

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

STEPHEN RANGE,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:07 CV 480
)	
DEVIN BRUBAKER, et al.)	
)	
Defendants)	

OPINION AND ORDER

On March 26, 2008, Magistrate Judge Christopher A. Nuechterlein issued a Report and Recommendation wherein he recommended that the District Judge GRANT in part Defendants Lynn Berndt (“Berndt”) and the Office of the Prosecuting Attorney’s motion to dismiss pursuant to Fed.R. Civ.P. 12(b)(6). Specifically, the Magistrate Judge recommended dismissing all official capacity claims against Berndt and the Office of the Prosecuting Attorney as they were barred by the 11th Amendment. The Magistrate Judge left open the question as to whether Berndt could be sued in her individual capacity.

On April 21, 2008, the undersigned adopted the Magistrate Judge’s Report and Recommendation and Berndt in her official capacity and the Office of the Prosecuting Attorney were terminated parties to the case. On July 16, 2008, plaintiff Stephen Range, filed an amended complaint wherein he again named Berndt in her official capacity as well as the Office of the Prosecuting Attorney.

Upon review of the Amended Complaint, it is clear that the reasons initially set out in the Magistrate Judge’s March 26, 2008 Report and Recommendation adopted by the undersigned on April 21, 2008, remain valid legal reasons to dismiss the official capacity claims against Berndt and

the Office of the Prosecuting Attorney. **Accordingly, the Clerk is DIRECTED to show any remaining official capacity claims against Berndt termed on the docket. Further, the Clerk is HEREBY DIRECTED to terminate from the docket the Office of the Prosecuting Attorney as a party to this case.**

SO ORDERED. This 16th day of October, 2009

s/ William C. Lee
United States District Court