

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**DIPA BHATTARAI; and  
TYLER BARKER**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO.: 3:19-CV-560-DPJ-FKB**

**JIM HOOD, in his official capacity  
As Attorney General for the State of Mississippi;  
DOROTHY ENNIS; DARLENE SMITH;  
HILDA BILLS; DEBORAH COKER AND  
FRANCIS ROBERTSON, all in their  
official capacities as Members of the Mississippi  
State Board of Cosmetology; and SHARON CLARK,  
in her official capacity as Executive Director of the  
Mississippi State Board of Cosmetology**

**DEFENDANTS**

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**SHARON CLARK’S MEMORANDUM IN SUPPORT OF MOTION  
TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

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Sharon Clark (“Ms. Clark”), in her official capacity as the Executive Director of the Mississippi State Board of Cosmetology (“Board”),<sup>1</sup> files this memorandum in support of her motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1). For the reasons set forth, the claims against Ms. Clark should be dismissed with prejudice.

**INTRODUCTION**

In 2013, the Mississippi Legislature amended Mississippi Code Annotated Section 73-7-2 to incorporate into the definition of cosmetology and esthetics, “[a]rching eyebrows to include trimming,

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<sup>1</sup> Although Ms. Clark has been sued in her official capacity only, Plaintiffs served her personally. [Dkt. 9]. Service upon the State of Mississippi or any one of its departments, officers, or institutions must be made by delivering the summons and complaint to the Attorney General. Miss. R. Civ. P. 4(d)(6); *see also* Fed. R. Civ. P. 4(j)(2)(B). Although service on Ms. Clark was improper, she does not raise insufficiency of process.

tweezing, waxing, threading or any other method of epilation or tinting eyebrows and eyelashes.” 2013 MISS. LAWS CH. 523 (H.B. 1164); MISS. CODE ANN. § 73-7-2(a)(iv) and (d)(ii). By statute, persons who seek to engage in any of the practices identified in Sections 73-7-2(a)(iv) and (d)(ii) must possess a valid Mississippi cosmetology or esthetician’s license. *Id.* Six years after the amendment to the cosmetology and esthetician’s licensing statutes, Dipa Bhattarai and Tyler Barker (“Plaintiffs”) allege they “want to engage in the business of eyebrow threading” but object to obtaining a Mississippi license as a cosmetologist or esthetician as required by law. [Dkt. 1], ¶ 2.

Plaintiffs want a declaration and injunction against Ms. Clark barring her from enforcing Mississippi’s “cosmetology licensing regime” against eyebrow threaders. [Dkt. 1], ¶ 34. Plaintiffs allege Mississippi’s licensing requirements for eyebrow threading violates the Fourteenth Amendment’s Substantive Due Process, Equal Protection, and Privileges and Immunities clauses, as well as Article 3, Sections 14 and 32 of the Mississippi Constitution. *Id.*, ¶¶ 160-194. Plaintiffs also seek nominal damages from Ms. Clark. Specifically, Plaintiffs request:

- A judgment declaring that the cosmetology licensing regime, its implementing rules and regulations, and policies and practices of the Board are unconstitutional when applied to eyebrow threaders facially and as applied;
- A permanent injunction prohibiting Defendants from enforcing the cosmetology licensing regime and its implementing rules and regulations against eyebrow threaders both facially and as applied;
- An award of nominal damages in the amount of One Dollar (\$1.00);
- An award of attorneys’ fees, costs, and expenses pursuant to 42 U.S.C. § 1988.

[Dkt. 1], p. 41.

Plaintiffs’ claims against Ms. Clark suffer from several fatal defects. First, Plaintiffs lack Article III standing to assert declaratory and injunctive claims. Next, Plaintiffs’ declaratory and injunctive claims are barred by the Eleventh Amendment as Ms. Clark lacks the requisite connection

to the enforcement of the challenged statutes. Third, Plaintiffs' damage claim against Ms. Clark, in her official capacity, is barred by the Eleventh Amendment. Finally, Ms. Clark, in her official capacity, is not a "person" within the meaning of Section 1983 and therefore not subject to liability. For these reasons, the Court should enter an order dismissing the claims against Ms. Clark with prejudice.

## ARGUMENT

### **I. Standard**

#### **A. Federal Rule 12(b)(1)**

"A case is properly dismissed for lack of subject matter jurisdiction [under Federal Rule 12(b)(1)] when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). "[T]he requirement that a claimant have 'standing is an essential and unchanging part of the case-or-controversy requirement of Article III.'" *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The party invoking the jurisdiction of the federal court bears the burden of demonstrating its existence. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

A court may base its disposition of a motion to dismiss for lack of subject matter jurisdiction on the complaint alone, the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir.), *cert. denied*, 454 U.S. 897 (1981)). Rule 12(b)(1) is the appropriate vehicle for dismissal because the Eleventh Amendment bars all claims, both state and federal, and deprives the Court of jurisdiction. *United States v. Texas Tech Univ.*, 171 F.3d 279, 285, 288 n.9 (5th Cir. 1999).

#### **B. Federal Rule 12(b)(6)**

To survive a motion to dismiss under this Federal Rule, a "complaint must allege 'sufficient

factual matter, accepted as true, to state a claim that is plausible on its face.” *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). Plaintiff’s Section 1983 claims are ripe for dismissal under Rule 12(b)(6). Ms. Clark, in her official capacity, is not considered a “person” for purposes of Section 1983 liability. *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). Therefore, Plaintiffs’ claims against Ms. Clark can be dismissed for this alternative reason.

## **II. Article III Standing**

The Article III standing requirements are familiar. First, Plaintiffs must have suffered an injury in fact—that is—and an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the alleged injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, Plaintiffs must show that it is likely, as opposed to merely speculative, that the alleged injury will be redressed by a favorable decision. *Lujan* 504 U.S. at 560-61.<sup>2</sup>

### **A. Injury-In-Fact**

To establish injury in fact, a plaintiff must show that he or she suffered “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), *as revised* (May 24, 2016) (quoting *Lujan*, 504 U.S., at 560). While Ms. Clark in no way concedes the merits of Plaintiffs’ alleged

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<sup>2</sup> This “triad of injury-in-fact, causation, and redressability constitutes the core of Article III’s “case or controversy” requirement. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 104-05 (1998). Plaintiffs bear the burden of establishing its existence. *Lujan* 504 U.S. at 560. “Standing is not . . . a mere technicality, and its applicability differs in this case with respect to the various Plaintiffs and the officials against whom they bring this suit.” *Campaign for S. Equal. v. Mississippi Dep’t of Human Servs.*, 175 F. Supp.3d 691, 698–99 (S.D. Miss. 2016) (citation omitted).

constitutional claims, she nonetheless is fully cognizant of this Court's injury analysis for purposes of standing articulated in *Campaign for Southern Equality*, 175 F.3d at 700. Therefore, this motion addresses only the causation and redressability elements of the standing analysis.

**B. Causation**

Even if Plaintiffs can meet the first prong of the standing analysis, they cannot establish a causal connection between their alleged injury and the actions, if any, of Ms. Clark. Plaintiffs' failure to meet any one of the three prerequisites for standing is dispositive. *Rivera v. Wyeth-Ayerst Labs.*, 283 F.3d 315, 319 (5th Cir. 2002) (noting that a failure to establish any one element deprives the court of jurisdiction).

With respect to the causation prong of the standing analysis there is a "long-standing rule that a plaintiff may not sue a state official who is without power to enforce the complained-of statute." *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (citing *Muskrat v. United States*, 219 U.S. 346 (1911)). Plaintiffs' alleged claims against Ms. Clark fall squarely into *Okpalobi's* prohibitions because she does not possess the statutory authority to independently enforce the cosmetology licensing statutes challenged by Plaintiffs.

The Cosmetology Board is composed of five (5) members appointed by the Governor, with the advice and consent of the Senate, who serve four year terms. MISS. CODE. ANN. § 73-7-1. The Cosmetology Board, *inter alia*, has the authority to make reasonable rules and regulations for the administration of the statutes within its purview. Furthermore, the board is authorized to set up a curriculum for operation of schools of cosmetology and the other professions it is charged to regulate in this state. MISS. CODE. ANN. § 73-7-7(1).

The Cosmetology Board may revoke the license of any cosmetologist, esthetician, manicurist, instructor, school of cosmetology, or salon, or may refuse to issue a license to any cosmetologist,

esthetician, manicurist, instructor, school of cosmetology, or salon that fails or refuses to comply with the provisions of this chapter and the rules and regulations of the Board in carrying out the provisions of the cosmetology statutes. MISS. CODE. ANN. § 73-7-7(1).

The Executive Director of the Cosmetology Board is not a statutory position. Plaintiffs concede as much and simply allege that Ms. Clark is “responsible for performing any duties as may be prescribed by the Board for the proper administration of the cosmetology laws,” citing Section 73-7-3. [Dkt. 1], ¶ 32. Section 73-7-3 provides, in part, “[t]he board shall be authorized to employ such clerical and stenographic assistance, bookkeepers, investigators and other agents as they may deem necessary to carry out the provisions of this chapter, and to fix their tenure of employment and compensation therefor.” MISS. CODE. ANN. § 73-7-3.<sup>3</sup> Ms. Clark’s role as the Executive Director does not satisfy *Okpalobi*.

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<sup>3</sup> The full text of the statute reads:

The board shall be authorized to employ such clerical and stenographic assistance, bookkeepers, investigators and other agents as they may deem necessary to carry out the provisions of this chapter, and to fix their tenure of employment and compensation therefor. The members of the board shall file a bond with the Secretary of State in the sum of not less than Five Thousand Dollars (\$5,000.00) payable to the State of Mississippi for the faithful performance of their duties. The bond shall be made by a surety company authorized to do business in this state, the premium of the bond to be paid out of any money in the board's special fund in the State Treasury.

The office of the board shall be located in the greater metropolitan area of the City of Jackson, Mississippi, and in the event office space cannot be obtained in any state-owned building, the board is authorized to rent suitable office space and to pay therefor out of funds in the board's special fund. The board shall employ inspectors as needed, not to exceed seven (7), who shall be full-time employees and whose salaries and duties shall be fixed by the board.

The salaries of all paid employees of the board shall be paid out of the funds in the board's special fund. The inspectors shall, in addition to their salaries, be reimbursed for such expenses as are allowed other state employees under the provisions of Section 25-3-41. In addition to the paying of office rent, the board is authorized to purchase necessary office furniture and equipment, stationery, books, certificates and any other equipment necessary for the proper administration of this chapter.

MISS. CODE. ANN. § 73-7-3.

In addressing standing's causation prong in *Campaign for Southern Equality*, this Court said:

Here, Plaintiffs' contentions regarding the Governor of Mississippi are at best strained. The Governor has no "coercive power" over adoptions and has taken no acts that are fairly traceable to the stated injury. Even if ordered to do so, he could not affect the adoption process or make a chancery court grant an adoption. The claims against the Governor are dismissed with prejudice.

175 F. Supp.3d at 701. The Court also found that the "claims against the Attorney General are only slightly less attenuated." *Id.* at 702. In dismissing those claims the Court concluded, "[m]oreover, the Attorney General is powerless to affect the adoption process or a decision by a Mississippi Chancellor. Plaintiffs' injuries are not fairly traceable to any act by the Attorney General. . . ." *Id.*

The same holds true in this case as Ms. Clark does not have the required coercive power over the challenged statutes. Thus, no "causal connection" exists between Ms. Clark's alleged conduct and any claimed "injury-in-fact" at issue in this case. *Okpalobi*, 244 F.3d at 426 ("[Notwithstanding that the defendants are powerless to enforce [the Act] against the plaintiffs (or to prevent any threatened injury from its enforcement), the plaintiffs yet must show (1) how these impotent defendants play a causal role in the plaintiffs' injury and (2) how these defendants can redress their alleged actual or threatened injury."). *Id.* Plaintiffs cannot meet the causation prong of standing and the claims against Ms. Clark should be dismissed with prejudice.

### **C. Redressability**

Plaintiffs' claims against Ms. Clark also fail the redressability prong of the standing analysis. This is because Article III standing – including its "causal connection" and redressability elements – "must exist with respect to each claim the plaintiff 'seeks to press and for each form of relief that is sought.'" *K.P. v. LeBlanc*, 729 F.3d 427, 436 (5th Cir. 2013) (citation omitted). Even if Plaintiffs met the first two standing prongs, a declaration or injunction entered against Ms. Clark would not relieve Plaintiffs' alleged injuries.

In *Campaign for Southern Equality* this Court noted, “[t]hough distinct, these prongs share some overlap and are often considered in tandem.” 175 F.3d at 701. A “plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury.” *Larson v. Valente*, 456 U.S. 228, 243, n.15 (1982). Here Plaintiffs merely allege that Ms. Clark performs duties as prescribed by the Board for the administration of the cosmetology laws. [Dkt. 1], ¶ 32. Because she lacks such coercive power, an injunction against her will not relieve Plaintiffs alleged injury.

In *Okpalobi* the Fifth Circuit said, “[f]or all practical purposes,” ordering any relief against the State Defendants would be ‘utterly meaningless.’” *Okpalobi*, 244 U.S. at 426. This is so because “[a]n injunction enjoins a defendant, not a statute,” *see id.*, n.34, and federal courts cannot, consistent with the Eleventh Amendment, enter a judgment against a state officer which purports to bind a State as an entity. *Sherman v. Community Consolidated Sch. Dist. 21*, 980 F.2d 437, 441 (7th Cir. 1992).

Because Ms. Clark does not possess the requisite coercive power with respect to enforcement of the cosmetology licensing regime regarding eyebrow threading, a declaration or injunction against her would not redress Plaintiffs’ alleged injuries. Plaintiffs therefore cannot establish the redressability prong of the standing analysis and the claims against Ms. Clark should be dismissed with prejudice.

## **II. Eleventh Amendment**

Even if the Court finds that Plaintiffs have standing, the declaratory and injunctive claims asserted against her are also subject to dismissal by virtue of the Eleventh Amendment.<sup>4</sup> Immunity

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<sup>4</sup> While Article III standing and Eleventh Amendment immunity are distinct concepts, there is significant overlap. *Harness. et al. v. Hosemann*, No. 3:17-cv-791-DPJ-FKB [Dkt. 91], p. 4, n.2 (August



from suit in federal court under the Eleventh Amendment applies to claims against the State, agencies considered an “arm of the state,” and state officials sued in their official capacities. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984).

Ms. Clark has been sued in her official capacity only and enjoys Eleventh Amendment immunity. This is because “a suit against a state official in his or her official capacity is not a suit against the official, but rather a suit against the official’s office. *Id.* As such, it is no different from a suit against the State itself.” *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

## **B. *Ex Parte Young***

To avoid the Eleventh Amendment’s bar, Plaintiffs must demonstrate the constitutional claims fit within the narrow exception to the Eleventh Amendment immunity carved out in *Ex parte Young*, 208 U.S. 123 (1908). The *Ex parte Young* doctrine applies only when a plaintiff sues the appropriate state officials, in their official capacities, for allegedly committing an ongoing violation of federal law, and plaintiff seeks prospective equitable relief against them. *Aguilar v. Texas Dept. of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998); *Sims v. Barbour*, 2010 WL 5184845, at \* 2 (S.D. Miss. December 15, 2010). Plaintiffs cannot meet *Ex parte Young*.

### **1. Connection with Enforcement**

The *Ex parte Young* doctrine only applies in a suit challenging a legislative enactment if the state officers sued “have ‘some connection’ with the enforcement of the act’ in question or [are] ‘specifically charged with the duty to enforce the statute’ and [are] threatening to exercise that duty.” *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014) (quoting *Okpalobi*, 244 F.3d at 414-15) (alteration in original); see also *Campaign for Southern Equality*, 175 F. Supp.3d at 708 (“In this case,

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7, 2019) (citing *Air Evac EMS, Inc. v. Tex., Dep’t of Ins., Div. of Workers’ Comp.*, 851 F.3d 507, 520 (5th Cir. 2017)).

neither Mississippi’s Governor nor its Attorney General have the power of compulsion or constraint over the adoption decisions at issue.”).

“The required ‘connection’ is not ‘merely the general duty to see that laws of the state are implemented,’ but ‘the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.’” *Id.* (quoting *Okpalobi*, 244 F.3d at 416); This Court concluded:

*Ex parte Young* acknowledged the “convenien[ce]” and “speed[ ]” that would be achieved in allowing suits against governors and attorneys general to test the constitutionality of statutes. 209 U.S. at 157, 28 S.Ct. 441. But it nevertheless held that a plaintiff must show the defendants “have the requisite ‘connection’ to the statutory scheme to remove the Eleventh Amendment barrier to suits brought in federal court against the State.” *Okpalobi*, 244 F.3d at 411. “The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact, and whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists.” *Ex parte Young*, 209 U.S. at 157.

*Id.* at 708.

Explaining the particularity of the “requisite connection” within the context of Eleventh Amendment immunity, this Court further explained:

[T]he Fifth Circuit noted that “[e]nforcement’ typically involves compulsion or constraint.” 627 F.3d at 124–25 (citing Webster’s Third New International Dictionary 751 (1993)). And this “required ‘connection’ is not ‘merely the general duty to see that the laws of the state are implemented,’ but ‘the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.’” *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir.2014) (emphasis added) (citing *Okpalobi*, 244 F.3d at 414–15 (quoting *Ex parte Young*, 209 U.S. at 157, 158, 28 S.Ct. 441)).

*Id.* at 708. Plaintiffs cannot satisfy the requisite “connection” prong of the *Okpalobi* test for the application of *Ex parte Young* and she does not have the requisite authority to enforce the statutes and regulations. Ms. Clark’s Eleventh Amendment immunity is not subject to the narrow *Ex parte Young* exception.

## 2. Threatened Enforcement

To defeat the Eleventh Amendment with *Ex parte Young*, it is not enough to simply show that

a government official defendant has some authority to enforce a challenged law. In addition, there must also be some credible threat that the defendant will attempt to enforce the statute at issue for a plaintiff to come within the narrow exception of *Ex parte Young*. *Okpalobi*, 244 F.3d at 417 (*Ex parte Young* requires the ability to enforce a statute *and demonstrated willingness to enforce it*); *see also Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992) (Eleventh Amendment barred suit, and no case or controversy existed where there was no threat that the Attorney General would pursue or encourage other officials to pursue violations of California law); *Kelley v. Metropolitan Cnty. Bd. of Ed.*, 836 F.2d 986, 990-91 (6th Cir. 1987) (*Ex parte Young* inapplicable to defendants not threatening to enforce challenged law), *cert denied*, 487 U.S. 1206 (1988)).

Even assuming Ms. Clark has the necessary connection to enforce the cosmetology statutes and regulations with respect to eyebrow threading, Plaintiffs have not alleged that she has threatened to enforce the statutes and regulations to come within *Ex parte Young*'s narrow exception to Eleventh Amendment immunity. In the end, Ms. Clark is entitled to Eleventh Amendment immunity as to the declaratory and injunctive claims asserted against her.

### **C. Damage Claim**

Plaintiffs have also sued Ms. Clark for nominal damages in her official capacity. [Dkt. 1], p. 40. However, the Eleventh Amendment bars suits by private citizens against a State and *state officers* in federal court. *Hope v. Bryant*, 2016 WL 380128, at \*2 (S.D. Miss. Jan. 29, 2016). “An official-capacity suit for damages is essentially a suit against the state.” *Id.* (citing *Barron v. Deloitte & Touche, L.L.P.*, 381 F.3d 438, 443 (5th Cir. 2004). “And as such, they are subject to Eleventh Amendment immunity.” *Id.* (citing *Fontenot v. McCraw*, 777 F.3d 741, 752 (5th Cir. 2015). “Official-capacity suits[ ] . . . generally represent only another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (citation omitted).

The *Ex parte Young* exception to Eleventh Amendment immunity does not save Plaintiffs' damage claim. It is well-settled that the "doctrine of *Ex parte Young* is of no aid to a plaintiff seeking damages from the public treasury." *Scheuer v. Rhodes*, 416 U.S. 232 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, (1946); *Ford Motor Co. v. Dep't Of Treasury*, 323 U.S. 459 (1945), *overruled on other grounds by Lapidus v. Bd. of Regents of Univ. Sys. of Georgia*, 535 U.S. 613 (2002); *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47 (1944)). *Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 256–57 (2011) ("*Ex parte Young* cannot be used to obtain an injunction requiring the payment of funds from the State's treasury."); *Okpalobi*, 244 F.3d at 439 ("*Ex parte Young* cannot be used to expose states to retroactive monetary damages.>").

### **III. Ms. Clark is not a "Person" for Purposes of Section 1983**

Finally, Ms. Clark, in her official capacity, is not considered a "person" subject to liability within the meaning of Section 1983. The United States Supreme Court's holding in *Will* is conclusive. In *Will*, the Supreme Court held that the states, arms of the states, and even officials acting in their official capacity are not "persons" within the meaning of Section 1983. *Id.*

Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself. We see no reason to adopt a different rule in the present context, particularly when such a rule would allow petitioner to circumvent congressional intent by a mere pleading device.

*Will*, 491 U.S. at 71 (internal citations omitted). In *Klingler v. University of Southern Mississippi*, *USM*, 612 Fed. Appx. 222 (5th Cir. May 11, 2015), the Court said that "[b]ecause neither a State nor its officials acting in their official capacities are 'persons' under § 1983, such suits against a state or a state official acting in his or her official capacity must be dismissed." *Id.* at 226 (citation omitted).

**CONCLUSION**

For the reasons set forth, Ms. Clark respectfully requests that the Court dismiss the Complaint against her with prejudice.

This the 10<sup>th</sup> day of September, 2019.

Respectfully submitted,

SHARON CLARK, in her official capacity as  
Executive Director of the Mississippi State Board of  
Cosmetology

BY: JIM HOOD, ATTORNEY GENERAL FOR THE  
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BY: /s/ Douglas T. Miracle  
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**CERTIFICATE OF SERVICE**

I, Douglas T. Miracle, Special Assistant Attorney General, hereby certify that the foregoing document has been filed using the Court's ECF filing system and thereby served on all counsel of record who have entered their appearance in this action to date.

This the 10<sup>th</sup> day of September, 2019.

/s/ Douglas T. Miracle  
Douglas T. Miracle