

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**JANE DOE,**  
*Petitioner,*

v.

**FAIRFAX COUNTY SCHOOL BOARD,**  
*Respondent.*

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**Case No. CL-2024-0003171**

**ORDER**

**THIS MATTER** came before the court for a hearing on Respondent Fairfax County School Board's Plea in Bar on Friday, May 31, 2024, and

**IT APPEARING** that the Court took the matter under advisement, and further

**IT APPEARING** that the parties have submitted the issues in this Plea in Bar on the pleadings, and further

**IT APPEARING** that since the date of the hearing, the Court has fully considered the arguments raised by the parties in their briefs and in oral argument as well as applicable law and is now prepared to rule, and further

**IT APPEARING** that the Respondent raised two issues in its Plea in Bar: (1) Petitioner lacks standing because any alleged harm is speculative and (2) Petitioner's claims are barred to the extent that she seeks damages and attorney's fees, and further

**IT APPEARING** that "[u]nder modern practice, a plea in bar does not point out the legal insufficiency of allegations but rather demonstrates their irrelevance because of some other dispositive point — usually some affirmative defense such as the statute of limitations, res judicata, collateral estoppel by judgment, accord and satisfaction, or statute of frauds." *Cal. Condo. Ass'n v. Peterson*, 301 Va. 14, 20 (2022); and further

**IT APPEARING** that as to the first issue of standing the Court finds that a Plea in Bar is not the proper mechanism to address an insufficiency in the pleadings as to alleged harm, including potential harm. Respondent Fairfax County School Board argues that Petitioner has failed to state a proper cause of action as Petitioner has not raised an injury or harm or has only asserted a speculative injury or harm which cannot necessitate court action. Respondent's arguments are tantamount to those properly raised by Demurrer rather than a Plea in Bar. Further, the authority cited by Respondent in support of its Plea in Bar resolved the similar issues attendant to injury and harm by demurrer and not a Plea in Bar. See e.g. *Lafferty v. Sch. Bd. of Fairfax Cnty.*, 293 Va. 354, 360-62 (2017); and

further

**IT APPEARING** that as to the second issue relating to Petitioner's requested relief for damages, Respondent asserts that sovereign immunity is a bar to Petitioner's requested relief. The Court agrees that sovereign immunity and its impact upon a case may properly be raised on a Plea in Bar. However, sovereign immunity has not explicitly nor implicitly barred for damages (nominal or otherwise) for violations of the Virginia Constitution. *Ibanez v. Albemarle Cnty. Sch. Bd.*, 80 Va. App. 169 (2024). Further, sovereign immunity does not preclude declaratory or injunctive relief based upon self-executing provisions of the Virginia Constitution. *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 137 (2011). The Constitutional provisions at issue in this case are self-executing. See Pet. Comp. ¶¶ 124-74 (citing Va. Const. Art. I, §§ 11-12 and 16); *Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 103 (2008). Therefore, for purposes of this Plea in Bar, the Court does not find that sovereign immunity bars Petitioner's claims for nominal damages; and further

**IT APPEARING** that as to Petitioner's requested relief seeking attorney's fees, Petitioner cites to no authority permitting Petitioner to recover attorney's fees even when asserting violations of self-executing Constitutional provisions. Applicable case law addresses the relationship between sovereign immunity and self-executing constitutional rights and the potential availability of nominal damages but makes no mention of the right to attorney's fees. Sovereign immunity applies to the School Board. See *Ibanez*. The common-law doctrine of sovereign immunity has barred *any* suit against the government long before the Constitution of Virginia came into existence. See *Clark v. Va. Dep't of State Police*, 292 Va. 725, 728-29 (2016). Ever since, the provisions of the Constitution have only displaced that immunity to the extent "no further legislation is required to make [them] operative," and which has only been recognized to apply to declaratory and injunctive relief. *Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 103 (2008). The Constitution of Virginia also does not contain a fee-shifting provision. See *Gray*, 276 Va. at 103. And, absent any statute authorizing them, "Virginia follows the 'American Rule'" that each party bears its own legal fees. *REVI, LLC v. Chi. Title Ins. Co.*, 290 Va. 203, 213 (2015). Indeed, "[i]n Virginia, the right to recover attorney's fees and costs has been regulated by statute since the colonial era." *Id.* Therefore, in the absence of any applicable authority permitting the award of attorney's fees from an entity who enjoys the normal protections of sovereign immunity, the Court finds that Petitioner's request for attorney's fees is barred by sovereign immunity; it is therefore

**ORDERED** that Respondent Fairfax County School Board's Plea in Bar is overruled as to the issue of standing and that the Plea in Bar is overruled as to the issue of damages but sustained with prejudice as to the issue of attorney's fees.

ENTERED.



Christie A. Leary  
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The Honorable Christie A. Leary

**ENDORSEMENT OF THIS ORDER THE PARTIES AND/OR COUNSEL IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.**