CASE NO. 24-1035

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

TEVA PHARMACEUTICALS USA, INC.,

Plaintiff–Appellee,

v.

PHILIP J. WEISER, in his official capacity as, Attorney General of the State of Colorado, and PATRICIA A. EVACKO, ERIN FRAZER, RYAN LEYLAND, JAYANT PATEL, AVANI SONI, KRISTEN WOLF, and ALEXANDRA ZUCCARELLI, in their official capacity as members of the Colorado State Board of Pharmacy,

Defendants–Appellants.

On Appeal from the United States District Court
For the District of Colorado
The Honorable Daniel D. Domenico
District Court Case No. 23-cv-02584-DDD-JPO

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT IS REQUESTED

Respectfully submitted,

PHILIP J. WEISER
Attorney General

PAWAN NELSON*
Assistant Attorney General

JENNIFER JOHNSON**
Assistant Attorney General

1300 Broadway, 10th Floor
Denver, Colorado 80203
Telephone: 720-508-6628
Email: pawan.nelson@coag.gov;
Jennifer.johnson@coag.gov

* Counsel of Record for AG Weiser

** Counsel of Record for Patricia A. Evacko, Erick Frazer, Ryan Leyland, Jayant Patel, Avani Soni, Kristen Wolf, and Alexandra Zuccarelli

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

ARGUMENT

The Eleventh Amendment bars Taking Clause claims when state just compensation remedies are available—a rule that this Court and multiple other circuits have adopted. (*See* Op. Br. at 14-19). Colorado provides just compensation remedies and courts have repeatedly held that those remedies are adequate, facts which Teva makes no attempt to dispute. (*See id*. at 19-21; 32-33). Because Colorado offers just compensation remedies, injunctive relief is unavailable to Teva, *Ex parte Young* does not apply, and the Eleventh Amendment bars this suit. (*See id*. at 21-27). Teva's multiplicity of suit theory has no basis in the Takings Clause and should not be applied to subvert well-established law. Furthermore, because Teva's products are identical, a single suit would solve this dispute when preclusion principles are considered. (*See id.* at 27-33).

For the reasons discussed below, Teva has failed to undermine any of these points in its Answer Brief. Accordingly, the Court should reverse the district court and remand with instructions to dismiss this case as barred by the Eleventh Amendment.

I. The Eleventh Amendment bars Teva's suit.

A. *Ex parte Young* does not apply in this case because just compensation remedies are available.

First, Teva suggests that the State Officials are making a categorical claim that *Ex parte Young* can never apply in the Takings Clause context. (*See* Ans. Br. at 13). But Teva misunderstands the State Officials' argument. The State Officials do not argue that *Ex parte Young* can never apply to a takings case. Rather, they assert that *Ex parte Young* cannot be applied to provide prospective injunctive relief in takings cases where, as here, just compensation remedies are available to a plaintiff. (*See, e.g.,* Op. Br. at 26-27). This straightforward principle is rooted in Takings Clause doctrine stretching back for over 100 years. (*See* Op. Br. at 22-24).

The State Officials do not dispute that prospective injunctive relief can be sought in federal court for an alleged taking when the plaintiff cannot obtain just compensation in state court. *See, e.g.*, *Clajon Prod. Corp. v. Petera*, 70 F.3d 1566, 1569, 1575 (10th Cir. 1995) (Takings Clause claim seeking injunctive relief allowed to proceed in federal court because plaintiff could not sue for inverse condemnation in state court). But where, as here, a state makes just compensation remedies available

through its courts, plaintiffs must seek relief for alleged takings in state court. *See, e.g.*, *Williams v. Utah Dep't of Corr.*, 928 F.3d 1209, 1213-14 (10th Cir. 2019).

In their Opening Brief, the State Officials cite to six cases where appellate and district courts adopted this exact reasoning to reject the application of *Ex parte Young* to takings claims against state officials. (*See* Op. Br. at 24-26). In its Answer Brief, Teva attempts to distinguish these cases, but misses the mark. (*See* Ans. Br. at 14-16).

In *Laborers' Int'l Union of N. Am., Loc. 860 v. Neff*, 29 F.4th 325 (6th Cir. 2022), a case Teva incorrectly relies on to support its position (*see* Ans. Br. at 13, 15), the Sixth Circuit actually found that *Ex parte Young* did not apply to the plaintiff's takings claim and the officials were entitled to sovereign immunity because state just compensation remedies were available. *Id.* at 334-335. In *Los Molinos Mut. Water Co. v. Ekdahl*, --- F.Supp.3d ---, 2023 WL 6386898 (E.D. Cal. Sept. 29, 2023) and *Culinary Studios, Inc. v. Newsom*, 517 F.Supp.3d 1042 (E.D. Cal. 2021), the district courts came to the exact same conclusion. *See Los Molinos*, 2023 WL 6386898 at *8; *Culinary Studios,* 517 F.Supp.3d at 1064.

In *EEE Mins., LLC v. State of N. Dakota*, 81 F.4th 809 (8th Cir. 2023), the Eight Circuit affirmed the district court's dismissal of the plaintiff's claim for injunctive relief on sovereign immunity grounds. The court explained that "the Eleventh Amendment bars a claim against the State in federal court as long as state courts remain open to entertain the action." *Id.* at 816. It noted that the plaintiff was apparently trying to repackage their claim for damages as an injunction, but "[i]n any event, equitable relief is unavailable to enjoin an alleged taking of private property where, as here, a remedy at law is available through a suit for just compensation in state court." *Id.* at 816.

In *Long v. Area Manager, Bureau of Reclamation*, 236 F.3d 910 (8th Cir. 2001), the Eighth Circuit raised the issue of Eleventh Amendment immunity *sua sponte* because it implicated the court's subject matter jurisdiction, and dismissed a claim for injunctive relief for an alleged taking because state compensation remedies were available to the plaintiff. *Id.* at 916-17. Teva claims that the *Long* court "said nothing to suggest the unavailability of injunctive relief meant the Eleventh Amendment barred the suit." (Ans. Br. at 15). But that is incorrect. This

whole discussion was in the context of sovereign immunity, the Eleventh Amendment, and *Ex parte Young*. *See Long*, 236 F.3d at 916-17.

Simply put, multiple federal courts have adopted the view that the State Officials are advancing in this case. This Court should adopt it as well. Because prospective injunctive relief is unavailable to Teva, this case should be dismissed.

B. Resolving the immunity question cannot be deferred to the end of the case.

Next, Teva argues that the availability of injunctive relief is irrelevant to the sovereign immunity analysis because, by simply pleading a claim for prospective injunctive relief, Teva's claims meet *Ex parte Young's* requirements, and its ultimate entitlement to that relief is a merits question to be determined later. (*See* Ans. Br. at 13-14). But that is not the law, and it is not how courts approach this important immunity issue.

In the *Ex parte Young* analysis, "formal pleading titles do not necessarily control," but rather courts must also look to the substance of the requested relief to see if *Ex parte Young* applies. *See Hill v. Kemp*, 478 F.3d 1236, 1259 (10th Cir. 2007) (discussing *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635 (2002)). The *availability* of the

requested prospective injunctive relief is relevant to whether *Ex parte Young* relief may be applied to a plaintiff's official capacity claims against state officers. Accordingly, courts frequently examine whether they can grant the requested relief when considering the applicability of *Ex parte Young*. *See, e.g., Davis v. Washington*, No. 2:21-cv-129, 2022 WL 855269, at *6 (W.D. Mich. Mar. 23, 2022) (declining to apply *Ex parte Young* to a plaintiff's claims for prospective injunctive relief against two state officials in their official capacity because the injunctive relief requested—release from custody due to the conditions of his confinement—was not available to him under § 1983); *Hong v. Read*, No. 8:19-cv-00086-RGK-JC, 2020 WL 4341726, at *7 (C.D. Cal. Mar. 16, 2020) (granting state officials motion to dismiss official capacity claims for injunctive relief related to disqualification from a state university training program in counseling because the plaintiff "fail[ed] to identify any available prospective injunctive relief.").

Specifically, in the Takings Clause context, courts "must look to the remedies available in connection with Fifth Amendment takings claims to determine whether the claims brought here fall within *Ex parte Young*'s limitation on state sovereign immunity." *Los Molinos*, 2023 WL

6386898, at *8. Indeed, *Williams* examined the Eleventh Amendment issue *sua sponte* on review of a granted motion to dismiss. *See Williams*, 928 F.3d at 1212. Similarly, *EEE Mins., LLC*, *Laborers' Int'l*, *Los Molinos*, and *Culinary Studios* (discussed above) all rejected the applicability of *Ex parte Young* at the motion to dismiss phase after examining the availability of the requested relief. *See EEE Mins., LLC*, 81 F.4th at 813, 816-17; *Laborers' Int'l*, 29 F.4th at 329, 334-35; *Los Molinos*, 2023 WL 6386898, at *4, *8; *Culinary Studios*, 517 F.Supp.3d at 1048-49. Contrary to Teva's suggestion, (s*ee* Ans. Br. at 15-16), these were not merit determinations. Dismissing a claim on Eleventh Amendment sovereign immunity grounds is a dismissal based on subject matter jurisdiction, which by definition is *not* a merits determination. *See, e.g., Colby v. Herrick*, 849 F.3d 1273, 1278 (10th Cir. 2017) (dismissal on sovereign immunity grounds is without prejudice); *Bright v. Univ. of Oklahoma Bd. of Regents*, 705 F. App'x 768, 769 (10th Cir. 2017) (same).

Given the purpose and importance of the Eleventh Amendment,[1] the question of whether the State Officials are entitled to immunity is

[1] "The very object and purpose of the 11th Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial

not a question that can be deferred to the end of the case.[2] Because Teva is seeking a remedy for a purported Takings Clause violation that is not available to it under the Takings Clause, Teva cannot rely on *Ex parte Young* to keep this case in federal court.

II. The Court should reject the multiplicity of suit approach advanced by Teva.

A. The multiplicity of suit theory is wrong as a legal matter.

In its Answer Brief, Teva also argues that the Court should hold that traditional principles governing the availability of equitable remedies apply with "full force" to takings claims, and that a supposed "multiplicity of actions" justifies federal subject matter jurisdiction in

---

tribunals at the instance of private parties." *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). The amendment confers immunity from suit. *See id.* at 145. Denials of claims to Eleventh Amendment immunity are immediately appealable under the collateral order doctrine precisely because this immunity involves a "fundamental constitutional protection" whose resolution has "no bearing on the merits of the underlying action," and whose value "is for the most part lost as litigation proceeds past motion practice." *Id.* at 145.

[2] Teva also argues that this issue should be decided in the first instance by the district court. (*See* Ans. Br. at 16-17). However, this issue was extensively briefed and argued below. (*See* Op. Br. at 9-10). Furthermore, Eleventh Amendment immunity is a "purely legal [issue] that can be decided on the record" and can be considered *sua sponte* by the Court. *Williams,* 928 F.3d at 1212. Accordingly, it is unnecessary to remand to the district court to consider this issue.

this case. (*See* Ans. Br. at 17). Teva bases this argument exclusively on *Pharm. Rsch. & Manufacturers of Am. v. Williams*, 64 F.4th 932 (8th Cir. 2023) ("*PhRMA*"). (*See* Ans. Br. at 17-21). Teva does not cite any other case that has applied this supposed "well-established remedial principle" in the Fifth Amendment Takings Clause context. That is because compensation is a remedy for a taking, and as "long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking." *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 201 (2019). *PhRMA* is an outlier that should not be followed by the Tenth Circuit.

None of the cases cited in *PhRMA* to support the multiplicity of suit theory are Takings Clause cases, and many do not support the Eighth Circuit's or Teva's approach. *See PhRMA*, 64 F.4th at 941-44. For example, *Hale v. Allinson*, 188 U.S. 56 (1903) involved a dispute over shareholder liability to creditors. There, the Supreme Court explained that:

> The single fact that a multiplicity of suits may be prevented by this assumption of jurisdiction is not in all cases enough to sustain it. It might be that the exercise of equitable jurisdiction on this ground, while preventing a formal multiplicity of

> suits, would nevertheless be attended with more and deeper inconvenience to the defendants . . .

Id. at 77. The court declined to exercise equity jurisdiction based on the multiplicity of suit theory. *Id.* at 80.

Di Giovanni v. Camden Fire Ins. Ass'n, 296 U.S. 64 (1935) involved a dispute over an insurance policy. There the court explained that while multiplicity of suit is a recognized ground for equitable relief, "the award of this remedy, as of other forms of equitable relief, is not controlled by rigid rules rigidly adhered to, regardless of the end to be attained and the consequences of granting the relief sought." *Id.* at 70. A "theoretical inadequacy of the legal remedy may be outweighed by other considerations." *Id.* In declining to exercise its equity powers to exert jurisdiction over the plaintiff's claims, the court stated, "it must be noted that this tenuous ground for the exercise of equity powers is put forth as the sole medium by which suits may be withdrawn from the jurisdiction of the state courts which could not have been removed to or otherwise brought into the federal courts." *Id.* at 73-74.

Equitable Life Assur. Soc. of U.S. v. Wert, 102 F.2d 10 (8th Cir. 1939) built upon *Di Giovanni*, noting again that the multiplicity of suit rationale is not a rigid rule and "something more than a theoretical

inadequacy of legal remedy must exist in order to justify the issuance of an injunction." *Id.* at 15. In that case, the plaintiff had shown a "theoretical necessity" for an injunction based on a multiplicity of suit theory, but not a "practical necessity" for it because several actions could be consolidated and there was no suggestion that one action in state court could not dispose of the dispute. *Id.* at 15.

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998), was not decided on the basis of the Takings Clause. Although the Supreme Court found the law at issue unconstitutional, a majority of the *Apfel* court "concluded that the Takings Clause was not implicated" and that, "instead, the controlling question was whether the [act] violated the substantive component of the Due Process Clause." *Gordon v. Norton*, 322 F.3d 1213, 1217 (10th Cir. 2003) (citing *Apfel*, 524 U.S. at 539-47, 554-58). Even the Takings Clause discussion in *Apfel* does not help Teva. Teva has repeatedly represented that it will deliver physical epinephrine auto-injectors – not money – to the pharmacies in response to the Affordability Program. (App. Vol. I at 127-26, ¶ 36; App. Vol. II at 275:9-23). So, the "pointless set of activities" that troubled some justices in *Apfel* would not even occur here. *See Apfel*, 524 U.S. at 521.

It is not accidental that Teva fails to point to a Takings Clause case before *PhRMA* that adopts the multiplicity of suit theory to authorize an injunction, nor does *PhRMA* cite any. The Takings Clause is unique among the Bill of Rights guarantees in that it specifies the remedy for its violation. So, for over 130 years, the Takings Clause has been only concerned with ensuring full compensation in the event of a taking, not avoiding potential inconvenience to plaintiffs.

In *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641 (1890), an Indian tribe brought a Takings Clause claim and sought to enjoin the construction of a railroad on their land. Id. at 651. The court concluded that the plaintiffs were not entitled to an injunction since it had an adequate remedy at law. Id. at 659. The court explained that the Takings Clause "does not provide or require that compensation shall be actually paid in advance" only that there is "reasonable, certain, and adequate provision for obtaining compensation." *Id.* Because the statute at issue required the railroad to pay "full compensation" for any property taken, the court concluded that the "reasonable, certain, and adequate" standard was satisfied. *Id.*

In *Hurley v. Kincaid*, 285 U.S. 95 (1932), the plaintiff brought a Takings Clause claim and sought an injunction to prevent the government from working on a flood control plan. The plaintiff alleged that the plan would involve "an intentional, additional, occasional flooding" of their land. *Id.* at 103. Although the plaintiff's claim involved allegations of repeated harms in the future, the court cited *Cherokee Nation* for the proposition that Takings Clause does not require payment in advance of a taking and concluded that, because the Tucker Act allowed for complete compensation, the case should be dismissed. *See id.* at 103-105 & n.4.

In *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), the plaintiff brought a Takings Clause claim and sought to enjoin certain data disclosure provisions in a federal law, requirements that would continue into the future. The court explained that "[e]quitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking." *Id.* at 1016. Because just compensation remedies were available, the court concluded that the district court lacked jurisdiction. *Id.* at 1019.

And, of course, there is *Knick*. There, the court emphasized on multiple occasions that injunctive relief is not available for Takings Clause claims when just compensation remedies are available. *Knick*, 588 U.S. at 201, 202, 205; (s*ee also* Op. Br. at 23-24).

Consistent with this line of precedent, this Court has rejected attempts by plaintiffs to obtain an injunction when faced with repeated takings. *See Gordon*, 322 F.3d at 1217-18. Teva tries to distinguish *Gordon* by arguing that it did not address the potential for a multiplicity of suits (*see* Ans. Br. at 23). But everyone in *Gordon* expected the wolves to continue killing the plaintiffs' livestock in the future, and the plaintiffs in *Gordon* were seeking to enjoin an alleged "continuing violation" and argued that "compensatory relief [was] inadequate." *Gordon*, 322 F.3d at 1216, 1217-18. The point is that this Court did not turn to the multiplicity of suit rationale–or really any equitable principle–to resolve *Gordon*. The Court considered whether a compensation remedy was available and then dismissed on that basis.[3] *Id.* at 1218-19.

[3] Teva also attempts to distinguish *Gordon* by arguing that the "lawfulness of the government action was not at issue" in *Gordon*, while it is here. (*See* Ans. Br. at 23). But Teva fails to appreciate the distinction between authorized (*i.e.*, lawful) conduct and a Takings Clause violation.

Since *Knick*, multiple courts have taken the same approach in cases that involved repeated, future takings. (*See* Op. Br. at 30). The government regulations at issue in all of these cases imposed repeated, ongoing economic costs on the plaintiffs, which all, theoretically, could have resulted in a multiplicity of suits. (*See id.*). The plaintiffs sought injunctions precisely because of the repetitive, ongoing nature of the regulations. But the multiplicity of suit theory never came up. The courts rejected the injunctive relief claims using the same logic the State Officials are urging the Court to adopt in this case. (*See id.*).

In short, "[i]t is a longstanding maxim that equity follows the law," which is a reminder "that courts may not invoke equity to craft a remedy

---

"'Unauthorized' conduct in the takings context equates to the ultra vires actions of an agency, *i.e.*, action explicitly prohibited or outside the normal scope of agency responsibilities." *Custer Cnty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1042 (10th Cir. 2001). "An agency may act within its authority even if its action is later determined to be legally erroneous." *Id.* In other words, government actors may act "lawfully" by exercising authority granted to them pursuant to a statute, even though the conduct may later be deemed a taking. In *Gordon*, the government acted pursuant to regulations promulgated under the Endangered Species Act, even though the plaintiffs later claimed a Takings Clause violation. Likewise, the Affordability Program is authorized by and lawful under C.R.S. § 12-280-142, even though Teva now alleges that it violates the Taking Clause. Teva's attempt to distinguish *Gordon* on this basis should be rejected.

inconsistent with the law." *Sanders v. Mountain Am. Fed. Credit Union*, 689 F.3d 1138, 1144 (10th Cir. 2012) (citations omitted). Since *Cherokee Nation*, the law in the Takings Clause context has been that plaintiffs are not entitled to injunctions when they can obtain full compensation from just compensation procedures. The Supreme Court repeatedly reemphasized this principle in *Knick*. Courts have repeatedly and consistently followed this rule since *Knick*. The Court should follow this well-established precedent, not *PhRMA*.

B. The multiplicity of suit theory is also wrong as a practical matter.

Not only is the multiplicity of suit theory incorrect as a matter of Takings Clause doctrine, but it is also incorrect on a practical level. Teva argues that filing a suit every two years would not be as efficient as just enjoining enforcement of the Affordability Program. (*See* Ans. Br. at 24-25).

But Teva ignores the State Officials' point about preclusion. (*See* Op. Br. at 31-32). Teva's epinephrine auto-injectors are identical products with an identical price. The Affordability Program is governed by a single law, C.R.S. § 12-280-142. Any lawsuit involving Teva's compliance with the Affordability Program will involve the same parties. Given claim and

issue preclusion principles, there would not need to be an "infinite" series of suits. Teva could assert a Takings Clause defense if enforcement proceedings are ever initiated against it. *See, e.g.*, *Horne v. Dep't of Agric.*, 569 U.S. 513, 528-29 (2013). Teva could also file a Takings Clause claim in state court after providing one epinephrine auto-injector to a pharmacy under the Affordability Program without being compensated for it. Teva could wait for two years and then file suit related to all epinephrine auto-injectors provided during that entire period. Regardless of the approach Teva decides to take, only one suit will be needed to completely resolve the issues between the parties because that suit would have preclusive effect on the parties in the future.

Because that is the case, the multiplicity of suit theory should be rejected as a practical matter. *See, e.g.*, *Lumbermen's Mut. Cas. Co. v. Bagley*, 62 F.2d 617, 618 (10th Cir. 1933) (rejecting request for injunctive relief under the multiplicity of suit theory because any suit would involve adjudication on defenses that "would be a bar to further litigation on the merits affecting the policy."); *Wert*, 102 F.2d at 15 (rejecting multiplicity of suit theory since plaintiff "has not asserted that the result of one trial in the state court will not suffice to dispose of all of the cases, nor has it

shown that the state court is powerless to try all of those cases as one case.").

III. The district court should be reversed because its conclusion improperly turns the Takings Clause into a weapon to block state policies.

Finally, Teva argues that the implications of the district court's decision are "modest." (*See* Ans. Br. at 25). That is not correct. As discussed above, allowing the district court's decision to stand would be a significant departure from Takings Clause doctrine. It would also set a dangerous precedent. Simply examining the circumstances bringing us here and the implications of the district court's approach shows why.

Here, months before the Affordability Program even took effect, Teva filed suit claiming a Takings Clause violation. Not a single epinephrine auto-injector had been taken from Teva, so there had been no taking and there was no "ongoing" violation of federal law. *Knick*, 588 U.S. at 190 ("The Fifth Amendment right to full compensation arises at the time of the taking."). But Teva objected to the Affordability Program because it would not provide compensation upfront. So, along with its complaint, Teva filed a motion for a preliminary injunction to prevent the Affordability Program from ever taking effect.

In response to Teva's motion for preliminary injunction and in their motion to dismiss, the State Officials argued that the court lacked subject matter jurisdiction. There was no ongoing violation of federal law and Teva could obtain full compensation using Colorado remedies, so the Eleventh Amendment barred the suit.

Without really addressing either point–and on a motion for preliminary injunction and motion for dismiss–the district court concluded that the Affordability Program would effect a taking as a matter of law. (App. Vol. II at 291-292). It also concluded that it could grant permanent injunctive relief to Teva in the future if there are "an infinite series of takings." (*Id.* at 297).

To date, the State Officials are unaware of Teva providing any epinephrine auto-injectors to any Colorado pharmacies pursuant to the Affordability Program. If the district court's order stands, all that is left for the parties to do is to wait for some undefined period of time to see whether, in the district court's estimation, there is an "infinite series of takings," however that is defined. But that would not even settle the dispute between the parties. Teva would still need to file a case in state court to get compensated for whatever takings occurred during the

federal court matter because a federal court cannot order a state to pay compensation, or even issue equitable orders that would have that practical effect. *See Edelman v. Jordan,* 415 U.S. 651, 666-68 (1974). So, the district court's approach will not even avoid a multiplicity of suits.

This is not how the Takings Clause, sovereign immunity, or federalism works. The district court's decision conflicts with Takings Clause precedent and sovereign immunity principles. It also opens to the door for any private party to drag unwilling state officials into federal court by simply asserting that a state policy with repeated economic effects will result in an "endless series of illegal takings." The federal courts will see a raft of new cases asserting this theory to block state policies.

The Court should decline to take this approach. The Takings Clause requires compensation and does not authorize injunctions when compensation is available. That simple rule disposes of this case and keeps the harmony between the Eleventh Amendment and the Takings Clause intact. Because it is undisputed that Colorado's just compensation procedures can provide Teva with full compensation if any taking occurs, the Court should reverse the district court and dismiss this case.

CONCLUSION

For all of the reasons stated in the Opening Brief and this Reply Brief, the State Officials respectfully request that the Court reverse the district court's denial of their motion to dismiss, find that *Ex parte Young* does not apply to Teva's claims, and remand with instructions to dismiss Teva's amended complaint because it is barred by sovereign immunity.

Dated: May 22, 2024.

Respectfully Submitted,

PHILIP J. WEISER
Attorney General

s/ Pawan Nelson

PAWAN NELSON*
Assistant Attorney General
Telephone: 720-508-6578
Email: pawan.nelson@coag.gov

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

* Counsel of Record for AG Weiser

s/Jennifer Johnson

JENNIFER JOHNSON**
Assistant Attorney General
Telephone: 720-508-6379
Email: jennifer.johnson@coag.gov

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

** Counsel of Record for Patricia A. Evacko, Erick Frazer, Ryan Leyland, Jayant Patel, Avani Soni, Kristen Wolf, and Alexandra Zuccarelli

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance With Type-Volume Limit,
Typeface Requirements, and Type Style Requirements

1. This document complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

[X] this document contains 4335 words, or

[ ] this brief uses a monospaced typeface and contains <state the number of> lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

[X] this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14 point Century Schoolbook, or

[ ] this document has been prepared in a monospaced typeface using <state name and version of word processing program> with <state number of characters per inch and name of type style>.

Date: May 22, 2024

s/Pawan Nelson

PAWAN NELSON
Assistant Attorney General
1300 Broadway, 10th Floor
Denver, Colorado 80203
Telephone: 720-508-6628
Email: pawan.nelson@coag.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2024, I electronically filed the foregoing **APPELLANTS' REPLY BRIEF** with the Clerk of the Tenth Circuit Court of Appeals using the CM/ECF system and was served via the Tenth Circuit CM/ECF on all counsel of record for the parties in this case.

s/Sarah Bomgardner