

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

THE NATIONAL FEDERATION  
OF THE BLIND OF VIRGINIA, *et al.*,

Plaintiffs,

Case No. 3:23-cv-127-HEH

v.

VIRGINIA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE OF (1) PLAINTIFFS' CRIMINAL HISTORIES; (2) PLAINTIFFS'  
DISCIPLINARY INFRACTIONS OR OTHER ALLEGED "BAD ACTS";  
3) PLAINTIFFS' ALLEGED DRUG USE; 4) PLAINTIFFS' ALLEGED GANG  
AFFILIATIONS; AND (5) ALLEGATIONS OF SEXUAL MISCONDUCT AT THE  
NATIONAL FEDERATION OF THE BLIND**

Plaintiffs submit this reply in support of their motion *in limine* in order to preclude Defendant from offering, or eliciting on cross-examination, any irrelevant and prejudicial evidence about (1) Plaintiffs’ criminal histories; (2) Plaintiffs’ prison disciplinary infractions or other alleged “bad acts;” (3) Plaintiffs’ alleged drug use; (4) Plaintiffs’ alleged gang affiliations; and (5) allegations of sexual misconduct at the National Federation of the Blind.

### **ARGUMENT**

Defendant has indicated that it does not oppose Plaintiffs’ motion to exclude gang affiliations or allegations of sexual misconduct at the National Federation of the Blind (unless Plaintiffs “open the door” to such testimony). This Court should therefore grant Plaintiffs’ Motion with regard to excluding that evidence.

#### **I. If This Court Allows Questioning Concerning Plaintiffs’ Convictions, It Should Not Permit Repeated Questioning**

Defendant indicates that it does not intend to introduce details about Plaintiffs’ criminal histories “except for impeachment purposes or the Plaintiffs otherwise open the door.” Plaintiffs understand this to mean that Defendant will not introduce these issues unless Plaintiffs put them at issue and, on the basis that it is unopposed, ask this Court to enter an order precluding evidence of the details of Plaintiffs’ convictions into evidence.

Defendant indicates that it intends to elicit that Plaintiffs are “convicted felons.” Plaintiffs continue to submit that the incarcerated Plaintiffs’ criminal histories are not relevant to the case and that Defendant should be barred from asking about them entirely. However, if this Court does permit questioning about Plaintiffs’ criminal histories, this Court should not allow repeated questioning. If the fact that an incarcerated witness or party has been convicted of a crime punishable by more than a year—which is the actual information that Federal Rule of Evidence 609 says must be admitted—is elicited on direct examination, then no further questioning

concerning criminal history should be permitted on cross-examination, since further repetition of this fact can only be prejudicial to Plaintiffs.

## **II. This Court Should Preclude Evidence Of Plaintiffs' Disciplinary Infractions**

Defendant claims that it wishes to introduce documents for two purposes: to show that “some of the Plaintiffs’ disciplinary convictions are directly relevant to whether they should be allowed certain accommodations for their visual impairment.” Defs.’ Opp’n at 2. Neither of these reasons justifies introducing such prejudicial information.

If Defendant intends to introduce disciplinary records to show that the disciplinary process is supposedly functioning as intended, then the actual substance of the disciplinary process is irrelevant to their purpose for introducing those documents. Accordingly, redacting the relevant documents and limiting testimony concerning them to the functioning of the disciplinary process (and excluding the outcome of that process) is the only way to limit the highly prejudicial nature of this evidence.

However, Defendant’s claim that it is appropriate to use evidence of disciplinary infractions (including, apparently, drug use) to decide what accommodations disabled prisoners are entitled to is not only wrong under the law, it is offensive. Federal law determines what accommodations prisoners should receive. Removing those accommodations to punish prisoners is inappropriate. Disciplinary issues that do not concern Plaintiffs’ claims should be excluded because they are not relevant and are highly prejudicial. *See Alexander v. Hoffman*, No. 4:16-CV-12069, 2019 WL 4640281, at \*1 (E.D. Mich. Sept. 24, 2019).

Disciplinary infractions in prison are decided pursuant to a much less stringent standard than that of a civil trial in federal court. Prisoners are restricted in the way they can offer evidence and the kinds of responses they can offer. Yet because jurors are unfamiliar with the standards of

proof and evidence in prison disciplinary processes, presenting them with evidence that Plaintiffs had been disciplined pursuant to these procedures would be highly prejudicial by giving them the impression that Plaintiffs were found guilty pursuant to a judicial proceeding like the one in Court.

In addition, wasting juror time over factual disputes about the true nature of these disciplinary infractions would distract from the questions of whether Defendant is appropriately accommodating Plaintiffs. Thus, in the interest of judicial economy as well as fairness, the Court should grant Plaintiffs' motion *in limine* to preclude evidence of Plaintiffs' disciplinary infractions.

### CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' motion *in limine* to preclude Defendant from offering, or eliciting on cross-examination, any irrelevant and prejudicial evidence about (1) Plaintiffs' criminal histories; (2) Plaintiffs' prison disciplinary infractions or other alleged "bad acts;" (3) Plaintiffs' alleged drug use; (4) Plaintiffs' alleged gang affiliations; and (5) allegations of sexual misconduct at the National Federation of the Blind.

Dated: May 13, 2024

Respectfully submitted,

/s/ Eve L. Hill

Eve L. Hill (VSB No. 96799)  
Monica R. Basche (*pro hac vice*)  
Jacqueline Cadman (*pro hac vice*)  
Jamie Strawbridge (*pro hac vice*)  
Jessica P. Weber (*pro hac vice*)  
Brown, Goldstein & Levy, LLP  
120 E. Baltimore Street, Suite 2500  
Baltimore, Maryland 21202  
(410) 962-1030  
ehill@browngold.com  
mbasche@browngold.com  
jcadman@browngold.com  
jstrawbridge@browngold.com  
jweber@browngold.com

Matthew W. Callahan (VSB No. 99823)  
Samantha Westrum (VSB No. 98453)  
Vishal Agraharkar (VSB No. 93265)  
American Civil Liberties Union of Virginia  
701 E. Franklin Street, Suite 1412  
Richmond, Virginia 23219  
(804) 519-5366  
swestrum@acluva.org  
vagraharkar@acluva.org

Rebecca Herbig (VSB No. 65548)  
disAbility Law Center of Virginia  
1512 Willow Lawn Drive, Suite 100  
Richmond, Virginia 23230  
(204) 255-2042  
Rebecca.Herbig@dlcv.org

