APPENDIX A

Decision of

the United State Court of Appeals for the Fourth Circuit

CH

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
INFORMAL BRIEF

No. 21-2076, James Adeyemi v. State of Maryland

1:19-cv-03207-ELH

1. Declaration of Inmate Filing

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing

Date NOTICE OF APPEAL deposited in institution's mail system: _____

I am an inmate confined in an institution and deposited my notice of appeal in the institution's internal mail system. First-class postage was prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Signature: _____ Date: _____

[***Note to inmate filers**: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).*]

2. Jurisdiction

Name of court or agency from which review is sought:

Date(s) of order or orders for which review is sought:

3. Issues for Review

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

RE: 21-2076, James Adeyemi v. State of Maryland 1:19-cv-03207-ELH

1. **Declaration of Inmate Filing**

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid.

To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing

I am an inmate confined in an institution. I deposited my notice of appeal in the institution's internal mail system on _____ [insert date]. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Signature: _____ Date: _____

2. **Jurisdiction**

Name of the court or agency from which you are appealing:
IN UNITED STATE DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Dates of the order or orders for which review is sought:
May 5, 2021 and September 21, 2021

3. **Issues for Review**

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

The court argued the defendant (Human Resources Service Division of DPSCS of Maryland State) entitles to having Soverign immunity from a resident of Maryland's suit against the employees of HRSD, sub unit of DPSCS

Supporting Facts and Argument.
Eleventh Amendment states clearly the sovereign immunity does not apply to the defendant when to face a legal suit from the marylanders, for the plaintiff is not a foreigner of Maryland.

Issue 2.
The court argued that Supreme court cases have extended the amendment's applicability to the defendant protecting against the Marylanders' suit

Supporting Facts and Argument.
Supreme Court usually upheld the constitution firmly unless congress amend it and there has not been amendment made for extending the immunity to the state against the citizens of the state. the defendant also argued a citation called Board of Trusteesof Unv. of Ala v. Garrett and Lincoln County v. Luning does not support the court's argument.

Issue 3.
the Court does not confirm with strong evidence that the defendant in fact denied that the plaintiff was employed for more than a year when to response to the prospect employers seeking for my employment history.

Supporting Facts and Argument.
The State states clearly that they will verify honestly and truly about the former employees as required basically without any motification.,

Issue 4.
the court ordered the plaintiff to file a motion without retaliation but defamation only and to file must be done via Circuit Court of Maryland within 30 days

Supporting Facts and Argument
The court is wrongful in forcing the plantiff to stop suing the defendant about retailation so that the plaintiff could lose the monetary for sufferance

4. **Relief Requested**

Identify the precise action you want the Court of Appeals to take:
vacant the order and get the case to be processed for a hearing with jury

5. **Prior appeals (for appellants only)**

A. Have you filed other cases in this court?
☐ Yes ☑ No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

10/21/2021
Signature
[Notarization Not Required]

James Adeyemi
[Please Print Your Name Here]

CERTIFICATE OF SERVICE
****

I certify that on October 21, 2021 I served a complete copy of this Informal Brief on all parties, addressed as shown below:

Mr. Matthew Wayne Mellady
U.S. Department of Justice
Federal Bureau of Prisons
302 Sentinel Drive
Suite 200
Annapolis Junction, MD 20701

James Adeyemi /s/
Signature

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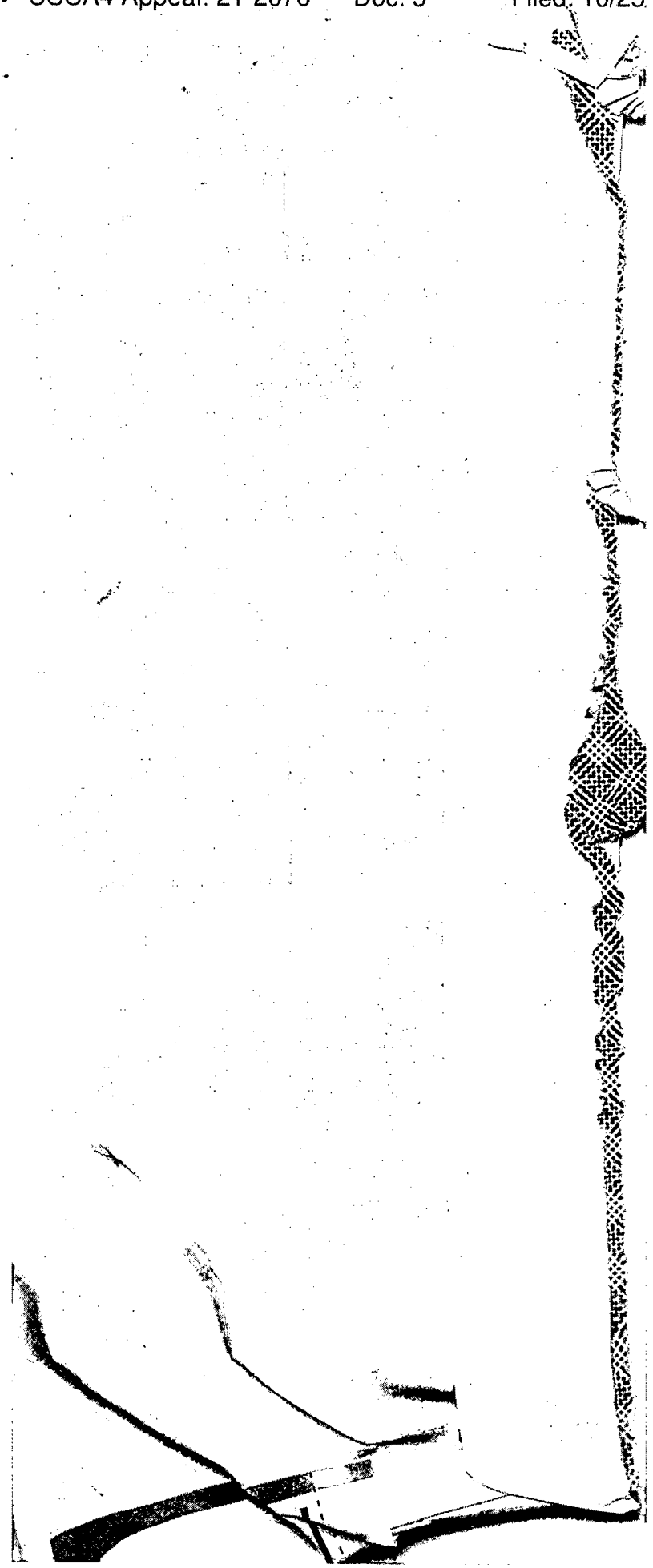

Unpublished Affirmed *dated* December 22, 2021

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2076

JAMES ADEYEMI,

Plaintiff - Appellant,

v.

STATE OF MARYLAND; DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,

Defendants - Appellees,

and

MARYLAND GOVERNOR LARRY HOGAN; ADMINISTRATION OF LARRY HOGAN,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Ellen L. Hollander, District Judge. (1:19-cv-03207-ELH)

Submitted: December 21, 2021 Decided: December 22, 2021

Before KING and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

James Adeyemi, Appellant Pro Se. Matthew Wayne Mellady, DEPARTMENT OF PUBLIC SAFETY & CORRECTIONAL SERVICES, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Adeyemi appeals the district court's orders dismissing for lack of jurisdiction his civil action and denying reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's orders. *Adeyemi v. Maryland*, No. 1:19-cv-03207-ELH (D. Md. May 5, 2021; filed Sept. 21, 2021 & entered Sept. 22, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Mandate *dated* December 22, 2021

FILED: December 22, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2076
(1:19-cv-03207-ELH)

JAMES ADEYEMI

Plaintiff - Appellant

v.

STATE OF MARYLAND; DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Defendants - Appellees

and

MARYLAND GOVERNOR LARRY HOGAN; ADMINISTRATION OF LARRY HOGAN

Defendants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in

accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Plaintiff-Appellees' Petition for Rehearing En Banc *dated* December 29th, 2021

CH

No. 21-2076

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JAMES ADEYEMI,

Plaintiff-Appellant,

v.

STATE OF MARYLAND, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Honorable Judge Ellen L. Hollander

PLAINTIFF – APPELLEES' PETITION FOR REHEARING EN BANC

James Adeyemi
P. O. Box 1671,
Sykesville, MD 21784
Jadeyemi60@hotmail.com
(443) 742-9963 (Text only)

December 28, 2021

STATEMENT REGARDING EN BANC REVIEW

I, myself, a deaf person, self- representative in this uneasy case. I am inexperienced as an attorney, and I wish to present an argument for or on behalf of the deaf population in the United States of America PLUS myself, mainly in the state of Maryland. The deaf communities or bodies with inability to speak or hear living in the state of Maryland mainly suffer daily not able to obtain a high position job in any agency of the Maryland state, for the district court failed to assist the plaintiff in the matter of retaliation and job discrimination caused by the agencies of the state of Maryland.

The agencies of Maryland State daily completely reject the bodies without ability to hear or speak who attempted to migrate with the family of the Maryland state from integrating with the family of Maryland state for job or employment and public events. Thus, the decision by the court might impact the bodies with inability to hear or speak severely because ADA or know Americans with Disability Act is presently weak unable to be enforced into act for their benefit due to their inability to be protected by hatred able bodies against the agencies of the Maryland state.

The court's decision might severely impact the bodies without ability to hear or speak (or deaf or hearing-impaired people) on job marketing for and push them into having harsh economy against their ability to making choices. With the decision, the agencies of the state might enjoy the continuality of hating and mistreating the most intelligent bodies without ability to hear or speak and refusing to offer a high position job because of their deafness. Then this will unconstitutionally violate the ADA daily freely.

Thus, I am bold enough to appeal this even though I am not sure I might be stupid to do this. By attempting this is not hurting me, and at least important, necessarily, it gets your attention. Once again, your decision or this court's decision actually **DESTROYS** ADA's ability to support the deaf communities in the family of Maryland state for job fair competitions.

As I have explained, I am inexperienced attorney, I do research samples of the petition and I get an idea how to do this. Please forgive me for the silly statement or providing this document in the poor format when I attempt to present that the court's decision is **UNCONSTITUTIONAL**.

STATEMENT OF ISSUES

I believe there is showing some errs the court already ignited violating the US constitutions because the court usually is purposed to stand and confirm the US constitution, and not to modify the constitution but confirm the constitution only and none else unless the congress modifies the US constitutions by adding Amendments only. The court erred getting in the violation of ADA because the court should affirm the ADA and support ADA without exceptions, Eleventh Amendment limits the matter of foreign state only, and it has NOTHING to do with ADA, ADA is for the FAMILY MATTERS!!!

1. The court erred in adding the new defendant named Maryland Governor Larry Hogan; Administration of Larry Hogan when the plaintiff modified the defendants to limit the defendants to Department of Public Safety and Correctional Services for the list of defendants only. Hopefully, the copy of the response-back to the Appellants' Informal Response Belief is being considered even though the decision was made before the document arrived late later at same day.

2. The Court erred in finding no reversible error, and thereafter, the court furtherly erred in the light of the argument would not aid the decisional process because ADA is in a dangerous place, for the court should not destruct the ability of ADA as well as the law of EEOC.

3. The agency named Department of Public Safety and Correctional Services is not the state of Maryland. Therefore, the agency is law-suitable by its people because the agency is capable of committing violations against its people and also the agency is responsible for repairing the brokens itself, the governor.

4. The court should not mind the monetary award in the matter when to tender a fair decision and make a good decision fair to both the parties rather than to take one side and hurt other side. There is always an alternate in order to stop the repeating violation causing by the agency rather than speechless because the courts could not accept a relief

against the agencies implemented by a government since the government is not a profit organization.

STATEMENT OF THE COURT OF PROCEEDINGS

First of all, the plaintiff or the Appellee *never* name the governor as one of the defendants, for the government secured the sovereign Immunity since the government is not capable of injuring the people of Maryland. Thus, it is unfair to name the governor as a defendant in order to secure the sovereign immunity for the appellant when the agency does not access to it because the agency committed repeated violations of EEOC and ADA as well without my consensus. I believe that is unconstitutional because it might encourage the agency to practice the continuity of injuring/ignoring/mocking about ADA protecting the bodies with inability to hear or speak for their right to integrate themselves with the family of the state or Maryland.

The appellee filed a complaint against the agency only and none else but the agency only for violation of the EEOC 's retaliation. The governor should be removed from the list of the defendants because the appellee corrected the error when to drop in the complaint and the district court agreed with that the agency (DPSCS) as a single defendant, and then the district court added the STATE of MARYLAND Attorney to the list of defendants, but there was never a named defendant as STATE of Maryland. I would request that the STATE of MARYLAND be removed as a defendant as well. The counsel for the Department of Public Safety and Correctional Services already took the State of Maryland's attorney's place in this matter. Eventually, the agency is not an infant feeding or breast feeding by the governor for accessing to the sovereign immunity, for it owns responsibility for its illegal actions against the people of Maryland with disability.

A MONETARY AWARD NOT REQUIRED BUT ALTERNATIVE IS NEEDED

I believe the district court dismissed the complaint NOT because of lack of jurisdiction but the district court was worrying about the monetary award being in place against the agency, for the agency is not a business entity. I am very aware of that that is impossible for the monetary award to be in store for the relief. The district court misinterpreted it when it is intended for alternative options in the case pertaining to a theory of possibly prevent the agency from continuity of violating the ADA repeatedly.

Secondly, the appellee never intended to seek monetary award by itself through the court since the court has an ability to modify the relief when it is according to the constitutional law. The appellee lacks having power to demand the district court to provide the monetary award when it does against the constitutional law. The question was why the appellees requested for the monetary award for a relief. The simple answer is was following the court's law, "no relief, the courts worthless" or known as 'Failure to state a claim upon which relief can be granted". That was the main reason I requested for the monetary award in order to get the complaint not dismissed. However, I double checked its meanings, and I started to understand about its meaning unlike what I read a ruling statement by a court. However, I will gladly withdraw the monetary award and request for a truce between deaf communities and the government in the theme of job competition, and in addition to this, there must be a relief thereafter.

The district court failed to provide alternative solutions if the state court believes in the agency's violation against ADA and EEOC. Instead of this, it was wrongful to dismiss the complaint because of the monetary award being in place. The agency refused to correct and renovate the illegal practicing system of retaliation and discrimination, which is prohibited by ADA and EEOC.

Instead of this, the district court destructed the abilities of ADA assisting the bodies with disabilities getting into the integration with the family of Maryland. Hence, the agency will hence continue the disobedience of ADA, which is also unconstitutional.

ARGUMENT

I want to question the court again as following:

1. Actually, the agencies are allowed not to honor ADA by not hiring high qualified deaf for the high position job? You never know, it can happen to your children and grand children when some become deaf, they will go through the similar experience I had for years. ADA was established for that purpose of getting the deaf children into integration with your family.
2. What will the court do when it finds the defendant actually did deliberately reject the deaf person for a high job position and hired able body with low educational credentials than

the unable body? Speechless? Or get the defendant to fix the problem and spare the plaintiff from pain and suffering? The decision by the court appeared to choose the SPEECHLESS and refuse to protect ADA in intact!

3. Is the decision fair by dismissing the appellees' complaint against the defendant who in fact knows its employee violated the defendant's policy? Won't the court violate the ADA because the court refuses to uphold the ADA as well as the US constitutions?

CONCLUSION

I am not shamed here to tell you that I beg you for your mercy and your mercy is needed for people with disability. You can see President Bush signed the ADA into law for protecting the people with disability from job discrimination and retaliation. No exception exists here from ADA and the ADA applies to the appellees as well. The **governor of Maryland** in fact does demand his servants to comply with ADA. Unfortunately, its employees tried to fool the governor by acting in the violation of ADA by rejecting the deaf persons for a high position job (everywhere) because they know they could get away with it. I suffered about 4 years not getting a job offer despite the fact that I am high qualified for the job. The agency or the appellee chose to offer a high position job to the able body with low credentials than me and I had more experience in the management than his. They were bold enough to violate ADA. With that, should the court do NOTHING? If so, the court violated ADA too because the court refused to uphold ADA.

I completely understand that we can't ask for monetary award against the governor for its violation because the governor does not run a business collecting our money but our tax. It is so forbidden for us to collect Tax money from the governor in any case!!! But the district court should know about that violator could not get away with violating ADA.

Here my idea I offer is to work on a new truce about how to get a STOP to violating the ADA and an alternative relief when a person goes through the violation of ADA.

The petition for rehearing en banc should be granted otherwise the decision is unconstitutional because it will encourage the agency or appellees repeating violations of ADA and concealing it.

The Maryland Tort Claims ("MTCA") Act requires that personal injury victims suing the State of Maryland submit a written claim to the Treasurer or designee of the treasurer within one year after the injury to person or property that is the basis of the claim.

To comply with the Maryland Tort Claims Act, a plaintiff must serve written notice upon the State Treasurer, or a designee of the State Treasurer, within one year following the injury." See Md. State Government Code Ann. §12-101 to §12-110.

Able body is able to sue the agencies for injuries; but the deaf person CAN'T sue the state of Maryland for retaliation violating EEOC law? What about ADA? So does the court CRUSH ADA virtually as the appellees explained that Eleventh Amendment BAR ADA? That explains the decision is unconstitutional.

Respectfully Submitted,

James Adeyemi

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JAMES ADEYEMI Plaintiff-Appellant v. STATE OF MARYLAND, DEPARTMENT OF PUBLIC SAFEFY AND CORRECTIONAL SERVICES Defendant-Appellee	No. 21-2076

CERTIFICATE OF SERVICE

I certify that on this 28th day of December 2021, **PLAINTIFF – APPELLEES' PETITION FOR REHEARING EN BANC** was filed electronically and served on appellee, Attorney for appellee, Matthew W. Mellady, electronically and via first class mail, postage prepaid at

Assistant Attorney General,
6776 Reisterstown, Rd., Ste. 311
Baltimore, Maryland 21215
matthew.mellady@oag.state.md.us

signed by
James Adeyemi

mely Urgent

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Temporary Stay of Mandate *dated* December 29th, 2021

FILED: December 29, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2076
(1:19-cv-03207-ELH)

JAMES ADEYEMI

Plaintiff - Appellant

v.

STATE OF MARYLAND; DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Defendants - Appellees

and

MARYLAND GOVERNOR LARRY HOGAN; ADMINISTRATION OF LARRY HOGAN

Defendants

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

Order denied on February 23, 2022

FILED: February 23, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2076
(1:19-cv-03207-ELH)

JAMES ADEYEMI

Plaintiff - Appellant

v.

STATE OF MARYLAND; DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Defendants - Appellees

and

MARYLAND GOVERNOR LARRY HOGAN; ADMINISTRATION OF LARRY HOGAN

Defendants

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

Mandate dated March 3, 2022 (restored)

FILED: March 3, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2076
(1:19-cv-03207-ELH)

JAMES ADEYEMI

Plaintiff - Appellant

v.

STATE OF MARYLAND; DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Defendants - Appellees

and

MARYLAND GOVERNOR LARRY HOGAN; ADMINISTRATION OF LARRY HOGAN

Defendants

M A N D A T E

The judgment of this court, entered December 22, 2021, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX B

Decision of

the United State District of Maryland

for the District of Maryland

Memorandum Opinion by

Judge Ellen L. Hollander

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES ADEYEMI,	*	
Plaintiff,	*	
v.	*	Civil No. ELH-19-3207
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,	*	
Defendant.	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION

In this employment discrimination case, the self-represented plaintiff, James Adeyemi, who is deaf, filed a "Complaint of Defamation and Retaliation" against his former employer, the Maryland Department of Public Safety and Correctional Services ("DPSCS"). ECF 1 ("Complaint"). The Complaint, which is accompanied by 29 exhibits, seems to assert two claims against defendant DPSCS: defamation, under Maryland law, and retaliation, under the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.* ("ADA"). ECF 1 at 2. Adeyemi seeks "compulsory damage and [recovery for] financial loss." *Id.*

Although the Complaint is difficult to decipher, it appears that plaintiff's retaliation claim is predicated on his non-selection for a job position with DPSCS. *See* ADA, Title V, 42 U.S.C. § 12203(a).[1] In particular, plaintiff alleges that DPSCS retaliated against him after he complained about being discriminated against during the hiring process. And, he alleges that DPSCS retaliated

[1] Significantly, the Complaint does *not* include a claim of disability discrimination under Title I of the ADA.

against him by refusing to verify his prior employment with DPSCS for prospective employers. ECF 1 at 14.

Defendant has moved to dismiss the Complaint for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1) or, in the alternative, for summary judgment, pursuant to Fed. R. Civ. P. 56. ECF 12. The motion is support by a memorandum (ECF 12-1) (collectively, the "Motion") and thirteen exhibits. According to DPSCS, plaintiff's ADA claim is barred by the State's entitlement to immunity under the Eleventh Amendment to the Constitution. ECF 21-1 at 8-11. As to the defamation claim, DPSCS contends that plaintiff has failed to comply with the requirements of the Maryland Tort Claims Act ("MTCA"), Md. Code (2014 Repl. Vol., 2018 Supp.), §§ 12-101 *et seq.* of the State Government Article ("S.G."). *Id.* at 12-15. Alternatively, defendant urges the Court to decline to exercise supplemental jurisdiction with regard to the State law defamation claim. *Id.* at 11-12.

Adeyemi opposes the Motion (ECF 15) and has submitted two additional exhibits. Defendant has not replied and the time to do so has expired.

No hearing is necessary to resolve the Motion. *See* Loc. R. 105.6. For the reasons that follow, I shall grant the Motion.

I. Factual and Procedural Background[2]

Plaintiff was a contract employee with DPSCS. On April 4, 2014, Adeyemi entered into an agreement with DPSCS's Police and Correctional Training Commissions ("PCTC") to begin work as an "IT Programmer Analyst Lead/Advanced." ECF 1 at 3; ECF 12-3 (Employment

[2] As discussed, *infra*, given the posture of this case, I must assume the truth of the facts alleged by Adeyemi in the Complaint.

Contract). Plaintiff continued working for PCTC until he resigned on November 17, 2015. ECF 1 at 3.[3] Plaintiff claims that he resigned because he was discriminated against for being deaf. *Id.*

On January 13, 2017, DPSCS posted a job vacancy announcement for "Administrator VI: Technical Services Administrator" at PCTC. ECF 1 at 4; *see* ECF 12-8 (Job Posting). Plaintiff applied for this position and was notified on January 23, 2017, that he was selected for an interview. *See* ECF 12-9 (Interview Notification). But, Adeyemi complains that during the interview for this position he was not given "a paper of questions for [the] interview" and he "noticed the interpreter translated very late," which made him suspect "that the interpreter might not be certified." ECF 1 at 4.

Several months later, on May 11, 2017, plaintiff was notified that he was not selected for the position. *Id.*; *see* ECF 12-10 (Rejection Letter). Adeyemi claims that the recruiter told him that the decision was based on the interview scores rather than the individual's educational background or work experience. ECF 1 at 4.

Thereafter, on July 10, 2017, plaintiff contacted the Executive Director of the Office of Equal Opportunity ("OEO") at DPSCS to complain that he was discriminated against during the interview and recruitment process for the Technical Services Administrator position. ECF 1 at 5; *see* ECF 12-11 (Email from Adeyemi to DPSCS). By letter of the same date, the Executive Director of DPSCS responded to Adeyemi's complaint. *See* ECF 1-4. The letter summarized plaintiff's stated complaints: "[Y]ou stated that you were discriminated against because your education was not taken into consideration when another candidate was selected [and you] alleged that the selection of the other candidate was only based on the oral interview for which you were

[3] In its Motion, defendant includes many factual assertions that are not included in the Complaint. These facts are not properly considered at this juncture. But, the date that plaintiff resigned from his position is not material to the issues here.

substantially limited based on the fact that you are deaf and the sign language interpreter that assisted you during the interview was not certified...." *Id.* at 1. In response to those complaints, the letter explained that the interpreter was "certified" and a college degree "was not a requirement in order to qualify for the position," so education did not have to be taken into consideration. *Id.* at 1-2. Further, the letter advised Adeyemi of his right to file a complaint of discrimination with the Maryland Commission on Civil Rights and the Equal Employment Opportunity Commission ("EEOC"). *Id.* at 2.

The following day, plaintiff contacted OEO again, stating that he was "afraid of applying for any job at DPSCS" and he was "tired of everyone get[ting] away with hurting [his] job opportunit[ies]" and "abus[ing] [him] at work." ECF 12-13 at 1. But, he said that he was still "willing to go through" with an interview that DPSCS had previously offered him for another IT programmer position. *Id.*[4]

Thereafter, throughout 2018, plaintiff applied for numerous positions at DPSCS, as well as the Maryland Office of the Comptroller, and Anne Arundel County Department of Social Services. *See, e.g.*, ECF 1-7; ECF 1-11; ECF 1-17. According to Adeyemi, he was not selected for these positions because his DPSCS employment references "refus[ed] to verify" his past employment as part of their retaliation against him. ECF 1 at 14.

In June 2019, plaintiff filed a Charge of Discrimination with the EEOC against DPSCS, alleging retaliation between November 2018 and March 2019. *See* ECF 1-25. In the Charge, Adeyemi stated, *id.* at 1: "I was previously employed by [DPSCS]. I previously filed complaints of discrimination against [DPSCS]. Since in or about November 2018, I have been aware that Respondent has either failed to respond to request for references from prospective employers or

[4] It is not entirely clear whether plaintiff interviewed for this position.

provided unfavorable references." Further, he stated, *id.*: "I believe that I have been discriminated against in retaliation for engaging in protected activity...."

II. Legal Standard[5]

With respect to the ADA, defendant has moved to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. DPSCS contends that plaintiff's ADA claim is barred by sovereign immunity. And, DPSCS claims that the State law defamation claim is subject to dismissal for failure to comply with the MTCA. Alternatively, defendant urges the Court to decline to exercise supplemental jurisdiction as to the State law claim.

District courts of the United States are courts of limited jurisdiction; they possess "'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 586 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); *see Home Depot U.S.A., Inc. v. Jackson*, ___ U.S. ___, 139 S. Ct. 1743, 1746 (2019); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). Simply put, if Congress or the Constitution "has not empowered the federal judiciary to hear a matter, then the case must be dismissed." *Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 432 (4th Cir. 2014); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("'Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'") (citation omitted).

Rule 12(b)(1) of the Federal Rules of Civil Procedure permits a defendant to challenge the court's subject matter jurisdiction with respect to the plaintiff's suit. Under Rule 12(b)(1), the plaintiff bears the burden of proving, by a preponderance of evidence, the existence of subject

[5] Because I will grant defendant's Motion under Fed. R. Civ. P. 12(b)(1), I need not address Rule 56. Moreover, defendant does not appear to make any arguments under Rule 56. *See* ECF 12-1. And, as to the defamation claim, I address supplemental jurisdiction, *infra*.

matter jurisdiction. *See Demetres v. E. W. Const., Inc.*, 776 F.3d 271, 272 (4th Cir. 2015); *see also The Piney Run Preservation Ass'n v. Cty. Comm'rs of Carroll Cty.*, 523 F.3d 453, 459 (4th Cir. 2008); *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). However, a court should grant a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) "'only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.'" *B.F. Perkins*, 166 F.3d at 647 (citation omitted).

A challenge to subject matter jurisdiction under Rule 12(b)(1) may proceed "in one of two ways": either a facial challenge or a factual challenge. *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009); *accord Hutton v. Nat'l Bd. of Exam'rs Inc.*, 892 F.3d 613, 620-21 (4th Cir. 2018). In a facial challenge, "the defendant must show that a complaint fails to allege facts upon which subject-matter jurisdiction can be predicated." *Hutton*, 892 F.3d at 621 n.7 (citing *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017)); *see also Kerns*, 585 F.3d at 192. Alternatively, in a factual challenge, "the defendant maintains that the jurisdictional allegations of the complaint are not true." *Hutton*, 892 F.3d at 621 n.7 (citing *Beck*, 848 F.3d at 270). In that circumstance, the court "may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004); *see also Beck*, 848 F.3d at 270; *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326, 333 (4th Cir. 2014); *Evans*, 166 F.3d at 647.

Sovereign immunity is "a weighty principle, foundational to our constitutional system." *Cunningham v. Lester*, 990 F.3d 361, 365 (4th Cir. 2021). The Fourth Circuit has made clear that the defense of sovereign immunity is a jurisdictional bar, explaining that "'sovereign immunity deprives federal courts of jurisdiction to hear claims, and a court finding that a party is entitled to sovereign immunity must dismiss the action for lack of subject-matter jurisdiction.'" *Cunningham*

v. Gen. Dynamics Info. Tech., Inc., 888 F.3d 640, 649 (4th Cir. 2018) (citation omitted), *cert. denied*, ___ U.S. ___, 139 S. Ct. 417 (2018). Notably, "the burden of proof falls to an entity seeking immunity as an arm of the state, even though a plaintiff generally bears the burden to prove subject matter jurisdiction." *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)).

Defendant raises a facial challenge to the Court's subject matter jurisdiction, asserting that the doctrine of sovereign immunity forecloses plaintiff's ADA claim. ECF 12-1 at 8-10; *see Cunningham v. Gen. Dynamics Info. Tech., Inc.*, 888 F.3d 640, 649 (4th Cir. 2018) (observing that "'sovereign immunity deprives federal courts of jurisdiction to hear claims'") (citation omitted), *cert. denied*, ___ U.S. ___, 139 S. Ct. (2018). Thus, it must show that the Complaint "fails to allege facts upon which subject-matter jurisdiction can be predicated." *Hutton*, 892 F.3d at 621 n.7; *see Kerns*, 585 F.3d at 192.

III. Discussion

A. The ADA and Sovereign Immunity

1.

The ADA was enacted in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1), and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." *Id.* § 12101(b)(2). The ADA contains five titles: Title I, Employment; Title II, Public Services; Title III, Public Accommodations; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.

Title I of the ADA prohibits discrimination "against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of

employment." 42 U.S.C. § 12112(a); *see also Summers v. Altarum Inst., Corp.*, 740 F.3d 325, 328 (4th Cir. 2014) ("The ADA makes it unlawful for covered employers to 'discriminate against a qualified individual on the basis of disability.'") A "qualified individual" is defined as a person who, "with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

Unlawful discrimination under Title I of the ADA "can include the failure to make 'reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee . . . .'" *Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 344 (4th Cir. 2013) (quoting § 12112(b)(5)(A)). Moreover, "denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability" may qualify as "discrimination against a qualified individual on the basis of disability." 42 U.S.C. § 12112(b)(5)(B). In addition, the ADA bars the discharge of a qualified employee because he is disabled. *Summers*, 740 F.3d at 328.

Also of relevance here, Title V states, in part: "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a). In other words, Title V protects individuals who are retaliated against for exercising their rights under Title I, II, or III of the ADA.

Title V does not have its own remedial scheme. *See* 42 U.S.C. § 12203(c); *G. v. Fay Sch.*, 931 F.3d 1, 10–11 (1st Cir. 2019). Thus, a Title V claim must be predicated on another section of the ADA. *See Melerski v. Virginia Dep't of Behavioral Health & Developmental Servs.*, No. 4:15-CV-00039, 2016 WL 154144, at *3 (W.D. Va. Jan. 11, 2016) ("A Title V retaliation action must

rest upon a previous Title's subject.") (citing *Collazo-Rosado v. Univ. of P.R.*, 775 F. Supp. 2d 376, 384 (D.P.R. 2011)).

Plaintiff does not cite the relevant title of the ADA in his Complaint. But, because he brings a retaliation claim, it arises under Title V. *See* 42 U.S.C. 12203(a). And, it is predicated on Title I, because he alleges that he was retaliated against for complaining about employment discrimination. *See* 42 U.S.C. § 12112.

2.

As noted, DPSCS maintains that plaintiff's ADA claim is barred by the Eleventh Amendment to the Constitution. The Eleventh Amendment to the Constitution provides: "The 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, or by Citizens or subjects of any Foreign State." The Eleventh Amendment "embodies the principle of sovereign immunity and prohibits suit by private parties against states in federal courts." *Weller v. Dep't of Soc. Serv's for City of Balt.*, 901 F.2d 387, 397 (4th Cir. 1990).

The Supreme Court has explained: "Although by its terms the Amendment applies only to suits against a State by citizens of another State, our cases have extended the Amendment's applicability to suits by citizens against their own States." *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 363 (2001) (collecting cases); *see, e.g.*, *Virginia Off. for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 253 (2011); *Lapides v. Bd. of Regents of Univ. Sys. of Georgia,* 535 U.S. 613, 618 (2002); *Kimmel v. Fla. Bd. of Regents*, 528 U.S. 62, 72-73 (2000). Thus, "the ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court." *Garrett*, 531 U.S. at 363. Put simply, states are generally immune from suit for damages in federal court, absent consent or a valid congressional abrogation of

sovereign immunity. *See Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 35 (2012); *Va. Office for Prot. & Advocacy*, 563 U.S. at 253-54; *Passaro v. Virginia*, 935 F.3d 243, 247 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 903 (2020).

The doctrine of state sovereign immunity from private suit predates the enactment of the Eleventh Amendment. *See Williams v. Morgan State Univ.*, ___ Fed. App'x ___, 2021 WL 1041699, at *2 (4th Cir. Mar. 18, 2021) (citing *Alden v. Maine*, 527 U.S. 706, 724 (1999); *Hans v. Louisiana*, 134 U.S. 1, 3 (1890)). However, as the Supreme Court affirmed in *Garrett*, 531 U.S. at 363, among several other decisions, it has construed the Eleventh Amendment to embody the broader principles of state sovereign immunity.[6]

The Fourth Circuit recently echoed this principle in *Pense v. Md. Dep't of Public Safety and Correctional Services*, 926 F.3d 97 (4th Cir. 2019), stating, *id.* at 100: "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.'" (Quoting *Port Auth. Trans–Hudson Corp. v. Feeney*, 495 U.S. 299, 304 (1990)); *see Lapides*, 535 U.S. at 618 ("The Eleventh Amendment provides that the 'Judicial power of the United States shall not be construed to extend to any suit . . . commenced or prosecuted against one of the . . . States' by citizens of another State, U.S. Const., Amdt. 11, *and (as interpreted) by its own citizens*.") (emphasis added; ellipses in *Lapides*); *Lee-Thomas v. Prince George's Cty. Pub. Sch.*, 666 F.3d 244, 248 (4th Cir. 2012).

[6] In *Williams*, 2021 WL 1041699, the Fourth Circuit characterized state sovereign immunity as "a broader doctrine" than Eleventh Amendment immunity, and described the text of the Eleventh Amendment as a "rather narrow and precise provision . . . ." *Id.* at *2.

The defendant refers to Eleventh Amendment immunity and state sovereign immunity interchangeably. *See, e.g.*, ECF 21-1 at 9. At various points, I shall also refer to state sovereign immunity as Eleventh Amendment immunity, consistent with defendant's usage.

State sovereign immunity bars suit not only against a state, but also against an instrumentality of a state, such as a state agency, sometimes referred to as an "arm of the state." *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984) ("It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment."); *see also Regents of Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997); *Pense*, 926 F.3d at 100; *McCray v. Md. Transit Admin.*, 741 F.3d 480, 483 (4th Cir. 2014); *Bland v. Roberts*, 730 F.3d 368, 389 (4th Cir. 2013); *Constantine v. Rectors and Visitors of George Mason Univ.*, 411 F.3d 474, 479 (4th Cir. 2005). Put another way, sovereign immunity applies when "'the governmental entity is so connected to the State that the legal action against the entity would . . . amount to the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.'" *Lane v. Anderson*, 660 F. App'x 185, 195-96 (4th Cir. 2016) (quoting *Cash v. Granville Cty. Bd. of Educ.*, 242 F.3d 219, 224 (4th Cir. 2001)) (cleaned up). In contrast, sovereign immunity "does not immunize political subdivisions of the state, such as municipalities and counties, even though such entities might exercise a 'slice of state power.'" *Ram Ditta v. Md. Nat. Capital Park & Planning Comm'n*, 822 F.2d 456, 457 (4th Cir. 1987) (quoting *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 401 (1979)).

It is undisputed that DPSCS is an arm of the State. Under Md. Code (2017 Repl. Vol.), § 2-101 of the Correctional Services Article, DPSCS is a principal department of Maryland State government. *See Clarke v. Maryland Dep't of Pub. Safety and Corr. Servs.*, 316 Fed. App'x 279,

282 (4th. Cir. 2009) (stating "the Maryland Department of Public Safety and Correctional services is undoubtedly an arm of the state for purposes of § 1983"). Therefore, in the absence of an exception to the Eleventh Amendment bar, DPSCS is not subject to suit in federal court.

The Fourth Circuit has identified three exceptions to the Eleventh Amendment's prohibition of suit against a state or an arm of a state. In *Lee-Thomas*, 666 F.3d at 249, it said (internal quotations omitted):

> First, Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority. *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001) . . . . Second, the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004) . . . . Third, a State remains free to waive its Eleventh Amendment immunity from suit in a federal court. *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 618 (2002).

None of the exceptions is applicable here. Title I of the ADA originally contained language abrogating state sovereign immunity in federal court. *See* 42 U.S.C. § 12202. However, the Supreme Court determined in *Garrett*, 531 U.S. 356, that Congress did not validly abrogate sovereign immunity with respect to discrimination claims under Title I of the ADA. *Id.* at 374. The Court said, *id.*: "[T]o authorize private individuals to recover money damages against the States, there must be a pattern of discrimination by the States which violates the Fourteenth Amendment . . . Those requirements are not met here . . ." *See also McCray*, 741 F.3d at 483.

Neither the Supreme Court nor the Fourth Circuit has determined whether Congress abrogated sovereign immunity for retaliation claims under Title V. But, many courts have ruled that where Title V claims are predicated on alleged violations of Title I, the Court's decision in *Garrett* applies. *Demshki v. Monteith*, 255 F.3d 986, 988–89 (9th Cir. 2001) ("Congress may not abrogate the states' Eleventh Amendment immunity from Title V claims."); *see, e.g., Block v. Tex. Bd. of L. Exam'rs,* 952 F.3d 613, 619 (5th Cir. 2020) ("Title V itself does not abrogate a state's

sovereign immunity. Instead, a plaintiff may bring a retaliation claim against a state entity only to the extent that the underlying claim of discrimination effectively abrogates sovereign immunity of the particular state."); *Levy v. Kansas Dept. of Social and Rehabilitation Services*, 789 F.3d 1164, 1169 (10th Cir. 2015); *see Bowen v. Maryland, Dep't of Pub. Safety & Corr. Servs.*, RDB-17-1571, 2018 WL 1784463, at *5 (D. Md. Apr. 12, 2018); *Chiesa v. N.Y. State Dep't of Labor*, 638 F. Supp. 2d 316, 323 (N.D.N.Y. 2009). Thus, because Adeyemi's underlying Title I claim is barred by sovereign immunity, so too is his Title V claim.

The second exception is unavailable because the suit does not seek prospective injunctive relief. *See* ECF 1 at 2, 15. Instead, Adeyemi seems to seek only money damages, which he may not recover, absent an exception.

As to the third exception, there is no allegation of a waiver of immunity by the State. To be sure, a state may waive its Eleventh Amendment sovereign immunity and permit suit in federal court. *See Lapides*, 535 U.S. at 618; *Pense*, 926 F.3d at 101; *Lee-Thomas*, 666 F.3d at 249. But, the test to determine whether a State has waived its immunity from suit in federal court is a "stringent" one. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 240 (1985), *superseded on other grounds, as recognized in Lane v. Pena*, 518 U.S. 187, 198 (1996); *see FAA v. Cooper*, 566 U.S. 284, 290 (2012) (stating that a waiver of sovereign immunity must be expressed in statute, not legislative history); *Pense*, 939 F.3d at 101; *Cunningham*, 990 F.3d at 365 (recognizing that a waiver of sovereign immunity must be "unequivocally expressed in statutory text"). Under *Atascadero*, 473 U.S. at 254, a court may find that a state has waived its Eleventh Amendment immunity "only where stated by the most express language or by such overwhelming implication from the text as will leave no room for any other reasonable construction." *Id.* (internal quotation marks and alteration omitted); *accord Pense*, 926 F.3d at

101; *Lee-Thomas*, 666 F.3d at 250-51. Maryland has not waived its immunity to suit in federal court as to ADA claims under Title V or Title I. *See McCray*, 741 F.3d at 483; *see also Constantine*, 411 F.3d at 479.

Moreover, plaintiff's opposition offers no legal argument for why his ADA claim is not barred by the Eleventh Amendment. *See* ECF 15. Therefore, he has waived any opposition to the argument. *See Stenlund v. Marriot Int'l, Inc.*, 172 F. Supp. 3d 874, 887 (D. Md. 2016) ("In failing to respond to [defendant's] argument, Plaintiff concedes the point."); *Ferdinand-Davenport v. Children's Guild*, 742 F. Supp. 2d 772, 777 (D. Md. 2010) (same).

Accordingly, Adeyemi's ADA claim shall be dismissed, without prejudice.

B: Supplemental Jurisdiction

At this juncture, the only remaining claim is the defamation claim that falls under State law. There is no basis for federal question jurisdiction under 28 U.S.C. § 1331. Nor do the allegations support diversity jurisdiction under 28 U.S.C. § 1332.

Federal courts are courts of limited jurisdiction. *Home Buyers Warranty Corp. v. Hanna,* 750 F.3d 427, 432 (4th Cir. 2014) (quotation marks omitted) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.,* 511 U.S. 375, 377 (1994)). Thus, a federal district court may adjudicate a case only if it possesses the "power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allapattah Servs., Inc.,* 545 U.S. 546, 552 (2005) (internal quotation marks omitted).

Notably, "[a] court is to presume . . . that a case lies outside its limited jurisdiction unless and until jurisdiction has been shown to be proper." *United States v. Poole,* 531 F.3d 263, 274 (4th Cir. 2008) (citing *Kokkonen,* 511 U.S. at 377). Even where no party challenges subject matter jurisdiction, a federal court has "an independent obligation to determine whether subject-matter jurisdiction exists." *Hertz Corp. v. Friend,* 559 U.S. 77, 94 (2010). And, "if Congress has

not empowered the federal judiciary to hear a matter, then the case must be dismissed." *Hanna,* 750 F.3d at 432.

Congress has conferred jurisdiction on the federal courts in several ways. To provide a federal forum for plaintiffs who seek to vindicate federal rights, Congress has conferred on the district courts original jurisdiction over civil actions that arise under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331; *see also Exxon Mobil Corp.,* 545 U.S. at 552; *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 394 (4th Cir. 2012); *see also* U.S. Constitution Art. III, § 2 ("The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . ."). This is sometimes called federal question jurisdiction.

In addition, "Congress . . . has granted district courts original jurisdiction in civil actions between citizens of different States, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens," so long as the amount in controversy exceeds $75,000. *Exxon Mobil Corp.,* 545 U.S. at 552; *see* 28 U.S.C. § 1332. Article III, § 2 of the Constitution permits a federal court to decide "Controversies . . . between Citizens of different States." *Navy Federal Credit Union v. Ltd. Financial Services LP*, 972 F.3d 344, 352 (4th Cir. 2020). Of relevance here, diversity jurisdiction "requires complete diversity among parties, meaning that the citizenship of *every* plaintiff must be different from the citizenship of *every* defendant." *Cent. W. Va. Energy Co., Inc. v. Mountain State Carbon, LLC,* 636 F.3d 101, 103 (4th Cir. 2011) (emphasis added); *see Strawbridge v. Curtiss,* 7 U.S. 267 (1806).

Under the "well-pleaded complaint" rule, facts showing the existence of subject matter jurisdiction "must be affirmatively alleged in the complaint." *Pinkley, Inc. v. City of Frederick,* 191 F.3d 394, 399 (4th Cir. 1999) (citing *McNutt v. Gen'l Motors Acceptance Corp.*, 298 U.S. 178

(1936)). Put another way, "before a federal court can decide the merits of a claim, the claim must invoke the jurisdiction of the court." *Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006). Moreover, the "burden of establishing subject matter jurisdiction is on . . . the party asserting jurisdiction." *Robb Evans & Assocs., LLC v. Holibaugh*, 609 F.3d 359, 362 (4th Cir. 2010); *accord Hertz*, 599 U.S. at 95; *McBurney v. Cuccinelli*, 616 F.3d 393, 408 (4th Cir. 2010).

The citizenship of the litigants is central when diversity jurisdiction is invoked. *Axel Johnson, Inc. v. Carroll Carolina Oil Co.*, 145 F.3d 660, 663 (4th Cir. 1998). Notably, "state citizenship for diversity jurisdiction depends not on residence, but on national citizenship and domicile." *Id.* (citation omitted). Generally, "the existence of such citizenship cannot be inferred from allegations of mere residence, standing alone." *Id*; *see also Robertson v. Cease*, 97 U.S. 646, 648 (1878) ("Citizenship and residence, as often declared by this court, are not synonymous terms.").

In other words, for "purposes of diversity jurisdiction, residency is not sufficient to establish citizenship." *Johnson v. Advance Am., Cash Advance Ctrs. of S.C., Inc.*, 549 F.3d 932, 937 n.2 (4th Cir. 2008). Rather, a U.S. national is a citizen of the state where the person has his or her domicile, which "requires physical presence, coupled with an intent to make the State a home." *Id.*

As noted, "the burden is on the party asserting jurisdiction to demonstrate that jurisdiction does, in fact, exist." *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999). Here, plaintiff seems to indicate that he is a citizen of Maryland. *See* ECF 1. And, DPSCS, as an arm of the State of Maryland, would certainly be considered a citizen of Maryland for purposes of diversity. Thus, there is not complete diversity between the parties.

In the absence of diversity, the Court must consider 28 U.S.C. § 1367(a), by which a district court is authorized to resolve state law claims under the grant of supplemental jurisdiction. Pursuant to § 1367(c)(3), however, a district court "may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction."

The Fourth Circuit has recognized that under § 1367(c)(3), "trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when federal claims have been extinguished." *Shanaghan v. Cahill*, 58 F.3d 106 (4th Cir. 1995); *see also ESAB Group, Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 394 (4th Cir. 2012) ("Section 1367(c) recognizes courts' authority to decline to exercise supplemental jurisdiction in limited circumstances, including . . . where the court dismisses the claims over which it has original jurisdiction."); *Hinson v. Northwest Fin. S. Carolina, Inc.*, 239 F.3d 611, 616 (4th Cir. 2001) (stating that, "under the authority of 28 U.S.C. § 1367(c), authorizing a federal court to decline to exercise supplemental jurisdiction, a district court has inherent power to dismiss the case . . . provided the conditions set forth in § 1367(c) for declining to exercise supplemental jurisdiction have been met"); *Ramsay v. Sawyer Property Management of Maryland, LLC,* 948 F. Supp. 2d 525, 537 (D. Md. 2013) (declining to exercise supplemental jurisdiction over plaintiff's state law claims after dismissing FDCPA claims); *Int'l Ass'n of Machinists & Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 500 (D. Md. 2005) ("Because the court will dismiss the claims over which it has original jurisdiction, the court will decline to exercise supplemental jurisdiction over the remaining state law claims.").

When exercising this discretion, the Supreme Court has instructed federal courts to "consider and weigh . . . the values of judicial economy, convenience, fairness, and comity in order

to decide whether to exercise jurisdiction over . . . pendent state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). The Court has said: "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966).

Pursuant to 28 U.S.C. § 1367(c), and the factors set forth in *Carnegie–Mellon*, 484 U.S. at 350, I decline to exercise supplemental jurisdiction with respect to plaintiff's defamation claim. [7] In the absence of subject matter jurisdiction as to the ADA claim, there is no reason for the tort claim to be heard in federal court, rather than in a Maryland State court, which is well equipped to address State law claims. *See, e.g.*, *Medina v. L & M Const., Inc.*, RWT–14–00329, 2014 WL 1658874, at *2 (D. Md. Apr. 23, 2014) ("Finally, as a matter of comity, this Court will remand Medina's state law claims back to state court, as '[n]eedless decisions of state law [by federal courts] should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.'") (alteration in *Medina*) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. at 726); *see also* 13D WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 3567.3 n. 72 (3d ed. 2020) (collecting cases).

Because the Court does not have original jurisdiction with respect to plaintiff's defamation claim, plaintiff may file his State-law claim in a Maryland court within thirty days following the entry of an Order of dismissal. As Judge William D. Quarles, Jr. explained in *Johnson v. Frederik Memorial Hosp., Inc.*, WDQ-12-2312, 2013 WL 2149762, at *7 n.26 (D. Md. May 15, 2013):

> 28 U.S.C. § 1367(d) provides that, "[t]he period of limitations for any claim asserted under subsection (a) . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling

[7] In view of my disposition as to the defamation claim, I need not consider defendant's argument that plaintiff was required to comply with the MTCA, S.G. § 12-101, but failed to do so.

period." *Accord* Md. Rule 2–101(b) ("[I]f an action is filed in a United States District Court or a court of another state within the period of limitations prescribed by Maryland law and that court enters an order of dismissal . . . because the court declines to exercise jurisdiction . . . an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in this State.").

IV. Conclusion

For the reasons set forth above, I shall grant the Motion. This dismissal is without prejudice to plaintiff's right to file his suit in State court within thirty days following the entry of the Order of dismissal, pursuant to 28 U.S.C. § 1367(d).

An Order follows.

Dated: May 5, 2021

/s/
Ellen L. Hollander
United States District Judge

Order by the Judge

On May 5, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES ADEYEMI,	*	
Plaintiff,	*	
v.	*	Civil No. ELH-19-3207
DEPARTMENT OF PUBLIC SAFETY CORRECTIONAL SERVICES,	*	
Defendant,	*	

* * * * * * * * * * * * *

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is this 5th day of May, 2021, by the United States District Court for the District of Maryland, ORDERED that:

a) The Motion (ECF 12) is GRANTED;

b) The ADA claim and the defamation claim are dismissed, without prejudice;

c) The Clerk is directed to close the case.

/s/
Ellen L. Hollander
United States District Judge

Memorandum Opinion on Motion for Reconsideration

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES ADEYEMI,	*	
Plaintiff,	*	
v.	*	Civil No. ELH-19-3207
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,	*	
Defendant.	*	

* * * * * * * * * * * * *

MEMORANDUM

This Memorandum resolves a "Motion to Reconsider with the Correction of the Memorandum Opinion" filed by the self-represented plaintiff, James Adeyemi, seeking reconsideration of the Court's dismissal of this case. ECF 18 (the "Motion"). The Motion includes one exhibit. ECF 18-1.

In this employment discrimination case, plaintiff, who is deaf, filed a "Complaint of Defamation and Retaliation" against his former employer, the Maryland Department of Public Safety and Correctional Services ("DPSCS"). ECF 1 ("Complaint"). The Complaint, which was accompanied by 29 exhibits, seemed to assert two claims against defendant DPSCS: defamation, under Maryland law, and retaliation, under the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.* ("ADA"). ECF 1 at 2. Plaintiff sought "compulsory damage and [recovery for] financial loss." *Id.*

Defendant moved to dismiss the Complaint for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), or in the alternative, for summary judgment, pursuant to Fed. R. Civ. P. 56. ECF 12. The motion was supported by a memorandum (ECF 12-1) and thirteen exhibits.

On May 5, 2021, I granted defendant's motion. ECF 16 (Memorandum Opinion); ECF 17 (Order). I dismissed plaintiff's ADA claim under Fed. R. Civ. P. 12(b)(1), without prejudice, as barred by state sovereign immunity. ECF 16 at 7-14. And, I declined to exercise supplemental jurisdiction with respect to plaintiff's defamation claim. *Id.* at 14-19. I noted that dismissal was without prejudice to plaintiff's right to file suit in State court within thirty days of the entry of the Order of dismissal. *Id.* at 18-19.

On May 17, 2021, plaintiff filed the pending Motion. ECF 18. The Motion seeks reconsideration of my rulings of May 5, 2021. *See* ECF ECF 16; ECF 17.

In particular, plaintiff cites five "factors" for reconsideration: "Eleventh Amendment," "Liability," "ADA Retaliation," "The Question of Relief," and "MTCA" (referring to the Maryland Tort Claims Act, Md. Code (2014 Repl. Vol., 2018 Supp.), §§ 12-101 *et seq.* of the State Government Article ("S.G.")). *Id.* at 2-8. Defendant opposes the Motion. ECF 19. And, plaintiff has replied, accompanied by an exhibit. ECF 20; ECF 20-1.

For the reasons that follow, I shall deny the Motion.

I. Legal Standard

Without specifying a particular rule or basis, plaintiff's Motion is styled, "Motion to Reconsider with the Correction of the Memorandum Opinion." ECF 18 at 1. The Federal Rules of Civil Procedure do not contain an express provision for a "motion for reconsideration" of a final judgment. *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 470 n.4 (4th Cir. 2011), *cert. denied*, 565 U.S. 825 (2011). But, to avoid elevating form over substance, a motion to reconsider may be construed as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e), or a motion for relief

from judgment under Fed. R. Civ. P. 60(b). *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 278-80 (4th Cir. 2008).

Fed. R. Civ. P. 59(e) is captioned "Motion to Alter or Amend a Judgment." It states: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." A motion filed outside the 28-day window set forth in Rule 59(e) is considered under Rule 60, captioned "Relief from a Judgment or Order." *See In re Burnley*, 988 F.2d 1, 2-4 (4th Cir. 1992) (construing untimely Rule 59(e) motion as a Rule 60(b) motion).

The timing of the filing of the motion is the key factor in ascertaining which rule applies. The Fourth Circuit has said that "a motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than [28] days after entry of the adverse judgment and seeks to correct that judgment." *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 412 (4th Cir. 2010) (citing *Small v. Hunt*, 98 F.3d 789, 797 (4th Cir. 1996)); *see In re Burnley*, 988 F.2d at 2–3; *Lewis v. McCabe, Weisberg & Conway, LLC*, DKC-13-1561, 2015 WL 1522840, at *1 (D. Md. Apr. 1, 2015).

Here, the Motion was filed on May 17, 2021, twelve days after I granted defendant's motion to dismiss. Because plaintiff filed for reconsideration within 28 days of my order dismissing this action, I will consider the Motion under Rule 59(e).

Fed. R. Civ. P. 59(e) "permits the district court to reconsider a decision in certain circumstances." *Ross v. Early*, 899 F. Supp. 2d 415, 420 (D. Md. 2012) (citing Fed. R. Civ. P. 56(e)), *aff'd*, 746 F.3d 546 (4th Cir. 2014). The plain language of Rule 59(e) does not provide a particular standard by which a district court should evaluate a motion to alter or amend judgment. However, the Fourth Circuit has clarified: "Our case law makes clear [ ] that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling

law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007) (internal quotations omitted); *see United States ex el Carter v. Halliburton Co.*, 866 F. 3d 199, 210-11 (4th Cir. 2017), *cert. denied*, — U.S. ——, 138 S. Ct. 2674 (2018); *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 197 (4th Cir. 2006); *U.S. ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003); *E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112 (4th Cir. 1997).

As indicated, a district court may amend a judgment under rule 59(e), *inter alia*, to "prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). Another purpose of Rule 59(e) is to "permit[ ] a district court to correct its own errors, 'sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.'" *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (quoting *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995)), *cert. denied*, 525 U.S. 1104 (1999). But, the Fourth Circuit has cautioned that a party may not use a Rule 59(e) motion to "raise arguments which could have been raised prior to the issuance of the judgment," or to "argue a case under a novel legal theory that the party had the ability to address in the first instance." *Id.*; see also *Nat'l Ecol. Found. v. Alexander*, 496 F.3d 466, 477 (6th Cir. 2007) ("Rule 59(e) motions are 'aimed at reconsideration, not initial consideration.'") (citation omitted). In other words, "[a] motion under Rule 59(e) is not authorized 'to enable a party to complete presenting his case after the court has ruled against him.'" *Matter of Reese*, 91 F.3d 37, 39 (7th Cir. 1996) (quoting *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995)); see 11 WRIGHT ET AL., FED. PRAC. & PROC. CIV. § 2810.1 (3d ed.) ("In practice, because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied").

Notably, "[m]ere disagreement [with a court's ruling] does not support a Rule 59(e) motion." *Hutchinson*, 994 F.2d at 1082; *see United States ex rel. Becker*, 305 F.3d at 290. Indeed, "'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.'" *Pac. Ins. Co.*, 148 F.3d at 403 (citation omitted).

II. Discussion

As noted, a Rule 59(e) motion for reconsideration should be granted only to accommodate an intervening change in controlling law, to account for new evidence not available at trial, or to correct a clear error of law or prevent manifest injustice. *Zinkand*, 478 F.3d at 637 (internal quotations omitted). Plaintiff has identified no such grounds in his Motion. As best as I can understand them, I briefly discuss each of plaintiff's five "factors" below.

Plaintiff's first factor is labelled "Eleventh Amendment." ECF 18 at 3-4. This section does not support any of the recognized grounds to grant a Rule 59(e) motion. Plaintiff's major argument is that the Eleventh Amendment does not bar his suit because he is a citizen of Maryland. *Id.* at 3. "By its terms the Amendment applies only to suits against a State by citizens of another State, [but the Supreme Court's] cases have extended the Amendment's applicability to suits by citizens against their own States." *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 363 (2001) (collecting cases).

Plaintiff also misapprehends the nature of my previous ruling. Plaintiff states: "[T]he department argued that I should make a contact with MTCA, and the court disagreed and ordered me to file a suit in State's Circuit Court within 30 days." ECF 18 at 4. I did not "order" plaintiff to file suit; I merely ruled that he *could* do so. In addition, in granting defendant's motion to dismiss, I explicitly did not consider defendant's argument that plaintiff did not comply with the MTCA. ECF 18 at 18 n.4.

Plaintiff's second factor is styled "Liability." ECF 18 at 5-6. Much of this section is a series of irrelevant allegations regarding employees of the Human Resources Services Division ("HRSD") of DPSCS. Insofar as there is a legal argument here, plaintiff contends that HRSD employees are not "the arm of [the] state" entitled to sovereign immunity. But, plaintiff's suit named DPSCS as an entity, not any individuals. *See* ECF 1 at 1. Regardless, there is nothing in this section to warrant granting a Rule 59(e) motion.

Plaintiff's third factor is "ADA Retaliation." ECF 18 at 6. It is not clear what plaintiff means in this section. He contends: "The court stated that the plaintiff didn't cite the relevant title of the ADA applied in the complaint. That is not true because I am deaf by disability that is required to be considered for throughout the title of the ADA." *Id.*

Plaintiff misunderstands the Court's point. In my ruling, I explained that although the plaintiff "does not cite the relevant title of the ADA in his Complaint," based upon his retaliation allegations his claim must arise under Title V, predicated on Title I because the alleged retaliation related to complaining about employment discrimination. ECF 16 at 9. And, for both a claim brought under Title I itself or a Title V retaliation claim premised on Title I, sovereign immunity applies. *Id.* at 12-13. Again, this section makes no arguments to support a Rule 59(e) motion.

The fourth factor invoked by plaintiff is labelled "The Question of Relief." ECF 18 at 6-7. In this section, plaintiff argues that "it is not true that the court stated that Adeyemi seems to seek only money damages." *Id.* at 6. He goes on to say that "the court forced" him to claim monetary damages, and "never question[ed]" if he was interested in injunctive relief, which he would "gladly accept." *Id.* Presumably, this is a reference to the Court noting that the exception to sovereign immunity for prospective injunctive relief did not apply to plaintiff, because he sought only money damages. ECF 16 at 13.

The Court did not "force" the plaintiff to claim any sort of damages. Rather, it merely proceeded on the basis of plaintiff's Complaint. In his Complaint, plaintiff sought "relief for compulsory damage and financial loss"—that is, money damages. ECF 1 at 1. Under "Relief," he wrote: "I would request the court to compensate the defendant for deliberately action of violating the policy for punitive damages [sic]." *Id.* at 15. His Complaint made no mention of injunctive relief. Nor can plaintiff request a different type of relief via a motion for reconsideration.

In this section, plaintiff also expresses a "wish" for court-ordered "mediation." ECF 18 at 7. Nothing in plaintiff's arguments in this section states a ground for granting a Rule 59(e) motion.

Plaintiff's final factor is titled "MTCA." ECF 18 at 8. This section states in its entirety:

> I think the defendant offered to help me get money damage through MTCA. I want to thank the court for not accepting the idea of requiring me to apply for a relief through MTCA since before I could not prove that I was suffering through lying by HRSD for employment verification. Now after this court verified that DPSCS did retaliate Adeyemi, I can use the order for a proof but I didn't know how much I could ask for. That is a big problem. AGAIN I AM NOT INTERESTED IN MONEY. I WANT A JOB.

The court did not reach the merits of plaintiff's retaliation claim, much less "verify" any claim of retaliation. Nor did the court issue any ruling one way or the other as to defendant's MTCA argument. And, defendant has rejected plaintiff's assertion that it offered to help him get money damages via the MTCA, saying it was merely arguing that the MTCA was plaintiff's sole avenue for a defamation claim against the State. ECF 19 at 7.

In sum, plaintiff has failed to provide any of the recognized grounds for granting a Rule 59(e) motion: an intervening change in controlling law, new evidence not previously available, a clear error of law, or manifest injustice. Instead, his arguments variously misconstrue the Court's previous ruling, disagree with its conclusions, present arguments he could have presented during

briefing on the motion to dismiss, or attempt to alter his claim. This does not suffice to grant a Rule 59(e) motion.

III. Conclusion

For the reasons set forth above, I shall deny the Motion. An Order follows, consistent with this Memorandum.

Dated: September 21, 2021

/s/
Ellen L. Hollander
United States District Judge

Denied Order by the Judge Ellen L. Hollander

On September 21, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES ADEYEMI,	*	
Plaintiff,	*	
v.	*	Civil No. ELH-19-3207
DEPARTMENT OF PUBLIC SAFETY CORRECTIONAL SERVICES,	*	
Defendant,	*	

* * * * * * * * * * * * *

ORDER

For the reasons set forth in the accompanying Memorandum, it is this 21st day of September, 2021, by the United States District Court for the District of Maryland, ORDERED that plaintiff's "Motion to Reconsider with the Correction of the Memorandum Opinion" (ECF 18) is DENIED.

/s/
Ellen L. Hollander
United States District Judge

CASES

Clark vs State of California cited 123F.3d 1267 (9th cir. 1997

(/subscribe/digital/) ADA and RA Suits Not Barred by 11th Amendment

Loaded on SEPT. 15, 1998 published in Prison Legal News September, 1998 (/news/issue/9/9/), page 12
Filed under: Discrimination (/search/?selected_facets=tags:Discrimination), Disabled Prisoners (/search/?selected_facets=tags:Disabled%20Prisoners), Americans with Disabilities Act (/search/?selected_facets=tags:Americans%20with%20Disabilities%20Act), Rehabilitation Act (/search/?selected_facets=tags:Rehabilitation%20Act), Eleventh Amendment Immunity (/search/?selected_facets=tags:Eleventh%20Amendment%20Immunity). Location: California (/search/?selected_facets=locations:1476).

The court of appeals for the ninth circuit held that the eleventh amendment does not bar suits under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, or the Rehabilitation Act (RA), 29 U.S.C. § 794. Developmentally disabled prisoners in California filed a class action lawsuit under the RA and ADA claiming they were discriminated against because of their disabilities. The state filed a motion to dismiss, arguing they were entitled to absolute immunity under the eleventh amendment from suits seeking relief under the ADA and RA. The district court denied the motion. The state then filed an interlocutory appeal, which the appeals court denied.

The eleventh amendment prohibits citizens from suing the states. That immunity can be abrogated by congress or waived by the state. "Here, congress has unequivocally expressed its intent to abrogate the Act. Section 42 U.S.C. § 12202 of the ADA explicitly states, 'A state shall not be immune under the eleventh amendment.' See also Duffy v. Riveland , 98 F.3d 447, 452 (9th Cir. 1996). Similarly, 42 U.S.C. § 2000d-7(a)(1) of the Rehabilitation Act explicitly states, 'A state shall not be immune under the eleventh amendment of the constitution of the United States from suit in federal court for a violation of section 504 of the Rehabilitation Act of 1973."

The only issue for the court to decide was whether congress had lawfully curtailed the state's immunity from suit. See: Seminole Tribe v. Florida , 116 S.Ct. 1114 (1996). The court held congress had acted properly under its authority to pass legislation under the fourteenth amendment because the disabled are protected against discrimination by the equal protection clause. The purpose of the ADA and RA is to prevent discrimination against the disabled. "Both the ADA and the Rehabilitation Act therefore are within the scope of appropriate legislation under the Equal Protection Clause as defined by the supreme court. At the same time, neither Act provides remedies so sweeping that they exceed the harms that they are designed to redress. We therefore agree with the district court that both the ADA and the Rehabilitation Act were validly enacted under the Fourteenth Amendment."

The court held that even if congress had not abrogated the state's immunity from suit, the state of California had waived its immunity from suit under the RA by accepting federal funds. The RA

conditions acceptance of federal funds upon waiver of eleventh amendment immunity. "Because California accepts federal funds under the Rehabilitation Act, California has waived any immunity under the eleventh amendment." See: Clark v. State of California , 123 F.3d 1267 (9th Cir. 1997).

Related legal case

Clark v. State of California

Year	1997
Cite	123 F.3d 1267 (9th Cir. 1997)
Level	Court of Appeals

Clark v. State of California, 123 F.3d 1267, 7 A.D. Cases 292, 97 Cal. Daily Op. Serv. 6894 (9th Cir. [illegible])

Read more ...

Bragdon v. abbott cited 118 S. Ct. 2196(1998) Supreme Court

(/subscribe/digital/) U.S. Supreme Court Rules That ADA Applies to Prisoners

Loaded on SEPT. 15, 1998 by Paul Wright (/news/author/paul-wright/) published in Prison Legal News September, 1998 (/news/issue/9/9/), page 1
Filed under: Medical (/search/?selected_facets=tags:Medical), HIV/AIDS (/search/?selected_facets=tags:HIV/AIDS), Cardiovascular (/search/?selected_facets=tags:Cardiovascular), Dental Care (/search/?selected_facets=tags:Dental%20Care), Blood (/search/?selected_facets=tags:Blood), Boot Camps (/search/?selected_facets=tags:Boot%20Camps), Americans with Disabilities Act (/search/?selected_facets=tags:Americans%20with%20Disabilities%20Act), Rehabilitation Act (/search/?selected_facets=tags:Rehabilitation%20Act), Drug Treatment/Rehab (/search/?selected_facets=tags:Drug%20Treatment/Rehab).
Locations: Maine (/search/?selected_facets=locations:1492), Pennsylvania (/search/?selected_facets=locations:1512).

By Paul Wright

On June 15, 1998, a unanimous United States supreme court held that the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, applies to prisoners. In doing so the court resolved a split between the circuits and affirmed a third circuit ruling.

In 1990 congress enacted the ADA to eliminate discrimination against the disabled. Title II of the ADA prohibits public entities from discriminating against a "qualified individual with a disability" because of the disability. PLN has provided extensive, detailed coverage of prison and jail ADA litigation since the law was first enacted. The importance of the ADA to prisoners cannot be overstated. As the nation's expanding prison population gets sicker and older, the ADA will help eliminate some of the discriminatory barriers impacting prisoners. The ADA has already been used successfully to secure injunctive relief for HIV+, deaf, wheelchair bound, quadriplegic and blind prisoners and pretrial detainees. It has also resulted in significant damage awards. [See, PLN , March, 1996. Love v. McBride , 896 F. Supp. 808 (ND IN 1995)]. However, due to a circuit split these successes were limited to only some parts of the country.

In the April, 1998, issue of PLN we reported Yeskey v. Pennsylvania DOC , 118 F.3d 168 (3rd Cir. 1997). Ronald Yeskey, a Pennsylvania state prisoner, was denied admission to the DOC's motivational boot camp program due to a history of hypertension, despite his sentencing judge's recommendation that he enter the program. Yeskey filed suit claiming that his exclusion from the program violated the ADA. As a result of not being able to enter the boot camp program Yeskey wound up spending 36 months in prison rather than the six he would have spent had he been allowed to enter the program.

The district court dismissed the suit on a Fed.R.Civ.P. 12(b)(6) motion, holding that the ADA did not apply to state prisoners. The third circuit reversed and remanded. After examining the legislative history of the ADA the court concluded that the ADA did apply to state prisoners, especially when

analyzed in conjunction with the Rehabilitation Act, 29 U.S.C. § 794(a), the ADA's forerunner which prohibits discrimination against the disabled by entities that receive federal funding. The ADA eliminates the federal funding requirement.

The supreme court granted review to answer the question "Does the ADA apply to inmates in state prisons?" In a brief ruling, justice Scalia answered yes for the unanimous court.

The case boiled down to a matter of statutory construction. "Assuming, without deciding, that the plain statement rule does govern application of the ADA to the administration of state prisons, we think the requirement of the rule is amply met: the statute's language unmistakably includes state prisons and prisoners within its coverage.... Here, the ADA plainly covers state institutions without any exception that could cast the coverage of prisons into doubt. Title II of the ADA provides that:

"'Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.' 42 U.S.C. § 12132.

"State prisons fall squarely within the statutory definition of 'public entity,' which includes 'any department, agency, special purpose district, or other instrumentality of a state or states or local government.'"

The court rejected the defendants' argument that prisons do not provide prisoners with the "benefits" of "programs, services or activities." The court held that modern prisons do, in fact, provide prisoners with many activities, services and programs within the meaning of the ADA. In this case, Pa.Stat.Ann. Title 61, § 1123 referred to the boot camp that Yeskey wanted to enter as a "program." The court held there was no basis to distinguish between services and activities provided by prisons to those provided by other government entities.

The court also held that simply because some prison activities, i.e., drug treatment programs, are not voluntary does not exclude them from ADA coverage. In a passing swipe at pro se prisoner litigants, justice Scalia noted that prison law libraries are a service prisoners can take or leave, and goes on to state that "pro se civil rights litigation has become a recreational activity for state prisoners." Presumably the ADA prohibits prisons from discriminating against disabled prisoners who seek to use a law library, if one is available.

The court held that the ADA is not ambiguous even though it does not mention prisons or prisoners in its text. The court did not consider the defendants' claim that the ADA's application to state prisons was an unconstitutional exercise of congressional power under the commerce clause or the Fourteenth amendment because the argument was not raised in the lower courts. See: Pennsylvania DOC v. Yeskey , 118 S.Ct. 1952 (1998).

In a separate case, the supreme court held that the ADA protects people infected with HIV and AIDS. The case arose when a dentist refused to treat a patient with HIV. See: Bragdon v. Abbott , 118 S.Ct. 2196 (1998).

Readers should note that the Prison Litigation Reform Act does not limit attorney fee awards in prison or jail litigation involving ADA claims. See: PLN , October, 1997.

Related legal cases

Bragdon v. abbott

Year	1998
Cite	118 S. Ct. 2196 (1998)
Level	Supreme Court

Bragdon v. Abbott, 118 S.Ct. 2196, 141 L.Ed.2d 540, 8 A.D. Cases 239 (U.S. 06/25/1998)

[1] United States Supreme Court

Read more ...

Pennsylvania DOC v. Yeskey

Year	1998
Cite	118 S.Ct. 1952 (1998)
Level	Supreme Court

Department of Corrections v. Yeskey, 118 S.Ct. 1952, 141 L.Ed.2d 215, 8 A.D. Cases 201 (U.S. 06/15/1998)

[1] United States Supreme Court

Read more ...

Tennessee, Petitioner v. Geirge Lane et al

Americans with Disabilities Act

Case Compliments of Versuslaw

ADA Title II (access) is a valid abrogation of the 11th Amendment - Tennessee v. Lane, 541 U.S. 509 (2004)

[1] SUPREME COURT OF THE UNITED STATES

[2] No. 02-1667

[3] 124 S.Ct. 1978, 541 U.S. 509, 158 L.Ed.2d 820, 15 A.D. Cases 865, 28 NDLR P 65, 2004 Daily Journal D.A.R. 5854, 04 Cal. Daily Op. Serv. 4207, 4 Cal. Daily Op. Serv. 4207, 2004.SCT.0000081< http://www.versuslaw.com>

[4] May 17, 2004

[5] **TENNESSEE, PETITIONER**
v.
GEORGE LANE ET AL.

[6] SYLLABUS BY THE COURT

[7] OCTOBER TERM, 2003

[8] Argued January 13, 2004

[9] Respondent paraplegics filed this action for damages and equitable relief, alleging that Tennessee and a number of its counties had denied them physical access to that State's courts in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), which provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity," 42 U. S. C. §12132. After the District Court denied the State's motion to dismiss on Eleventh Amendment immunity grounds, the Sixth Circuit held the appeal in abeyance pending Board of Trustees of Univ. of Ala. v. Garrett, 531 U. S. 356. This Court later ruled in Garrett that the Eleventh Amendment bars private money damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled. The en banc Sixth Circuit then issued its Popovich decision, in

Protecting the Constitutionality of the ADA

III. PROTECTING THE CONSTITUTIONALITY OF THE ADA

The Department has been actively engaged in defending the constitutionality of the ADA. The Department intervenes in private suits across the country to defend the constitutionality of the statute against challenges by state defendants. In early 2001, the Supreme Court limited the reach of the ADA by holding in Board of Trustees of the University of Alabama v. Garrett[141] that a private individual may not, consistent with the Constitution, sue a State or state agency to enforce the employment discrimination protections in Title I of the ADA. The Court held that States are protected from such suits by sovereign immunity under the Eleventh Amendment. Following earlier decisions holding that Con-gress may remove States' immunity only when acting pursuant to its powers under the Four-teenth Amendment, the Court in Garrett held that Title I's prohibition of discrimination on the basis of disability went beyond Congress's authority under the Fourteenth Amendment. Thus plaintiffs may not sue a State directly to enforce Title I.

The Garrett opinion, however, does not bar all ADA actions challenging state and local government policies or practices. The Court made clear that the federal government may continue to sue States for injunctive relief and money damages under Title I, and that private individuals may sue state officials in their official capacities as long as the plaintiffs do not seek money damages. Also, the Garrett decision only prohibited Title I suits against state governments, not cities or counties, because sovereign immunity as embodied in the Eleventh Amendment does not apply to local governments. Moreover, the Court left open the question whether private individuals may sue States under Title II, as opposed to Title I.

Following the decision in Garrett, numerous lawsuits were brought against state and local governments under Title II of the ADA. The Department has intervened in scores of cases at all levels of the federal court system throughout the country to defend the constitutionality of Title II in these private suits. The cases involve a wide range of claims regarding courts, prisons, public transit, voting, public education, parking placards, licensing, and institutionalization. In defending the constitutionality of Title II of the ADA, the Department has argued that Congress had the authority to remove States' immunity because the ADA is an appropriate and constitutional means of remedying the history of pervasive discrimination against people with disabilities.

Since Garrett, the Supreme Court has addres-sed the application of Title II in two instances. In 2004, the Supreme Court issued a decision in Tennessee v. Lane,[142] holding that individuals may sue States directly to require States to make their courts and judicial services accessible under the ADA. The plaintiffs alleged that the State of Tennessee and 25 of its counties violated the ADA by having inaccessible courthouses. They asked the federal court to order that the courts be made accessible and to award compensatory damages. One plaintiff, a wheelchair user who was charged with two misdemeanor offenses, alleged that he had to crawl up two flights of stairs to make a required court appearance. The other, a court reporter who is also a wheelchair user, alleged that many of Tennessee's courthouses and courtrooms had barriers that made it difficult for her to practice her profession. The Court held that Title II is an appropriate response by Congress to prevent denial of the right of access to state courts in light of the history of unconstitutional treatment by States of people with disabilities. The Lane decision left open the question of the constitutionality of Title II suits challenging state

practices or policy in other areas of activity.

Following Lane, the Supreme Court in 2006 ruled unanimously in United States v. Georgia[143] that a prisoner could proceed with his Title II claims for damages against the State of Georgia to the extent that his claims alleged independent violations of the Constitution. The Court's opinion did not address the extent to which individuals may enforce Title II against States to secure ADA rights in prison that are more expansive than those that are provided by the Constitution. The plaintiff, a prisoner who has paraplegia and uses a wheelchair, alleged that his cell was too small for him to maneuver his wheelchair, making it impossible for him to gain access to his bed, toilet, and shower without assistance, which was often denied. He also claimed that architectural barriers in the prison prevented him from using the library, attending religious services, and participating in a wide range of counseling, education, and vocational training programs. The Court remanded the case to the district court to determine which of his Title II claims would also allege constitutional violations.

As a result of the decision in United States v. Georgia, many Title II cases pending in appellate courts are being sent back to district courts to determine whether they can be upheld because they seek to enforce Title II rights that do not go further than those protected by the Constitution. The Department of Justice is continuing its nationwide effort to intervene in such cases and others to defend the constitutionality of Title II of the ADA.

Footnotes

141 Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001).
142 Tennessee v. Lane, 541 U.S. 509 (2004).
143 United States v. Georgia, 126 S. Ct. 877 (2006).

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