

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SCHYLER Z. GRODMAN, M.D.,
Plaintiff

v.

TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER
Defendant

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Civil Action No. 5:23-cv-00210-H

DEFENDANT’S PARTIAL MOTION TO DISMISS

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TO THE HONORABLE JAMES WESLEY HENDRIX:

Defendant Texas Tech University Health Sciences Center (“Defendant” or “TTUHSC”), by and through their undersigned attorney, file this Partial Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and in support thereof, respectfully show the Court as follows:

I. BACKGROUND

This case centers around the dismissal of Plaintiff Schyler Z. Grodman, M.D., from TTUHSC’s Pediatrics Residency Program. Pl’s Orig. Comp. at ¶ 7. Plaintiff alleges that he was employed by TTUHSC as a Resident in 2019 and was terminated from employment in January 2022. *Id.* at ¶ 13. He alleges that he is disabled due to attention deficit hyperactivity disorder, Autism Spectrum Disorder, depression, and social anxiety. *Id.* at ¶ 8. He alleges that TTUHSC discriminated against him on the basis of his disability, failed to accommodate his disability, and retaliated against him for requesting disability accommodations. Based on these allegations, Plaintiff asserts causes of action under: (1) Title I of the American with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“Title I of the ADA”); (2) chapter 21 of the Texas Commission on Human Rights Act (“TCHRA”); and (3) the Rehabilitation Act.

Because TTUHSC is a Texas state institution protected by the state’s sovereign immunity, the claims under the ADA and TCHRA are barred by the Eleventh Amendment. TTUHSC respectfully requests the Court grant this Partial Motion to Dismiss and dismiss these claims for lack of subject-matter jurisdiction.

II. ISSUES IN DISPUTE AND STANDARD OF REVIEW

1. Whether Plaintiff’s claims under Title I of the Americans with Disabilities Act (“ADA”) should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1).
2. Whether Plaintiffs’ state law claims under the TCHRA should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1).

Plaintiff has the burden to establish subject matter jurisdiction. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). A defendant may challenge a court’s subject matter jurisdiction through a “facial attack” or a “factual attack.” *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). Where, as here, a defendant challenges subject matter jurisdiction on the face of a complaint, the district court presumes the plaintiff’s factual allegations to be true and determines whether those allegations are legally sufficient to establish jurisdiction. *See id.*

III. ARGUMENT

A. Plaintiff’s Disability Discrimination and Failure to Accommodate Claims under Title I of the ADA Are Barred By The Eleventh Amendment.

TTUHSC is a state institution protected by sovereign immunity and the Eleventh Amendment. *See U.S. v. Tex. Tech Univ.*, 171 F.3d 279, 289 n.14 (5th Cir. 1999) (“The Eleventh Amendment cloaks Texas Tech University and Texas Tech University Health Sciences Center with sovereign immunity as state institutions.”); TEX. EDUC. CODE § 110.01 (law establishing Texas Tech Health Sciences Center as state institution under control of Texas Tech Board of Regents).

Plaintiff brought disability discrimination and failure to accommodate claims against his former employer under Title I of the ADA. Pl’s Orig. Comp. at ¶¶ 60–61 (citing 42 U.S.C. § 12112(b)(5)(A)). It is well-settled that Title I of the ADA did not validly abrogate state sovereign immunity, and that claims against state entities under Title I are therefore barred by the Eleventh Amendment. *Sullivan v. Texas A&M Univ. Sys.*, 986 F.3d 593, 596 (5th Cir.), *cert. denied*, 142 S. Ct. 216 (2021); *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001); *Perez v. Region 20 Educ. Service Center*, 307 F.3d 318, 331-32 (5th Cir. 2002) (dismissing ADA Title I claims against state entity on sovereign immunity grounds); *Martinez v. Texas Health & Hum. Servs. Com’n*, No. 4:20-CV-03706, 2021 WL 2302627, at *3 (S.D. Tex. June 4, 2021) (dismissing both discrimination and failure to accommodate claims brought under Title I of the ADA under Eleventh

Amendment). Eleventh Amendment immunity deprives courts of subject matter jurisdiction. *See Wagstaff v. U.S. Dep't Educ.*, 509 F.3d 661, 664 (5th Cir. 2007) (per curiam). Because Title I of the ADA does not validly abrogate state sovereign immunity, Plaintiff's First Cause of Action, bringing claims for disability discrimination and failure to accommodate are barred by the Eleventh Amendment, and the Court should dismiss it for lack of subject-matter jurisdiction.

B. Plaintiffs' Retaliation Claims under the ADA are Barred by the Eleventh Amendment.

Employment retaliation claims under Title V of the ADA, like disability discrimination claims under Title I, are also barred by sovereign immunity and the Eleventh Amendment. *See Demshki v. Monteith*, 255 F.3d 986, 988-89 (9th Cir. 2001) (holding Eleventh Amendment bars ADA retaliation claim against state entity where claim predicated on alleged violations of Title I); *Shabazz v. Tex. Youth Com'n*, 300 F.Supp. 2d 467, 473 (N.D. Tex. 2003) (applying *Garrett* to bar ADA retaliation claims); *Karam v. Del. Div. of Serv. for Children, Youth and Their Families*, 2010 WL 5343182, at *5 (D. Del. Dec. 15, 2010) ("Defendant is immune from Plaintiff's Title V claim because it is premised on Defendant's alleged violation of Title I."); *Emmons v. City Univ. of N.Y.*, 715 F.Supp. 2d 394, 408 (E.D.N.Y. 2010) (holding ADA retaliation claim barred by Eleventh Amendment). Thus, Plaintiff's retaliation claims under Title I of the ADA are similarly barred by the Eleventh Amendment, and the Court should dismiss Plaintiff's ADA claim in his Third Cause of Action.

C. Plaintiffs' Claims under the TCHRA are Barred by the Eleventh Amendment.

The State of Texas has waived its sovereign immunity in *state* courts for TCHRA violations. *King v. Texas Dept. of Human Svcs., ex rel. Bost*, 28 S.W.3d 27, 30 (Tex.App.—Austin, 2000). But Texas' waiver of sovereign immunity in its own courts is not a waiver of its Eleventh Amendment immunity in *federal* courts. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985). The Eleventh Amendment in fact bars the adjudication of pendent state law claims against nonconsenting

state defendants in federal court. *Pennhurst State Sch. & Hosp. v. Haldermann*, 465 U.S. 89, 120 (1984). And the supplemental jurisdiction statute, 28 U.S.C. § 1367 (West 2004), which codified pendent jurisdiction, does not abrogate Eleventh Amendment immunity. *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 541–42 (2002). Accordingly, disability claims brought under the TCHRA are barred in federal court by the state’s sovereign immunity under the Eleventh Amendment. *See Hernandez v. Texas Dep’t of Hum. Servs.*, 91 F. App’x 934, 935 (5th Cir. 2004) (dismissing disability claim along with gender and age discrimination claims). For these reasons, the Court should dismiss Plaintiff’s Second Cause of Action in its entirety and the TCHRA claim in the Third Cause of Action, for lack of subject-matter jurisdiction.

IV. CONCLUSION

For the foregoing reasons, Plaintiff’s ADA and TCHRA claims are barred by sovereign immunity and the Eleventh Amendment. Defendant, therefore, respectfully requests that this Court grant this motion and dismiss these claims.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of *Defendants' Partial Motion to Dismiss* was filed via the CM/ECF system on October 3, 2023, to:

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