does not constitute an independent cause of action, and damages are not the only relief Plaintiffs seek for their constitutional claims. Rather, Plaintiffs primarily seek declaratory and injunctive relief. *See* Doc. 1, Compl. 10. In addition, Plaintiffs object to any denial of their request for damages for the purpose of preserving the issue for appellate review.

*Third*, Plaintiffs acknowledge that this Court is bound by Supreme Court precedent holding that courts may not award nominal damages against state officers sued in their official capacities under 42 U.S.C. § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 n. 24 (1997). Again, Plaintiffs' request for nominal damages does not warrant dismissal of their constitutional claims, for which Plaintiffs also seek declaratory and injunctive relief. And, again, Plaintiffs object to any denial of their request for damages for the purpose of preserving the issue for appellate review.

Dated: January 18, 2016

Respectfully submitted,

/s/ Jeffrey M. Schwab

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I, Jeffrey M. Schwab, certify that the foregoing Response to Defendants' Partial Motion to Dismiss was served upon Defendants on January 18, 2016, using the Court's CM/ECF system.

/s/ Jeffrey M. Schwab \_\_\_\_\_