

defendant's employees had failed to prevent Frank's death. She asserted both federal and pendant state causes of action and sought a judgment for money damages.

The defendant has moved to dismiss, on the ground, *inter alia*, of Eleventh Amendment immunity. In her response to the Motion to Dismiss, the plaintiff requests the court to allow her to conduct discovery in order "to identify persons who may need to [be] named as additional parties defendant to these proceedings. . . ." ¹ In reply, the defendant has moved to stay discovery until the Motion to Dismiss has been determined by the court. The various motions are now ripe for decision. ²

The Eleventh Amendment to the Constitution affords the states immunity from suit for damages in federal court without their consent. ³ This immunity, while subject to waiver, is "expressed as a limit on the jurisdiction of the federal courts," ⁴ and "because of its jurisdictional nature, a court ought to consider the issue of Eleventh

¹ Plt.'s Resp. 1.

² I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

³ See U.S. Const. amend. XI (stating 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."). In spite of its language, the Eleventh Amendment has been construed to prohibit suits against a state by its own citizens. See *Hans v. Louisiana*, 134 U.S. 1, 14-15 (1890).

⁴ *Coakley v. Welsh*, 877 F.2d 304, 305 (4th Cir. 1989).

Amendment immunity at any time, even *sua sponte*.”⁵ When a claim is barred by the Eleventh Amendment, the court lacks subject matter jurisdiction to hear it.⁶

There is a *prima facie* Eleventh Amendment bar to the claims made in the present action. While a constructive waiver of Eleventh Amendment immunity exists under some federal statutes, the statute that forms the basis for the present suit, 42 U.S.C.A. § 1983,⁷ has been held not to override the Eleventh Amendment.⁸ The Department of Corrections is clearly a state agency⁹ and as such is entitled to absolute immunity from liability in federal court for the claims made in this action.¹⁰

In her response, the plaintiff does not contest the Eleventh Amendment defense, but requests the court to allow her to conduct discovery, presumably so that she might learn the identity of any responsible Department of Corrections employees

⁵ *Suarez Corp. Indus. v. McGraw*, 125 F.3d 222, 227 (4th Cir. 1997).

⁶ *Id.* at 228.

⁷ (West 1994 & Supp. 2001).

⁸ *See Quern v. Jordan*, 440 U.S. 332, 341 (1979). Moreover, it has been held that the state and state agencies are not “persons” within the meaning of § 1983, so that suits in state court under that statute against such defendants are also precluded. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1978).

⁹ *See* Va. Code Ann. § 53.1-8 (Michie 2002) (providing that “[t]here shall be in the executive department a Department of Corrections responsible to the Governor.”)

¹⁰ *See Hale v. Arizona*, 993 F.2d 1387, 1399 (9th Cir. 1993) (holding that Arizona Department of Corrections is an arm of the state and thus immune from § 1983 liability for damages).

to sue individually as a result of her decedent's death. However, I agree with the defendant that the nature of the Eleventh Amendment requires the court to dismiss the case once the defense has been established. To subject a defendant that is immune from suit to discovery would be unwarranted.¹¹

Moreover, the addition of individual defendants would likely be futile. An action under § 1983 does not have its own statute of limitations and normally borrows from an analogous cause of action under state law.¹² A wrongful death action in Virginia must be filed within two years of the death.¹³ Where a plaintiff chooses to sue the wrong party, and thereafter adds additional parties, there is usually no relation back to the original filing date for statute of limitations purposes.¹⁴ Accordingly, the addition of individual defendants now would be subject to the bar of the statute of limitations, since more than two years has elapsed since the death of the decedent.

For these reasons, the Motion to Dismiss will be granted. A separate judgment consistent with this opinion is being entered herewith.

¹¹ See *Bouchard Transp. Co. v. Fla. Dep't of Env'tl. Prot.*, 91 F.3d 1445, 1448-49 (11th Cir. 1996) (holding that ruling on Eleventh Amendment immunity should not be "unnecessarily postponed" where the issue may be decided without further proceedings).

¹² See *Lewis v. Richmond City Police Dep't*, 947 F.2d 733, 735 (4th Cir. 1991).

¹³ See Va. Code Ann. § 8.01-244(B) (Michie 2000).

¹⁴ See *Western Contracting Corp. v. Bechtel Corp.*, 885 F.2d 1196, 1201 (4th Cir. 1989).

DATED: October 23, 2002

United States District Judge