



F.Supp.2d 1192, 1198 (D.Kan. 2002). The Eleventh Amendment also applies to when a plaintiff seeks declaratory or injunctive relief against a state. Steadfast Ins. Co. v. Agricultural Ins. Co., 507 F.3d 1250, 1252 (10<sup>th</sup> Cir. 2007). In this matter, plaintiff appears to concede that he may not bring a damages claim against defendants in their official capacities.

Plaintiff in response to the motion to dismiss has filed a motion to amend the complaint which deletes references to suing defendants in their “representative” capacities, but adds language seeking “declaratory and injunctive relief against the Defendants in their official capacities.” Doc. No. 15-1, p. 6. Counsel for defendants in their official capacities opposes the motion to amend the complaint upon the grounds that plaintiff does not specify the kind of declaratory and injunctive relief he is requesting and because plaintiff fails to allege any facts that would support a claim for declaratory and injunctive relief.

The court shall deny the motion to amend on the grounds of futility. A proposed amendment to a complaint may be denied on the grounds of futility if the claims added by the proposed amendment would be subject to dismissal for any reason. See Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1239-40 (10<sup>th</sup> Cir. 2001). Here, the proposed amended complaint presents no facts which would support a plausible claim for declaratory or injunctive relief. “A ‘plaintiff cannot maintain a declaratory or injunctive action unless he or she can demonstrate a good chance of being likewise injured in the future.’” Barney v. Pulsipher, 143 F.3d 1299, 1306 n.3 (10<sup>th</sup> Cir. 1998)(quoting, Facio v. Jones, 929 F.2d 541, 544 (10<sup>th</sup> Cir. 1991)); see also, Ysais v. New Mexico, 373 Fed.Appx. 863, 866 (10<sup>th</sup> Cir.) cert. denied, 131 S.Ct. 88 (2010)(“declaratory judgment is meant to define the rights and obligations of the parties in anticipation of some future conduct, not simply to proclaim liability for a past act”). No facts are set forth in the proposed amended complaint which demonstrate a good chance of plaintiff being

injured by defendants in the future. Therefore, plaintiff's motion to amend the complaint to add unspecified claims for declaratory and injunctive relief against defendants in their official capacities shall be denied.

In conclusion, defendants' motion to dismiss plaintiff's official capacity claims (Doc. No. 6) shall be granted. Plaintiff's motion to amend (Doc. No. 15) shall be denied.

**IT IS SO ORDERED.**

Dated this 29<sup>th</sup> day of November at Topeka, Kansas.

s/Richard D. Rogers  
United States District Judge