

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

THE NATIONAL FEDERATION
OF THE BLIND OF VIRGINIA, et al.,

Plaintiffs,

v.

Case No. 3:23-cv-127-HEH

VIRGINIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

**PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS ON BEHALF OF DEFENDANTS CHADWICK DOTSON,
BARRY MARANO, DARRELL MILLER, HAROLD CLARKE, DAVID NEWCOMER,
LAKEISHA SHAW, LANE TALBOTT, LARRY EDMONDS, OFFICER D. SMITH,
TAMMY WILLIAMS, AND THE VIRGINIA DEPT. OF CORRECTIONS**

Plaintiffs—six prisoners in the custody of Defendant Virginia Department of Corrections (“VDOC”), one former prisoner, and a non-profit organization that advocates for the rights of the blind—seek systemic change within VDOC due to its ongoing failure to provide blind inmates with equal access to programs and services. This Court, in large part, denied Defendants’ Motion to Dismiss the initial Complaint and permitted Plaintiffs’ claims under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and the Virginians with Disabilities Act (“VDA”) to proceed. Order at 1–2 (Oct. 16, 2023), ECF No. 128. Defendants Chadwick Dotson, Barry Marano, Darrell Miller, Harold Clarke, David Newcomer, Lakeisha Shaw, Lane Talbott, Larry Edmonds, Officer D. Smith, Tammy Williams, and VDOC (collectively, “VDOC Defendants”) now seek a second bite at the motion-to-dismiss apple, making similar arguments and advancing a borderline frivolous mootness argument in an attempt to curtail

Plaintiffs' case. Plaintiffs respectfully request that this Court reject Defendants' arguments and deny their Motion to Dismiss for the reasons set forth herein.

BACKGROUND

Plaintiffs National Federation of the Blind of Virginia ("NFB-VA"), Nacarlo Courtney, William Hajacos, Michael McCann, Wilbert Rogers, Kevin Muhammad Shabazz, Patrick Shaw, and William Stravitz filed this action on February 15, 2023, alleging among other claims that the VDOC Defendants have violated Plaintiffs' rights under the ADA, Section 504, and the VDA by failing to accommodate their disabilities or by discriminating against them on the basis of their disabilities. *See* Compl., ECF No. 1. This Court heard argument on the VDOC Defendants' Motion to Dismiss on August 10, 2023, *see* ECF No. 74, and issued an opinion and order denying Defendants' Motion in part on October 16, 2023, Mem. Op. (Oct. 16, 2023), ECF No. 127; Order (Oct. 16, 2023), ECF No. 128. Specifically, this Court denied Defendants' Motion with regard to dismissing the individual Defendants in their official capacity, holding that "NFBVA and the Individual Plaintiffs can assert their ADA claims against the VDOC and its officials in their official capacity." Mem. Op. at 23. The Court also denied Defendants' Motion as to its argument that Plaintiffs' claims under the VDA were barred by common law sovereign immunity. *Id.* at 28–30. Plaintiffs filed their Amended Complaint on November 6, 2023, alleging substantively similar claims under the ADA, Section 504, and the VDA. Am. Compl. ¶¶ 174–83, 189–209, ECF No. 136.

STATEMENT OF FACTS

Plaintiffs are seven blind¹ men who, at all relevant times, have been incarcerated within VDOC, and one non-profit membership organization, NFB-VA. Am. Compl. ¶¶ 9–16.

1. Four of the Plaintiffs, Michael McCann, Kevin Muhammad Shabazz, Patrick Shaw, and William Stravitz, are housed at Deerfield Correctional Center (“Deerfield”) and are members of the NFB-VA. *Id.* ¶¶ 11, 13–15, 17.

2. Two of the Plaintiffs, William Hajacos and Wilbert Rogers, are currently housed at Greenville Correctional Center (“Greenville”). *Id.* ¶¶ 10, 14.

3. At all relevant times and until his recent release, Plaintiff Nacarlo Courtney was also housed at Greenville. *Id.* ¶ 9.

4. Each individual Plaintiff has a vision impairment that substantially limits the major life activity of seeing. *Id.* ¶¶ 9–16.

5. Plaintiff NFB-VA’s members include blind people of all ages (including four of the Individual Plaintiffs), their families, and friends. *Id.* ¶ 16. NFB-VA provides advocacy and support to blind Virginians, promotes full participation and integration of blind people in all areas of life, and advocates for change when equal access and treatment of the blind is denied. *Id.*

6. Plaintiffs allege that they have been denied reasonable accommodations and have been denied the benefits of many of VDOC’s programs, including education, employment, housing, libraries, commissary, and more, on the basis of their disabilities. *Id.* ¶¶ 86–95, 120–62.

¹ We use blind in its broad sense, to include people with low-vision and other vision impairments that substantially limit their ability to see, consistent with the definition laid out in the Amended Complaint. *See* Am. Compl. ¶ 1 n.1.

7. Because of Defendants’ actions and omissions, Plaintiffs have—among other consequences—suffered physical injuries, lost money and personal property, been denied opportunities for rehabilitation, and been put at a greater risk of such harms. *Id.*

ARGUMENT

I. Plaintiffs’ claims are neither redundant nor moot.

A. VDOC and the individual VDOC Defendants are all proper, non-redundant defendants.

VDOC and the individual VDOC Defendants are all proper defendants necessary for the adjudication of Plaintiffs’ claims. As they argued in their Motion to Dismiss the initial Complaint, Defendants again maintain that, because Plaintiffs brought suit against VDOC, Plaintiffs’ official-capacity claims against the individual VDOC Defendants are redundant, and that the Court should dismiss them from this suit. *See* Mem. In Supp. Defs.’ 1st Mot. To Dismiss [“Defs.’ 1st Mot.”] at 24–25, ECF No. 58; Mem. In Supp. of Defs.’ 2d Mot. to Dismiss [“Defs.’ 2d Mot.”] at 4–5, ECF No. 146. Defendants were wrong then, and they are wrong now.

As Plaintiffs explained previously, in *Fauconier v. Clarke*, 966 F.3d 265 (4th Cir. 2020), the Fourth Circuit squarely ruled that state prison officials may be sued in their official capacity under Title II of the ADA because those claims are “effectively, claims made against the State.” Pls.’ Opp’n to Defs.’ Mot. to Dismiss [“Pls.’ Opp’n”] at 35–36 (quoting *Fauconier*, 966 F.3d at 280); *see also Hicks v. Doyle*, No. 1:20cv552, 2023 WL 2385613, at *10 (E.D. Va. Mar. 6, 2023) (holding that “[p]laintiff may clearly raise his ADA and RA claims against [state prison medical contractor] in his official capacity”).² Plaintiffs’ Amended Complaint sufficiently alleges ongoing

² To the extent Defendants advance this argument against Plaintiffs’ Section 504 claim, the Fourth Circuit has likewise held that an official capacity suit under Section 504 is essentially a suit against a public entity and is permitted. *See, e.g., Williams v. Carvajal*, 63 F. 4th 279, 284 (4th Cir. 2023) (citing *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 472 (4th Cir. 1999) (agreeing with the district

violations of federal law, namely the ADA and Section 504, against the VDOC Defendants. Am. Compl. ¶¶ 86–95, 120–62. They seek prospective injunctive relief to remedy these ongoing violations—relief which the individual VDOC Defendants can provide. *Id.* ¶¶ 237–42. The individual Plaintiffs seek monetary damages for their harms, *id.* ¶ 244, which only VDOC can provide, *see* 42 U.S.C. § 2000d-7 (expressly abrogating states’ Eleventh Amendment immunity for violations of “the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance,” such as Section 504); *see also Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 491 (4th Cir. 2005) (“Section 504 is enforceable through private causes of action, . . . and the States are not immune from federal suits to enforce this provision” (citations omitted)). NFB-VA seeks VDOC-wide prospective injunctive relief that is not limited to Greensville and Deerfield, making VDOC, Dotson, and Marano proper defendants because they are the only ones in a position to grant system-wide relief. The individual Plaintiffs are housed at Deerfield and Greensville, making the specific prison officials at those facilities against whom they bring claims proper, non-redundant defendants. Finally, this Court has already ruled that “NFBVA and the Individual Plaintiffs can assert their ADA claims against the VDOC and its officials in their official capacity.” Mem. Op. at 23. Defendants do not give this Court any reason to disturb this ruling.

B. The claims brought by the currently incarcerated Plaintiffs are not moot.

court in allowing an official capacity claim against a federal Bureau of Prisons official in a suit against a covered federal government entity)); *Shepard v. Irving*, 77 F. App’x. 615, 620 n.3 (4th Cir. 2003) (holding that state university officials were liable in their official capacity under Section 504 for damages and injunctive relief, reasoning that a suit against the officials in their official capacity was in fact a suit against the state entity.). Thus, Plaintiffs’ Section 504 claims against the individual VDOC Defendants in their official capacities may also proceed.

Defendants argue that Plaintiff Nacarlo Courtney's claims are mooted by his release from prison. Defs.' 2d Mot. at 5. Although Plaintiffs agree that Mr. Courtney's claims for prospective injunctive relief under the ADA, Section 504, and the VDA are mooted by his release, his claims for damages and declaratory relief are not.³ As for the remaining individual Plaintiffs—Mr. Hajacos, Mr. McCann, Mr. Rogers, Mr. Shabazz, Mr. Shaw, and Mr. Stravitz—they are still incarcerated at their respective prisons. Therefore, Defendants have no colorable argument that their claims are mooted by Mr. Courtney's release.

Defendants then confusingly argue that the incarcerated Plaintiffs' claims against Defendants Clarke, Williams, Edmonds, and Punturi in their official capacities are moot because they no longer hold the positions that they held during the timeframe of the allegations in the Amended Complaint. *Id.* at 6. Federal Rule of Civil Procedure 25(d) provides for the automatic substitution of a public official sued in his or her official capacity with his or her successor. Fed. R. Civ. P. 25(d) ("An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party."); see *Farley v. Clarke*, No. 7:15-cv-00352, 2016 WL 8540135, at *1 n.2 (W.D. Va. Dec. 27, 2016) (automatically substituting new VDOC defendant in her official capacity under Rule 25(d) when previously named VDOC defendant died). Thus, whoever currently holds the public offices that Defendants Clarke, Williams, Edmonds, and Punturi previously held are now the defendants for the claims in which they were

³ See *Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991) (holding that a prisoner's case for damages is not mooted after his release from prison); *Grimm v. Gloucester Cnty. Sch. Bd.*, No. 4:15-CV-54, 2017 WL 9882602, at *3 (E.D. Va. Dec. 12, 2017) (holding that where "resolution of a claim for declaratory relief determines liability for damages to redress injuries alleged and proven, a plaintiff's claim for declaratory relief is not necessarily moot" and allowing declaratory relief claim to proceed (quoting *Marks v. City Council of City of Chesapeake*, 723 F. Supp. 1155, 1159 (E.D. Va. 1988))).

sued in their official capacity. In other words, the incarcerated Plaintiffs' claims for prospective injunctive relief are not moot and dismissal of those claims against Defendants Clarke, Williams, Edmonds, and Punturi from this case is not necessary because the Rules provide for the automatic substitution of the proper defendants.⁴ Furthermore, those individuals are still proper Defendants for the purposes of Plaintiffs' claims for money damages under Section 504 and the VDA.

II. The VDA permits suit against a state entity in federal court.

The VDA provides that no qualified individual with a disability may be “excluded from participation in, be denied the benefits of, or be subjected to discrimination” by a state agency. Va. Code Ann. § 51.5-40. The individual Plaintiffs have, at all relevant times, been blind and, by virtue of their incarceration, are qualified to participate in and benefit from VDOC's many programs and activities, including education, employment, commissary, and more. Am. Compl. ¶¶ 1, 9–15.

The Commonwealth expressly consented to be sued under the VDA, which applies to “any program or activity conducted by or on behalf of any state agency.” Va. Code Ann. § 51.5–40. As Plaintiffs have previously argued, the relevant language in the VDA's remedies provision states: “An action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter.” Va. Code Ann. § 51.5-46(B); *see also* Pls.' Opp'n at 27–29. This section does not mandate that a plaintiff bringing a VDA claim do so in a state court and is, therefore, sufficient to waive sovereign immunity. A separate provision in the remedies section confers on “[a]ny circuit court having jurisdiction and venue pursuant to Title 8.01” the right to provide relief where plaintiffs are entitled to it. *Id.* § 51.5-46(A). This language clarifies where state-court litigants must first file their VDA claims (*i.e.*, in the circuit court, rather than the

⁴ Chadwick Dodson is substituted in place of Defendant Clarke, Darrell Miller is substituted in place of Defendant Williams, and David Newcomer is substituted in place of Defendants Edmonds and Punturi.

general district court). The legislature thus stated *which* state courts could hear VDA cases, not that *only* state courts could hear them.

Defendants argued in their motion to dismiss Plaintiffs’ original complaint that common law sovereign immunity barred the Plaintiffs’ claims under the VDA due to the language provided in § 51.5-46(A). *Id.*; Defs.’ 1st Mot. at 37–41. Defendants repeat this argument under the guise of a different legal theory in the instant Motion. This Court rejected that argument, Mem. Op. at 29–30, as it should do again here. Defendants rely on the same textual interpretation that this Court already held was not sufficient to establish common law sovereign immunity. *Compare* Mem. Op. at 29, *with* Defs.’ 1st Mot. at 7. As was the case in their first motion to dismiss, Defendants provide no additional textual or case law in support of their argument. *Compare* Defs.’ 1st Mot. at 39, *with* Defs.’ 2d Mot. at 7. While the plaintiff generally bears the burden to prove subject matter jurisdiction, “the burden of proof falls to an entity seeking immunity as an arm of the state.” *Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 176 (4th Cir. 2019) (citing *Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 543 (4th Cir. 2014)). Without additional support for their argument, Defendants have failed to meet their burden here.

Furthermore, because this Court has previously held that the Commonwealth has expressly consented to suit under the VDA, and that “there is nothing precluding Plaintiffs from filing their VDA claims in federal court so long as this Court can exercise supplemental jurisdiction over the claims,” Mem. Op. at 29–30, the law of the case doctrine precludes this Court’s review of Defendants’ Motion on these grounds. The law of the case doctrine “posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Spencer v. Earley*, 278 F. App’x 254, 261–62 (4th Cir. 2008) (internal quotation marks omitted) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). As the

Commonwealth's express waiver has already been determined in the original Motion to Dismiss ruling, Plaintiffs respectfully request that the Court deny Defendants' motion on these grounds.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss.

Respectfully submitted,

/s/ Samantha Westrum

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Dated: November 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this day the 30th of November, 2023, I filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system, which has automatically sent copies to the following:

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