

# **EXHIBIT A**

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

SIMON SOLOMON,	)	
	)	
Plaintiff,	)	Case No. 17-cv-6144
	)	
v.	)	Judge Robert M. Dow, Jr.
	)	
LISA MADIGAN, et al.,	)	
	)	
Defendants.	)	

**ORDER**

For the reasons stated below, Defendant Madigan’s motion to dismiss [17] is granted. The case remains pending against the remaining Defendants. The case is set for further status hearing on May 7, 2018 at 10:30 a.m. The parties are directed to submit a revised joint status report, including a discovery plan, no later than May 3, 2018.

**STATEMENT**

Plaintiff Simon Solomon brought this lawsuit against Defendants Illinois Attorney General Lisa Madigan, Cook County Sheriff Thomas Dart, Cook County State’s Attorney Kimberly Foxx, and each of the individual members of the Cook County Board of Commissioners. Each of the Defendants is sued in his or her official capacity. Plaintiff challenges the state law (430 ILCS 66/65(a)(14)) and Cook County ordinance (FPDCC Code Section 3-3-6) that prohibit concealed carry license holders from knowingly carrying a firearm on or into any real property under the control of the Cook County Forest Preserve District. He contends that the challenged provisions violate the Due Process and Equal Protection Clauses in the Fourteenth Amendment as well as the Second Amendment. Plaintiff seeks declaratory and injunctive relief, as well as attorneys’ fees and costs.

According to the complaint, Plaintiff currently possesses a license to carry a concealed firearm pursuant to the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1, *et seq.* (“FCCA”). On April 30, 2015, while fishing on Cook County Forest Preserve District property, Plaintiff was stopped by the Cook County Sheriff to whom he disclosed that he was in possession of two concealed handguns. Solomon was arrested and charged with a violation of Section 66/65(a)(14) of FCCA which prohibits the carrying a firearm onto “[a]ny real property under the control of [CCFPD].” On September 9, 2015, the Circuit Court nolle prossed all counts against Solomon and ordered the return of the confiscated firearms. Almost two years later, on August 24, 2017, Solomon commenced this lawsuit.

All of the Defendants (collectively, “the County Defendants”) answered the complaint [see 15]. Attorney General Madigan has moved to dismiss the complaint [17] on several

grounds: (1) Eleventh Amendment immunity, (2) standing, (3) absence of an actual controversy, and (4) failure to state a claim. As explained below, because the first of these arguments mandates dismissal of Defendant Madigan, the Court need not address arguments (2), (3), or (4).

Although the Eleventh Amendment bars suits in federal court seeking money damages against states and state officials, in *Ex parte Young*, 209 U.S. 123, 155 (1908), the Supreme Court held that suits seeking prospective declaratory and injunctive relief against state officials in their official capacities are permissible. Specifically, the Supreme Court stated that “individuals who, as officers of the state, are *clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings*, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.” *Id.* at 155-56 (emphasis added). As the highlighted language makes clear, the pertinent inquiry is two-fold, and “while authority to prosecute is a necessary condition to invoke the *Young* exception, it is not sufficient.” *Palmetto Properties, Inc. v. County of DuPage*, 160 F. Supp. 2d 876, 880 (N.D. Ill. 2001). A threat of prosecution also must be properly alleged before a plaintiff can proceed under *Ex parte Young*.

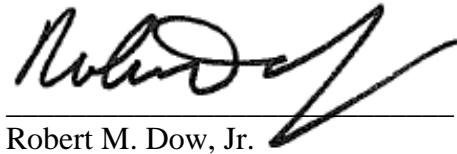
For purposes of this motion, Defendant Madigan does not contest that the first prong of the inquiry—namely, her general authority to enforce Illinois law—is satisfied. But she insists that Plaintiff has “failed to present any facts, either in his complaint or response,” to satisfy the additional requirement of a threatened prosecution. The Court agrees.

In his complaint, Plaintiff mentions Defendant Madigan only in paragraph 8, which alleges as follows: “Defendant Attorney General Lisa Madigan is sued in her official capacity as the Attorney General of the State of Illinois, responsible for executing and administering the laws of the State of Illinois, including [430 ILCS 66/65 (a)(14)]. Defendant Attorney General Madigan has enforced the challenged laws, customs and practices against Plaintiff and is in fact presently enforcing the challenged laws, customs and practices against Plaintiff.” Elsewhere in the complaint, Plaintiff alleges that the Cook County Sheriff’s Police effectuated his arrest, and the court file from his state court case (of which the Court can take judicial notice) confirms that the complaining officer was from the Cook County Forest Preserve Department [see 18-1, at 4]. Nothing in the court records indicates that Defendant Madigan or anyone from the Attorney General’s office filed an appearance or was involved in any way in the state court action. In his brief in response to Defendant Madigan’s motion to dismiss, Plaintiff’s sole nod in the direction of the “threat to prosecute” prong is a conclusory statement that “[t]here can be no question the involvement of the Attorney General is highly probable.” [25, at 2].

Plaintiff’s reliance on *Entertainment Software Ass’n v. Blagojevich*, 469 F.3d 641, 645 (7th Cir. 2006), for the proposition that “the Attorney General has a sufficient connection to enforcement of the statute to permit a suit against her under *Ex parte Young*” [25, at 2] is misplaced. In that case, the Seventh Circuit addressed only the first (undisputed) prong of the test, holding that the power to enforce “satisfies the ‘some connection’ requirement of *Ex parte Young*.” *Id.* There is no discussion in the opinion concerning the “threat to prosecute,” or even a suggestion that the Attorney General disputed that issue notwithstanding the fact that she was represented in the Seventh Circuit by the Solicitor General of Illinois, who argued the case on

her behalf (see *id.* at 643). Here, by contrast, the Attorney General has vigorously contested the issue and Plaintiff has presented nothing but conclusory allegations of past enforcement and speculation about future enforcement, with not even a hint of any actual involvement in this or any other prosecution of the challenged laws. In these circumstances, Plaintiff cannot maintain an action against Attorney General Madigan under the authority of *Ex parte Young*.<sup>1</sup>

Dated: April 23, 2018



Robert M. Dow, Jr.  
United States District Judge

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<sup>1</sup> Given the dismissal of Defendant Madigan on Eleventh Amendment immunity grounds, Plaintiff cannot maintain any claims against her in this lawsuit and the Court need not reach any of the alternative arguments that she raises in support of dismissal. See *Richardson v. Wilkesburg Police Dep't*, 2016 WL 4141084, at \*6 n.5 (W.D. Pa. Aug. 4, 2016).