



his claim fails.

The Takings Clause of the Fifth Amendment provides, “nor shall private property be taken for public use, without just compensation.”<sup>3</sup> Phillips v. Washington Legal Foundation, 524 U.S. 156, 163 (1998); Chicago Burlington & Quincy R.R. Co. v. City of Chicago, 166 U.S. 226, 239 (1897). The Takings Clause protects private property, it does not create it. See Phillips, 524 U.S. at 164. In a Takings Clause analysis, the court must first determine whether the plaintiff possesses a constitutionally protected property interest then, if he does, whether the property was “taken” for public use and, finally, whether the plaintiff received just compensation. See id. at 156; Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978). The existence of a property interest is determined not by the Constitution itself but by reference to “existing rules or understandings that stem from an independent source such as state law.” Phillips, 524 U.S. at 164 (quoting Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)). In Virginia, an inmate does not have a constitutionally protected property right in the interest earned on an inmate trust account. Washlefske v. Winston, 234 F.3d 179, 186 (4th Cir. 2000) ( holding that Virginia statutes create and define a limited property right in the funds held in prison accounts, which do not grant full rights of possession, control, and disposition over the amounts “earned” and credited to the prisoner’s account.) Accordingly, inasmuch as George has no property right to the interest income, the court finds that the defendants did not violate the Takings Clause and George’s claim fails.<sup>4</sup>

---

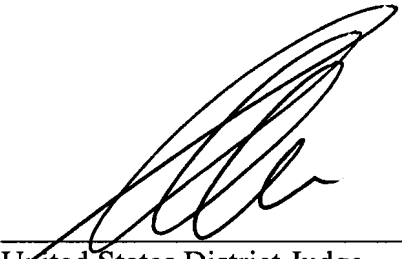
<sup>3</sup> This limitation of governmental power has been imposed on the states through the Due Process Clause of the Fourteenth Amendment.

<sup>4</sup> Further, to the extent George claims the defendants violated his due process rights by not giving him notice and an opportunity to be heard before denying him interest income, his claim also fails. In order to prevail on a procedural due process claim, an inmate must first demonstrate that he was deprived of “life, liberty, or property” by governmental action. Bevrati v. Smith, 120 F.3d 500, 502 (4th Cir. 1997). In this case, George has no property right in the interest income and, thus, he has not stated a due process claim of constitutional magnitude.

**III.**

For the reasons stated herein, the court dismisses George's action as frivolous, pursuant to § 1915A(b)(1).

**ENTER:** This 10<sup>th</sup> day of August, 2009.



---

United States District Judge