

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

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

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Chadwick Dotson, Barry Marano, Darrell Miller, Harold Clarke, Kevin Punturi, Lakeisha Shaw, Lane Talbott, Larry Edmonds, Officer D. Smith, and Tammy Williams (“Defendants”), by counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully move this Honorable Court for entry of an order dismissing them from this case, for the reasons detailed herein. Further, the Defendants, along with the Virginia Department of Corrections (“VDOC”), also respectfully request that the Court dismiss the claims asserted against them under the Virginians with Disabilities Act, for the reasons detailed in-depth below.

Background

This case has been brought by several VDOC inmates, and one former inmate, regarding various accommodations that the Plaintiffs allege that they were denied for their vision impairments while they were housed at Deerfield Correctional Center (“Deerfield”) and Greensville Correctional Center (“Greensville”). This action currently proceeds on the Plaintiffs’ Amended Complaint. (*See* Amend. Compl., ECF No. 136.) In their Amended Complaint, the Plaintiffs bring claims under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Rehabilitation Act”), and the Virginians with Disabilities Act (“VDA”)

against the Defendants in their official capacities, as well as against VDOC as a state agency. (Amend. Compl. ps. 23-27.).

In response to the Plaintiffs' Amended Complaint, the individual Defendants request that the Court dismiss them from this action. As detailed herein, the Plaintiffs have named VDOC, the relevant state agency, as a Defendant in this action but have also named the Defendants in their official capacities, which is redundant. Further, at this juncture, several of the Plaintiffs' claims for injunctive relief against the individually named Defendants are moot, as one of the Plaintiffs is no longer in VDOC custody and several of the named Defendants are no longer in the respective positions they held at the relevant time, making injunctive relief against them unavailable to the Plaintiffs. Accordingly, to streamline this litigation and to clarify which claims for injunctive relief remain cognizable, Defendants Marano, Miller, Clarke, Punturi, Lakeisha Shaw, Talbott, Edmonds, Smith, and Williams respectfully ask this Court to dismiss them from this lawsuit.

Further, the Defendants and VDOC are entitled to Eleventh Amendment immunity as to the Plaintiffs' VDA claims. The VDA permits suit to be filed only in a Virginia "circuit court having jurisdiction and venue[.]" Va. Code § 51.5-46. The VDA does not permit suit against the Commonwealth or her agencies in federal court. Accordingly, for this reason, the Defendants and VDOC respectfully request that the Court dismiss the Plaintiffs' VDA claims against them pursuant to their Eleventh Amendment Immunity.

Statement of Facts

1. Plaintiffs are six current VDOC inmates, one former VDOC inmate, and one nonprofit organization. Amend. Compl. ¶¶ 9-16.

2. Of the seven individual Plaintiffs, two Plaintiffs are currently incarcerated at Greenville: William L. Hajacos (“Hajacos”) and Wilbert G. Rogers (“Rogers”). Amend. Compl. ¶¶ 10, 14. Their allegations address the conditions of their confinement at Greenville.
3. Four Plaintiffs are currently incarcerated at Deerfield: Michael McCann (“McCann”), Kevin M. Shabazz (“Shabazz”), Patrick Shaw (“Patrick Shaw”),¹ and William Stravitz (“Stravitz”). Amend. Compl. ¶¶ 11, 13-15. Their allegations address the conditions of their confinement at Deerfield.
4. Plaintiff Nacarlo Antonio Courtney (“Courtney”) was previously a prisoner in the custody of VDOC. From November 2021 to March 2023, Mr. Courtney was housed at Greenville. VDOC released him from custody on March 16, 2023. Amend. Compl. ¶ 9.
5. Plaintiffs allege they experience different levels of “blindness.”² See Amend. Compl. ¶ 1. Of the seven individual plaintiffs, only Rogers is identified as “fully blind.” Amend Compl. ¶ 12. The remaining individual Plaintiffs identify as having varying levels of visual impairment and retain some level of sight. See Amend. Compl. ¶¶ 77-95. Accordingly, their specific complaints vary based on their individual visual needs.
6. The Plaintiffs allege, for a variety of reasons, that VDOC has failed to accommodate their varying levels of impairment. See Amend. Compl. ¶¶ 77-95.
7. The Plaintiffs have named several individuals as Defendants in this action: Chadwick Dotson, the current Director of VDOC; Barry Marano, VDOC’s ADA Coordinator; Darrell Miller, the

¹ To reduce confusion, when referring to Plaintiff Patrick Shaw in this Memorandum, Defendants use his full name: Patrick Shaw. When referring to Defendant Lakeisha Shaw, Defendants also refer to her by her full name: Lakeisha Shaw.

² Plaintiffs use “blind” in a “broad sense” to include individuals capable of seeing. Amend. Compl. ¶ 1, n. 1.

Warden of Deerfield; Harold Clarke, the former Director of VDOC; Kevin Punturi, the former Warden of Greenville³; Lakeisha Shaw, the ADA Coordinator at Deerfield; Lane Talbott, the ADA Coordinator at Greenville; Larry Edmonds, the former Warden of Greenville; Officer D. Smith, a Correctional Officer at Greenville; and Tammy Williams, the former Warden of Deerfield. Amend. Compl. ¶¶ 21-29.

8. In the caption of the Plaintiff's Amended complaint, the Plaintiffs state that they have sued each of the named Defendants in their individual capacities. *See* Amend. Compl. p. 1.
9. However, in listing their Claims for Relief, the Plaintiffs only name the Defendants in their official capacities. *See* Amend. Compl. ps. 23-27.

Argument

I. The Plaintiff's Official Capacity Claims against the Named Defendants are Redundant and Many of those Claims are Moot.

"[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," and therefore it is "no different from a suit against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Here, the Plaintiffs have named VDOC, the state agency, as a Defendant. However, the Plaintiffs also seek to bring claims against the individually named Defendants in their official capacities.⁴ But such claims "are redundant" in this case because, as stated, the Plaintiffs have also named VDOC as a Defendant. *Richardson v. Clarke*, E.D. Va. No. 3:18CV23-HEH, 2020 WL 4758361, at *5 (E.D. Va. Aug. 17, 2020) (Hudson, J.) (citing *Latson v. Clarke*, 249 F. Supp. 3d 838, 856 (W.D. Va.

³ At the time of the filing of the Plaintiffs' Amended Complaint, Defendant Punturi was the Warden of Greenville. However, upon information and belief, since the filing of the Plaintiffs' Amended Complaint, Mr. Punturi has since moved to a different VDOC institution.

⁴ The Plaintiffs have not pled individual capacity claims against the named Defendants in their Amended Complaint. *See* Amend. Compl. ps. 23-27.

2017)). The Plaintiff's official capacity claims against the Defendants should therefore be dismissed. *See id.* (dismissing VDOC Defendants in their official capacities under the ADA and Rehabilitation Act as redundant of the claims against VDOC).

Further, as this Court has already held in this litigation, the Plaintiffs' official capacity claims against the individually named Defendants are cognizable for injunctive relief only. *Nat'l Fed'n of the Blind of Virginia v. Virginia Dep't of Corr.*, E.D. Va. No. 3:23-CV-127-HEH, 2023 WL 6812061, at *11 (E.D. Va. Oct. 16, 2023) (explaining that the "the States' sovereign immunity has not been abrogated and Plaintiffs' claims for money damages [against the individuals in their official capacities] are barred. Therefore, Plaintiffs are only entitled to declaratory and injunctive relief" under the ADA.) However, at this juncture, many of the Plaintiffs' claims for injunctive relief against the Defendants in their official capacities are now moot.

First, Plaintiff Nacarlo Antonio Courtney's claims for injunctive relief against any of the Defendants in their official capacities are moot because Courtney has been released from VDOC custody. Amend. Compl. ¶ 9. A prisoner's transfer or release from prison moots his claims for injunctive and declaratory relief with respect to his incarceration there. *See Incumaa v. Ozmint*, 507 F.3d 281, 286–87 (4th Cir.2007); *see also Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir.1991) (holding that a transfer rendered moot a prisoner's claims for injunctive and declaratory relief). Since Courtney is no longer within VDOC custody, his claims for injunctive relief against any of the individual Defendants in their official capacities are moot. *Id.*

Likewise, the remaining Plaintiffs' claims against Clarke, Williams, Edmonds, and Punturi in their official capacities are moot because these individual Defendants are no longer in the positions they held within VDOC during the relevant timeframe and therefore are unable to provide injunctive relief to the Plaintiffs. *See* Amend. Compl. ¶¶ 9, 11, 12, 13. As explained herein,

Defendants Clarke, Williams, Edmonds, and Punturi are, respectively, the former Director of VDOC, and the former Wardens of Greensville and Deerfield. These individuals therefore cannot be sued in their official capacities for injunctive relief. *Wilson v. United States*, 332 F.R.D. 505, 528 (S.D. W.Va. 2019) (explaining that “Plaintiff cannot maintain an official capacity claim against Warden Nohe for prospective relief, because she is no longer the Warden at Lakin Correctional Center[.]”).

As stated, the Plaintiffs have named VDOC, the relevant state agency, as a Defendant in this action. But the Plaintiffs have also named several VDOC employees in their official capacities. However, at this juncture, several of the Plaintiffs’ claims for injunctive relief are moot, and maintaining the individually named Defendants in this lawsuit in their official capacities is redundant. Accordingly, to streamline this litigation and to clarify what claims for injunctive relief remain cognizable, Defendants Marano, Miller, Clarke, Punturi, Lakeisha Shaw, Talbott, Edmonds, Smith, and Williams respectfully ask this Court to dismiss them from this lawsuit.

II. The Defendants in their Official Capacities and VDOC are Entitled to Eleventh Amendment Immunity as to the Plaintiffs’ VDA Claims.

The Eleventh Amendment provides that “[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. “The Supreme Court ‘has drawn on principles of sovereign immunity to construe the Amendment to establish that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state.’” *Lee–Thomas v. Prince George's Cnty. Pub. Sch.*, 666 F.3d 244, 248 (4th Cir.2012) (quoting *Port Auth. Trans–Hudson Corp. v. Feeney*, 495 U.S. 299, 304 (1990)). The Court has also held that Eleventh Amendment immunity extends to “state agents and state instrumentalities.” *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997).

In this case, the Plaintiffs have filed a federal lawsuit against the Defendants in their official capacities and VDOC, a state agency, under the VDA. However, the Commonwealth, and by extension, VDOC and the Defendants in their official capacities, did not consent to be sued in federal court under the VDA. Specifically, the VDA permits suit to be filed only in a Virginia “circuit court having jurisdiction and venue pursuant to Title 8.01.” Va. Code § 51.5-46.⁵ The VDA does not permit suit against the Commonwealth or her agencies in *federal* court. As stated by the Fourth Circuit, “a state does not waive its Eleventh Amendment immunity ‘by consenting to suit in the courts of its own creation,’ ‘by stating its intention to sue and be sued, or even by authorizing suits against it in any court of competent jurisdiction.’” *Lee-Thomas v. Prince George’s Cnty. Pub. Sch.*, 666 F.3d 244, 251 (4th Cir. 2012) (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 676 (1999)).

Here, the VDA preserves the Commonwealth’s Eleventh Amendment immunity against federal lawsuits. Accordingly, the Defendants and VDOC respectfully request that the Court dismiss the Plaintiff’s VDA claims against them.

Conclusion

The individually named Defendants respectfully request that the Court dismiss them from this action. As detailed herein, the Plaintiffs have named VDOC, the relevant state agency, as a Defendant but have also named the Defendants in their official capacities, which is redundant in this case. Further, several of the Plaintiffs’ claims for injunctive relief against the named Defendants are moot, as one of the Plaintiffs is no longer in VDOC custody and several of the named Defendants are no longer in their relevant positions at VDOC, making injunctive relief

⁵ Title 8.01 of the Virginia Code addresses jurisdiction, venue, and other procedural matters applicable to Virginia’s state courts.

against them unavailable to the Plaintiffs. For these reasons, Defendants Marano, Miller, Clarke, Punturi, Lakeisha Shaw, Talbott, Edmonds, Smith, and Williams respectfully ask this Court to dismiss them from this lawsuit.

Further, the Defendants and VDOC are entitled to Eleventh Amendment immunity as to the Plaintiffs' VDA claims. The VDA permits suit to be filed only in a Virginia "circuit court having jurisdiction and venue[.]" Va. Code § 51.5-46. The VDA does not permit suit against the Commonwealth or her agencies in federal court. Accordingly, for this reason, the Defendants and VDOC respectfully request that the Court dismiss the Plaintiffs' VDA claims against them pursuant to their Eleventh Amendment Immunity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to the following:

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