

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON / GREENWOOD DIVISION

Adrian Charles Banks,	)	C/A No. 8:10-cv-3031-JMC-BHH
	)	
	)	
Plaintiff,	)	REPLY TO RESPONSE TO
	)	MOTION TO DISMISS <sup>1</sup>
v.	)	
	)	
The State of South Carolina,	)	
Defendant.	)	
_____		

In his response to the State’s Motion to Dismiss, Appellant contends that the State is not immune from suit under the Eleventh Amendment when State law conflicts with the Thirteenth Amendment and Fourteenth Amendments, but the statutes under which he has sued do not waive the State’s immunity. He has alleged in his complaint that he has brought this suit pursuant to 42 U.S.C. §1981 and refers to §1983 in his Response to the State’s Motion to Dismiss. Those statutes do not waive the State’s immunity from suit pursuant to the Eleventh Amendment. *Quern v. Jordan*, 440 U.S. 332, 332(1979)(“§1983 does not abrogate the Eleventh Amendment immunity of the States”); *See Malone v. Schenk*, 638 F. Supp. 423 (C.D. Ill. 1985)(§1981); *Gilyard v. S. Carolina Dept. of Youth Services*, 667 F. Supp. 266, 276 (D.S.C. 1985)(Eleventh Amendment bars claims under §§1981 and 1983). Accordingly, because the statutes under which Plaintiff has brought suit do not waive the State’s immunity, the State remains immune and this suit must be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General  
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<sup>1</sup> This Reply also addresses Plaintiff’s Amendment to his Response.

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