

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

SANDRA KELLOGG MORNEAU

PLAINTIFF

VS.

CASE NO. 4:12-CV-4109

MARK D. SIMS, *et al*

DEFENDANTS

**ORDER**

Before the Court is Separate Defendants Jackie Runion, Jeffrey Clay Raybord, and Justin Smith's Motion to Dismiss Official Capacity Claims. (ECF No. 60). This case is a civil-rights action brought under 42 U.S.C. § 1983. Plaintiff sued Separate Defendants Runion, Rayborn, and Smith in their official and individual capacities as officers of the Arkansas Game and Fish Commission. Separate Defendants move the Court to dismiss the official capacity claims on two grounds: (1) because sovereign immunity applies; and (2) because in their official capacities, the officers are not "persons" within the meaning § 1983. Plaintiff has not responded to Separate Defendants' motion, and the time for doing so has passed. Local Rule 7.2(b). The matter is ripe for the Court's consideration. Because Separate Defendant's motion can be resolved on sovereign immunity grounds, the Court need not address the officers' statuses as "persons" within the meaning of § 1983.

Sovereign immunity is created by the Eleventh Amendment, which generally provides a state with immunity from suit by citizens in federal court absent the state's consent. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). That immunity also extends to actions against state officials sued in their official capacities. *Thomas v. Gunter*, 32 F.3d 1258, 1261 (8th Cir. 1994). In this

case, Separate Defendants Runion, Rayborn, and Smith are state officials because they are officers of the Arkansas Game and Fish Commission, an agency created by the Arkansas Constitution. *See* AR CONST. AMEND. 35, § 1. Because Plaintiff has sued them in their official capacity, such claims are barred by sovereign immunity.

Accordingly, the Court finds that Plaintiff's official capacity claims against Separate Defendants Runion, Rayborn, and Smith should be and hereby are **DISMISSED**.

**IT IS SO ORDERED**, this 10th day of December, 2012.

/s/ Susan O. Hickey  
Hon. Susan O. Hickey  
United States District Judge