

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Kevin Fennick,	)		
Plaintiff,	)		
V.	)	Civil Action No.	<b>12</b> 1269
The State of Massachusetts,	)		
Defendant.	)		

## MEMORANDUM OPINION

This matter is before the Court on review of plaintiff's *pro se* complaint and application to proceed *in forma pauperis*. The Court will grant plaintiff's application and dismiss the complaint for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (requiring the court to dismiss an action "at any time" it determines that subject matter jurisdiction is wanting).

Plaintiff is a resident of Boston, Massachusetts, suing the State of Massachusetts for \$175 million in damages. The Eleventh Amendment to the U.S. Constitution immunizes a state from suit in federal court, unless immunity is waived. See College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 675-76 (1999); Keenan v. Wash. Metro. Area Trans. Auth'y, 643 F. Supp. 324, 327-28 (D.D.C. 1986) (citing cases). A waiver is found "only where stated 'by the most express language or by such overwhelming implications from the test as [will] leave no room for any other reasonable construction.' "Morris v. Wash. Metro. Area



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<sup>&</sup>lt;sup>1</sup> The amendment provides in pertinent part: "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State." U.S. Const. amend. XI. It is established that this amendment applies equally to suits brought by citizens against their own states. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974); *Hans v. Louisiana*, 134 U.S. 1, 13-15 (1890).

*Trans. Auth'y*, 781 F.2d 218, 221 (D.C. Cir. 1986) (internal citations omitted). Plaintiff has not alleged, and the complaint does not reveal, a basis from which the Court may find a waiver of Massachusetts' immunity. Therefore, the complaint will be dismissed. A separate Order accompanies this Memorandum Opinion.

July 157, 2012

United States District Judge