

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

BRYAN ANTHONY REO,	:	
	:	
Plaintiff,	:	Case No. 1:19-CV-02589-CAB
	:	
v.	:	Judge Christopher A. Boyko
	:	
MARTIN LINDSTEDT,	:	Magistrate Thomas A. Parker
	:	
Defendant.	:	

MOTION TO DISMISS OF COUNTER-DEFENDANT STATE OF OHIO

Pursuant to Fed. R. Civ. P. 12(b)(1) and (6), Counter-Defendant State of Ohio respectfully moves to dismiss all claims against it. A memorandum in support of the motion is attached.

Respectfully submitted,

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/s/ Michael Walton

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MEMORANDUM OF LAW

I. INTRODUCTION

Defendant Martin Lindstedt has filed an Amended Answer in which he purports to bring new claims against various third-parties, including the State of Ohio, as counterclaims. (Doc. 17, Defendants' Amended Answer and Counterclaims). Defendant Lindstedt appears to attempt to sue the State for permitting Plaintiff Bryan Reo to continue practicing law as a licensed attorney and for not allowing Plaintiff, a non-lawyer, to represent his church. Doc. 17 at pages 4-5, 9, 12 and paragraphs 7, 29-30 (PageID# 129-30, 134-34, 137, 154-55). He purports to "joinder" the State under 42 U.S.C. § 1983 for violating his First Amendment rights. *Id.* at ¶7 (PageID# 135). The State, however, is absolutely immune from this suit, and Defendant Lindstedt has failed to state a claim for relief. Accordingly, Defendant Lindstedt's claims against the State should be dismissed.

II. LAW AND ARGUMENT

A. Legal Standard

The State brings this motion pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Rule 12(b)(1) "provides for the dismissal of an action for lack of subject matter jurisdiction." *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014). The plaintiff bears the burden of demonstrating that jurisdiction exists. *Id.* at 760.

Rule 12(b)(6) provides for dismissal based on failure to state a claim. To survive a motion to dismiss under Rule 12(b)(6), "a complaint must allege sufficient facts that, accepted as true, 'state a claim to relief that is plausible on its face.'" *Strayhorn v. Wyeth Pharm., Inc.*, 737 F.3d 378, 387 (6th Cir. 2013), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570

(2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating a motion to dismiss under Rule 12(b)(6), the Court “must accept all of Plaintiffs’ well-pleaded factual allegations as true and construe them in a light most favorable to Plaintiffs.” *Alshaibani v. Litton Loan Servicing, LP*, 528 F. App’x 462, 463-64 (6th Cir. 2013). The Court, however, need not accept “legal conclusions or unwarranted factual inferences,” and “a formulaic recitation of the elements of a cause of action will not do.” *Id.* (quotations omitted). “[F]actual allegations in the complaint need to be sufficient to give notice to the defendant as to what claims are alleged, and the plaintiff must plead ‘sufficient factual matter’ to render the legal claim plausible, i.e., more than merely possible.” *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010), quoting *Iqbal*, 556 U.S. at 678.

B. The Eleventh Amendment bars Defendant Lindstedt’s claims against the State of Ohio.

Ohio is immune from suit pursuant to the Eleventh Amendment. Under the Eleventh Amendment, this Court is without subject matter jurisdiction to adjudicate Defendant Lindstedt’s claims against the State. “[A]n consenting State is immune from suits brought in federal courts by her own citizens” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (quotation omitted). The Eleventh Amendment “bars all suits, whether for injunctive, declaratory or monetary relief” brought by individuals against a State. *McCormick v. Miami Univ.*, 693 F.3d 654, 661 (6th Cir. 2012) (quotations omitted). Such immunity applies unless a state has consented to suit or Congress has clearly expressed its intent to abrogate immunity. *Latham v. Office of Atty. Gen. of State of Ohio*, 395 F.3d 261, 270 (6th Cir. 2005).

Eleventh Amendment immunity applies to Defendant Lindstedt's claims against Ohio here, and no exception to Eleventh Amendment immunity applies. "The State of Ohio has not waived its Eleventh Amendment immunity." *Mackey v. Cleveland State Univ.*, 837 F. Supp. 1396, 1403 (N.D. Ohio 1993). Ohio does not consent to suit in this case, and Defendant Lindstedt fails to identify any way in which Congress has abrogated sovereign immunity relevant to his claims. *See Cartwright*, 751 F.3d at 760 (placing the burden on the plaintiff to prove jurisdiction). Indeed, the Supreme Court has explicitly stated that there is no exception to Eleventh Immunity for claims brought under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989) ("Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties.").

In sum, Eleventh Amendment immunity jurisdictionally bars all of Defendant Lindstedt's claims against the State, and Defendant Lindstedt has not and cannot show that any exception to immunity applies.

C. Defendant Lindstedt also has failed to state a claim for relief against the State.

Even if this Court had jurisdiction (which it does not), Defendant Lindstedt's complaint fails to state a claim against the State. A State is not a "person," and therefore, cannot be subject to liability under § 1983. *See, e.g., McKenna v. Bowling Green State Univ.*, 568 F. App'x 450, 456 (6th Cir. 2014), citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 64 (1989) (noting that a State is not a "person" subject to suit under § 1983"). Accordingly, Defendant Lindstedt's claims against the State should be dismissed pursuant to Rule 12(b)(6).

III. CONCLUSION

For all the foregoing reasons, the State of Ohio respectfully requests this Court to dismiss all claims against it for lack of subject matter jurisdiction and failure to state a claim for relief against the State.

Respectfully submitted,

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/s/ Michael A. Walton

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the U.S. District Court, Northern District of Ohio, on April 17, 2020, and served by U.S. Postal Service on April 17, 2020, upon:

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