

APPENDIX

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ENTERED OCTOBER 11, 2017

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1049

DOUGLAS C. CHARNOCK, JR.,

Plaintiff - Appellant,

v.

COMMONWEALTH OF VIRGINIA;
EDWARD W. HANSON, JR.; FREDERICK B.
LOWE, JR.,

Defendants - Appellees.

Appeal from the United States District Court for
the Eastern District of Virginia, at Norfolk.
Raymond A. Jackson, District Judge. (2:16-cv-00493-
RAJ-LRL)

Submitted: September 19, 2017

Decided: October 11, 2017

Before MOTZ, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael D.J. Eisenberg, LAW OFFICE OF MICHAEL D.J. EISENBERG, Washington, D.C., for Appellant. Mark R. Herring, Attorney General of Virginia, Samuel T. Towell, Deputy Attorney General, Nicholas F. Simopoulos, Senior Assistant Attorney General, Christian A. Parrish, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Douglas C. Charnock, Jr., appeals the district court's order granting defendants' motion to dismiss his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Charnock v. Virginia*, No. 2:16-cv-00493-RAJ-LRL (E.D. Va. Jan. 5, 2017). 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

ENTERED: OCTOBER 11, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1049
(2:16-cv-00493-RAJ-LRL)

DOUGLAS C. CHARNOCK, JR.

Plaintiff - Appellant

v.

COMMONWEALTH OF VIRGINIA; EDWARD W.
HANSON, JR.; FREDERICK B. LOWE, JR.

Defendants - Appellees

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

ENTERED JANUARY 5, 2017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DOUGLAS C. CHARNOCK, JR.

Plaintiff,

v.

ACTION NO. 2:16cv493

COMMONWEALTH OF VIRGINIA, *et al.*,

Defendants.

DISMISSAL ORDER

This matter is before the Court on a number of motions filed by *pro se* Plaintiff Douglas C. Charnock, Jr. ("Plaintiff") and Defendants Commonwealth of Virginia, Judge Edward W. Hanson, Jr., and Judge Frederick B. Lowe, Jr. ("Defendants"), namely:

- (1) Plaintiff's Motion for Declaratory and Injunctive Relief, Mistrial for Jurisdictional Violations and Official Misconduct for Violations of Constitutional and Civil Rights Statutes for Discrimination, Violations of U.S.C. Title 38 and Social Security Disability Act 42 U.S.C. 207 Under the Color of Law ("Motion for Declaratory and Injunctive Relief," ECF No. 2);

- (2) Plaintiff's Amended Motion for Declaratory and Injunctive Relief, Mistrial for Jurisdictional Violations and Official Misconduct for Violations of Constitutional and Civil Rights Statutes for Discrimination, Violations of U.S.C. Title 38 and Social Security Disability Act 42 U.S.C. 207 Under the Color of Law ("Amended Motion for Declaratory and Injunctive Relief," ECF No. 5);
- (3) Defendants' Motion to Dismiss (ECF No. 8);
- (4) Plaintiff's Motion and Support to Restore Non-Assignability 38 U.S.C. Disability Award ("Motion to Restore," ECF No. 12);
- (5) Plaintiff's Motion for Criminal Federal Discovery by Grand Jury Investigation for Probable Cause Tort Law Violations, Unconscionable Acts of Discretion Violating Tort Law, Fraud on the Court in Excess of One Million Dollars (\$1,000,000) to Certify Charges to Federal Grand Jury by Virginia Eastern District Federal Court Against Accomack County Circuit Court Defendants ("Motion for Criminal Federal Discovery," ECF No. 14); and
- (6) Plaintiff's Motion to Incorporate Recently Acquired Evidence in Support of Sixth Amendment Violation for Declaratory Judgment Ruling Where

Constitutional Law and Support by
Stare Decisis Doctrine of Precedent
Where Balance Favors for Plaintiff
("Motion to Incorporate," ECF No. 25).

The Court concludes that oral argument is unnecessary because the facts and legal arguments are adequately presented in the parties' briefs. For the reasons set forth below, Defendants' Motion to Dismiss (ECF No. 8) will be GRANTED. Because the Court has determined that dismissal of Plaintiff's Amended Complaint is warranted, Plaintiff's Motion for Declaratory and Injunctive Relief (ECF No. 2); Amended Motion for Declaratory and Injunctive Relief (ECF No. 5); Motion to Restore (ECF No. 12); Motion for Criminal Federal Discovery (ECF No. 14); and Motion to Incorporate (ECF No. 25) will be **DISMISSED AS MOOT**.

I. Factual Background

In 2012, Plaintiff's now ex-wife filed for divorce from Plaintiff in the Circuit Court for the County of Accomack, Virginia ("Circuit Court"). On July 15, 2014, the Circuit Court entered a Final Divorce Decree. (Br. Supp. Mot. to Dismiss Ex. 1, ECF No. 10-1 at 4.) Plaintiff appealed, and on May 12, 2015, the Court of Appeals of Virginia

summarily affirmed¹ Proceedings in this matter, however, have not ceased. Most recently, by Omnibus Order entered on July 10, 2016, the Circuit Court concluded, *inter alia*, that Plaintiff was in contempt of the Final Divorce Decree and retained the matter on the docket for further proceedings. (Br. Supp. Mot. to Dismiss Ex. 2, ECF No. 10-2 at 4-5.)

In his Amended Complaint, Plaintiff expresses his disagreement with various judicial rulings and decisions made in his divorce proceedings. For example, Plaintiff contends that Defendants Hanson and Lowe violated his rights by denying motions for a *guardian ad litem* and a continuance, and by ignoring a request for an accommodation under the Americans with

¹ "The [Court of Appeals of Virginia's] docket is accessible through the Virginia Judicial System Website. Federal Courts in the Eastern District of Virginia regularly take judicial notice of the information contained on this website." *McClain v. Clarke*, No. 3:13CV324, 2013 WL 6713177, at *1 n.6 (E.D. Va. Dec. 18, 2013) (citations omitted). Moreover, a court may consider public records referenced in a complaint without converting a motion to dismiss into a motion for summary judgment. *Cain v. Virginia*, 982 F. Supp. 1132, 1133 n.2 (E.D. Va. 1997) (citing *Gasner v. Cty. of Dinwiddie*, 162 F.R.D. 280, 282 (E.D. Va. 1995)). The Court of Appeals of Virginia's proceedings in Plaintiff's divorce matter can be found at: <http://www.courts.state.va.us/main.htm> (select "Case Status and Information;" select "Court of Appeals of Virginia" from drop-down menu; follow "ACMS-CAV" button; select "Appellant/Petitioner" under "Inquiry;" type "Charnock, Douglas" in the "Name" box and follow "Search" button; then follow hyperlink for "1450-14-1."

Disabilities Act ("ADA"). (Am. Compl. at 4, ECF No. 4.) Plaintiff also contends that Defendants Hanson and Lowe denied access to "recordings, cameras and a trained advocate[] for accommodations." (*Id.*) Throughout his Amended Complaint, Plaintiff contends that these Defendants acted outside of their jurisdiction and committed violations of the ADA, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, the Fifth Amendment, the Speedy Trial Clause of the Sixth Amendment, the Free Speech Clause of the First Amendment, as well as various federal statutes² (*Id.* at 6-16.)³

As relief, Plaintiff "prays for judgment against Defendants where rulings ordered were outside the scope of their authority and therefore in violation of Federal Laws and Statutes." (*Id.* at 17.) Plaintiff requests that this Court "agree[to] a reversal of all the circuit court orders of the marital settlement agreement and final divorce decree orders by Accomack Circuit Court." (*Id.* at 4.)

² For example, Plaintiff contends that Defendants Hanson and Lowe violated 38 U.S.C. § 5301, 42 U.S.C. § 407, 18 U.S.C. § 242, and 18 U.S.C. § 241. (Am. Compl. at 14-16.)

³ Given Plaintiff's claims that Defendants Hanson and Lowe have violated various constitutional and statutory provisions, the Court construes Plaintiff's Amended Complaint to be brought pursuant to 42 U.S.C. § 1983. See generally *West v. Atkins*, 487 U.S. 42 (1988) (noting that to state a cause of action under § 1983, a plaintiff must allege facts indicating that he or she was deprived of rights guaranteed by the Constitution or laws of the United States by individuals acting under color of state law).

II. Standards of Review

Defendants seek dismissal of Plaintiff's Amended Complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Plaintiff bears the burden of proving that subject matter jurisdiction exists by a preponderance of the evidence. *United States ex rei. Vuyyuru v. Jadhav*, 555 F.3d 337, 347-48 (4th Cir. 2009). If Plaintiff fails to do so, dismissal may be appropriate. A Rule 12(b)(1) motion to dismiss should be granted "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (quoting *Richmond. Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)).

Defendants also seek dismissal of Plaintiffs Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). A motion to dismiss under Rule 12(b)(6) should be granted if a complaint fails to "allege facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A Rule 12(b)(6) motion "tests the sufficiency of a complaint and 'does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" *Johnson v. Portfolio Recovery Assocs., LLC*, 682 F. Supp. 2d 560, 567 (E.D. Va. 2009) (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). As such, the district court must accept all factual allegations

contained in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Johnson*, 682 F. Supp. 2d at 567.

If the parties submit materials outside the pleadings in conjunction with a Rule 12(b)(6) motion, "the court must either exclude such materials from consideration or convert the motion into a motion for summary judgment." *Id.* Here, both Plaintiff and Defendants submitted materials outside the pleadings to support their arguments. The Court will consider the materials in conjunction with Defendants' Motion to Dismiss under Rule 12(b)(1), but will not consider the materials in conjunction with Defendants' Motion to Dismiss under Rule 12(b)(6). As such, this Court does not convert the Motion into a motion for summary judgment. *See id.* at 567 n.3.

III. Analysis

A. The *Younger* Doctrine Bars Plaintiff's Action

Defendants first assert that the abstention doctrine set forth by the United States Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), applies to bar Plaintiff's Amended Complaint. In *Younger*, the Supreme Court detailed the "national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances." 401 U.S. at 41. The *Younger* abstention doctrine applies if there is "(1) an ongoing state judicial proceeding, instituted prior to any substantial progress in the federal

proceeding; that (2) implicates important, substantial, or vital state interests; and (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit." *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 165 (4th Cir. 2008) (quoting *Moore v. City of Asheville, N.C.*, 396 F.3d 385, 390 (4th Cir. 2005)). Specifically, *Younger* precludes federal intrusion into (1) ongoing state criminal prosecutions; (2) "civil proceedings that are akin to criminal prosecutions," and (3) civil proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013)⁴.

⁴ The Supreme Court has recognized three exceptions to the *Younger* abstention doctrine:

where (1) there is a showing of bad faith or harassment by state officials responsible for the prosecution; (2) the state law to be applied in the criminal proceeding is flagrantly and patently violative of express constitutional prohibitions; or (3) other extraordinary circumstances exist that present a threat of immediate and irreparable injury.

Nivens v. Gilchrist, 444 F.3d 237, 241 (4th Cir. 2006) (internal quotations and citation omitted).

The Court agrees with Defendants that all three elements mandating abstention under the *Younger* doctrine are present here. Although the Circuit Court entered a Final Divorce Decree on July 15, 2014, there has since been extensive litigation of various motions and requests in Plaintiffs divorce proceedings. The claims asserted by Plaintiff in his Amended Complaint, which challenge various rulings and decisions made in these divorce proceedings, thus "implicate [the] State's interest in enforcing the orders and judgments of its courts." *Sprint*, 134 S. Ct. at 588; see *Johnson v. Byrd*, No. 1:16cv1052, 2016 WL 6839410, at *8 (M.D.N.C. Nov. 21, 2016) (concluding that *Younger* abstention was appropriate for complaint involving ongoing child custody dispute); *Cole v. Montgomery*, No. 4:14-cv-4462-RMG, 2015 WL 2341721, at *7 (D.S.C. May 12, 2015) (concluding that *Younger* abstention was appropriate for complaint regarding property issues intertwined with ongoing divorce proceedings). Moreover, the Commonwealth of Virginia "has an important state interest in its own domestic relations proceedings." *Minns v. Portsmouth Juvenile & Domestic Relations Court*, No. 2:07cv323, 2008 U.S. Dist. LEXIS 23847, at *12 (E.D. Va. Mar. 26, 2008). Finally, Plaintiff certainly can raise his constitutional and statutory claims on appeal. See *id.*; see also *Bonner v. Circuit Court of City of St. Louis, Mo.*, 526 F.2d 1331, 1336 (8th Cir. 1975) (noting that "where constitutional issues arise, state court judges are fully competent to handle them subject to Supreme

Court review")⁵. See *id.* Thus, Defendants are entitled to dismissal of this action based upon the *Younger* abstention doctrine alone.

B. The *Rooker-Feldman* Doctrine Also Bars Plaintiff's Action

Even if *Younger* did not apply, Plaintiff's action would still be barred under the *Rooker-Feldman* doctrine. This doctrine is a jurisdictional bar that prohibits federal district courts from reviewing final state court judgments. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Under the doctrine, federal courts are prohibited from exercising jurisdiction over issues actually decided by a state court, as well as those issues that are "inextricably intertwined with the questions ruled upon by a state court." *Feldman*, 460 U.S. at 483. "It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court." *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). Essentially, *Rooker-Feldman* "prevents a state-court loser from bringing suit in federal court in order effectively to set aside the state-court judgment." *Gilbert v. Ill. State Bd of*

⁵ Although Plaintiff's Amended Complaint has been brought pursuant to 42 U.S.C. § 1983, this Court has explained that a litigant "may not circumvent the state court appellate process by filing a § 1983 action in district court." *Minns*, 2008 U.S. Dist. LEXIS 23847, at *13

Educ., 591 F.3d 896, 900 (7th Cir. 2010). The doctrine applies to both final judgments and "interlocutory orders issued by state court." *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 319 (4th Cir. 2003) (citations omitted).

Here, Plaintiff is clearly asking this Court to determine that various rulings made by Defendants Hanson and Lowe in Plaintiff's divorce proceedings are erroneous. For example, Plaintiff seeks a determination that these Defendants erroneously denied his motions for a *guardian ad litem* and a continuance, and that they wrongly denied Plaintiff's request for ADA accommodations. (Am. Compl. at 4.) Plaintiff also contends that these Defendants erroneously denied "access to recordings, cameras and a trained advocate[] for accommodations." (*Id.*) Indeed, Plaintiff specifically asks this Court to "agree [to] a reversal of all the circuit court orders of the marital settlement agreement and final divorce decree orders by Accomack Circuit Court." (*Id.*) Plaintiff's entire Amended Complaint is based upon his disagreements with adverse rulings in his divorce proceedings, and he asks this Court to take action that would render these rulings ineffectual. Such a ruling would violate the jurisdictional bar of *Rooker-Feldman*. Thus, Defendants are entitled to dismissal of this action based upon the *Rooker-Feldman* doctrine as well.

C. Judicial Immunity

Even if the *Younger* and *Rooker-Feldman* doctrines did not bar this action, judicial immunity bars Plaintiff's claims against Defendants Hanson and Lowe. Judges are absolutely immune from suit under § 1983 for acts committed within their judicial discretion. *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978). "Absolute judicial immunity exists 'because it is recognized that judicial officers in whom discretion is entrusted must be able to exercise discretion vigorously and effectively, without apprehension that they will be subjected to burdensome and vexatious litigation.'" *Lesane v. Spencer*, No. 3:09CV012, 2009 WL 4730716, at *2 (E.D. Va. Dec. 3, 2009) (quoting *McCray v. Maryland*, 456 F.2d 1, 3 (4th Cir. 1972), *overruled on other grounds by Pink v. Lester*, 52 F.3d 73, 77 (4th Cir. 1995)). A judge is entitled to immunity even if "the action he took was in error, was done maliciously, or was in excess of his authority." *Stump*, 435 U.S. at 356. Only two exceptions apply to judicial immunity: (1) nonjudicial actions, and (2) those actions, "though judicial in nature, taken in complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (citation omitted). Here, neither exception applies.

Furthermore, judicial immunity bars Plaintiff's requested relief for two additional reasons. First, as noted *supra*, Plaintiff seeks declaratory relief in the form of "judg[]ment against Defendants where rulings ordered were outside the scope of their authority and therefore in violation of Federal Laws and Statutes." (Am. Compl. at 17.)

Essentially, Plaintiff requests a declaration that Defendants' past orders and rulings were erroneous. Nevertheless,

the only presently effective relief sought for the violations claimed and conceded is quintessentially retrospective: the voiding of [Defendants' prior rulings and orders]. That this could be effectuated in an injunctive or declaratory decree directed at [Defendants] does not alter the inescapable fact that its effect would be to undo accomplished state action and not to provide prospective relief against the continuation of the past violation.

Republic of Paraguay v. Allen, 134 F.3d 622, 628 (4th Cir. 1998). Such a request for retrospective relief is barred by judicial immunity. *See Safouane v. Fleck*, 226 F. App'x 753, 761 (9th Cir. 2007); *MacPherson v. Town of Southampton*, 664 F. Supp. 2d 203, 211 (E.D.N.Y. 2009)⁶.

Second, the Supreme Court has held that the doctrine of judicial immunity does not bar claims for prospective declaratory or injunctive relief. *See Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984). In 1996, however, Congress effectively reversed the Court's ruling with respect to injunctive relief by enacting the Federal Courts Improvement Act of

⁶ To the extent that Plaintiff's Amended Complaint can be construed as requesting monetary damages as well, judicial immunity bars such a request. *See Battle v. Whitehurst*, 831 F. Supp. 522, 526 (E.D. Va. 1993) (citing *Stump*, 435 U.S. at 356; *Pierson v. Ray*, 386 U.S. 547 (1967)).

1996, Pub. L. No. 104-317, 110 Stat. 3847 (1996)(amending 42 U.S.C. § 1983). As amended, § 1983 now provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Here, Plaintiff alleges neither the violation of a declaratory decree by Defendants, nor the unavailability of declaratory relief. Therefore, Plaintiffs claim for injunctive relief is barred by § 1983. *See, e.g., Jacobs v. Mostow*, 271 F. App'x 85, 88 (2d Cir. 2008); *Montero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999). Thus, Defendants Hanson and Lowe are entitled to dismissal of this action based upon judicial immunity as well.

D. Eleventh Amendment Immunity

Finally, even if the *Younger* and *Rooker-Feldman* doctrines did not bar this action, Eleventh Amendment immunity bars Plaintiff's claims against the Commonwealth of Virginia. The Eleventh Amendment provides that "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State." U.S. Const. amend XI. "This bar to federal jurisdiction also extends to suits against a state by its own citizens." *In re Collins*, 173 F.3d 924, 927 (4th Cir. 1999) (citing *Hans v. Louisiana*, 134 U.S. 1, 10 (1890)).

Nevertheless, "[s]tate sovereign immunity is not absolute Congress, pursuant to authority bestowed upon it by the [C]onstitution, can abrogate sovereign immunity....Alternatively, a state may waive its protection under the Eleventh Amendment." *Taylor v. Virginia*, 951 F. Supp. 591, 593-94 (E.D. Va. 1996) (citations omitted). With respect to suits under 42 U.S.C. § 1983, Congress has not abrogated the Commonwealth of Virginia's immunity and the Commonwealth of Virginia has not consented to suit under § 1983. *See Madden v. Virginia*, No. 3:11Cv241-HEH, 2011 WL 2559913, at *3 (E.D. Va. June 28, 2011) (citation omitted). Moreover, "a state is not a 'person' and so is not amenable to suit under § 1983 for injunctive or declaratory relief." *Bey v. Virginia*, No. 1:13cv176 (LO/IDD), 2014 WL 1233443, at *8 (E.D. Va. Mar. 20, 2014) (citations omitted). Thus, Defendant Commonwealth of Virginia is entitled to dismissal of this action based upon Eleventh Amendment immunity as well.

IV. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss (ECF No. 8) is GRANTED. Because the Court has determined that dismissal of Plaintiffs Amended Complaint is warranted, Plaintiff's Motion for Declaratory and Injunctive Relief (ECF No. 2); Amended Motion for Declaratory and Injunctive Relief (ECF No. 5); Motion to Restore (ECF No. 12); Motion for Criminal Federal Discovery (ECF No. 14); and Motion to Incorporate (ECF No. 25) are **DISMISSED AS MOOT**. The

Clerk is **DIRECTED** to enter judgment in favor of Defendants.

Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510. The written notice must be received by the Clerk within thirty (30) days of the date of entry of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* must be submitted to the Clerk of the United States District Court, Norfolk Division, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **DIRECTED** to mail a copy of this Dismissal Order to Plaintiff and counsel of record.

IT IS SO ORDERED.

January 4, 2017

/s/ Raymond A. Jackson
Raymond A. Jackson

UNITED STATES DISTRICT JUDGE

ENTERED JANUARY 5, 2017

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DOUGLAS C. CHARNOCK, JR.,

Plaintiff,

v.

Case No. 2:16cv493

COMMONWEALTH OF VIRGINIA, et al,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by the Court. This action came for decision before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED GRANTING that Defendants' Motion to Dismiss (ECF No. 8) is **GRANTED**. Because the Court has determined that dismissal of Plaintiff's Amended Complaint is warranted. Plaintiff's Motion for Declaratory and Injunctive Relief (ECF No. 2); Amended Motion for Declaratory and Injunctive Relief (ECF No. 5); Motion to Restore (ECF No. 12); Motion for Criminal Federal Discovery (ECF No. 14); and Motion to Incorporate (ECF No. 25) are **DISMISSED AS MOOT**. The Clerk is **DIRECTED** to enter judgment in favor of Defendants.

DATED: 01/05/2017

FERNANDO GALINDO, Clerk

By _____/s/_____
E. Price, Deputy Clerk

ENTERED: DECEMBER 12, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1049
(2:16-cv-00493-RAJ-LRL)

DOUGLAS C. CHARNOCK, JR.

Plaintiff - Appellant

v.

COMMONWEALTH OF VIRGINIA; EDWARD W.
HANSON, JR.; FREDERICK B. LOWE, JR.

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Duncan, and Judge Agee.

For the Court
/s/ Patricia S. Connor, Clerk

10 U.S.C. §§ 1408(a)(4)(A)(ii) & (e)(1):

“(4)(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled less amounts which—

(ii) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-marital or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38...”

“(e) **Limitations.**—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.”

28 U.S.C. § 1257(a) (2012):

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

28 U.S.C. § 1331:

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

28 U.S.C. § 1651(a):

“The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

38 U.S.C. §§ 5301(a)(1) & (a)(3)(A):

“Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.”

“This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.”

42 U.S.C. § 659(a):

“Notwithstanding any other provision of law (including section 407 of this title and section 5301 of Title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under

such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.”

42 U.S.C. § 1983:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

42 U.S.C. §§ 12131-33:

“The term ‘qualified individual with a disability’ means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural,

communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

“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.”

“The remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.”

U.S. Const. Amend. V:

“No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

U.S. Const. Amend. XI:

“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.”

U.S. Const. Amend. XIV §§ 1 & 5:

1. “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”