

UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO. 3:97-CV-709-H

GUS “SKIP” DALEURE, JR., et al.

PLAINTIFFS

V.

COMMONWEALTH OF KENTUCKY, et al.

DEFENDANTS

MEMORANDUM OPINION

Among the numerous dispositive motions now pending are those of Defendants Commonwealth of Kentucky and Commonwealth of Kentucky Department of Corrections, to dismiss based on the Eleventh Amendment.¹ Plaintiffs say that sovereign immunity only bars damages paid out of general state funds and that there is a commercial activity exception to the Eleventh Amendment. The Court considers these arguments in turn.

Under the Eleventh Amendment, federal courts lack subject matter jurisdiction over claims by private parties against a state unless the state consents to suit. *See* U.S. Const. 11th Amendment; *Hans v. Louisiana*, 134 U.S. 1, 15 (1890) (interpreting the Eleventh Amendment to bar suits against a state by citizens of that state as well as citizens of other states). Eleventh Amendment immunity also extends to state agencies.² *See Pennhurst State Sch. and Hosp. v.*

¹Defendants presented several other theories for dismissal that are unnecessary to decide for this opinion. The Court has already dismissed similarly situated State of Missouri defendants on jurisdictional grounds.

²Plaintiffs never specifically argue that the Commonwealth of Kentucky Department of Corrections is not an arm of the state, but the Court addresses this point briefly for clarity:

The Commonwealth of Kentucky Department of Corrections is an arm of the state. The Sixth Circuit has previously recognized that a state’s department of corrections is a state agency for purposes of Eleventh Amendment

Halderman, 465 U.S. 89, 100 (1984); *P.R. Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). The Amendment is grounded in traditional notions of sovereign immunity and protects states and their agencies from all types of lawsuits, unless the state has waived its immunity or Congress has specifically overridden state immunity. The Court cannot see that either of these events applies here.

Plaintiffs argue that Defendants waived their Eleventh Amendment immunity by engaging in proprietary, commercial activity.³ There is no textual basis for a commercial activity exception to the Eleventh Amendment, nor is such an exception supported by case law or logic. The Ninth Circuit decision Plaintiffs cite in support of a commercial activity exception, *Mills Music, Inc. v. State of Arizona*, 591 F.2d 1278, 1286 (1979), has since been discredited. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 240 (1985) (Congress must unequivocally express the intent to override state sovereign immunity); *BV Engineering v. UCLA*, 657 F. Supp. 1246, 1248 (C.D. Cal. 1987), *aff'd*, 858 F.2d 1394. *cert. denied*, 489 U.S. 1090 (1989) (recognizing that *Mills Music* is no longer the law). The Eleventh Amendment is an important component of federalism. This Court finds no satisfactory rationale for eroding state sovereignty by reading an implied exception into the Eleventh Amendment's clearly stated blanket prohibition on non-consensual suits.

immunity. *See Foulks v. Ohio Dept. of Rehabilitation and Correction*, 713 F.2d 1229 (6th Cir. 1983). Moreover, under KRS 196.030, Kentucky authorizes the Department of Corrections to “exercise all functions of the state” related to managing the correctional institutions. *See Hutsell v. Sayre*, 5 F.3d 996, 1002 (6th Cir. 1993) (statutory scheme indicates University of Kentucky is an arm of state). Finally, any award of damages against the Commonwealth of Kentucky Department of Corrections would have to be paid out of Kentucky state funds.

³There is no evidence in this case that either state engaged in commercial activity. The states did not contract with the telephone companies, nor did they receive a profit directly from the contracts. The states only involvement in this case is having delegated power to their departments of corrections. Delegating power is not a commercial activity.

Plaintiffs also argue that the Eleventh Amendment only protects the state coffers from judgment. However, the language of the Amendment and the cases interpreting it have held otherwise.⁴ The Eleventh Amendment protects the state from the “indignity” of being subjected to the judicial process. *P.R. Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). This immunity does not depend on the remedy sought by the plaintiff. A state cannot be sued directly in its own name regardless of the relief sought. *See Alabama v. Pugh*, 438 U.S. 781, 781-82, 98 S.Ct. 3057-58 (1978); *Thiokol Corp. v. Dep’t. of Treasury*, 987 F.2d 376, 381 (1993). Under the Eleventh Amendment, this court lacks subject matter jurisdiction over the Defendants in this suit.

The Court will enter an order consistent with this Memorandum.

JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

⁴Plaintiffs cite *Papasas v. Allain*, 478 U.S. 265, 277 (1986) to argue that the Supreme Court has upheld some forms of prospective relief against states. This analysis is unpersuasive, however, because *Papasas* addresses the Eleventh Amendment immunity of a state official, not the state itself. The Supreme Court has repeatedly drawn a distinction between the immunity available to state officials as opposed to the state itself. Prospective injunctive relief that has an ancillary effect on the state treasury is available against a state official, but it is not available against a state.

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ORDER

Defendants, Commonwealth of Kentucky and Commonwealth of Kentucky Department of Corrections, moved to be dismissed from this suit. For the reasons set forth in the accompanying memorandum and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendants', Commonwealth of Kentucky and Commonwealth of Kentucky Department of Corrections, motions to dismiss are SUSTAINED and the claims against these Defendants are DISMISSED WITH PREJUDICE.

This __ day of October, 1999.

JOHN G. HEYBURN II
JUDGE U.S. DISTRICT COURT

cc: Counsel of Record