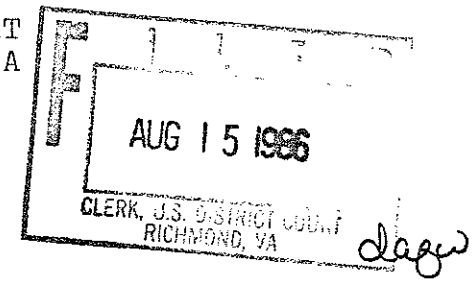
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



MADELINE SIMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 86-0171-R
	)	
LONGWOOD COLLEGE, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter comes before the Court on Longwood College's motion to dismiss. For reasons stated below, the Court, in part, GRANTS the motion.

This is an employment discrimination action. The plaintiff seeks relief under Title VII, the Civil Rights Acts, 42 U.S.C. §§ 1981, 1983, and 1988, and state law theories. She also seeks relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The plaintiff was, at times relevant to this suit, an assistant professor at Longwood College. The defendants are the college and Charles Vail, the Vice-President for Academic Affairs. Longwood College moves to dismiss those claims brought against it under the Civil Rights Acts, arguing that these causes of action are barred by the Eleventh Amendment and pre-empted by Title VII.

Taking these arguments in reverse order, the Court holds that Title VII does not pre-empt 42 U.S.C. §§ 1981 and 1983. When it first confronted this issue in Carter v. City of Richmond, et al., C/A 84-0890-R (E.D.Va., Oct. 21, 1985), the

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Court lamented the "overlapping and duplicative § 1981, § 1983, and Title VII remedies." Together, these create a crazy patchwork of causes of action, almost guaranteed to wreak havoc with the carefully-crafted administrative and statutory structure of Title VII. Nonetheless, the Court was not persuaded that Congress intended Title VII to pre-empt the Civil Rights Acts, at least insofar as state employees are concerned. The Court's position has not altered, although it is still concerned that some plaintiffs could throw a monkey wrench into the finely-tuned scheme of Title VII. Until Congress, the Fourth Circuit, or the Supreme Court decides otherwise, however, the Court adheres to its present position that Title VII does not pre-empt 42 U.S.C. §§ 1981 and 1983.

The Eleventh Amendment argument presents a much stronger case for dismissal of the Civil Rights claims. Simpson is suing Longwood College for compensatory and affirmative relief. More specifically, she seeks a declaratory judgment that she was the victim of racial discrimination and that her contractual rights were violated, backpay and frontpay (although she is no longer at the college), damages (against Longwood College) for breach of contract, and damages -- both punitive and compensatory -- against defendant Vail pursuant to 42 U.S.C. §§ 1981 and 1983.

Longwood College agrees that it is a proper defendant to the Title VII claim. Cf. Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) (Congress has specifically overriden the Eleventh Amendment bar with respect to Title VII suits brought against a state employer). It contends, however, that the Eleventh Amendment

bars the Civil Rights claims and, logically, the declaratory judgment counts.

"[I]n the absence of consent a suit in which the State or one of its agencies or department is named as the defendant is proscribed by the Eleventh Amendment," whether the relief sought is legal or equitable. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100-01 (1984). Neither the Commonwealth nor its agencies and departments waived its Eleventh Amendment immunity by consenting to §§ 1981 or 1983 suits. Croatan Books, Inc. v. Virginia, 574 F.Supp. 880 (E.D.Va. 1983); Jacobs v. College of William and Mary, 495 F.Supp. 183 (E.D.Va. 1980).

The plaintiff maintains that Longwood College is, in fact, "independent of the state in its day to day operation." This independence, the argument continues, destroys any Eleventh Amendment immunity. The Court does not agree. Longwood College is not an independent political subdivision of the Commonwealth. See Va. Code §§ 23-1.1, 23-4.1, 23-4.4, 23-9.5, 23-28, 23-30.02. While a state corporation, it is an institution owned and controlled by the state. Rather than being a political subdivision, it is an arm or alter ego of the Commonwealth of Virginia. Although recognizing that other states differ in the treatment of state institutions, this Court joins the majority of courts in holding that the Eleventh Amendment applies to state colleges and universities. Hall v. Medical College of Ohio at Toledo, 742 F.2d 299, 301-02 (6th Cir. 1984), cert. denied, 105 S.Ct. 796 (1985) (collecting cases: "the great majority of cases addressing the question of Eleventh Amendment immunity for public

colleges and universities have found such institutions to be arms of their respective state governments and thus immune from suit").

Additionally, declaratory relief is barred by the Eleventh Amendment. Green v. Mansour, --- U.S. ---, 88 L.Ed.2d 371 (1985). Simpson seeks declaratory relief that her contractual rights were violated (as well as $100,000 in compensatory damages for breach of contract). She also claims declaratory relief that she was racially discriminated against when the college denied her tenure (as well as relief pursuant to Title VII). In Green, the Supreme Court decided that the Eleventh Amendment barred claims for declaratory judgment and notice relief relating to a state official's past violations of federal law.

Here, the plaintiff does not seek injunctive relief. There is no claim for a continuing violation of federal law, nor any threat of a future violation. As the Supreme Court pointed out in Green, a declaratory judgment is inappropriate in these circumstances since its purpose would be to provide a federal judgment on the issue of liability. This could then be offered in state court as res judicata, producing "much the same effect as a full-fledged award of damages or restitution by the federal court, the latter kinds of relief being of course prohibited by the Eleventh Amendment. [Prior precedent is] that a declaratory judgment is not available when the result would be a partial 'end run' around our decision in Edelman v. Jordan, 415 U.S. 615 (1974)." Id. at 380-81. If plaintiff can make no showing that the declaratory judgment was res judicata in later commenced

state proceedings, the declaratory judgment would serve no purpose in resolving the dispute between the parties. It is therefore unavailable for that reason. Id. at 381 n.2; Public Service Commission v. Wycoff Co., 344 U.S. 237, 247 (1952).

Therefore, no retrospective relief under 42 U.S.C. §§ 1981 and 1983 is available against Longwood College. As plaintiff is not seeking any prospective relief, these claims are DISMISSED in their entirety against Longwood College. Also DISMISSED are those claims brought against the college pursuant to the Declaratory Judgment act.

Let the Clerk send a copy of this order to all counsel of record.

AUG 15 1986
DATE

Richard L Williams
UNITED STATES DISTRICT JUDGE