

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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DANNY L. BROWN, )  
Plaintiff, )  
v. ) C.A. No. 11-637-S  
STATE OF RHODE ISLAND; )  
GOVERNOR LINCOLN CHAFEE; )  
ASHBEL T. WALL II, Director of )  
the Adult Correctional )  
Institutions; KENNETH WALKER; )  
FREDRICK REAMER; NANCY )  
GARCIA-PONTE; and )  
VICTORIA ALMEIDA, )  
Defendants. )

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**OPINION AND ORDER**

WILLIAM E. SMITH, United States District Judge.

Plaintiff Danny L. Brown ("Plaintiff" or "Brown"), an inmate at the Adult Correctional Institutions ("ACI") in Cranston, Rhode Island, has filed a pro se Complaint pursuant to 42 U.S.C. § 1983 against the Rhode Island Parole Board and others, alleging that he was denied release on parole in violation of his constitutional rights.<sup>1</sup>

Pursuant to 28 U.S.C. §§ 1915(e) and 1915A, the Court will screen the Complaint to determine whether it states a

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<sup>1</sup> Plaintiff has also filed an application to proceed in forma pauperis (ECF No. 2) ("IFP application"), which is discussed infra.

claim upon which relief may be granted or is otherwise subject to dismissal. Under those provisions, a Court may dismiss a case at any time if, inter alia, it determines that the action fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).<sup>2</sup>

In making this determination, the Court must accept Plaintiff's allegations as true and construe them in the light most favorable to Plaintiff, although the Court need not credit bald assertions or unverifiable conclusions. See Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949-50 (2009). Further, the Court must review pleadings of a pro se plaintiff liberally. Estelle v. Gamble, 429 U.S. 97, 106 (1976). The legal standard for dismissing a

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<sup>2</sup> 28 U.S.C. § 1915(e)(2) states:

- (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that-
- (A) the allegation of poverty is untrue; or
  - (B) the action or appeal--
    - (i) is frivolous or malicious;
    - (ii) fails to state a claim on which relief may be granted; or
    - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

Similarly, § 1915A directs courts to screen complaints filed by prisoners against a governmental entity, officer or employee, and to dismiss the complaint, or any portion thereof, for reasons identical to those set forth in § 1915(e)(2). See 28 U.S.C. § 1915A(b).

complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) and § 1915A(b) is identical to the legal standard used when ruling on a Rule 12(b)(6) motion. See Pelumi v. Landry, C.A. Nos. 08-084 ML, 08-085 ML, 08-086 ML, 08-087 ML, 08-105 ML, 08-106 ML, 08-107 ML, 2008 WL 2660968, at \*2 (D.R.I. June 30, 2008); Fridman v. City of New York, 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002).

I. The Complaint<sup>3</sup>

The instant Complaint alleges the following facts. In January 2004, Brown successfully obtained postconviction relief (PCR) in the Rhode Island Superior Court, vacating his conviction,<sup>4</sup> and he was released from prison. (Compl. ¶ 15.) In February 2009, the Rhode Island Supreme Court reversed the Superior Court decision and reinstated Brown's conviction. Id. ¶ 16; see Brown v. State, 964 A.2d 516

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<sup>3</sup> Brown's Complaint consists of a filled-in form complaint ("Form Compl."), together with an attached document entitled "Complaint for Declaratory Judgment, Injunctive Relief, and Damages" ("Compl."). The two documents are collectively referred to herein as the "Complaint."

<sup>4</sup> In 1994, Brown was convicted of three counts of first-degree sexual assault and three counts of first-degree child molestation sexual assault in Rhode Island state court and was sentenced to two concurrent forty-year terms of imprisonment, with twenty years to serve. His conviction was affirmed on direct appeal by the Rhode Island Supreme Court. See State v. Brown, 709 A.2d 465 (R.I. 1998).

(R.I. 2009). On March 19, 2009, Brown's sentence was reinstated, and he was returned to prison. (Compl. ¶ 17.) In May 2009, the Parole Board denied him parole due to the fact that Brown had a pending matter in Rhode Island state court. (Id. ¶ 19; see Ex. 2 to Compl.)<sup>5</sup>

Brown alleges that, while on release between 2004 and 2009, he successfully started two businesses in construction and in shell fishing and that the Parole Board's denial of parole on the basis of his pending state court matter violated his right of access to the courts and his due process rights under both the state and federal Constitutions. (Compl. ¶¶ 28-31.)

The named Defendants include the State of Rhode Island, Governor Lincoln Chafee, A.T. Wall, and four Parole Board members (Kenneth Walker, Frederic Reamer, Nancy Garcia-Ponte, and Victoria Almeida).<sup>6</sup> Plaintiff seeks declaratory and injunctive relief as well as compensatory and punitive damages, including damages for the loss of his truck and shellfish license and for lost earnings resulting

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<sup>5</sup> The nature of the pending state court matter is not clear from the Complaint.

<sup>6</sup> Brown's Complaint also purports to name John and Jane Doe Defendants, so-called, described as other state workers whose role in his parole denial is currently unknown or unclear. (See Form Compl. 3, Sect. IV, Statement of Claim; Compl. ¶ 7.) Those Defendants are discussed infra.

from his inability to pursue his livelihood due to his continued incarceration. (Form Compl. 3-4, Sect. V. Relief; Compl. ¶¶ 16-17.)

## II. Discussion

The instant Complaint must be dismissed as both procedurally and substantively deficient for several reasons. First, several of the named Defendants are subject to summary dismissal. As to the Defendant State of Rhode Island, a section 1983 action may not be brought against a state. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Likewise, Defendants Governor Chafee and A.T. Wall, as state officials, are not amenable to suit under section 1983. See Johnson v. Rodriguez, 943 F.2d 104, 108 (1st Cir. 1991) (“[N]either a state agency nor a state official acting in his official capacity may be sued for damages in a section 1983 action.” (citing Will, 491 U.S. at 71)). Nor are they liable on any theory of respondeat superior, and Plaintiff has alleged no direct actions taken by either of these Defendants. See Iqbal, 129 S. Ct. at 1948 (stating that “Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior” and that complaint must plead individual superior’s own actions). Thus, Plaintiff’s claims against

these Defendants (the State, Governor Chafee, and Wall) must be dismissed.

As to the Defendant Parole Board members, Plaintiff's Complaint fares no better. The claims against those Defendants in their official capacities are barred because, as noted above, section 1983 actions are not available against State officials in their official capacities. See Johnson, 943 F.2d at 108.

To the extent that Brown seeks damages against the Parole Board members in their individual capacities, the law is well settled in this circuit that members of a state parole board have absolute immunity for actions arising out of their official conduct. See Johnson v. Rhode Island Parole Bd. Members, 815 F.2d 5, 8 (1st Cir. 1987) (holding that parole board members are entitled to absolute immunity for actions taken within the scope of their official duties in section 1983 lawsuits seeking monetary damages); Phillips v. Conrad, Civil Action No. 10-40085-FDS, 2011 WL 309677, at \*7 (D. Mass. Jan. 28, 2011) (same); Nicolas v. Rhode Island, 160 F. Supp. 2d 229, 231 (D.R.I. 2001) (Report and Recommendation by Hagopian, M.J., as adopted by Lisi, J.) (same). There is no question here that the actions complained of constituted official actions, and

thus Plaintiff's claims against these Defendants must be dismissed.<sup>7</sup>

Finally, even if Plaintiff's claims warranted substantive review, Rhode Island courts have long recognized that "there is no 'constitutional or inherent right' to parole." Estrada v. Walker, 743 A.2d 1026, 1031 (R.I. 1999) (quoting Bishop v. State, 667 A.2d 275, 278 (R.I. 1995) (quoting Greenhotz v. Nebraska Penal Inmates, 442 U.S. 1, 7 (1979))). Further, "due process only entitles the parole applicant an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole." Id. (quoting Bernard v. Vose, 730 A.2d 30, 32 (R.I. 1999)). Here, Plaintiff does not claim that he was not informed of -- or did not understand -- the reasons set forth in the Parole Board's letter denying his parole. That is all that is necessary as a constitutional matter.

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<sup>7</sup> While Plaintiff purports to also seek declaratory or injunctive relief (see Form Compl., Sec. V; Compl. ¶ 1), the Court finds that the gravamen of the relief sought here is damages, and there is no showing, in any event, of irreparable harm, inadequacy of legal remedy, or likelihood of success. See Lopez v. Wall, No. CA 09-578-S, 2011 WL 3678686, at \*1 (D.R.I. Aug. 22, 2011).

In view of the disposition of claims against all named Defendants, the claims against the John and Jane Doe Defendants are likewise dismissed, for similar reasons.

III. Conclusion

In view of the foregoing considerations, this Court hereby orders that the Complaint must be, and hereby is, DISMISSED.<sup>8</sup> Further, Plaintiff's IFP application is DENIED as moot.

IT IS SO ORDERED.

*/s/ William E. Smith*

William E. Smith  
United States District Judge  
Date: March 12, 2012

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<sup>8</sup> This disposition of Plaintiff's Complaint does not preclude Plaintiff from pursuing his pending state court matter, whether or not that matter relates to the subject of the instant Complaint. The Court takes no position on the merits of that matter.