

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DAVID PINA, et al.,	:	
	:	
Plaintiffs,	:	NO. 3:04CV1574 (MRK)
v.	:	
	:	
THERESA C. LANTZ, et al.,	:	
	:	
Defendants.	:	

RULING

This action arises from Defendants' alleged actions in abolishing a certain position that Plaintiffs held within the Connecticut State Department of Corrections ("DOC") and in later failing to re-hire Plaintiffs to newly created positions which they claim were similar to their prior position at DOC. *See generally* Amended Complaint [doc. #20]. Plaintiffs sue Defendants under 42 U.S.C. §§ 1983 & 1988, alleging violations of their Fourteenth Amendment rights to procedural due process, substantive due process and equal protection of the laws. Presently pending before the Court is Defendant's Motion to Dismiss [doc. #23] Plaintiffs' substantive due process claim, found in paragraph 29 of Plaintiffs' Amended Complaint [doc. #20].

The Court notes at the outset that it is unclear under what circumstances – if any – the Second Circuit would recognize a substantive due process claim based on alleged violations of state-law contractual rights. For example, in *Local 342, Long Island Public Service Employees v. Town Board of Huntington*, 31 F.3d 1191 (2d Cir. 1994), the Second Circuit stated: "We do not think, however, that simple, state-law contractual rights, without more, are worthy of substantive due process protection. Such rights are not the type of 'important interests that have heretofore been accorded the protection of substantive due process.'" *Id.* at 1196 (quoting *Regents of Univ.*

of *Mich. v. Ewing*, 474 U.S. 214, 230 (1985) (Powell, J., concurring)). See also *McClary v. O'Hare*, 786 F.2d 83, 89 (2d Cir. 1986) ("[U]nder these circumstances, the substantive component of the Due Process Clause does not provide a remedy to a public employee that would not be available to a private employee subject to identical conduct by his employer.") (internal citations and footnote omitted).

Moreover, even if Plaintiffs' claims were cognizable, the Court has serious doubts whether Defendants' actions could be considered so "egregious" or "conscience-shocking" as to violate Plaintiffs' substantive due process rights. See, e.g., *Smith v. Half Hollow Hills Cent. Sch. Dist.*, 298 F.3d 168, 173 (2d Cir. 2002) ("[T]he protections of substantive due process are available only against egregious conduct which goes beyond merely 'offending some fastidious squeamishness or private sentimentalism' and can fairly be viewed as so 'brutal and offensive to human dignity' as to shock the conscience.") (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 n.6 (2d Cir. 1973) (Friendly, J.)) (some internal quotes omitted); *Natale v. Town of Ridgefield*, 170 F.3d 258, 262 (2d Cir. 1999) ("For state action to be taken in violation of the requirements of substantive due process, the denial must have occurred under circumstances warranting the labels 'arbitrary' and 'outrageous.' ").

Nevertheless, and despite the Court's considerable doubts, on a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, the Court must "construe the complaint in the light most favorable to the plaintiff, accepting the complaint's allegations as true." *Todd v. Exxon Corp.*, 275 F.3d 191, 197 (2d Cir. 2001). "A complaint should not be dismissed for failure to state a claim 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Id.* at

197-98 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Thus, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir. 1996). In light of the standards governing a motion to dismiss for failure to state a claim, the Court DENIES Defendants' Motion to Dismiss [doc. #23], but does so without prejudice to renewal once the factual record of this case is more fully developed.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: June 21, 2005.