



for government actions). However, Congress did not *clearly and unambiguously* waive sovereign immunity to a claim for attorneys' fees for a challenge to the constitutionality of a state statute under any theory of recovery, including under 42 U.S.C. § 1988.

Neither the Supreme Court in *Ex Parte Young* nor the Fifth Circuit in *K.P. v. LeBlanc* addressed whether a plaintiff seeking prospective relief from a state official could recover attorney's fees. *See Ex Parte Young*, 209 U.S. 123, 159 (1908); *LeBlanc*, 729 F.3d at 439.

As a result, Defendant Smith is entitled to summary judgment on the Plaintiffs' claims for attorney's fees regardless of how this Court rules on the constitutionality of the Texas statutes under attack.

**B. Plaintiffs' Claims For Attorney's Fees Are  
Also Barred By Prosecutorial Immunity.**

Additionally, district attorneys and other prosecutors are absolutely immune from liability when performing their prosecutorial functions. *Imbler v. Pachtman*, 424 U.S. 409, 420-24, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); *Font v. Carr*, 625 S.W.2d 873, 874-76 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1993, writ dismiss'd w.o.j.).

This immunity protects prosecutors who perform prosecutorial functions. *Imbler*, 424 U.S. at 420-24. Defendant Smith is therefore entitled to immunity as a prosecutor from Plaintiffs' claims for attorneys' fees pursuant to 42 U.S.C. § 1983. *Charleston v. Pate*, 194 S.W.3d 89, 90-91 (Tex. App.—Texarkana 2006, no pet.).

WHEREFORE, PREMISES CONSIDERED, Defendant J. Brett Smith, in his official capacity as Criminal District Attorney of Grayson County, Texas, prays this Court to dismiss Plaintiffs' claims for lack of subject matter jurisdiction, or, alternatively, to deny Plaintiffs' claims

for relief in their entirety and enter a summary judgment against Plaintiffs on all of their claims, and to grant Defendant Smith such relief as he may show himself justly entitled, at law or in equity.

Respectfully submitted,

/s/ Craig M. Price

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record.

/s/ Craig M. Price

CRAIG M. PRICE