

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

DAVID S. DAVIS,

Plaintiff-Appellant.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

No. 95-8579

v.

R. T. ANGELONE; W. P. ROGERS;

D. R. GUILLOURY; K. SUTTON, C/O;

M. ORNALAS,

Defendants-Appellees.

DAVID S. DAVIS,

Plaintiff-Appellee.

UNITED STATES OF AMERICA,

Plaintiff.

No. 96-6176

v.

R. T. ANGELONE; W. P. ROGERS;

D. R. GUILLOURY; K. SUTTON, C/O;

M. ORNALAS,

Defendants-Appellants.

Appeals from the United States District Court  
for the Eastern District of Virginia, at Alexandria.

Albert V. Bryan, Jr., Senior District Judge.

(CA-95-599-AM)

Submitted: October 31, 1997

Decided: December 10, 1997

Before HAMILTON and MOTZ, Circuit Judges, and  
PHILLIPS, Senior Circuit Judge.

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No. 95-8579 affirmed and No. 96-6176 dismissed by unpublished per  
curiam opinion.

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#### **COUNSEL**

David S. Davis, Appellant Pro Se. Richard Parker, OFFICE OF THE  
UNITED STATES ATTORNEY, Alexandria, Virginia; Patricia Ann  
Millett, Michael Jay Singer, UNITED STATES DEPARTMENT OF  
JUSTICE, WASHINGTON, D.C., for Intervenor. Pamela Anne Sar-  
gent, Assistant Attorney General, Richmond, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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#### **OPINION**

##### **PER CURIAM:**

David S. Davis appeals the district court's order denying his  
renewed motion for a temporary restraining order to require Defen-  
dants to return his religious necklace to him. Because Davis sought  
the same relief in the restraining order as in his underlying civil suit,  
we construe the order as denying a preliminary injunction. See  
Virginia v. Tenneco, Inc., 538 F.2d 1026, 1029-30 (4th Cir. 1976).  
However, our review of the record reveals no abuse of discretion in  
the denial of relief. See South Carolina Dep't of Wildlife & Marine  
Resources v. Marsh, 866 F.2d 97, 99-100 (4th Cir. 1989); Wetzel v.  
Edwards, 635 F.2d 283, 286 (4th Cir. 1980). We therefore affirm the  
district court's order denying Davis' renewed motion for injunctive  
relief.

The Defendants have cross appealed, asserting that the district court erred in declining to address the constitutionality of the Religious Freedom Restoration Act, 42 U.S.C.A. #8E8E # 2000bb-2000bb-4 (West 1994). In light of the Supreme Court's decision in City of Boerne v. Flores, \_\_\_ U.S. \_\_\_, 65 U.S.L.W. 4612 (U.S. June 25, 1997) (No. 95-2074), that Congress lacked authority under the Fourteenth Amendment to apply the Religious Freedom Restoration Act to the states, we dismiss the Defendants' cross appeal as moot. We also deny as moot the Defendants' and the United States' motions to file briefs addressing this issue.

Accordingly, we affirm the district court's order denying Davis' motion for injunctive relief and dismiss as moot the Defendants' appeal from the district court's judgment which declined to rule on the constitutionality of the Religious Freedom Restoration Act. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 95-8579 - AFFIRMED

No. 96-6176 - DISMISSED