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.

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

The Virginia Department of Corrections ("VDOC"), Chadwick Dotson, Barry Marano, Darrell Miller, Harold Clarke, Kevin Punturi, Lakeisha Shaw, Lane Talbott, Larry Edmonds, Officer D. Smith, David Newcomer, and Tammy Williams ("Defendants"), by counsel, submit the following Reply in support of their Motion to Dismiss.

Introduction

In response to the Plaintiff's Amended Complaint, VDOC and the VDOC individuals named only in their official capacities (the "Defendants"), filed a Motion to Dismiss wherein the Defendants argued that because several of the official capacity Defendants are no longer employed by VDOC or are no longer in their positions within VDOC during the relevant timeframe, the Plaintiff's claims for injunctive relief against them are moot. In response, the Plaintiffs assert that the Defendants have brought a "borderline frivolous mootness argument" because the Plaintiffs seek "VDOC-wide prospective injunctive relief," and therefore their claims for injunctive relief against the named Defendants in their official capacities, no matter who they are, are not moot. (ECF No. 150, at 5.) But under the Prisoner Litigation Reform Act ("PLRA"), which governs this case, agency-wide injunctive relief is not available to the Plaintiffs. Therefore, as detailed herein,

the Plaintiffs' claims against the former Director of VDOC and the former wardens of Greensville Correctional Center ("Greensville") and Deerfield Correctional Center ("Deerfield")—Clarke, Williams, Punturi, and Edmonds—are indeed moot. And, notwithstanding the Plaintiffs' arguments to the contrary, the inclusion of claims against VDOC *and* against eleven named official-capacity Defendants—a group which now includes officials at multiple levels of the agency's hierarchy and those who no longer hold positions relevant to the claims in this action—are in fact redundant and unnecessary.

Further, the Plaintiffs' arguments with respect to claims brought under the Virginians with Disabilities Act ("VDA") are misplaced. Plaintiffs contend that the Court has already rejected the Defendants' argument that they enjoy Sovereign Immunity against claims brought under the VDA in its earlier Memorandum Opinion. (*See* ECF No. 127.) But here, the Defendants assert that they are protected by immunity under the Eleventh Amendment, which although similar to an assertion of Sovereign Immunity, is a distinct doctrine which has not yet been fully addressed in this case. As explained below, VDOC and the VDOC official capacity Defendants are entitled to Eleventh Amendment Immunity in this action as to the Plaintiffs' VDA claims because the Commonwealth has not unequivocally consented to be sued in federal court under the VDA.

Argument

I. Plaintiffs are not entitled to "VDOC-wide" injunctive relief in this case and therefore their claims against the VDOC Defendants in their official capacities are moot and redundant.

As an initial matter, the Plaintiffs concede that Nacarlo Courtney's claims against VDOC and the VDOC official capacity Defendants for injunctive relief are moot. (ECF No. 150, at 6.) Plaintiffs also acknowledge that the official-capacity Defendants who no longer hold their relevant positions—former Director Clarke and former Wardens Williams, Edmonds, and Punturi—are

automatically substituted with their successors pursuant to Federal Rule 25(d). (*Id.* at 6–7.) Thus, Plaintiffs also appear to concede that those Defendants are no longer properly named in this case for purposes of injunctive relief.[1]

Nonetheless, the Plaintiffs argue that their claims against the former wardens of Greensville and Deerfield—Defendants Williams, Punturi, and Edmonds—as well as all of the other official capacity Defendants, are not moot the because the Plaintiffs seek "VDOC-wide injunctive relief." (*Id*. at 5.) But the Plaintiffs ignore the fact that this case is governed by the PLRA which severely limits the availability of injunctive relief to them. Specifically, the PLRA states:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

18 U.S.C. § 3626(A)(1)(a).

In this case, injunctive relief is only available if the Court finds that VDOC has violated the individual rights of the Plaintiffs housed at Greensville and Deerfield and orders such relief that "is narrowly drawn, [and] extends no further than necessary to correct the violation of the Federal right[.]" *Id*. Under the PLRA, there is no "VDOC-wide prospective injunctive relief" available to the Plaintiffs because the Plaintiffs have not pled a violation of a federal right of

[1] Plaintiffs maintain that claims asserted by Plaintiff Courtney and against Defendants Clarke, Williams, Edmonds, and Punturi are still live to the extent declaratory or monetary relief are sought. Yet these Defendants are only named in their official capacities. (*See* Am. Compl., ECF No. 126, at 23–26). 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" and is "no different from a suit against the State itself," *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989), and because Plaintiffs already assert claims for monetary relief against VDOC, it is unclear what purpose there is for keeping these official-capacity Defendants in this case.

anyone other than Plaintiffs Hajacos, McCann, Rogers, Shabazz, Courtney, and Stravitz (Plaintiff Courtney, as stated, is no longer incarcerated in VDOC so injunctive relief is not available to him at all). And, although the National Federation of the Blind of Virginia ("NFB-VA") is also a Plaintiff in this action, that does not remove this action from the contours of the PLRA. The NFB-VA is limited in the injunctive relief that it can obtain in this action to a finding of a violation of the individually named Plaintiffs' rights. 18 U.S.C. § 3626(A)(1)(a); *see*, *e.g., Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. New York State Dep't of Corr*. & Cmty. Supervision, 16 F.4th 67, 78 (2d Cir. 2021) (finding that the organizational Plaintiff had standing but the PLRA requires that injunction relief be narrowly drawn), *cert. denied sub nom. Green Haven Preparative Meeting v. New York State Dep't of Corr. & Cmty. Supervision*, 142 S. Ct. 2676, (2022).

Whether the Plaintiffs like it or not, the PLRA governs this action and prevents the Plaintiffs from receiving "VDOC-wide prospective injunctive relief" because such relief would necessarily "extend . . . further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs" in violation of the PLRA.[2] 18 U.S.C. § 3626. Therefore, the Plaintiff's claims for injunctive relief against the former wardens of VDOC facilities at which the Plaintiffs are housed are indeed moot. Defendants Punturi, Edmonds, and Williams are no longer the wardens of Greensville and Deerfield—the only two VDOC institutions from which the Plaintiffs' claims in this action arise. Those Defendants cannot provide narrowly tailored injunctive relief to the Plaintiffs at Deerfield and Greensville, and such claims against them are now moot.

[2] For example, the Plaintiff's request for "VDOC-wide" injunctive relief would necessarily affect VDOC facilities at which the Plaintiffs would never be housed, such as women's facilities, and thus would violate the PLRA because such relief is not narrowly drawn.

The Plaintiff's arguments as to why it is necessary that a former Director of VDOC and former wardens of the relevant facilities remain in this action exemplifies the redundancy of the Plaintiff's claims against VDOC and the official capacity Defendants. The Defendants do not dispute that the official capacity Defendants are automatically substituted under the Federal Rules. What is irrational is the Plaintiffs' argument that former officials in that same position are necessary in this action. Using the Plaintiffs' logic, *every VDOC employee* could be named as an official capacity Defendant, presumably making them subject to party discovery. This is clearly inappropriate, unnecessary, and redundant, as VDOC, alone, is the proper Defendant for any available injunctive relief in this case. Accordingly, to streamline this litigation, all of the VDOC official capacity Defendants respectfully request that the Court dismiss them from this action as the Plaintiffs' claims against them are redundant to the claims against VDOC. *See, e.g., Richardson v. Clarke*, E.D. Va. No. 3:18CV23-HEH, 2020 WL 4758361, at *5 (E.D. Va. Aug. 17, 2020) (Hudson, J.) (citation omitted) (dismissing VDOC Defendants in their official capacities under the ADA and Rehabilitation Act as redundant of the claims against VDOC).

II. The VDA does not waive VDOC's Eleventh Amendment Immunity in this Court.

In response to the Defendants' Motion to Dismiss on the issue of Eleventh Amendment Immunity, the Plaintiffs argue that the Court has already ruled on this issue and the Court should not deviate from that ruling. (ECF No. 150, at 7-8.) However, the Plaintiffs are incorrect that the Court has ruled upon the Defendants' Eleventh Amendment Immunity defense in this case. Although the Court ruled on the Defendants' Sovereign Immunity argument in its October 16, 2023 Memorandum Opinion, Eleventh Amendment Immunity is a distinct legal doctrine which the Court has not yet addressed. *See, e.g.*, *Lee-Thomas v. Prince George's Cnty. Pub. Sch.*, 666 F.3d 244, 256 (4th Cir. 2012) (explaining that "a state's waiver with respect to state court immunity

differs significantly from the question whether the state has waived its immunity from suit in federal court."). As detailed below, the Eleventh Amendment undoubtedly bars the Plaintiff's VDA claims against VDOC and the VDOC Defendants in their official capacities because the Commonwealth has not unequivocally consented to be sued in federal court under the VDA.

Unless a state waives its Eleventh Amendment immunity, courts lack jurisdiction over suits brought by private citizens against a state in federal court. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 64 (1996). Accordingly, the "test for determining whether a State has waived its immunity from federal-court jurisdiction is a stringent one." *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd*., 527 U.S. 666, 675 (1999)). To satisfy this stringent test, "[a] State's consent to suit must be 'unequivocally expressed' in the text of the relevant statute." *Id*. (citation omitted). "Only by requiring this clear declaration' by the State can [a court] be 'certain that the State in fact consents to suit." *Id*. at 284 (internal quotations and citation omitted). And, a state's waiver of Sovereign Immunity in state court does not mean the state has waived Eleventh Amendment immunity in federal court. As explicitly held 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)).

In this case, the Commonwealth did not unequivocally waive its Eleventh Amendment Immunity under the VDA. The VDA permits "an action" to be filed in a Virginia "circuit court

having jurisdiction and venue pursuant to Title 8.01." Va. Code § 51.5-46.[3] The U.S. Court of Appeals for the Fourth Circuit has found that such language does not waive the Commonwealth's Eleventh Amendment Immunity. *See, e.g., McConnell v. Adams*, 829 F.2d 1319, 1329 (4th Cir. 1987) (citations omitted) (explaining that the Virginia Torts Claims Act which allows for suit in "general district courts" and "circuit courts" only "waives sovereign immunity in actions brought in Virginia courts. [The VTCA] does not express the clear legislative intent necessary to constitute a waiver of eleventh amendment immunity."). Like the VTCA, the VDA does not permit suit against the Commonwealth or her agencies in *federal* court. Although the VDA has waived Sovereign Immunity in state court, it preserves the Commonwealth's Eleventh Amendment Immunity against federal lawsuits.

In response to the Defendants' Motion to Dismiss, the Plaintiffs point to the VDA's vague language that "[a]n action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter" to argue that the Commonwealth has waived Eleventh Amendment Immunity. (ECF No. 150, at 8 (citing Va. Code Ann. § 51.5-46(B)). But this language is much too broad to waive Eleventh Amendment Immunity. Indeed, "[a] state's intention to subject itself to suit in federal court must be 'stated by the most express language or by such overwhelming implication from the text as will leave no room for any other reasonable construction.'" *Lee-Thomas v. Prince George's Cty. Pub. Sch.*, 666 F.3d 244, 250 (4th Cir. 2012) (citation omitted). If the Court were to accept the Plaintiffs' logic that the VDA's language that "an action may be commenced" waives the Commonwealth's Eleventh Amendment Immunity, then the Commonwealth would never retain such immunity at all. Under the VDA, it is quite clear

[3] Title 8.01 of the Virginia Code addresses jurisdiction, venue, and other procedural matters applicable to Virginia's state courts.

that the Commonwealth retains its Eleventh Amendment Immunity against federal lawsuits. Accordingly, VDOC and the VDOC official capacity Defendants respectfully request that the Court dismiss the Plaintiff's VDA claims against them.[4]

Conclusion

Whether the Plaintiffs like it or not, the PLRA governs this action and prevents the Plaintiffs from receiving "VDOC-wide prospective injunctive relief." The Plaintiffs' claims against a former Director of VDOC and wardens of the relevant prisons in this case are moot, and all of the VDOC official capacity claims are unnecessarily redundant. The VDOC Defendants in their official capacities therefore request that the Court dismiss them from this action.

The Plaintiffs are also incorrect that the Court has ruled at all on the VDOC's Eleventh Amendment defense. Although the Court has addressed the Defendants' Sovereign Immunity argument, Eleventh Amendment Immunity is a distinct legal doctrine which the Court has not yet addressed in this action. As explained herein, VDOC and the VDOC official capacity Defendants are entitled to Eleventh Amendment Immunity in this action as to the Plaintiff's VDA claims because the Commonwealth has not unequivocally consented to be sued in federal court under the VDA.

For all the reasons detailed herein, the VDOC official capacity Defendants respectfully request that the Court dismiss them from this action. And, VDOC and the VDOC official capacity

[4] In response to the Defendants' Motion to Dismiss on the Eleventh Amendment immunity issue, the Plaintiffs try as a last-ditch-effort to make a law-of-the-case argument. (ECF No. 150, at 8-9.) However, as explained herein, the Court previously ruled on Sovereign Immunity—and not Eleventh Amendment Immunity—and therefore the Plaintiff's argument is misplaced. And, further, because the Plaintiffs have filed an Amended Complaint, the law-of-the-case doctrine is not necessarily binding. *See, e.g., Noel v. PACCAR Fin. Corp,* 568 F. Supp. 3d 558, 567 (D. Md. 2021) (explaining the circumstances in which courts have found the law-of-the-case doctrine applicable after the filing of an amended complaint).

Defendants respectfully request that the Court dismiss all of the Plaintiff's VDA claims against them.

Respectfully submitted,

VDOC, ET AL, DEFENDANTS.

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