

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

MARVIN JONES, )  
 ) Civil Action No. 4:10CV-011-P-S  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 TYSON FOODS, INC.; HALEY )  
 BARBOUR, in his official capacity of )  
 Governor of the State of Mississippi; )  
 CHRISTOPHER EPPS, in his )  
 individual and official capacities as )  
 Commission of the Mississippi )  
 Department of Corrections; LEE )  
 McTEER, in his official capacity as )  
 Community Correctional Director for )  
 Region I and in his individual capacity; )  
 and JONATHAN BRADLEY, in his )  
 official capacity as Correctional )  
 Supervisor of Leflore County )  
 Restitution Center and in his individual )  
 capacities )

Defendants.

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PLAINTIFF'S REPOSE TO DEFENDANT HALEY BARBOUR'S  
MOTION TO DISMISS

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COMES NOW, the Plaintiff, by and through counsel, and files this his Response to the Defendant Haley Barbour's Motion to Dismiss on grounds of Eleventh Amendment immunity, and would show unto the Court the following:

I.

Plaintiff moves, pursuant to Local Rule 7.2 (F)(1), for a hearing and/or oral argument concerning the merits of Defendant Barbour's motion at a date to be determined by the Court. The issues

presented by Defendant's motion, coupled with the nature of Plaintiff's case, suggest a hearing/oral argument would be beneficial to the Court.

II.

Defendant Barbour has filed a Motion to Dismiss seeking to dismiss the Plaintiff's Sections 1983 and 1985 claims brought against him in his *official* capacity.

III.

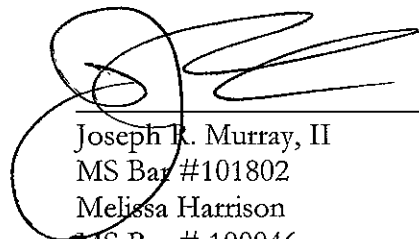
Plaintiff's First Amended Complaint asks this Court to "[d]eclare that Defendants' actions, as herein described, violated Plaintiff's constitutional rights under the Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution." As such, the "official capacity" Defendant should ultimately remain defendants in this case because declaratory relief is being sought. *See Ex parte Young*, 209 U.S 123 (1908) (carving out exception to Eleventh Amendment and specifically authorizing private suits against state officials for injunctive relief and declaratory relief in situations where defendants violate federal law).

IV.

A brief in opposition to Defendant Tyson's Motion to Dismiss is being filed simultaneously herewith.

WHEREFORE, in light of the above-stated reasons, Plaintiff prays that the Defendant's Motion to Dismiss be denied, as well as any relief requested.

Respectfully submitted,



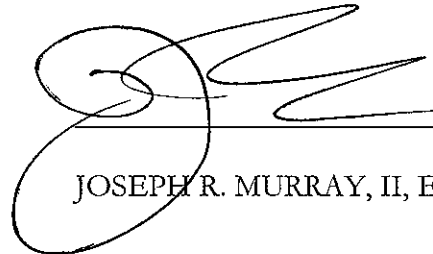
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**CERTIFICATE OF SERVICE**

I, Joseph R. Murray, II, attorney for Plaintiff, do hereby certify that I have filed the forgoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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JOSEPH R. MURRAY, II, ESQ.