In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2859

JEREMIAH C. SHERWOOD and MEGAN DOYLE,

Plaintiffs-Appellants,

v.

RAYMOND P. MARCHIORI,[*] in his official capacity as Acting Director of the Illinois Department of Employment Security,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 20-cv-07285 — **Jorge L. Alonso**, *Judge*.

ARGUED JUNE 2, 2023 — DECIDED AUGUST 7, 2023

Before FLAUM, BRENNAN, and ST. EVE, *Circuit Judges*.

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[*] The Court has substituted Raymond P. Marchiori, the current Acting Director of the Illinois Department of Employment Security, for the original defendant, Kristin Richards. *See* Fed. R. App. P. 43(c)(2).

FLAUM, *Circuit Judge*. In March 2020, Jeremiah Sherwood and Megan Doyle lost their jobs because of the COVID-19 pandemic and, as a result, applied for unemployment benefits. They never received those benefits, however, and still have not received notice of the denial of their claims or an opportunity for a hearing. In response, Sherwood and Doyle turned to federal court. They filed a putative class action lawsuit against the Director of the Illinois Department of Employment Security ("IDES")—the Illinois entity responsible for administering unemployment benefits—in his official capacity. Plaintiffs bring equal-protection and procedural-due-process claims under the Fourteenth Amendment and seek injunctive relief against the Director. The district court granted the Director's motion to dismiss the complaint, and plaintiffs now appeal. For the following reasons, we affirm the dismissal of plaintiffs' claims, albeit on slightly different grounds.

I. Background

A. Factual Background[1]

During the pandemic, IDES experienced an increased volume of claims for unemployment benefits. Between March 2020 and late 2021, IDES issued debit cards to all individuals from whom they received claims. If the claim was ultimately approved, funds were added to the card. So, IDES's failure to add funds to a debit card functionally amounted to the denial of a claim. However, many individuals who never received

[1] To resolve the Director's motion, we recount the facts as plaintiffs allege them in their complaint. *See Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1007 (7th Cir. 2021); *Bronson v. Ann & Robert H. Lurie Child. Hosp. of Chi.*, 69 F.4th 437, 448 (7th Cir. 2023).

funds—including plaintiffs—also never received a "determination" of their claims, which would have provided them with notice of the denial and an opportunity for a hearing to contest the denial.[2]

Sherwood was laid off from his job at a hotel, and thus became eligible for unemployment benefits, on March 13, 2020. Shortly thereafter, he submitted a claim for benefits and received a debit card in the mail from IDES. However, no funds were ever added to the card. Sherwood repeatedly called and emailed IDES about the issue to no avail. He never received benefits or a determination regarding his claim. Sherwood was re-employed on May 1, 2020.

Doyle was furloughed from her job at a real-estate firm in March 2020 and submitted a claim for unemployment benefits soon after. IDES informed her that she would receive a debit card in about one week, but the card never came. Although she repeatedly called IDES to inquire about her claim, no one ever responded. Doyle never received benefits or a determination of her claim. She regained employment in July 2020.

B. Procedural Background

Plaintiffs brought a putative class action alleging that IDES's failure to appropriately process claims for unemploy-

[2] Under Illinois law, a "determination" "state[s] whether or not the claimant is eligible for [unemployment] benefits," 820 Ill. Comp. Stat. 405/702, and "set[s] forth, in writing, its factual and legal basis," Ill. Admin. Code tit. 56, § 2720.140(a). A claimant may appeal a determination within thirty days, 820 Ill. Comp. Stat. 405/800, and must then receive a "reasonable opportunity for a fair hearing," *id.* § 801(A).

ment benefits violated their constitutional rights to equal protection and procedural due process.[3] Plaintiffs named the Director in his official capacity pursuant to 18 U.S.C. § 1983, seeking injunctive relief and attorneys' fees. The district court granted the Director's motion to dismiss these claims for lack of jurisdiction. Plaintiffs now appeal that ruling, arguing that they have standing, their claims fit within the exception to sovereign immunity provided by *Ex parte Young*, 209 U.S. 123 (1908), and they have sufficiently stated claims for relief.

II. Discussion

We review a district court's dismissal of a complaint under either Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6) de novo. *Doe v. McAleenan*, 926 F.3d 910, 913 (7th Cir. 2019); *KAP Holdings, LLC v. Mar-Cone Appliance Parts Co.*, 55 F.4th 517, 523 (7th Cir. 2022). In doing so, we "accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff." *Prairie Rivers*, 2 F.4th at 1007; *see Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015).

A. Jurisdiction

We must begin with this Court's jurisdiction. *Ware v. Best Buy Stores, L.P.*, 6 F.4th 726, 731 (7th Cir. 2021). One limitation to our jurisdiction, as dictated by Article III of the Constitution, is standing. *Pucillo v. Nat'l Credit Sys., Inc.*, 66 F.4th 634, 637 (7th Cir. 2023). To establish standing, plaintiffs must suf-

[3] The operative complaint also raises substantive-due-process claims and claims pursuant to the Social Security Act. Plaintiffs, however, have waived any challenge to the district court's adjudication of these claims. *See Miller v. Chi. Transit Auth.*, 20 F.4th 1148, 1155 (7th Cir. 2021).

ficiently "allege an injury in fact that is traceable to the defendant's conduct and redressable by a favorable judicial decision." *Int'l Union of Operating Eng'rs, Loc. 139, AFL-CIO v. Daley*, 983 F.3d 287, 294 (7th Cir. 2020) (citation omitted).

That said, "even if a plaintiff could otherwise establish that he has standing to sue a state or a state official, the Eleventh Amendment generally immunizes those defendants from suit in federal court." *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2018). Indeed, "the Eleventh Amendment is 'jurisdictional' in the sense that a defendant invoking its sovereign immunity deprives a federal court of jurisdiction over the claims against that defendant." *McHugh v. Ill. Dep't of Transp.*, 55 F.4th 529, 533 (7th Cir. 2022). A narrow exception to sovereign immunity, though, "allows suits … for declaratory or injunctive relief against state officers in their official capacities." *Reed v. Goertz*, 143 S. Ct. 955, 960 (2023). Specifically, "[u]nder the *Ex parte Young* doctrine, private parties may sue individual state officials for prospective relief to enjoin ongoing violations of federal law." *Lukaszczyk v. Cook County*, 47 F.4th 587, 604 (7th Cir. 2022) (citation and internal quotation marks omitted). Here, plaintiffs sue the IDES Director, a state official, in his official capacity. Thus, to determine whether *Ex parte Young* applies, we must "conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Id.* (citation omitted).

1. Equal-Protection Claims

The complaint alleges that IDES violated plaintiffs' rights to equal protection by arbitrarily selecting their particular claims to deny without any process while providing process

for other denied claims. IDES, according to plaintiffs, was unequipped to handle the influx of claims during the pandemic. As such, plaintiffs allege that IDES utilized an arbitrary selection methodology to make its "processing statistics appear better than they actually were."

These allegations refer to purely past conduct. Indeed, the complaint specifically alleges that the unlawful conduct at issue occurred in spring 2020, when plaintiffs were singled out to be denied process. Even more, the complaint alleges that IDES stopped using the debit-card system (and thus the arbitrary selection criteria) entirely "in late 2021." Therefore, based on the complaint, one could not reasonably infer that IDES is *still* utilizing this methodology in violation of applicants' rights. *See Webber v. Armslist LLC*, 70 F.4th 945, 967 (7th Cir. 2023) (explaining plaintiffs must allege facts that "move their complaints over the line from conceivable to plausible"). Simply put, plaintiffs allege that IDES violated their equal-protection rights in the past—not that IDES is continuing to do so today.

As a result, even if plaintiffs had standing to bring these claims,[4] sovereign immunity bars them. *See Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 522 (7th Cir. 2021) (explaining that the *Ex parte Young* exception "does not apply when federal law has been violated [only] at one time or over a period of time in the past" (alteration in original) (citation and internal quotation marks omitted)); *cf. Papasan v. Allain*, 478 U.S. 265, 282 (1986) (applying the *Ex parte Young* exception be-

[4] We need not address plaintiffs' standing before sovereign immunity. *See Amling v. Harrow Indus. LLC*, 943 F.3d 373, 379 (7th Cir. 2019).

cause "the *essence* of the [plaintiffs'] equal protection allegation" focused on a "present disparity" as opposed to the state's "past actions" (emphasis added)). "[W]hen there is no continuing conduct that states must change to comply with federal law[,] the reason for the rule of *Young* no longer applies." *Watkins v. Blinzinger*, 789 F.2d 474, 484 (7th Cir. 1986). Thus, we affirm the district court's dismissal of plaintiffs' equal-protection claims.

2. Procedural-Due-Process Claims

The analysis differs for plaintiffs' procedural-due-process claims. A procedural-due-process violation occurs when there has been: "(i) [a] deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed*, 143 S. Ct. at 961. Here, the complaint alleges that: (i) IDES deprived plaintiffs of a protected property interest, the unemployment benefits for which they were qualified, (ii) with inadequate process because they never received notice of the denial or an opportunity for a hearing. Specifically, plaintiffs allege that IDES failed to promptly provide them with an appealable determination notifying them of the denial of their claims and their hearing rights. Plaintiffs concede that they are only entitled to this sort of post-deprivation process.

a. Standing

To have standing, plaintiffs' alleged "injur[ies] in fact must be 'concrete and particularized' and 'actual or imminent.'" *Holcomb*, 883 F.3d at 978 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). The Director argues that the alleged procedural violations (failure to provide a determina-

tion) are divorced from any concrete harm because the underlying deprivations of property (unemployment benefits) ended once plaintiffs regained employment. Put differently, according to the Director, the only present injury is a bare procedural violation that does not suffice for standing purposes.

Certainly, the "deprivation of a procedural right" is "insufficient to create Article III standing" unless it affects "some concrete interest." *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009). However, assuming plaintiffs were eligible for benefits when they applied, the Director does not dispute that plaintiffs maintain a property interest in those benefits today.[5] Plaintiffs sufficiently allege that IDES's present failure to provide adequate process "impair[s] [their] separate concrete interest" in those benefits, *Lujan*, 504 U.S. at 572; they contend that IDES's continued refusal to provide them determinations is preventing them from challenging the wrongful deprivations of their property. *See Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 736 (7th Cir. 2020). Further, the alleged injury is not based on purely past conduct because the complaint alleges that IDES is currently denying plaintiffs process. *See Simic*, 851 F.3d at 738. Plaintiffs therefore have alleged a sufficient injury to pursue their procedural-due-process claims.[6]

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[5] To be clear, the Director appropriately points out that plaintiffs could not proceed on the "conjectural or hypothetical" theory that they may become unemployed in the future and be denied benefits without process again. *Simic v. City of Chicago*, 851 F.3d 734, 738 (7th Cir. 2017) (citation omitted).

[6] Of course, as noted above, there are other elements of standing, *see Summers*, 555 U.S. at 493, but they are easily satisfied in this case (and the Director does not contend otherwise).

b. Eleventh Amendment

Plaintiffs must also clear the sovereign-immunity hurdle. Again, under *Ex parte Young*, "[t]he relevant inquiry is whether the suit seeks prospective relief against an ongoing violation of federal law." *Driftless*, 16 F.4th at 523. The parties here do not dispute that plaintiffs' request for injunctive relief is "properly characterized as prospective." *Id.* at 521 (citation omitted). Instead, the Director argues that the alleged violations are not ongoing because the complaint solely challenges IDES's denial of benefits over a period of time in the past and plaintiffs are no longer eligible for benefits. This position is unavailing for reasons similar to those discussed in the standing context.

Sonnleitner v. York is instructive here. 304 F.3d 704 (7th Cir. 2002). In that case, a state employee sued his supervisors on the grounds that he was demoted without an adequate pre-disciplinary hearing. *Id.* at 708–10. We concluded that because the employee "was eventually given an opportunity to tell his side of the story" through a post-deprivation hearing, he had, "at most, [claimed] a past rather than an ongoing violation of federal law." *Id.* at 718. That is to say, "[a]fter the postdeprivation hearing, the alleged error in the predeprivation process could not be characterized as 'ongoing.'" *Driftless*, 16 F.4th at 524.

Unlike the employee in *Sonnleitner*, plaintiffs in this case have *never* had a chance "to tell [their] side of the story." *Sonnleitner*, 304 F.3d at 718. The provision of such process was determinative in *Sonnleitner*. *See Driftless*, 16 F.4th at 524 ("Our holding in *Sonnleitner* turned on the fact that the plaintiff had received a postdeprivation hearing that complied with due-process requirements."). Thus, given the sustained absence of

any process here, along with plaintiffs' continued property interest in the underlying benefits, the alleged federal due-process violations are still ongoing. As such, plaintiffs can invoke the *Ex parte Young* exception to sovereign immunity.

B. Failure to State a Claim

We turn next to the sufficiency of plaintiffs' procedural-due-process claims under Rule 12(b)(6). As explained above, these claims require "(i) [a] deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed*, 143 S. Ct. at 961. The process prong is at issue here. Plaintiffs concede that due process only requires a post-deprivation remedy in these circumstances; their complaint alleges that they never received a determination after the denial of their claims and seeks an injunction requiring the Director to provide those determinations.[7] However, plaintiffs can only sustain their claims if Illinois provides *no* adequate post-deprivation remedies that they could have pursued instead of coming to federal court. *See Cleven v. Soglin*, 903 F.3d 614, 617 (7th Cir. 2018) ("[A] plaintiff simply cannot refuse to pursue the available state remedies and then come into federal court complaining that he was not afforded due process." (citation and internal quotation marks omitted)); *see also Ellis v. Sheahan*, 412 F.3d 754, 756–58 (7th Cir. 2005) (considering the adequacy of post-deprivation, state-law remedies in a case involving an alleged "systematic" policy of due-process violations).

[7] Again, a determination would offer plaintiffs both notice of the basis for denial and an opportunity to be heard. *See, e.g.*, 820 Ill. Comp. Stat. 405/702, 800, 801(A); Ill. Admin. Code tit. 56, § 2720.140(a).

We have often cited mandamus as an adequate post-deprivation remedy available under state law. *See, e.g.*, *Cleven*, 903 F.3d at 617–18; *Armato v. Grounds*, 766 F.3d 713, 722 (7th Cir. 2014); *Ellis*, 412 F.3d at 756–58; *Flower Cab Co. v. Petitte*, 685 F.2d 192, 193 (7th Cir. 1982). Here, there is no question that Illinois law imposed a non-discretionary duty on IDES to consider plaintiffs' claims for unemployment benefits and provide corresponding determinations. *See, e.g.*, 820 Ill. Comp. Stat. 405/702; Ill. Admin. Code tit. 56, § 2720.100(c). In turn, mandamus allows plaintiffs to "enforce [their] right to a public officer's performance of an official nondiscretionary duty." *Beauchamp v. Dart*, 207 N.E.3d 1118, 1122 (Ill. App. Ct. 2022); *see also McHenry Township v. County of McHenry*, 201 N.E.3d 550, 559 (Ill. 2022). Therefore, mandamus offers a state-law route to the relief plaintiffs seek: an order requiring IDES to provide them with determinations.

Plaintiffs, however, maintain that mandamus is an inadequate remedy here. To be adequate, a state remedy must "offer meaningful redress for the particular injury suffered by the plaintiff." *Simpson v. Brown County*, 860 F.3d 1001, 1010 (7th Cir. 2017). To start, plaintiffs cite caselaw indicating that Illinois courts have previously declined to grant mandamus relief on behalf of a class. *See, e.g.*, *People ex rel. Aramburu v. City of Chicago*, 219 N.E.2d 548, 553 (Ill. App. Ct. 1966).[8] But a

[8] We express no opinion on whether Illinois courts would prohibit this sort of lawsuit today. However, we note that the Illinois Code of Civil Procedure suggests that mandamus is now a suitable claim for a class action. *See* 735 Ill. Comp. Stat. 5/1–108(a) ("The provisions of Article II of this Act [which includes rules governing class actions] apply to all proceedings covered by Articles III through XIX of this Act [which includes rules governing mandamus] except as otherwise provided in each of the Articles III through XIX, respectively.").

state remedy need not mirror the relief available under § 1983 to be adequate. *Simpson*, 860 F.3d at 1010. In other words, plaintiffs cannot circumvent the adequacy of mandamus as a state remedy just because they chose to bring their claims on a class-wide basis in federal court.

Plaintiffs briefly raise the related argument that a class action is the *only* adequate way to bring this case. According to them, applicants for unemployment benefits will typically be unable to afford counsel to file a mandamus action on an individual basis. In that sense, plaintiffs argue that a class action is the sole way to provide applicants with an adequate post-deprivation remedy.

Even if we could consider such a factor within our adequacy inquiry here, plaintiffs overlook that this is not yet a class action. Certification has not been granted, so the named plaintiffs are the only members of the putative class before us now. *Cf. Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 676 (7th Cir. 2009) ("*Before* a class is certified … the named plaintiff must have standing, because at that stage no one else has a legally protected interest in maintaining the suit.").[9] Plaintiffs do not point to any allegations which support the conclusion that they personally lack the means to file a mandamus action. *See Webber*, 70 F.4th at 967.

Finally, plaintiffs argue that succeeding in a mandamus action would not actually remedy their substantive harm be-

[9] Plaintiffs do not contend that a decision on the motion to dismiss should be deferred until the district court has had a chance to decide certification. *See McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 879 n.4 (7th Cir. 2012). In fact, plaintiffs never filed for certification below.

cause it would only require IDES to provide them with a determination—not the benefits themselves. IDES's failure to provide plaintiffs with a determination is the precise injury plaintiffs allege here, though, and they exclusively seek injunctive relief as redress. *See Cleven*, 903 F.3d at 617 (holding that mandamus was adequate relief because it could "accomplish exactly" what the plaintiff sought in federal court). In light of this, plaintiffs cannot now claim that mandamus would not serve as a "meaningful procedure[] to remedy [the] erroneous deprivations" at issue. *Tucker v. Williams*, 682 F.3d 654, 661 (7th Cir. 2012) (discussing the requirements of due process "[w]hen a predeprivation hearing is not required"). Plaintiffs' argument only goes to show why mandamus suffices as post-deprivation relief here.

In sum, mandamus provides an adequate state-law remedy in this case. As a result, plaintiffs have failed to state procedural-due-process claims.

III. Conclusion

For the foregoing reasons, we AFFIRM the dismissal of plaintiffs' complaint. Further, we modify the judgment to reflect the dismissal of plaintiffs' procedural-due-process claims with prejudice for failure to state a claim. *See Roe v. Dettelbach*, 59 F.4th 255, 257, 262 (7th Cir. 2023).