

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

TOBY J. SUTTON

PLAINTIFF

v.

No. 3:11CV00075 JLH

ARKANSAS STATE UNIVERSITY

DEFENDANTS

**ORDER**

Toby J. Sutton brings this action against Arkansas State University pursuant to 42 U.S.C. § 1983, alleging that the University violated his rights under the Fourteenth Amendment to the Constitution of the United States by terminating his contract before the expiration of its term. Sutton also alleges claims for breach of contract and violation of the Arkansas Whistle-Blower Act, Ark. Code Ann. § 21-1-601 *et seq.* The University has moved to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

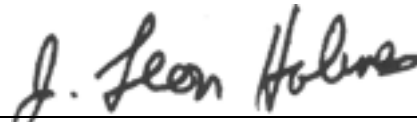
In its motion, the University argues that as an agency of the State of Arkansas it is not a person subject to suit under section 1983. In *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989), the Supreme Court held that neither a state nor its officials acting in their official capacities are persons subject to suit under section 1983. The United States Court of Appeals for the Eighth Circuit has held that Arkansas State University is immune from suit under section 1983 for any kind of relief, not merely monetary damages. *Monroe v. Arkansas State Univ.*, 495 F.3d 591, 594 (8th Cir. 2007). *See also Labickas v. United States Dept. of Educ.*, 94 F.3d 649 (8th Cir. 1996); *Dover Elevator Co. v. Arkansas State Univ.*, 64 F.3d 442, 447 (8th Cir. 1995). Sutton's claim under section 1983 is therefore dismissed.

Pursuant to 28 U.S.C. § 1367(c)(3), the Court declines to exercise supplemental jurisdiction over Sutton's claims that arise under state law. *Cf. Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343,

350 n.7, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988); *Condor Corp. v. City of St. Paul*, 912 F.2d 215, 220 (8th Cir. 1990).

For the reasons stated, Toby J. Sutton's claim against Arkansas State University under 42 U.S.C. § 1983 and the Fourteenth Amendment to the Constitution of the United States is dismissed with prejudice. Sutton's claims against Arkansas State University that arise under state law are dismissed without prejudice.

IT IS SO ORDERED this 23rd day of June, 2011.

A handwritten signature in black ink that reads "J. Leon Holmes". The signature is written in a cursive style with a horizontal line underneath it.

J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE