

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Civil Case No. 2:20-cv-00007-JPJ-PMS

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

The Virginia Department of Corrections (“VDOC”) and its employees and agents (collectively, “Defendants”) have interfered with the fair adjudication of this case by intimidating and retaliating against Named Plaintiffs and class members (collectively, “Plaintiffs”) for refusing to endorse and affirm statements with which they disagree and which may conflict with or contradict with their past or future testimony in this case. As described more fully in their accompanying Memorandum of Law, Plaintiffs are currently suffering harm as a result of Defendants’ actions, and despite ample notice and opportunity, Defendants have refused to ameliorate this harm or respond to requests by Plaintiffs’ counsel to meet to discuss a possible resolution. To ensure the fair adjudication of their case, Plaintiffs, by and through their undersigned counsel, hereby move for an order that protects them from retaliatory, chilling, or harassing conduct, and prohibits Defendants from improperly communicating with putative class members about this lawsuit.

Courts have inherent equitable powers “over their own process, to prevent abuses, oppression, and injustices.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35, 104 S. Ct. 2199, 2209, 81 L. Ed. 2d 17 (1984) (internal quotations and citations omitted). “The findings necessary

to support such a protective order are simply that the plaintiffs reasonably fear retaliation and that the court's fact-finding may be materially impaired unless there is provided the tangible protection of a suitable court order." *Ben David v. Trivisono*, 495 F.2d 562, 564 (1st Cir. 1974). In addition, Federal Rule of Civil Procedure 26(c) permits a party to file a motion for protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

Further, Federal Rule of Civil Procedure 23(d) allows a court significant leeway to manage a class action, including by entering orders governing communications with the parties and with putative class members in order to prevent class opponents from engaging in conduct or communication that "is abusive in that it threatens the proper functioning of the litigation." *Adair v. EQT Prod. Co.*, No. 1:10CV00037, 2011 WL 4501048, at *4 (W.D. Va. Sept. 28, 2011).

Accordingly, for the foregoing reasons and those set out in the Memorandum of Law in Support of this Motion, Plaintiffs respectfully request that the Court grant their motion and enter a Protective Order with the following provisions:

1. Prohibiting Defendants from imposing any consequence or punishment, or taking other adverse action against any Plaintiff who refuses to sign the Safety Agreement on the basis of that refusal;
2. Requiring Defendants to immediately restore power to the outlets in the cells of class members who have refused to sign the Safety Agreement;
3. Prohibiting Defendants from turning off the power to the cell of any Plaintiff absent an individualized determination supported by specific findings, made by a licensed mental health provider, that an individual is at significant risk of self-harm and that such measures are necessary to prevent an act of self-harm;

4. Prohibiting VDOC staff from threatening, warning of, suggesting, imposing or attempting to impose any punitive or undesired consequences in retaliation for Plaintiffs' participation in the preparation or litigation of this Motion, including any communications with Plaintiffs' counsel, experts, investigators, or other persons, including but not limited to: cell transfer, facility transfer, disciplinary charges, cell shakedowns, destruction of personal property, withholding of necessities or privileges such as food, laundry, recreation, mail, phone, programming, religious observation, etc., placement in segregated housing or strip cells, infliction of physical pain or harm, verbal abuse, etc.;
5. Order VDOC to issue guidance to Red Onion staff on what constitutes retaliation and the requirements of any protective order issued by the Court; and
6. Any other relief that is just and necessary.

Dated: March 27, 2025

Respectfully Submitted,

/s/ Vishal Agraharkar
Vishal Agraharkar (VSB #93265)
Eden B. Heilman (VSB #93554)
Geri Greenspan (VSB #76786)
ACLU of Virginia
701 E. Franklin Street, Ste. 1412
Richmond, VA 23219
Telephone: (804) 644-8022
vagraharkar@acluva.org
eheilman@acluva.org
ggreenspan@acluva.org

Kathryn Ali (VSB # 97966)
Ali & Lockwood LLP
300 New Jersey Avenue, NW, Ste. 900
Washington, DC 20001
Telephone: (202) 651-2475
katie.ali@alilockwood.com

Jared Frisch (*pro hac vice*)
Paul Wilson (*pro hac vice*)
Covington & Burling LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
jfrisch@cov.com
pwilson@cov.com

Matthew Phelps (*pro hac vice*)
Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
Telephone: (212) 841-1000
mphelps@cov.com

Counsel for Class Plaintiffs

Certificate of Service

1) I hereby certify that on the 27th day of March, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all CM/ECF participants.

/s/ Vishal Agraharkar