

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

PAUL ALMER BRANCH,

Plaintiff,

v.

CASE NO. 4:10cv516-RH/WCS

KURT S. BROWNING et al.,

Defendants.

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**ORDER OF DISMISSAL**

This case is before the court on the magistrate judge's second report and recommendation, ECF No. 8. The plaintiff has filed no objections to the second report and recommendation, but in response to the magistrate judge's first report and recommendation, ECF No. 5, the plaintiff filed a motion for reconsideration, ECF No. 10. The motion for reconsideration sets out the plaintiff's position in a manner making clear that he has the same objections to the second report and recommendation. I have reviewed the issues de novo.

The plaintiff seeks an award of damages for being held in custody on a state sentence longer than would have been allowed under a later decision of the Florida Supreme Court. He has been released from custody and does not seek injunctive

relief. The plaintiff has named as defendants only the State of Florida, its former governor, and its secretary of state. The plaintiff makes no claim that the governor or secretary state had any personal role in his incarceration. His claim against them thus plainly is only an official-capacity claim. The Eleventh Amendment bars a damages award in federal court against either the state itself or a state officer in the officer's official capacity, precisely as the second report and recommendation concludes. Accordingly,

IT IS ORDERED:

The second report and recommendation is ACCEPTED and adopted as the court's opinion. The clerk must enter judgment stating, "This case is DISMISSED based on the Eleventh Amendment."

SO ORDERED on February 25, 2011.

s/Robert L. Hinkle  
United States District Judge