

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

DUNNET BAY CONSTRUCTION)	
COMPANY, an Illinois corporation,)	
)	
Plaintiff,)	
)	
v.)	No. 10-3051
)	
GARY HANNIG, in his official)	
capacity as Secretary of)	
Transportation for the Illinois)	
Department of Transportation,)	
and the ILLINOIS DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Defendants.)	

OPINION

This matter comes before the Court on the Motion of Defendant Illinois Department of Transportation (IDOT) to Dismiss Counts I, II, and III of the Second Amended Complaint (d/e 26). Counts I, II, and III allege claims against the IDOT and Defendant Gary Hannig in his official capacity for racial discrimination and denial of equal protection pursuant to 42 U.S.C. §§ 1981 and 1983. Second Amended Complaint (d/e 19). IDOT moves to dismiss Counts I and II as barred by the Eleventh Amendment, and Count III as redundant of Count II. Plaintiff Dunnet Bay Construction

Company concedes that IDOT is correct. Response to IDOT's Motion to Dismiss (d/e 29). Defendant Hannig does not move to dismiss the claims against him. Counts I and II, therefore, still state claims against Hannig in his official capacity for prospective declaratory and injunctive relief. See Green v. Mansour, 474 U.S. 64, 68 (1985).

THEREFORE, the Motion of Defendant Illinois Department of Transportation to Dismiss Counts I, II, and III of the Second Amended Complaint (d/e 26) is ALLOWED. The claims against Defendant Illinois Department of Transportation in Counts I and II are dismissed. Count III is dismissed without prejudice as redundant. Counts I and II still state claims against Defendant Hannig in his official capacity.

ENTERED this __6th__ day of October, 2010

s/ Michael P. McCuskey
MICHAEL P. McCUSKEY
CHIEF U.S. DISTRICT JUDGE