

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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TODD DAVIS

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF CORRECTIONS, Dr.  
JEFFERY BEARD, Secretary, Department of  
Corrections, STATE CORRECTIONAL  
INSTITUTION OF CHESTER, MARTIN L.  
DRAGOVICH, Superintendent, State  
Correctional Institution of Chester, Dr.  
BENJAMIN ROBINSON, Medical Doctor,  
State Correctional Institution of Chester,  
OFFICER TERRA, PRISON HEALTH  
SERVICES, INC.

Defendants.

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CIVIL ACTION

No. 06-4952

**MEMORANDUM**

**ROBERT F. KELLY, Sr. J.**

**MARCH 12, 2007**

Presently before this Court is the Defendants'<sup>1</sup> Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c), and all replies and responses thereto. The Defendants' Motion is granted in part and denied in part for the following reasons.

**I. BACKGROUND**

On November 10, 2005, Plaintiff filed a Complaint in the United States District Court for the Western District of Pennsylvania alleging civil rights violations under 42 U.S.C. § 1983, and related state law negligence claims. His claims arise from an injury he suffered while he was an inmate at the State Correctional Institution of Chester ("SCI-Chester"). Defendants filed a

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<sup>1</sup> As used in this Memorandum, the title Defendants refers to Dr. Jeffrey Beard, Martin L. Dragovich, and Officer Terra who are represented by the Office of the Attorney General of Pennsylvania.

Motion to Dismiss in response to this original Complaint. Plaintiff thereafter filed an Amended Complaint in the Western District. Defendants responded to the Amended Complaint with another Motion to Dismiss, in which they argued that dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) was warranted as Plaintiff had failed to state a claim for relief.

Judge Arthur Schwab assigned this Motion to Dismiss to a magistrate judge for a Report and Recommendation. Magistrate Amy Hay issued a Report and Recommendation in which she found that the dismissal should be granted in part and denied in part. Judge Schwab adopted her Report and Recommendation in full on October 12, 2006. Magistrate Hay noted that Plaintiff had not sued the Defendants in their individual capacities, but she thought that leave would be granted to allow Plaintiff to amend his complaint. Thus, all claims against the Commonwealth of Pennsylvania, the Department of Corrections and its employees were dismissed. The claims against the individual employees were not dismissed to the extent they were sued in their individual capacities. The parties then agreed by stipulation to transfer this case to this Court, and the case was transferred on November 2, 2006. Plaintiff filed a Motion for Leave to Amend which was denied.

The facts of Plaintiff's case are straight-forward. He was released on parole from the custody of the Pennsylvania Department of Corrections in December, 2000. He was remanded to the custody of the Department of Corrections in August of 2003 after a parole violation. During the period of December, 2000—August, 2003, when he was not in the custody of the Department of Corrections, Plaintiff ruptured his Achilles' tendon. Upon re-incarceration, he was given a "bottom bunk" designation because of his injury. He was initially housed at two other state prisons before being transferred to SCI-Chester. He was afforded bottom bunks at these prisons.

Plaintiff was given a bottom bunk initially at SCI-Chester. However, his bunk assignment was changed after the first night. He states that Defendants chose to ignore his “bottom bunk” designation and assigned him to a top bunk despite his difficulty climbing onto the top bed. Plaintiff requested a switch to a bottom bunk, but his request was not fulfilled. He also asked to receive therapy for his injury, but no rehabilitation was provided. On January 27, 2004, while attempting to climb onto his assigned top bunk, Plaintiff experienced pain and weakness around his Achilles’ tendon and fell to the ground. He struck his head during this fall and suffered a laceration on his forehead. He was initially treated at the prison before he was taken to a unnamed hospital where his injury was attended to. Plaintiff claims that the initial treatment at the prison was not provided until one half-hour after the incident. He stated that the Defendants ignored his cellmate’s continuous calls for help during this period. He believes that Defendants lack of prompt attention was a violation of his constitutional rights.

When Plaintiff returned to SCI-Chester from the hospital, he was placed in the prison’s infirmary. He was released from the infirmary on January 29, 2004. Upon his release from the infirmary he claims that Dr. Robinson (also a Defendant) placed him on “medical hold” status. This status prevented Plaintiff from being paroled. He was told by the Defendants that he would remain on “medical hold” status unless and until he signed a waiver of liability. Plaintiff remained on “medical hold” until September 12, 2004, when he signed the waiver of liability, and on September 13, 2004, he was released from SCI-Chester on parole. Plaintiff claims that he was coerced and threatened to sign this waiver of liability. He believes that having to sign this waiver of liability under duress was a violation of his constitutional rights.

Plaintiff’s Amended Complaint contained five counts. Judge Schwab dismissed portions

of all of those counts. Count V was a claim for a violation of substantive due process. It was dismissed in its entirety. Count IV was a claim for access to courts and equal protection. Judge Schwab dismissed the access to courts claim in its entirety, but did not dismiss the equal protection claim. Count III is a claim for violation of due process of law; count II is a claim for violations of the Eighth Amendment's protection from cruel and unusual punishment; and count I is a claim for negligence. All portions of these claims against the Defendants in their official capacities have been dismissed, while on the other hand they were not dismissed in regards to the Defendants in their individual capacities.

Defendants have now filed a Rule 12(c) motion asking this Court to dismiss Plaintiff's equal protection claim in its entirety for failing to state a claim. Defendants have also asked this court to order Plaintiff to proceed with the claim set forth in Count III under the Eighth Amendment rather than a due process theory.

## **II. STANDARD OF REVIEW**

A motion for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), addresses the substantive merits of the parties claims and defenses as revealed in the pleadings. Charles Wright & Arthur Miller, 5C Federal Practice and Procedure § 1367 (3d ed. 2004). Judgment on the pleadings "will not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 290 (3d Cir. 1988).

A motion for judgment on the pleadings is analyzed under the same standard as a motion to dismiss under Rule 12(b)(6). Bald Eagle Ridge Protection Ass'n, Inc. v. Mallory, 119 F. Supp. 2d 473, 476 (M.D. Pa. 2000). All allegations in the complaint must be accepted as true

and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989). “A complaint should be dismissed if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Smith v. Sch. Dist. of Phila., 112 F. Supp. 2d 417, 423 (E.D. Pa. 2000).

### **III. DISCUSSION**

A defendant may raise a defense of failure to state a claim upon which relief may be granted in a judgment on the pleadings. This defense may be raised by motion before the filing of an answer, or as in this case “by motion for judgment on the pleadings.” Fed. R. Civ. P. 12(b), 12(h)(2). A defendant who raises the defense in a judgment on the pleadings must do so “[a]fter the pleadings are closed but within such time as not to delay the trial[.]” Fed. R. Civ. P. 12(c). The Defendants filed an Answer to Plaintiff’s Amended Complaint on October 31, 2006, which closed the pleadings. Fed. R. Civ. P. 7(a). This Motion for Judgment on the Pleadings was filed on January 17, 2007, after the pleadings were closed. Defendants argue that judgment on the pleadings should be granted as to Plaintiff’s due process claim in count III of the Amended Complaint and the equal protection claim in count IV.

Plaintiff argues that the Defendants are making the same arguments now that they made in their Motion to Dismiss, and this Court must not reconsider the decisions of Judge Schwab because to do so would violate the law of the case doctrine. The law of the case doctrine is a principle of disciplined self-consistency by which courts are reluctant to reopen a ruling once made, but this constraint is a matter of discretion. Charles Wright, Arthur Miller & Edward Cooper, 18B Federal Practice and Procedure § 4478 (2d ed. 2002). Courts apply the doctrine to maintain consistency and avoid reconsidering matters already decided during the course of a

single continuing lawsuit. Council of Alternative Political Parties v. Hooks, 179 F.3d 64, 69 (3d Cir. 1999). Application of the doctrine extends to decisions made by coordinate courts as well. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1988).

**A. Count III of the Amended Complaint**

This Court finds that the law of the case doctrine does not apply to Defendants' argument with regard to count III of the Amended Complaint, due process, because this argument was not previously addressed. The Defendants believe that Plaintiff can only proceed with his allegation under the Eighth Amendment, not the due process clause. However, this seems inappropriate as the facts contained in that allegation if proven true could entitle Plaintiff to relief under the due process clause. The movant must clearly establish that under no circumstances could relief be granted on the allegations to succeed on a judgment on the pleadings. Defendants have not met their burden.

At first glance, Plaintiff seems to allege a procedural due process claim. He states “[t]hat the actions of the Defendants in purposeful assignment of a medical hold in order to preclude him from eligibility for parole was done without due process of law.” (Compl. ¶ 85). He has also alleged that the Commonwealth Defendants acted with “deliberate indifference to the rights of the Plaintiff by assigning him the status of medical hold unless and until he agreed to sign a waiver of liability[.]” If these allegations are true, and the Commonwealth Defendants acted intentionally, then Plaintiff could be entitled to relief for a violation of procedural due process.

This Court acknowledges that Defendants are not addressing this aspect of the claim, rather they are addressing the substantive due process aspect of Plaintiff's claim. Defendants believe that Plaintiff must proceed under the Eighth Amendment for any substantive due process

claim that might be contained in count III. However, that request seems inappropriate at this time as the Amended Complaint as it stands alleges enough to show that there is some situation under which Plaintiff could gain relief for a violation of due process. Based only on what is contained in the pleadings, this Court finds that it would be imprudent to require Plaintiff to proceed with his claim under the Eighth Amendment rather than under the due process clause as he has pleaded. Judgment on the pleadings is appropriate only when it is clear that no relief could be granted. This Court finds that at this stage of the litigation, it is not clear that there are no circumstances under which Plaintiff would be entitled to relief.

Additionally, the Defendants have not supported their contention that Plaintiff must proceed under the Eighth Amendment. While they have shown that many prisoner rights cases are more properly argued under a constitutional amendment than under the generalized concept of due process, they have not shown that Plaintiff's claim of coercion in being forced to sign a waiver of liability must be argued under the Eighth Amendment. In Harmer v. Adkins, 1994 WL 132907 \* 4 (N.D. Ind. March 22, 1994), a district court addressed a situation where an inmate alleged that he was forced and threatened into signing a form. That court found that the prison's actions did not implicate the Eighth Amendment, as attempting to coerce an inmate into signing does not amount to cruel and unusual punishment. Id. The present case is similar to Harmer. This Court declines to require Plaintiff to proceed with this claim under the Eighth Amendment rather than the due process clause. This issue could be more properly addressed at a later stage in this litigation.

**B. Count IV of the Amended Complaint**

Plaintiff's claim of an equal protection violation lacks merit. Judge Schwab denied the

Motion to Dismiss on this claim because Defendants failed to adequately address the issue. Now they have. Reconsideration is justified to prevent manifest injustice since declining to review the merits of Defendants' argument would result in them having to defend against a meritless claim.

Courts do not entertain motions in which the defendant merely repeats an argument on which a court has already ruled. See Campbell-El v. Dist. of Columbia, 881 F. Supp. 42, 43 (D.D.C. 1995). However, reconsideration may be justified in circumstances where there has been an intervening change in the law, new evidence has become available, or reconsideration is necessary to prevent clear error or a manifest injustice. Hooks, 179 F.3d at 69. Additionally, this defense of failure to state a claim can be raised in a motion for summary judgment. See Lindsey v. United States, 448 F. Supp. 2d 37, 56 (D.D.C. 2006). As Defendants arguments have merit, this Court finds no reason why it should not address this defense now as opposed to waiting until the parties have expended time in discovery.

This Court finds that reconsideration is necessary to prevent injustice. Relief cannot be granted under any set of facts that could be proved consistent with the Plaintiff's allegations. A trial court has the authority to correct itself under Federal Rule of Civil Procedure 54(b). That rule states that until the court expressly directs entry of final judgment, an order resolving fewer than all of the claims against all of the parties is subject to revision at any time. Fed. R. Civ. P. 54(b). The Supreme Court has said that "every order short of a final decree is subject to reopening at the discretion of the district judge." Moses H. Cone Mem. Hosp. v. Mercury Const. Corp., 460 U.S. 1, 11 (1983).

Plaintiff stated in his complaint that he "has a right under the Fifth and Fourteenth Amendments to the United States Constitution to equal protection of the laws in his right to

access to the Courts.” (Compl. ¶ 94). Magistrate Hay dismissed the claim of access to the courts in her Report and Recommendation, noting that Plaintiff was not deprived of the opportunity to litigate his claim in court. However, the Magistrate did not dismiss the equal protection portion because the Defendants provided only a single sentence in support of their Motion to Dismiss. The Defendants have now adequately supported this defense and in so doing have shown that there is no set of facts under which Plaintiff would be entitled to relief, and that the claim should be dismissed as a matter of law.

Plaintiff cannot allege that he was denied equal protection in his right of access to the courts as he states in his complaint. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike.” City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Statutes that substantially burden a fundamental right or target a suspect class must be reviewed under strict scrutiny and to survive they must be narrowly tailored to serve a compelling governmental interest. Abdul- Akbar v. McKelvie, 239 F.3d 307, 317 (3d Cir. 2001). Conversely, if a statute neither burdens a fundamental right nor targets a suspect class, it does not violate the Fourteenth Amendment's Equal Protection Clause, as incorporated through the Fifth Amendment's Due Process Clause, so long as it bears a rational relationship to some legitimate end. Id.

We must first determine whether Plaintiff is a member of a suspect class or whether a fundamental right is implicated. First, prisoners are not a suspect class. McKelvie, 239 F.3d at 317. Second, there is no allegation of a violation of a fundamental right because the only fundamental right alleged was a claim of denial of access to the courts which was dismissed.

Lastly, Plaintiff has not alleged in his complaint that he was treated any differently than anyone else. He merely asserts that the Defendants adopted a custom or policy of maintaining inmates on medical hold until they sign waivers of liability.

Giving the Plaintiff the benefit of all inferences, it appears that he is alleging that inmates are improperly maintained on medical hold. He states in paragraph 97 of the Amended Complaint that he was denied due process of law and the Defendants' actions shock the conscience. His allegations if proved true could show that there was a violation of his due process, but the fact that he avers that he was treated the same as all inmates means that any laws or rules as applied by the Defendants were done so equally to all inmates. While Plaintiff could make out a claim that he was denied due process, his allegations clearly state that he was not treated any differently than anyone else. Plaintiff's claim for a violation of equal protection is dismissed.

In conclusion, Defendants' Motion for Judgment on the Pleadings is granted as to the equal protection claim contained in count IV of the Amended Complaint, but is denied in regards to the due process claim in count III.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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Plaintiff,	:	
	:	
v.	:	
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COMMONWEALTH OF PENNSYLVANIA,	:	CIVIL ACTION
DEPARTMENT OF CORRECTIONS, Dr.	:	
JEFFERY BEARD, Secretary, Department of	:	No. 06-4952
Corrections, STATE CORRECTIONAL	:	
INSTITUTION OF CHESTER, MARTIN L.	:	
DRAGOVICH, Superintendent, State	:	
Correctional Institution of Chester, Dr.	:	
BENJAMIN ROBINSON, Medical Doctor,	:	
State Correctional Institution of Chester,	:	
OFFICER TERRA, PRISON HEALTH	:	
SERVICES, INC.	:	
Defendants.	:	

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**ORDER**

**AND NOW**, this 12th day of March, upon consideration of the Commonwealth Defendants' Motion for Judgement on the Pleadings (Doc. No. 9), and all responses and replies, it is hereby **ORDERED** that the Motion is **GRANTED** in respect to count IV of the Amended Complaint, but it is **DENIED** in respect to count III.

BY THE COURT:

/s/ Robert F. Kelly  
ROBERT F. KELLY, Sr. J.