

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

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

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**COUNTER-DEFENDANT STATE OF OHIO’S RESPONSE TO  
DEFENDANT MARTIN LINDSTEDT’S OBJECTIONS**

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**I. INTRODUCTION**

Defendant Martin Lindstedt’s Objections (Doc. 57) to the Magistrate Judge’s Report and Recommendation (Doc. 50) lack any legal support and should be overruled. The Magistrate Judge appropriately found that the State of Ohio is immune and that Defendant otherwise failed to state a claim against the State. Report and Recommendation, Doc. 50, PAGEID #474-475. Accordingly, this Court should adopt the Magistrate’s Report and Recommendation (Doc. 50) and dismiss Defendant’s claims against the State of Ohio.

**II. BACKGROUND**

On February 3, 2020, Defendant filed an Amended Answer in which he purported to bring new claims against several Counter-Defendants, including the State of Ohio, in the form of counterclaims. *See* Doc. 17. Specifically, the Defendant brought a claim against the State pursuant to 42 U.S.C. § 1983 based on allegations that the State allows attorneys, such as the Plaintiff Bryan

Reo and some of the other Counter-Defendants, to practice law while non-lawyers, such as Defendant, cannot represent others. *Id.* at PAGEID #129-30, 134-35, 137, 154-55.

On April 17, 2020, the State filed a Motion to Dismiss based on lack of jurisdiction and Defendant's failure to state a claim against the State. *See* Doc. 31. As to jurisdiction, the State argued that it was immune from suit under the Eleventh Amendment and that no exception applied. *Id.* at PAGEID #276-277. Moreover, the State argued that, even if immunity did not attach, Defendant had otherwise failed to state a 42 U.S.C. § 1983 claim as the State was a not a "person" under that statute. *Id.* at PAGEID #277.

The Magistrate Judge recommended that the Court dismiss Defendant's claims against the State on August 6, 2020. *See* Doc. 50 at PAGEID #468. Notably, the Magistrate Judge concluded that the State was entitled to immunity under the Eleventh Amendment. *Id.* at PAGEID #471-472. Further, the Magistrate Judge found that the State was not a "person" for the purposes of 42 U.S.C. § 1983. *Id.* at PAGEID #473. The Magistrate Judge also found that Defendant otherwise failed to state a constitutional claim and that he was unable to represent his church as Defendant was not an attorney. *Id.* at PAGEID #473-474.

On August 20, 2020, Defendant filed his Objections to the Magistrate Judge's Report and Recommendation. Doc. 57. Although captioned as Objections, Defendant failed to raise any cogent, legal arguments objecting to the Magistrate Judge's findings and conclusions. Further, as none of the "objections" are specific and all lack any legal support, they should be overruled..

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

A district court reviews any objections to a Magistrate Judge's report and recommendation de novo. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Rule 72.3(b); *Forgues v. Carpenter Lipps & Leland LLP*, No. 1:16CV2576, 2017 U.S. Dist. LEXIS 159827, at \*5 (N.D. Ohio Sep. 28, 2017). The

Magistrate Judge's report and recommendation addressed the State's Motion to Dismiss (Doc. 31) for lack of jurisdiction and failure to state a claim. 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 the 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)).

Moreover, a "District Court need only review the Magistrate Judge's factual or legal conclusions that are specifically objected to by either party." *Id.* (citing *Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). "[O]bjections disput[ing] the correctness of the magistrate's recommendation but fail[ing] to specify the findings . . . believed [to be] in error' are too general." *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006) (quoting *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995)). Thus, if a party fails to file *specific* objections, then the failure to do so constitutes a waiver of those objections. *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004).

**B. The Magistrate Judge correctly found that the State is immune from being sued.**

Defendant first addresses the Magistrate Judge's conclusion that the State is entitled to immunity under the Eleventh Amendment. *See* Doc. 57, PAGEID #543-545. However, Defendant fails to raise any specific objections related to this finding and otherwise fails to provide any legal support for his statements. Rather, Defendant simply argues that the State "should consent to be sued" by Defendant and his church. *Id.* at PAGEID #545. Yet, this is not relevant to the question of whether the State is immune from being sued.

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). 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.”).

As stated in its Motion to Dismiss, the State of Ohio does not consent to this lawsuit and has not otherwise “waived its Eleventh Amendment immunity.” *Mackey v. Cleveland State Univ.*, 837 F. Supp. 1396, 1403 (N.D. Ohio 1993). Further, Defendant failed to establish where Congress abrogated the State’s immunity as to his claims. *See Cartwright*, 751 F.3d at 760 (placing the burden on the plaintiff to prove jurisdiction). Accordingly, the Eleventh Amendment jurisdictionally bars Defendant’s claims against the State, and they must be dismissed.

**C. The Magistrate Judge correctly found that the Defendant failed to state a claim against the State.**

Defendant also addressed the Magistrate Judge’s dismissal pursuant to Rule 12(b)(6). *See* Doc. 57, PAGEID #545-547. Again, though, Defendant’s “objection” is not specific as it is entirely unclear what Defendant is objecting to and is otherwise not supported by any legal authority. Therefore, he has waived any objections related to this conclusion. *See Spencer*, 449 F.3d at 725 (quoting *Miller*, 50 F.3d at 380); *Cowherd*, 380 F.3d at 912. Defendant also failed to object to the Magistrate Judge’s finding that the State is not a “person” under 42 U.S.C. § 1983. Therefore, any objection related to this issue is waived as well. *Cowherd*, 380 F.3d at 912.

Regardless of whether Defendant's objections are waived, the Magistrate Judge correctly concluded that the Defendant cannot sue the State under § 1983 because the State is not a person. *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").

#### IV. CONCLUSION

For the foregoing reasons, Defendant's Objections (Doc. 57) should be overruled. As a result, this Court should adopt the Magistrate Judge's Report and Recommendation (Doc. 50) in full and dismiss the claims brought by Defendant against the State.

Respectfully submitted,

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Ohio Attorney General

*/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 and served by U.S. Postal Service on September 1, 2020, upon:

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