

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Big Stone Gap Division**

WILLIAM THORPE, <i>et al.</i> ,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:20-cv-00007-JPJ-PMS
)	
VIRGINIA DEPARTMENT OF)	
CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS’ RULE 72(B) OBJECTIONS TO
MAGISTRATE JUDGE’S REPORT & RECOMMENDATION**

Defendants object to the Magistrate Judge’s Report and Recommendation of September 4, 2020 (Dkt. 70), granting in part and denying in part Defendants’ motions to dismiss. Defendants object to each proposed finding of fact and conclusion of law decided adversely to them. *See* Dkt. 70 at 87–88 (Proposed Findings of Fact and Conclusions of Law 1, 4, 6-7). Defendants also object to the Magistrate Judge’s recommended disposition, to the extent it recommends denial of their motions to dismiss. *Id.* at 88.

The Magistrate Judge erred on the following grounds, as amplified in the accompanying brief:

1. The Magistrate Judge erred in finding the 1985 Settlement Agreement potentially enforceable and in refusing to find VDOC immune from suit on that claim.
2. The Magistrate Judge erred in concluding that Plaintiffs stated a due process claim because VDOC policies afford them adequate process.

3. The Magistrate Judge erred in concluding that Plaintiffs stated an equal protection claim. Among other things, Plaintiffs failed to show they were treated unequally to similarly situated inmates, that Defendants intentionally discriminated against them, or that Defendants' alleged discrimination was not for a legitimate penological purpose.

4. The Magistrate Judge erred in concluding that Plaintiffs adequately pleaded an Eighth Amendment claim. Among other things, Plaintiffs failed to support their claims with sufficient facts, including specific allegations related to Defendants' alleged deliberate indifference.

5. The Magistrate Judge erred in not finding Defendants entitled to qualified immunity. The Magistrate Judge defined the rights at issue too broadly, and ignored that Plaintiffs' allegedly violated rights were not clearly established at the time of the complained-of conduct.

6. The Magistrate Judge erroneously concluded that Plaintiffs stated claims under the ADA and Rehabilitation Act. Plaintiffs did not allege a continuing violation that escapes the reach of the one-year statute of limitations, nor did they allege sufficient facts to support their claims.

WHEREFORE the Court should sustain Defendants' objections and grant their motions to dismiss in full.

September 18, 2020

Respectfully submitted,

/s/ Maya M. Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of September, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

/s/ Maya M. Eckstein
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