IN THE U.S. DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

KENNETH FITCH, *
And all those similarly situated
Plaintiff, *

v. * Case No.: 26-01831

YAAKOV WEISSMANN, Secretary *
Department of Budget and Management
In his official capacity *
Defendant
*

* * * * * * * * * * * * * *

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS

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Now Comes, Plaintiff, Kenneth Fitch, on behalf of himself and all those similarly situated respectfully submits this Opposition to Defendant's Motion to Dismiss and states the following:

INTRODUCTION

This case presents a straightforward statutory question: whether the Department of Budget and Management ("DBM") may disregard the mandatory requirements of Maryland State Personnel & Pensions Code Ann. § 2-509.1(d)–(k) ("the Statute") and replace the State's retiree prescription-drug reimbursement program with a vendor-run HRA system administered by a private entity not licensed to conduct business in Maryland. The Complaint alleges detailed and plausible facts showing ongoing violations of federal and state law, including violations of the Equal Protection Clause, the Due Process Clause, and § 2-509.1(d)–(k). Defendants move to dismiss on five grounds—sovereign immunity, standing, mootness, feasibility, and deference to their interpretation of the Statute. Each argument fails.

Sovereign immunity does not bar this action because Plaintiff seeks prospective declaratory and injunctive relief against a state official for ongoing violations of federal law, which is precisely the relief authorized by *Ex Parte Young*[1]. Plaintiff has Article III standing because he has suffered concrete, particularized, and ongoing injuries directly traceable to DBM's unlawful conduct and redressable by prospective relief. The case is not moot because DBM has not permanently or unequivocally ceased the challenged conduct, and because the "capable of repetition yet evading review" exception applies.

Defendant's feasibility argument is contradicted by the legislative record: the General Assembly appropriated the funds, calculated the costs, and determined that the statutory program

[1] 209 U.S. 123 (1908).

is workable. And Defendants are not entitled to deference in their interpretation of § 2-509.1(d)–(k). Under *Loper Bright Enterprises v. Raimondo*[2], this Court must independently interpret the Statute, and its text and structure do not authorize the conditions DBM imposed. Under *PFLAG v. Trump*[3], the Executive may not "enact, amend, or repeal" statutory requirements through policy preferences or administrative directives. DBM's extra-statutory conditions therefore constitute ultra vires conduct.

Dismissal would deprive members of a legislatively created closed class of statutory benefits without legal justification and would contradict the express mandate of the Maryland General Assembly. For the reasons set forth below, the Motion to Dismiss should be denied in its entirety.

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BACKGROUND

This case arises from DBM's interpretation of Maryland State Personnel & Pensions Code Ann. § 2-509.1(d)–(k). The General Assembly created a closed statutory class of vested State retirees and expressly preserved prescription-drug assistance for that class through a mandatory reimbursement program.

Historically, Maryland operated the Retiree Health Welfare and Benefits Plan ("State Plan"), which subsidized prescription-drug coverage for Medicare-eligible State retirees, making coverage affordable for retirees on fixed incomes. Eligibility required at least five years of creditable State service, with full subsidy available after sixteen years.

In 2011, the General Assembly enacted legislation authorizing the State to establish health insurance benefit options different from active State employees and eliminating the State Plan for

[2] 603 U.S. 369 (2024)
[3] 766 F.Supp.3d 535 (2025).

Medicare eligible state retirees effective June 1, 2019 and codified as Maryland State Personnel & Pensions Code Ann. § 2-509.1(b)("2011 Law").[4] In 2014, the State took advantage of a federal subsidy to replicate the State Plan's protections ("2014 Amendment") and the Legislature bifurcated eligibility: employees with fewer than five years of service before July 1, 2011, were permanently excluded, while employees with five or more years before that date retained prescription-drug protections until 2019 .[5] Membership in this vested class was fixed; no employee could enter it after July 1, 2011.

Absent the lawsuit and injunction, all vested retirees and active employees would have lost prescription-drug protections in 2019. To prevent that result, the General Assembly enacted 2019 Md. Laws, Ch. 767, codified as § 2-509.1(d)–(k) ("2019 Law"), creating three mandatory reimbursement programs:

- **§ 2-509.1(d)** — Maryland State Retiree Prescription Drug Coverage Program ("SRP"), reimbursing retirees who retired on or before December 31, 2019 for prescription-drug costs exceeding statutory limits.

- **§ 2-509.1(e)** — Maryland State Retiree Catastrophic Prescription Drug Assistance Program ("SRC"), reimbursing retirees who began State service on or before June 30, 2011 and retired on or after January 1, 2020 for catastrophic-phase Part D costs.

- **§ 2-509.1(f)** — Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program ("LSPDP"), reimbursing retirees for life-sustaining medications not covered by Medicare Part D. The Statute requires automatic enrollment for eligible retirees under subsections (d) and (e).

Maryland State Personnel & Pensions § 2-509.1(d)-(f).

[4] 2011 Maryland Laws Ch. 397
[5] 2014 Maryland Laws, chapter 45 § 5

Although subsections (d) and (e) describe two pathways to eligibility, the Statute does not authorize DBM to treat these retirees differently. Both groups are members of the same closed statutory class preserved by federal injunction, and both are similarly situated with respect to the Statute's purpose.

The 2019 Law imposes mandatory duties on DBM: establishing the reimbursement programs; developing the Life-Sustaining Drug List; providing one-on-one counseling; adopting and implementing regulations; and submitting quarterly reports to the General Assembly. The Legislature appropriated funds, calculated costs, and determined that the statutory program was feasible and necessary to protect the closed class.

Despite these commands, DBM dismantled the statutory program and replaced it with a private vendor model administered through "VIA Benefits," a trademark owned by Willis Towers Watson ("WTW"). The State's contract is not with VIA Benefits but with Extend Health, LLC. DBM nevertheless conditions access to statutory benefits on enrollment through this trademark vendor, imposes PHI-disclosure requirements not found in the Statute, and instructs retirees that they must use VIA Benefits to obtain assistance. These conditions fracture the closed statutory class into unauthorized subclasses based on vendor enrollment, PHI disclosure, marketplace usage, and HRA-funding status.

Plaintiff Kenneth Fitch is a vested member of the closed statutory class. He completed more than five years of service before July 1, 2011, and retired after more than sixteen years of State service. He is entitled to the statutory protections preserved by the 2019 Law, including reimbursement of prescription-drug costs exceeding statutory limits and access to the Life-Sustaining Prescription Drug Assistance Program. DBM's elimination of statutory programs, imposition of unauthorized conditions, and delegation of statutory duties to a private trademark

vendor have caused Plaintiff ongoing, concrete injuries directly traceable to Defendants' unlawful conduct.

Plaintiff incorporates Exhibit X to illustrate the statutory structure, legislative history, and closed-class eligibility framework that DBM is required to follow and has unlawfully disregarded.

STANDARD OF REVIEW

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the Complaint. The Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in Plaintiff's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). A complaint survives dismissal if it states a claim that is "plausible on its face," meaning the allegations permit the Court to infer more than the mere possibility of misconduct. *Iqbal*, 556 U.S. at 678. The plausibility standard is not a probability requirement; it requires only enough factual matter to nudge the claim "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. The Court may not resolve factual disputes, weigh evidence, or consider matters outside the pleadings. *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016). Dismissal is appropriate only when the allegations, taken as true, fail to state any claim upon which relief can be granted.

Sovereign immunity does not bar claims for prospective declaratory and injunctive relief against state officials who are violating federal law. *Ex parte Young*, 209 U.S. 123 (1908). When a plaintiff seeks only prospective relief and alleges ongoing violations of federal law, the Court must evaluate the claims under *Ex parte* Young rather than under Eleventh Amendment immunity. *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002).

Finally, under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), courts must interpret statutes independently and without deference to an agency's interpretation. The Court

must determine the meaning of § 2-509.1(d)-(k) based on its text, structure, and context—not DBM's preferred construction.

Under these standards, Plaintiff's claims easily survive dismissal

ARGUMENT

I. PLAINTIFF HAS STANDING TO BRING THIS ACTION

A. Standing

Plaintiff easily satisfies Article III standing. To establish standing, a plaintiff must demonstrate: (1) a concrete, particularized, actual or imminent injury-in-fact; (2) a causal connection between the injury and the challenged conduct; and (3) redressability — a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). All three requirements are met here, and they are met with precision and particularity in the Complaint's allegations.

At the pleading stage, and where—as here—the defendant mounts only a facial attack, the Court must accept the Complaint's allegations as true and determine whether they plausibly establish each element. *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017).

1. Injury-in-Fact

Plaintiff alleges multiple concrete, particularized, and ongoing injuries. He has been denied statutory prescription-drug benefits guaranteed to the closed class and deprived of the mandatory reimbursement programs created by § 2-509.1(d)–(f). Plaintiff is compelled to enroll through a trademark gateway as a condition of receiving statutory benefits and has been denied access to the Life-Sustaining Drug Program (which does not cover all life sustaining drugs). He also alleges arbitrary subclassification within a closed statutory class.

Plaintiff further alleges a concrete privacy injury: PHI disclosure constitutes a cognizable concrete privacy injury that establishes Article III standing under *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), which explicitly recognized that the unauthorized disclosure of private information causes harm closely analogous to the common-law torts of invasion of privacy and public disclosure of private facts — harms that American courts have long redressed. *Id.* at 425. It is not a bare procedural violation; it is the exposure of sensitive medical and financial information to an entity legally incapable of receiving it. Plaintiff has therefore suffered actual, individualized injuries, including denial of statutory benefits, PHI disclosure through a legally void gateway, and exposure to an arbitrary classification scheme that treats similarly situated retirees differently.

The Supreme Court has made clear that a concrete injury may consist of the denial of a statutory entitlement, the violation of a legally protected privacy interest, or the deprivation of constitutional equal protection. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340–41 (2016). Plaintiff alleges all three. Defendants argue Plaintiff lacks standing because he did not complete the VIA Benefits enrollment process. But the injury-in-fact is not a failure to complete a procedural step; it is the structural impossibility of obtaining statutory benefits through a legally nonexistent gateway. A plaintiff is not required to complete a futile or unlawful process before challenging it. *Honig v. Doe*, 484 U.S. 305, 327 (1988). Requiring Plaintiff to complete VIA Benefits enrollment would compound the injury, not cure it. Plaintiff's injuries are ongoing, statutory, and constitutional.

2. Traceability

Plaintiff's injuries are directly traceable to DBM's implementation of § 2-509.1 (d)-(k). DBM eliminated statutory programs, imposed PHI-disclosure and vendor-enrollment requirements not found in the Statute, delegated statutory duties to a trademark vendor, failed to

adopt required regulations, and failed to develop a comprehensive and cohesive Life-Sustaining Drug List. These actions are the immediate cause of Plaintiff's loss of statutory benefits and the unconstitutional conditions imposed on the closed class.

The causation requirement does not demand that the challenged conduct be the sole cause of the injury; it requires only that the injury be "fairly traceable" to the defendant's conduct. *Lujan*, 504 U.S. at 560. Here, each injury has a direct, unmediated causal connection to specific official actions of the named Defendant. There is no intervening cause, no third-party action, and no speculative causal chain. Causation is established with clarity and specificity in the Complaint's allegations, which must be accepted as true at this stage

3. Redressability

Plaintiff seeks only prospective declaratory and injunctive relief requiring DBM to comply with mandatory statutory duties and prohibiting unlawful conditions. Such relief would fully redress Plaintiff's injuries by restoring statutory benefits, eliminating unauthorized requirements, and ensuring lawful administration of the programs. Prospective relief is squarely available under *Young* [6]and *Verizon Md., Inc. v. Pub. Serv. Comm'n*[7]. Because Plaintiff's injuries stem from ongoing violations of federal law, and because the requested relief would remedy those violations, redressability is easily satisfied.

4. Standing Is Plainly Established

Plaintiff alleges concrete statutory injuries, directly caused by DBM, and fully redressable through prospective relief.

[6] 209 U.S. 123 (1908),
[7] 535 U.S. 635, 645 (2002)

II. SOVEREIGN IMMUNITY

Sovereign immunity does not bar Plaintiff's claims. Plaintiff seeks only prospective declaratory and injunctive relief to halt ongoing violations of federal law by this state official. Under *Ex parte Young*, such claims fall squarely within the well-established exception to Eleventh Amendment immunity.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State." U.S. Const. amend. XI. The Supreme Court has extended this immunity to suits by a state's own citizens against the state in federal court. *Hans v. Louisiana*, 134 U.S. 1 (1890). In the ordinary case, sovereign immunity requires federal courts to decline jurisdiction over suits against a state or its treasury.

But this is not the ordinary case — and this Court does not confront a suit against a state. *Ex parte Young*, 209 U.S. 123 (1908), established the foundational constitutional principle that the Eleventh Amendment does not bar a federal court from enjoining a state official who is acting in violation of federal law. The reasoning underlying *Ex parte Young* is as elegant as it is essential: when a state official acts in contravention of federal law — the supreme law of the land — that official is stripped of the state's authority and may be enjoined in federal court as if acting in an individual, non-sovereign capacity. *Id.* at 159-60. The state cannot confer upon its officers the power to violate the Constitution and federal statutes, and therefore a state official who does so is not acting within the sovereign's immunity.

The Eleventh Amendment presents no jurisdictional obstacle to this action. The named Defendants are sued exclusively in their official capacities as state officials currently violating

federal law. The relief sought is entirely prospective — no money damages, no retroactive benefit payments, no claim against the state treasury. The action falls squarely within the heartland of *Ex parte Young*, and the Eleventh Amendment defense fails as a matter of law.

A. Defendants' State-Court Arguments Are Without Merit

Defendants argue — apparently — that Plaintiff's challenge to this State's ongoing federal violations must be litigated in State court. This argument is flawed in both law and logic, and it should be rejected without hesitation.

Federal district courts have original subject-matter jurisdiction over this action under multiple independent statutory and constitutional grants. This Court has federal-question jurisdiction under 28 U.S.C. § 1331 over all claims arising under the Constitution and laws of the United States — including the Equal Protection Clause, the Due Process Clause, and HIPAA. This Court has civil rights jurisdiction under 28 U.S.C. § 1343 over Plaintiff's § 1983 claims. Plaintiff does not ask this Court to exercise discretionary pendent jurisdiction over novel or unsettled state law questions; Plaintiff brings federal constitutional and statutory claims that have always belonged in federal court.

State court is not an adequate or appropriate forum for Plaintiff's federal constitutional claims. The Supremacy Clause, U.S. Const. art. VI, cl. 2, mandates that federal law is the supreme law of the land, and federal courts exist to vindicate it. Defendants' suggestion that Plaintiff must exhaust state administrative remedies before seeking federal relief fares no better. The Supreme Court held decades ago that exhaustion of state administrative remedies is not a prerequisite to a § 1983 civil rights suit in federal court. *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982) ("exhaustion of state administrative remedies should not be required as a prerequisite to bringing

an action pursuant to § 1983"). Defendants cannot use a purported exhaustion requirement to deflect this Court's jurisdiction over Plaintiff's federal claims.

B. Plaintiff Seeks Prospective Relief Only

Plaintiff seeks no damages, no monetary relief, and no retroactive payments from the State treasury. He seeks only prospective declaratory and injunctive relief requiring DBM to comply with mandatory statutory duties and prohibiting unlawful conditions. This is precisely the type of relief *Ex Parte Young* authorizes.

C. *Ex parte Young* Authorizes Federal Review

Defendants argue that Plaintiff's Due Process claim is a "state-law question" that belongs in state court. That argument misunderstands *Ex parte Young*. *Ex parte Young* exists precisely to ensure that federal courts may hear suits against state officials for ongoing violations of federal law, even when adjudicating those claims requires interpreting state statutes or reviewing state administrative conduct. Plaintiff alleges ongoing violations of the Due Process Clause, seeks only prospective relief, and sues officials responsible for enforcing the challenged policies. *Ex parte Young* therefore applies, and federal jurisdiction is proper.

The Supreme Court has repeatedly reaffirmed that prospective relief against state officials is not barred by sovereign immunity. *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) ("In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.").

D. Yaakov Weissman is the Proper Defendant

The Secretary of DBM is the proper defendant because he is responsible for administering § 2-509.1(d)–(k) and personally implemented the challenged policies. Young requires only "some

connection" to enforcement of the unlawful conduct. The Secretary's connection is direct: he oversees the programs, imposes the conditions, and controls the statutory duties at issue.

E. Sovereign Immunity Does Not Apply

What Plaintiff seeks is: (1) a declaration that the challenged program actions are unlawful; (2) a permanent injunction requiring future compliance with the statutory terms of the 2019 Law, the Equal Protection Clause and the Due Process Clause — specifically, inclusion of a comprehensive list of Life Sustaining Drugs (that covers insulin), elimination of the vendor-enrollment barrier going forward, restoration of the Catastrophic Program going forward, a correction of all public-facing materials including the DBM website to accurately reflect the statutory eligibility criteria in the 2019 Law and remove any statements conditioning eligibility or access to prescription drug assistance on enrollment with VIA Benefits or any other private vendor, and cessation of unauthorized PHI disclosures going forward. This is textbook prospective relief: it is "designed to end a continuing violation of federal law." *Verizon Maryland, Inc. v. Public Service Comm'n*, 535 U.S. 635, 645 (2002). Under settled Supreme Court and Fourth Circuit precedent, such relief is squarely available under *Ex parte Young*, and the Eleventh Amendment presents no bar.

III. STATUTORY CLAIMS

Plaintiff states a straightforward statutory claim: DBM is not administering § 2-509.1(d)–(k) as written. The Statute imposes mandatory duties, creates a closed class, and establishes three reimbursement programs that DBM must implement. DBM has instead eliminated statutory programs, imposed conditions not found in the Statute, and delegated statutory responsibilities to a trademark vendor. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), courts

must interpret statutes independently and without deference to agency preferences. The text, structure, and context of § 2-509.1 foreclose DBM's interpretation.

A. The Statute Creates a Closed Class and Mandatory Programs

Section 2-508(d)(2)(iii) establishes a closed class of vested retirees fixed as of July 1, 2011. Section 2-509.1(d)–(f) then creates three mandatory reimbursement programs for that class: the State Retiree Drug Reimbursement Program, the State Retiree Catastrophic Coverage Reimbursement Program, and the Life-Sustaining Drug Assistance Reimbursement Program. The 2019 Law uses mandatory language throughout. DBM must establish all three programs, develop a comprehensive Life-Sustaining Drug List, ensure one-on-one counseling, submit quarterly reports, and adopt implementing regulations. None of these duties are discretionary.

DBM ignored these statutory commands and instead created vendor-enrollment requirements, PHI-disclosure requirements, marketplace-usage requirements, HRA-funding conditions, and trademark-based eligibility—none of which appear in the Statute. Under *Loper Bright*, agencies cannot rely on "discretion" to contradict statutory text. And under *PFLAG v. Trump*, the Executive may not create new conditions or subclassifications not enacted by the Legislature. DBM's marketplace model is not interpretation; it is replacement. It is also ultra vires.

. B. DBM Is Not Administering the Statute as Written

DBM's implementation contradicts the statute's text and structure. DBM has eliminated the mandatory reimbursement programs; replaced statutory programs with a private marketplace, conditioned statutory eligibility on PHI disclosure, conditioned eligibility on enrollment with a trademark vendor, delegated statutory duties to VIA Benefits (a trademark, not a legal entity), failed to adopt required regulations; and failed to develop the Life-Sustaining drug list. These

actions are ultra vires because they exceed DBM's statutory authority and contradict mandatory legislative commands.

The Court's reasoning in *PFLAG v. Trump*, 766 F. Supp. 3d (2025), reinforces why dismissal is improper. In *PFLAG,* the Court held that the Executive may not impose conditions on a statutory program that the legislature did not enact. Plaintiff alleges the same defect here: DBM eliminated mandatory statutory programs, narrowed statutory entitlements, and imposed PHI-disclosure and vendor-enrollment conditions that appear nowhere in 2019 Law. These allegations must be accepted as true at the pleading stage and state a plausible claim for statutory and ultra vires violations. Plaintiff has already addressed *PFLAG* in detail in the preliminary-injunction briefing; its relevance here is limited to confirming that DBM's extra-statutory conditions cannot be sustained under Rule 12(b)(6).

C. Ultra Vires Conduct Violates State and Federal Law

State officials violate federal law when they act beyond their statutory authority. Ultra vires conduct is actionable under *Ex Parte Young* because it constitutes an ongoing violation of federal law. The ultra vires doctrine serves a critical structural function: it enforces the separation of powers by ensuring that administrative agencies remain creatures of the legislature, subject to the boundaries the legislature has drawn. When an agency exceeds those boundaries — no matter how well-intentioned the purpose — the rule of law demands that the unauthorized action be set aside.

The Supreme Court's decision in *Loper Bright Enterprises* dramatically reinforces the ultra vires doctrine in the current legal landscape. *Loper Bright* overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), holding that courts — not agencies — are the final arbiters of statutory meaning. "Courts must exercise their own independent judgment in deciding whether an agency has acted within its statutory authority." *Loper Bright*, 144 S. Ct. at

2273. While *Loper Bright* arose in the federal administrative law context, its core holding that courts owe no deference to agency interpretations of their enabling statutes applies equally when this Court must evaluate whether DBM acted within the bounds of the 2019 Law.

Plaintiff's Complaint contends that DBM's actions are ultra vires because the Statute does not authorize vendor-enrollment conditions, marketplace usage, delegation to a trademark vendor, PHI-disclosure requirements, or the elimination of mandatory programs. The Statute requires regulations and a comprehensive Life-Sustaining Drug List that DBM has not adopted. These unauthorized conditions independently support Plaintiff's statutory and ultra vires claims. Defendants cannot invoke administrative deference, agency expertise, or program-administration discretion to insulate their ultra vires actions from judicial scrutiny. The era of judicial deference to agency self-serving statutory constructions is over. This Court is the final arbiter of what the 2019 Law means and whether Defendants have complied with it.

D. Plaintiff States a Plausible Statutory Claim

Plaintiff alleges that DBM is not administering § 2-509.1(d)–(k) as written, has eliminated mandatory programs, and has imposed conditions not found in the Statute. Under *Twombly, Iqbal*, and *Loper Bright*, these allegations state a plausible claim for relief. The Court must accept the well-pleaded facts as true and interpret the Statute independently. Defendants' arguments mischaracterize the claims, misunderstand the doctrines invoked, or ignore entire categories of allegations. When the Statute is applied as written, Plaintiff's statutory claim easily survives dismissal.

IV. CONSTITUTIONAL CLAIMS

Plaintiff plausibly alleges violations of the Equal Protection Clause and the Due Process Clause. At the pleading stage, the Court must accept the Complaint's factual allegations as true and draw all reasonable inferences in Plaintiff's favor. *Iqbal*, 556 U.S. at 678; *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016). Under these standards, Plaintiff's constitutional claims easily survive dismissal.

A. Equal Protection

1. Classifications Affecting Vested Statutory Rights Warrant Heightened Scrutiny

The Defendant argues that "Plaintiff appears to concede rational basis review…" (Deft. MTD, pg.15, ¶ 1) which is not the case. Plaintiff does not concede that rational basis review applies. The closed class created by §2 508(d)(2)(iii) and the mandatory statutory entitlements in § 2-509.1(d)-(k) establish a vested property interest, and the classifications affecting vested statutory rights warrant heightened scrutiny. *Morrison v. Garraghty*, 239 F.3d 648, 654–55 (4th Cir. 2001)("…classifications which…impinge upon fundamental rights protected by the Constitution, are subjected to stricter scrutiny, sustained only if they are narrowly tailored to serve a compelling state interest.")

Plaintiff submits that heightened scrutiny — or at minimum a more searching application of rational basis — is warranted for three independent reasons. First, the subclassifications at issue burden a fundamental interest in life-sustaining medical care. The Supreme Court has recognized that interests touching on bodily integrity and survival occupy a privileged place in constitutional law. Where a government benefit classification directly determines whether a person lives or dies — as the insulin exclusion does for insulin-dependent diabetics — courts should apply more than

perfunctory rational basis review. Second, the class of insulin-dependent diabetics correlates closely with a disability, and classifications burdening persons with disabilities warrant closer scrutiny under *City of Cleburne v. Cleburne Living Center* 's "searching" rational basis analysis. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 447 (1985). Third, where a state's own enabling statute commands coverage of a drug — because it is life-sustaining — and the agency then excludes that exact drug from coverage, the classification is not merely arbitrary; it is facially irrational.

Even if rational basis applies, Plaintiff plausibly alleges that DBM's subclassifications are arbitrary, unauthorized, and irrational - failing even the most deferential review. *King,* 825 F.3d at 218–19.

2. The Statute Creates One Closed Class

The statutory structure of § 2-5082 508(d)(2)(iii), the 2011 Law, the 2014 Amendment, and the 2019 Law all preserve prescription drug protections exclusively for individuals who vested into the State Plan by completing at least five years of service before July 1, 2011. This closed class includes vested retirees and vested active employees, all of whom would have lost prescription drug protections in 2019 but for the injunction and the subsequent enactment of the 2019 Law.

DBM's subclassifications fracture this protected class.

3. DBM Created Unauthorized Subclassifications

Plaintiff pled two unauthorized subclassifications in the Complaint: vendor-enrolled versus non-vendor-enrolled retirees, and HRA-funded versus unfunded retirees.

a. Vendor Enrolled Retirees vs. Non-Enrolled Retirees

DBM created an unauthorized subclassification by conditioning access to statutory programs on enrollment through VIA Benefits. Retirees who enroll through VIA receive access to the Life-Sustaining Program and HRA funds; retirees who do not enroll through VIA are denied both. The 2019 Law contains no vendor-enrollment requirement. A subclassification created without statutory authority is per se irrational under rational basis review

b. HRA Funded Retirees vs. HRA Unfunded Retirees

DBM created a second unauthorized subclassification by providing HRA funds to some retirees but not others. Retirees in subsection (d) who enroll through VIA receive HRA deposits; retirees in subsection (e), and retirees in subsection (d) who do not enroll through VIA, receive no HRA funds. Section 2-509.1 requires reimbursement of actual costs above State Plan maximums and does not authorize DBM to provide different levels of financial protection to different members of the statutory class. This subclassification is arbitrary, unauthorized, and irrational.

These subclassifications fracture the closed statutory class and treat identically situated retirees differently based on conditions not found in the 2019 Law.

Additional subclassifications—PHI-disclosing versus non-disclosing, marketplace-using versus not-using, insulin-covered versus insulin-excluded, catastrophic-protected versus catastrophic-unprotected, and retirement-date subclassifications—were revealed by Defendants' own Motion to Dismiss. These are not new claims; they are evidence of the irrational, discriminatory, and ultra vires implementation Plaintiff already alleged. The Court may consider Defendants' admissions in evaluating plausibility.

c. Insulin Exclusion Creates an Irrational Drug-Based Subclassification

Section 2-509.1(f) requires DBM to reimburse retirees for "life-sustaining prescription drugs … not covered by Medicare Part D." Insulin is a paradigmatic life-sustaining drug. Its exclusion demonstrates that DBM is not implementing § 2-509.1(f) as written and is creating an unauthorized subclassification of drugs and retirees. DBM's list is unlawfully narrow, contradicts medical reality, and denies statutory entitlements. The Statute does not allow DBM to redefine "life-sustaining" drugs. This narrowing is arbitrary, irrational, and ultra vires.

d. Eliminating the Catastrophic Program Creates Another Unauthorized Subclassification

Section 2-509.1(e) mandates the Catastrophic Program. DBM eliminated it entirely. An agency cannot repeal a statutory program; only the Legislature can. See *PFLAG v. Trump*. Eliminating subsection (e) fractures the statutory class structure, deprives eligible retirees of mandatory catastrophic protection, and demonstrates DBM's belief that it may rewrite eligibility criteria and impose new conditions not found in the Statute without Legislative approval.

e. Insulin Exclusion and Catastrophic Program Elimination Are Statutory Subclassifications

These subclassifications contradict explicit, express statutory text. Section 2-509.1(f) requires automatic enrollment and reimbursement for life-sustaining drugs; § 2-509.1(e) requires creation of the Catastrophic Program. Defendants' Motion to Dismiss confirms that DBM is not interpreting the Statute—it is defying it. These subclassifications fracture the closed class at the level of statutory entitlements. That fracture is a constitutional injury, not merely an administrative one. They demonstrate systemic irrationality: DBM is not mismanaging the programs; it is

rewriting the statutory scheme. No legitimate governmental interest justifies excluding insulin, eliminating the Catastrophic Program, or narrowing statutory entitlements in contradiction of explicit legislative mandates.

4. Classifications Created without Statutory Authority are Per Se Irrational.

DBM's assertion that the HRA system "meets and exceeds statutory requirements" is incorrect. (Deft. MTD, pg. 9, ¶ 2). Section 2-509.1(d) requires reimbursement of actual out-of-pocket costs above the State Plan maximum. The HRA is a fixed-deposit model unrelated to actual expenses. Defendants' own tables show that retirees with no costs above the State maximum receive $750, while retirees with costs above the maximum receive less than full reimbursement. A fixed-deposit model is not "reimbursement"; it is a subsidy unrelated to the statutory entitlement outlined in the 2019 Law. Administrative convenience cannot justify denying statutory entitlements.

5. Arbitrary and Irrational Treatment States a Claim

The Fourth Circuit has held that arbitrary, unjustified, and inconsistent treatment of similarly situated individuals states an Equal Protection claim. *King*, 825 F.3d at 218–19. DBM's subclassifications are unauthorized because they do not appear in the Statute, irrational because they serve no legitimate purpose, arbitrary because they depend on vendor enrollment, PHI disclosure, and marketplace usage, and injurious because they deprive Plaintiff of statutory benefits.

DBM's subclassifications contradict statutory text, fracture the statutory class structure, require PHI disclosure to a trademark vendor, outsource statutory eligibility to a private marketplace, exclude statutory class members, and rely on a non-entity to administer statutory programs. Under rational-basis review, these subclassifications cannot be sustained. At the

pleading stage, these allegations must be accepted as true and easily state a plausible Equal Protection claim that survives a dismissal motion.

B. Due Process

The Due Process Clause protects individuals from arbitrary government action and from deprivation of property interests without lawful procedures. State-created entitlements are protected property interests under federal law. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Perry v. Sindermann*, 408 U.S. 593, 601 (1972); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). Coerced surrender of protected health information is likewise a constitutionally cognizable injury. *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). DBM conditions statutory benefits on PHI disclosure—an unauthorized, coercive, and arbitrary requirement. As a result, DBM deprived Plaintiff of statutory entitlements created the 2019 Law without lawful process.

1. Plaintiff Has a Protected Federal Property Interest

Defendants argue that § 2-509.1 creates only a "state-law benefit." That is incorrect. Under *Roth* and *Loudermill*, mandatory statutory entitlements are protected property interests under the Fourteenth Amendment. The 2019 Law creates mandatory entitlements for the closed class, including three reimbursement programs, automatic enrollment, counseling and reporting protections, regulatory safeguards, a Life-Sustaining Drug Program, mandatory catastrophic protection, and reimbursement of actual out-of-pocket costs above State Plan maximums. These are not discretionary benefits; they are statutory entitlements. Once the Legislature creates a mandatory entitlement, the State cannot eliminate it or condition it on requirements not found in the Statute. *Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985)*.

2. Maryland Common Law Does Not Control Federal Due Process

Defendants argue that Maryland common law determines whether Plaintiff has a protected property interest. That is incorrect. Federal Due Process is governed by federal law, not state common law. State common law cannot erase a federal property interest created by a Maryland statute. Once the Legislature creates mandatory statutory entitlements, federal Due Process attaches. DBM cannot avoid constitutional review by recharacterizing statutory entitlements as discretionary "benefits." Plaintiff relies on mandatory statutory entitlements, not Maryland common law. Defendant's' argument misunderstands the governing doctrine.

3. DBM's Implementation Is Not Discretionary — It Is Ultra Vires

Defendants argue that DBM's implementation of the 2019 Law is discretionary. It is not. The 2019 Law requires DBM to automatically enroll eligible retirees, administer the Life-Sustaining Drug Program, reimburse actual out-of-pocket costs, maintain the Catastrophic Program, and implement the statutory structure for the closed class. None of these duties are discretionary.

The Catastrophic Program was not a discretionary administrative initiative that the Department could adopt or withdraw at will. Defendants eliminated the Catastrophic Program without providing the required advance notice and without affording the required comment period. This was a procedural ultra vires action — an agency action taken in direct violation of mandatory statutory procedural requirements. Under settled principles of administrative law, such action is void *ab initio*.

Section 2-509.1(d) commands the Department to cover drugs necessary to prevent death or serious disability. The verb "shall" in this provision is mandatory, not permissive. The legislature did not grant the Department discretion to exclude drugs that meet the statutory definition; it

imposed an obligation to cover them. Insulin is a drug necessary to prevent death or serious disability in insulin-dependent diabetics — as a matter of medical fact and as a matter of law. DBM's administrative exclusion of insulin from the Life Sustaining Drug Assistance Program directly contravenes this mandatory statutory command. No amount of agency interpretation can transform a mandatory coverage obligation into a discretionary one or exclude from a coverage mandate a drug that plainly meets the statute's own definitional criteria.

The vendor-enrollment requirement is precisely the type of administrative overreach that the ultra vires doctrine exists to correct. The Defendant has imposed a requirement that conditions State retirees' access to statutory benefits upon enrollment in a HRA system administered by a trademark not licensed to do business in Maryland. DBM's substitution of a fixed-deposit Health Reimbursement Account ("HRA") model for the mandatory reimbursement of actual costs required by Md. Code Ann., State Pers. & Pens. § 2-509.1(d)-(f) further compounds the agency's departure from its statutory mandate. Under this system; retirees receive reimbursement only if they enroll with the vendor; retirees who do not enroll receive nothing. This structure is not merely a flawed implementation of the 2019 Law it is a wholesale replacement of the statutory scheme with an unauthorized administrative creation. The statute contains no language permitting the State to outsource the core function of determining who receives reimbursement of life sustaining medications. Nor does it authorize the State to create a two-tier system in which identically situated retirees are treated differently based solely on their willingness to participate in a private vendor's system. Defendants have disclosed Plaintiff's protected health information ("PHI") without authorization, in violation of the HIPAA Privacy Rule, 45 C.F.R. §§ 164.502 ("HIPAA"), Maryland's Confidentiality of Medical Records Act, Md. Health-Gen. §§ 4-301 *et seq* and the constitutional right to medical privacy recognized by this Circuit.

DBM eliminated the Catastrophic Program, narrowed the Life-Sustaining Drug Program (including insulin exclusion), imposed vendor-enrollment and PHI-disclosure conditions, outsourced statutory eligibility to a private marketplace, and replaced statutory reimbursement with a fixed-deposit HRA model. These actions contradict mandatory statutory text and exceed DBM's authority. Because the DBM's actions contradict the statute's text and exceed the authority granted by the General Assembly, they are ultra vires.

4. Procedural and Substantive Due Process Violations

Defendants deprived Plaintiff of the protected property interest through a unilateral internal policy change, with no pre-deprivation notice, no opportunity to be heard, and no formal rulemaking. This falls far short of the minimum procedural protections the Due Process Clause requires. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976) (balancing private interest, risk of erroneous deprivation, and governmental interest). The private interest here — continued receipt of an earned employment benefit codified as a statutory entitlement — is substantial. The risk of erroneous deprivation through an unilateral internal directive is high

Once eligibility is established by law, the state may not eliminate the statutory entitlement without procedurally adequate process *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

To the extent the Policy burdens a fundamental right or implicates a constitutionally protected liberty interest, it is also subject to substantive due process scrutiny. The right to be free from arbitrary governmental deprivation of employment benefits, particularly where the deprivation is based on a protected characteristic, implicates liberty interests recognized by the Supreme Court. See *Obergefell v. Hodges*, 576 U.S. 644, 663-64 (2015).

DBM's replacement of statutory reimbursement with a fixed-deposit HRA model deprives retirees of the statutory entitlement to reimbursement of actual costs. Defendants' own tables show

that retirees with no costs above the State maximum receive $750, while retirees with costs above the maximum receive less than full reimbursement. A fixed-deposit model is not "reimbursement"; it is a subsidy unrelated to statutory entitlement. This deprivation is particularly severe because it affects access to life-sustaining medications—the very category of drugs the Statute was designed to protect.

C. HIPAA Is Evidence of Unlawfulness — Not the Cause of Action

Defendants argue that HIPAA does not create a private right of action. Plaintiff is not suing under HIPAA. HIPAA is relevant only because it demonstrates that DBM imposed PHI-disclosure requirements without lawful authority and delegated PHI-dependent statutory duties to a trademark vendor. HIPAA is evidence of arbitrary, coercive, and ultra vires conduct—not the source of any cause of action.

D. Plaintiff States a Plausible Due Process Claim

Plaintiff alleges that DBM fractured a closed statutory class, imposed unauthorized conditions, eliminated mandatory programs, narrowed statutory entitlements, coerced PHI disclosure, and deprived Plaintiff of statutory entitlements without lawful process. Under *Twombly*, *Iqbal*, *King*, *Loudermill*, and *Sylvia Dev.*, these allegations state plausible Due Process claim that will survive a Motion to Dismiss.

V. FAILURE TO STATE A CLAIM (Rule 12(b)(6))

Defendants' Rule 12(b)(6) arguments fail because the Complaint alleges detailed facts that, accepted as true, state plausible claims for relief under *Twombly* and *Iqbal*. At this stage, the Court must accept Plaintiff's factual allegations as true and draw all reasonable inferences in Plaintiff's favor. *King v. Rubenstein*, 825 F.3d 206, 212 (4th Cir. 2016). The Complaint easily satisfies this standard. Defendants' arguments either mischaracterize the claims, misunderstand the doctrines

invoked, or ignore entire categories of allegations. Each count states a valid claim or a valid request for relief tethered to substantive claims.

A. The Complaint Plausibly Alleges Statutory Violations

Plaintiff alleges that DBM eliminated mandatory statutory programs, narrowed statutory entitlements, replaced statutory reimbursement with a fixed-deposit HRA model, imposed vendor-enrollment and PHI-disclosure requirements not found in the Statute, and fractured the closed statutory class created by §2 508(d)(2)(iii). These allegations describe direct violations of mandatory statutory text. At the pleading stage, they must be accepted as true and are more than sufficient to state claims for statutory and ultra vires violations.

B. The Complaint Plausibly Alleges Equal Protection Violations

Plaintiff alleges that the Legislature created a closed class of vested retirees fixed as of July 1, 2011, and that DBM fractured that class into multiple unauthorized subclasses not found in § 2-509.1(d)-(f). Plaintiff further alleges irrational drug-based subclassification (insulin exclusion), elimination of the Catastrophic Program, PHI-disclosure subclassifications, vendor-enrollment subclassifications, marketplace-usage subclassifications, and retirement-date subclassifications. Arbitrary subclassification within a defined group states an Equal Protection claim under *King*. Defendants' arguments rely on factual disputes inappropriate at the pleading stage.

C. The Complaint Plausibly Alleges Due Process Violations

Plaintiff alleges mandatory statutory entitlements, deprivation of those entitlements without lawful procedures, elimination of statutory programs, narrowing of statutory protections, coercive PHI-disclosure requirements, vendor-enrollment conditions, and replacement of statutory reimbursement with a fixed-deposit model. These allegations state both procedural and substantive

Due Process claims under *Loudermill*, *Roth*, and *King*, Defendants' argument that 2019 Law creates only a "state-law benefit" is incorrect. Once the Legislature creates mandatory statutory entitlements, federal Due Process attaches.

D. Defendants Improperly Seek Fact-Finding at the Pleading Stage

Defendants repeatedly dispute Plaintiff's factual allegations, assert alternative factual narratives, and argue that DBM acted "efficiently," "reasonably," or "necessarily." These are factual defenses, not Rule 12(b)(6) arguments. At this stage, the Court cannot weigh evidence or resolve factual disputes. Plaintiff's allegations must be accepted as true. See *Iqbal.*

E. Plaintiff States Plausible Claims for Relief

Plaintiff alleges statutory violations, ultra vires conduct, arbitrary subclassifications, coercive PHI-disclosure requirements, elimination of statutory entitlements, and deprivation of property without process. Under *Twombly*, *Iqbal*, *King*, *Loudermill*, and *Sylvia Dev.*, these allegations state plausible claims for relief. Dismissal is improper.

XI. DEFENDANT WAIVED MULTIPLE ARGUMENTS UNDER 12)(b)(6)

Defendants' motion omits entire categories of arguments that Plaintiff actually pled. Under Rule 12(b)(6), a defendant must challenge the legal sufficiency of each claim. When a defendant fails to address a claim or a theory supporting a claim, the argument is forfeited. Here, Defendants' silence is extensive and dispositive.

A. Waiver of Statutory-Structure Arguments

Defendants do not address the statutory vesting structure created by §2-508(d)(2)(iii) or the closed class fixed as of July 1, 2011. Plaintiff pled that vesting defines the similarly situated group for Equal Protection purposes, and Defendants' motion does not respond to that allegation. Defendants likewise do not address Plaintiff's allegation that § 2-509.1(d)-(f) mandates automatic

enrollment for eligible retirees. Their silence on these statutory-structure allegations constitutes waiver.

B. Waiver of Ultra Vires and Administrative-Law Arguments

Defendants do not address Plaintiff's allegations that DBM imposed PHI-disclosure requirements without statutory authority, delegated PHI-dependent statutory duties to a trademark vendor without a Business Associate Agreement, or conditioned statutory eligibility on enrollment through VIA Benefits. Defendants do not address Plaintiff's allegation that "VIA Benefits" is not a legal entity but a trademark owned by WTW, and that the State's contract is with Extend Health, LLC. Nor do they address Plaintiff's allegations that trademark-based eligibility is irrational, discriminatory, and ultra vires under § 2-509.1. Defendants also ignore DBM's failure to adopt regulations required by § 2-509.1(k). These omissions waive any challenge to Plaintiff's ultra vires and administrative-law theories.

C. Waiver of Equal Protection Arguments

Plaintiff does not contend that Defendants waived the subclassifications first revealed in their own Motion to Dismiss. Plaintiff identifies waiver only for the subclassifications pled in the Complaint—specifically vendor-enrollment and HRA-funding subclassifications. Defendants' silence on these pled subclassifications constitutes waiver under Rule 12(b)(6).

The additional subclassifications identified in Defendants' Motion to Dismiss—PHI-disclosure, marketplace-usage, insulin-coverage, catastrophic-protection, and retirement-date subclassifications—are not asserted as waived claims. They are evidence of irrationality and ultra vires implementation supporting Plaintiff's existing Equal Protection theory. The Court may consider Defendants' admissions in evaluating plausibility.

D. Waiver – Sovereign Immunity Not Properly Raised under Rule 12)(b)(1)

Defendant styles certain sovereign immunity arguments as 12(b)(6) failures to state a claim rather than 12(b)(1) jurisdictional arguments. Sovereign immunity, to the extent it is a jurisdictional doctrine, must be raised under Rule 12(b)(1). Raising it as a 12(b)(6) argument conflates two distinct standards and is procedurally improper. In any event, *Ex Parte Young* defeats sovereign immunity for claims of ongoing constitutional violations, as discussed above.

E. Legal Consequence of Waiver

At this stage, the Court must accept Plaintiff's allegations as true. When Defendants fail to contest entire categories of allegations—statutory, administrative, and constitutional—the Court must treat those allegations as conceded for purposes of the motion. Defendants' silence confirms that Plaintiff's statutory, Equal Protection, and Due Process claims are plausible and must proceed.

VII. DEFENDANT'S NEW ARGUMENTS FAIL ON THEIR OWN TERMS

Defendant raises two arguments for the first time in their Motion to Dismiss — appropriations and the Catastrophic Program. These arguments do not support dismissal. The Legislature appropriated funds for statutory reimbursement of actual out-of-pocket costs, not for a fixed-deposit HRA model. Appropriations therefore reinforce Plaintiff's statutory claim: DBM replaced a reimbursable entitlement with a non-statutory funding mechanism. Likewise, Defendants' Catastrophic Program argument confirms that DBM eliminated a mandatory statutory program. These issues strengthen Plaintiff's statutory and constitutional theories, but they are not necessary to defeat the Rule 12(b)(6) motion.

VIII. COMPLAINT COUNTS VII -IX COUNTS ARE PROCEDURALLY PROPER

A. Count VII — Declaratory Judgment

Plaintiff agrees that the Declaratory Judgment Act does not create an independent cause of action. Count VII is not asserted as a standalone substantive claim. It seeks declaratory relief under 28 U.S.C. § 2201 based on Plaintiff's underlying constitutional and statutory causes of action, including Equal Protection, Due Process, violation of § 2-509.1, and ultra vires implementation. Federal courts routinely entertain declaratory judgment counts tethered to substantive claims, and Defendants do not dispute the validity of Plaintiff's underlying causes of action. Count VII is therefore procedurally proper as a request for declaratory relief and should not be dismissed.

B. Count VIII — *Ex parte Young*

Plaintiff likewise agrees that *Ex Parte Young* does not create an independent cause of action. Count VIII is not a standalone claim. It is a jurisdictional allegation explaining why sovereign immunity does not bar Plaintiff's federal constitutional, statutory, and administrative-law claims.

Defendants do not dispute—and therefore concede—the elements that trigger the *Ex parte Young* exception: (1) Plaintiff alleges ongoing violations of federal law; (2) Plaintiff seeks only prospective relief; (3) Plaintiff seeks no damages; and (4) the named officials enforce the challenged policies.

Because Defendants do not challenge any of these elements, sovereign immunity does not bar Plaintiff's claims. Count VIII is properly pled and should not be dismissed.

C. Count IX — Judicial Review Under Loper Bright and PFLAG

Plaintiff agrees that "Judicial Review under *Loper Bright* and *PFLAG*" is not a standalone cause of action. Count IX is not asserted as an independent claim. Rather, *Loper Bright* and *PFLAG*

supply the governing interpretive and administrative-law principles that apply to Plaintiff's statutory, constitutional, and ultra vires claims.

These doctrines require courts to interpret § 2-509.1 without deference and prohibit agencies from creating new classifications or narrowing statutory protections. Count IX is properly understood as an articulation of the standards that govern review of DBM's implementation—not as a separate cause of action. It should not be dismissed.

IX. REMEDY

Plaintiff seeks only prospective, non-monetary relief to halt ongoing violations of federal law. The requested relief is narrow, appropriate under *Ex parte Young*, and fully consistent with the statutory structure enacted by the Maryland Legislature. Because Plaintiff alleges ongoing violations of federal constitutional and statutory rights, and because the named official is responsible for enforcing the challenged policies, the requested relief is proper at the pleading stage.

Plaintiff seeks a declaration that DBM's implementation of § 2-509.1(d)-(k) is unlawful to the extent it eliminates mandatory statutory programs, narrows statutory entitlements, imposes conditions not found in the statute, or fractures the closed class created by §2 508(d)(2)(iii). Declaratory relief is appropriate under 28 U.S.C. § 2201 because it will clarify the parties' rights and obligations under the governing statute and the U.S. Constitution.

Plaintiff also seeks prospective injunctive relief requiring DBM to implement the 2019 Law in accordance with its mandatory terms. This includes administering the statutory reimbursement programs, maintaining the Life-Sustaining Drug Program and Catastrophic Program, adopting regulations required by § 2-509.1(k), and eliminating PHI-dependent and vendor-enrollment conditions not authorized by the statute. Plaintiff does not seek damages,

retroactive relief, or any remedy barred by sovereign immunity. The requested injunction is limited to ensuring compliance with federal law and the governing statute.

This relief is precisely the type authorized by *Ex parte Young*, which permits suits against state officials for ongoing violations of federal law when the plaintiff seeks only prospective relief. Because Plaintiff alleges ongoing statutory, constitutional, and ultra vires violations, and because the requested relief is prospective and non-monetary, the Court has jurisdiction to grant the remedy sought.

At the pleading stage, the Court need not resolve the precise contours of the final injunction. It need only determine that Plaintiff's claims are plausible and that the requested relief is legally available. Plaintiff's allegations satisfy *Twombly* and *Iqbal*, and the requested declaratory and injunctive relief is proper under federal law. The Remedy section therefore supports denial of the Motion to Dismiss.

X. DEFENDANT'S PRELIMINARY INJUNCTION ARGUMENTS REINFORCE THE PLAUSIBILITY OF PLAINTIFF'S CLAIMS

Defendants' opposition to the preliminary injunction further confirms that dismissal is improper. Defendants argue that Plaintiff cannot show irreparable harm, but constitutional injury and ultra vires deprivation of statutory entitlements constitute irreparable harm as a matter of law. The Supreme Court and Fourth Circuit have repeatedly held that ongoing violations of constitutional rights are irreparable, and that ultra vires state action causing loss of statutory entitlements cannot be remedied through damages. Plaintiff alleges ongoing Equal Protection and Due Process violations, ongoing ultra vires conduct, and ongoing deprivation of statutory entitlements. These allegations must be accepted as true at the pleading stage and independently

foreclose dismissal. Defendants' PI arguments therefore reinforce, rather than undermine, the plausibility of Plaintiff's claims.

X. CONCLUSION

Plaintiff has alleged detailed facts that, accepted as true, state plausible claims for relief under *Twombly* and *Iqbal*. The Complaint sets forth statutory violations, ultra vires conduct, arbitrary subclassifications, coercive PHI-disclosure requirements, and deprivations of protected property interests without lawful process. These allegations support Plaintiff's Equal Protection and Due Process claims and fall squarely within the jurisdictional framework of *Ex parte Young*. Defendants' Motion to Dismiss relies on factual disputes, ignores entire categories of pled allegations, and mischaracterizes mandatory statutory entitlements as discretionary benefits. At this stage, the Court must accept Plaintiff's allegations as true and draw all reasonable inferences in Plaintiff's favor.

Because Plaintiff states plausible claims under federal constitutional law, Maryland statutory law, and established administrative-law principles, and because the requested relief is prospective and fully authorized under *Ex Parte Young*, the Motion to Dismiss should be denied.

Respectfully Submitted,

08/07/2026
Date

/s/ Deborah A. Holloway Hill

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IN THE U.S. DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

KENNETH FITCH, *And all those similarly situated* Plaintiff,	*	
v.	*	Case No.: 26-01831
YAAKOV WEISSMANN, Secretary Department of Budget and Management *In his official capacity* Defendant	*	

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that Plaintiff's Proof of Service was served by CM/ECF on all registered users.

Respectfully submitted,

08/07/2026
Date

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