

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 26-1133

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MICHAEL HICKSON,  
Appellant

v.

PECO ENERGY COMPANY, a Pennsylvania corporation and wholly owned subsidiary of Exelon Corporation; EXELON CORP, a Delaware corporation; NATURAL LANDS, a Pennsylvania nonprofit corporation; EXELON FOUNDATION, a nonprofit foundation; THE ROCK CREEK GROUP COMMUNITY IMPACT CAPITAL FUND, A Delaware limited liability company; PATRICK NOONAN, individually and in his official capacity; PENNSYLVANIA PUBLIC UTILITY COMMISSION; GLADYS BROWN DUTRIEVILLE, individually and in her official capacity as Commissioner and Chairman of the Pennsylvania Public Utility Commission; TOM WOLF & SUCCESSOR, individually and in his official capacity as Governor of Pennsylvania; JIM KENNEY & SUCCESSOR, Individually and in his/her official capacity as Mayor of Philadelphia

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil Action No. 25-cv-02980)  
District Judge: Honorable Gerald McHugh

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Submitted on Appellees' Motion for Summary Affirmance and for Possible Summary  
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6  
on October 1, 2026

Before: BIBAS, FREEMAN, and MASCOTT, *Circuit Judges*

(Opinion filed: October 27, 2026)

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OPINION\*

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PER CURIAM

Michael Hickson, proceeding pro se, appeals the dismissal of his complaint against PECO Energy Company (“PECO”) and other defendants. We will summarily affirm the District Court’s judgment.

Hickson’s complaint raised seven counts<sup>1</sup> arising from disputes with his utility company, seeking monetary damages, injunctive relief, and declaratory relief. The defendants, in three groups, moved to dismiss. The Private Defendants<sup>2</sup> argued, inter alia, a failure to state a claim due to a lack of state action and untimeliness; the Commonwealth Defendants argued, inter alia, that the District Court lacked subject matter jurisdiction due to Eleventh Amendment immunity and that they had no personal involvement; and the City Defendants argued, inter alia, a failure to state a claim due to lack of personal involvement and the inapplicability of the Seventh Amendment to municipalities. The District Court granted all three motions, dismissing most of Hickson’s federal claims with

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

<sup>1</sup> The claims consisted of the following: Commerce Clause and contract claims (Count I); a Seventh Amendment claim (Count II); nonprofit tax-exempt status violations (Count III); state-law corporate malfeasance (Count IV); “Unrelated Business Income Tax” violations (Count V); “federal privacy law[]” violations (Count VI); and “civil rights violations” under 42 U.S.C. § 1983 (Count VII). ECF No. 1 at 4–6.

<sup>2</sup> For convenience, we will use the names that the District Court gave the groups of defendants.

prejudice and declining to exercise jurisdiction over Hickson's state-law claims. As for Count VI of Hickson's complaint against PECO (claims for "privacy rights and unauthorized use of personal info"), the District Court dismissed it without prejudice and 14 days' leave to amend. Rather than amending, Hickson filed a motion to reconsider. The District Court denied reconsideration, and noting that the information in that motion clarified which federal statutes Hickson was invoking in relation to his "privacy rights," determined that Hickson could not state a claim in Count VI and dismissed it with prejudice.

Hickson timely appealed. Private Appellees moved for summary affirmance, and we also notified Hickson that we would consider whether summary action is appropriate.

We have jurisdiction under 28 U.S.C. § 1291, review Rule 12(b)(6) dismissals de novo, *Fowler v. UPMC Shadyside*, 578 F.3d 203, 206 (3d Cir. 2009), and construe pro se pleadings liberally, *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002). Upon review, we will take summary action because the appeal presents no substantial question. 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

As to the Private Defendants, the District Court properly concluded that the claims in Count I, insofar as it asserted a Commerce Clause claim, Count II, and Count VII, which could proceed only through 42 U.S.C. § 1983, were deficient because Hickson did not plausibly allege that any Private Defendant acted under color of state law. *See West v. Atkins*, 487 U.S. 42, 49 (1988). Hickson argues PECO's status as a state-regulated, tariff-approved utility monopoly satisfies the state-action requirement under a nexus or entwinement theory of state action, but a heavily regulated, privately owned utility does not become a state actor merely by virtue of that regulation. *Jackson v. Metro. Edison Co.*,

419 U.S. 345, 358 (1974). Hickson’s complaint alleged nothing more as to these appellees.

As to the Commonwealth and City Defendants, the District Court properly held the claims in Counts I, II, and VII were time-barred.<sup>3</sup> Section 1983 claims arising in Pennsylvania are subject to a two-year limitations period. *Kach v. Hose*, 589 F.3d 626, 634 (3d Cir. 2009) (citing 42 Pa. Cons. Stat. § 5524(2)). Hickson’s claims concerned events between February and May 2022, but he did not file suit until June 2025. Because the bar was apparent on the face of the complaint, dismissal was proper. *See Wisniewski v. Fisher*, 857 F.3d 152, 157 (3d Cir. 2017).

Hickson’s arguments to the contrary are unavailing. He contends that the Commonwealth Defendants’ alleged failure to regulate PECO constituted an ongoing violation. But the continuing-violation doctrine targets affirmative acts, not “continual ill effects from an original violation.” *Cowell v. Palmer Twp.*, 263 F.3d 286, 293 (3d Cir. 2001) (quotation marks and citation omitted). Nor does the discovery rule help him. Hickson’s claims accrued when he knew or should have known of his injury, which was

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<sup>3</sup> Although the Commonwealth and City Defendants did not raise timeliness, the Private Defendants did as to claims arising from the same 2022 events, so Hickson had notice of the issue and an extended opportunity to respond. In any event, the claims against these defendants also fail on grounds they raised below. The complaint alleges no personal involvement by any individual Commonwealth or City Defendant. *See Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Hickson’s official-capacity claims against the mayors are claims against the city itself, *see Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985), and a municipality is liable under Section 1983 only when its own policy or custom caused the constitutional violation, *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). The complaint identifies no such policy or custom, alleging only that the City Defendants “provided or approved public funding and support to PECO.” ECF No. 1 at 4.

no later than the 2022 events he described. *See Montanez v. Sec’y Pa. Dep’t of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014). His fraudulent concealment theory related solely to when his claims against PECO arose, so it could not toll claims against the governmental defendants. Because the claims against the Commonwealth Defendants were untimely, Hickson’s arguments under *Ex parte Young*, 209 U.S. 123 (1908), and *Hafer v. Melo*, 502 U.S. 21 (1991), provide no basis for relief.

The District Court also properly dismissed Counts III and V, which alleged that certain defendants violated their nonprofit tax-exempt status and failed to pay taxes on unrelated business income. Even construing those counts liberally, Hickson identified no private right of action to enforce the Internal Revenue Code, the enforcement of which is committed to the Secretary of the Treasury and Commissioner of Internal Revenue. *See United States v. LaSalle Nat. Bank*, 437 U.S. 298, 308 (1978).

Having dismissed the federal claims, the District Court declined to exercise supplemental jurisdiction over the state-law claims in Counts I (in part) and IV and noted the absence of diversity jurisdiction, because Hickson and many defendants are Pennsylvania citizens. That was not an abuse of discretion. When all federal claims are dismissed before trial, a district court should decline to exercise supplemental jurisdiction unless considerations of judicial economy, convenience, and fairness provide an affirmative justification. *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995). Hickson identified no such justification.

The District Court did not abuse its discretion in denying reconsideration. *See Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 673 (3d Cir. 1999).

Although Hickson claimed that his due process rights had been violated because the District Court had ruled on the motions to dismiss before he had filed a response, there was no due process violation. Hickson had been granted an extension to respond to the motions to dismiss, **ECF No. 25**, and the District Court ruled only after that deadline passed. Furthermore, the District Court analyzed the merits rather than granting the motions as unopposed, *see Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991), and, in considering Hickson's motion for reconsideration, reviewed his late-filed responses before concluding that nothing in them warranted relief.

Nor did the District Court err in dismissing Count VI with prejudice after reviewing the motion for reconsideration. The District Court properly concluded that the statutes Hickson identified in his reconsideration motion could not support a claim against PECO. The Privacy Act, 5 U.S.C. § 552a(a)(1), (g)(1), applies only to federal agencies, and the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801–6809, provides no private right of action. *See Dunmire v. Morgan Stanley DW, Inc.*, 475 F.3d 956, 960 (8th Cir. 2007).

Finally, the District Court permissibly dismissed Hickson's federal claims with prejudice because, contrary to Hickson's argument, amendment would have been futile. *See United States ex rel. Schumann v. AstraZeneca Pharm. LP*, 769 F.3d 837, 849 (3d Cir. 2014).

For the foregoing reasons, we grant the Private Appellees' motion for summary affirmance and will affirm the District Court's judgment.