

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

Allaeddin K. Qandah and Samuel J. Howard,)	
individually and on behalf of others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	2:12-cv-4213
)	
George A. Lombardi, in his official capacity as)	
Director of the Missouri Department of)	
Corrections,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT FOR PROSPECTIVE RELIEF

INTRODUCTION

1. It appears that on August 7, 2012, a majority of the Missouri voters cast a ballot in favor of Amendment 2, which will amend Article I, § 5 of the Constitution of 1945 of the State of Missouri. If enforced after taking effect on or about September 6, 2012, the amendment will take from all prisoners the additional protection of religious liberty that Missouri’s constitutions has provided, until now, to all persons since 1820.

2. Because Amendment 2 withdraws an existing right or benefit from one group, but not others, without a legitimate reason, the provision of Amendment 2 that would limit prisoners (and only prisoners) to rights afforded by federal law violates the Equal Protection Clause of the Fourteenth Amendment.

3. Because Amendment 2’s withdrawal from prisoners of existing state constitutional protection of religious liberty has a principal or primary effect of inhibiting religion, it violates the Establishment Clause of the First Amendment, as incorporated by the Fourteenth Amendment.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Plaintiffs' claims of a deprivation of a right, privilege, or immunity secured by the Constitution under color of state law.

5. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiffs' civil action arising under the Constitution of the United States.

6. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343 to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and L.R. 3.1 (b)(1) because Defendant resides in Cole County and carries out the official duties that give rise to Plaintiffs' claims for relief in Cole County.

PARTIES

8. Plaintiff Allaeddin K. Qandah is a citizen of the United States and of the State of Missouri, who is prisoner of the State of Missouri in the custody of the Missouri Department of Corrections.

9. Plaintiff Samuel J. Howard is a citizen of the United States and of the State of Missouri, who is prisoner of the State of Missouri in the custody of the Missouri Department of Corrections.

10. Defendant, George A. Lombardi, is the Director of the Missouri Department of Corrections, in which capacity he is responsible for overseeing the enforcement and implementation of laws, including the state and federal constitutions, within the Missouri Department of Corrections, as well as the creation and implantation of policies for the Missouri

Department of Corrections. The Missouri Department of Corrections operates twenty-one institutions, including Algoa Correctional Center and Jefferson City Correctional Center in Cole County. Lombardi carries out his duties as Director of the Missouri Department of Corrections primarily from his office located in Cole County.

11. Defendant is sued solely in his official capacity.

12. Defendant's actions in implementing and enforcing Amendment 2 are taken under color of state law.

CLASS ALLEGATIONS

13. The Named Plaintiffs are members of a class of current and future prisoners confined in the custody of the Missouri Department of Corrections.

14. The total number of persons currently imprisoned in the custody of the Missouri Department of Corrections is approximately 30,000; thus, the number of individuals in the class of current and future prisoners confined in the custody of the Missouri Department of Corrections is so numerous that joinder of all members of the class would be impracticable.

15. There are questions of law and fact that are common to the claims of the class, including legal questions of whether Amendment 2 impermissibly infringes on class members' rights under the Equal Protection Clause of the Fourteenth Amendment or the Establishment Clause of the First Amendment; whether Amendment 2's withdraw from prisoners of the additional protections for religious liberty afforded by the state constitution serves a legitimate purpose; and whether Amendment 2's withdraw from prisoners of the additional protections for religious liberty afforded by the state constitution has a principal or primary effect of inhibiting religion.

16. The claims of the Named Plaintiffs are typical of the claims of the class.

17. Plaintiffs will fairly and adequately protect the interests of the class.
18. The challenged provision of Amendment 2 and Defendant's obligation to enforce the challenged provision are generally applicable to the class, making appropriate the grant of relief to the class as a whole.

FACTS

19. Beginning with its first Constitution in 1820, Missouri has provided additional protections of religious liberty beyond those secured by federal law.

20. In 1820, a year before statehood, Missouri adopted its first constitution.

21. Article XIII, § 4 of the Constitution of 1820 of the State of Missouri provided:

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support, or attend any place of worship, or to maintain any minister of the gospel, or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested, or restrained in his religious profession or sentiments, if he do not disturb others in their religious worship.

22. In 1865, at the end of the Civil War, Missouri adopted a new constitution.

23. Article I, § 9 of the Constitution of 1865 of the State of Missouri provided:

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State,

nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

24. Missouri's third constitution, the Constitution of 1875 of the State of Missouri, retained the identical language of Article I, § 9 of the Constitution of 1865 of the State of Missouri; however, the provision was placed as Article II, § 5 of the Constitution of 1875 of the State of Missouri.

25. Missouri adopted its fourth, and current, Constitution in 1945.

26. Prior to Amendment 2, Article I, § 5 of the Constitution of 1945 of the State of Missouri provided:

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor

to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

27. At all times since 1820 until the passage of Amendment 2, the Constitution of Missouri has been more protective of an individual right to religious liberty and expression than federal law.

28. Prior to Amendment 2, “the religious freedom provisions of the Missouri Constitution [we]re broader than those of the First Amendment[.]” *Perry v. Johnston*, 641 F.3d 953, 956-57 (8th Cir. 2011)(citing *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997)).

29. At all times since 1820 until the passage of Amendment 2, the religious freedom provisions of the various Missouri constitutions have applied to all individuals, including prisoners.

30. Plaintiff Howard has sought and obtained an accommodation of his religious beliefs, including through the grievance process and by bringing a suit under the First Amendment and Article I, § 5, in settlement of which he secured a religious accommodation.

31. The Constitution of 1945 of the State of Missouri provides mechanisms for amendment of the constitution by initiative petition or by initiative referred to the voters by the General Assembly.

32. Since the adoption of the current constitution in 1945, it has been amended more than 200 times by popular vote following either referral by the legislature or a petition by voters to place a proposed amendment on the ballot.

33. Prior to Amendment 2, Article I, § 5 of the Constitution of 1945 of the State of Missouri had never been amended.

34. Mike McGhee, in his capacity as a state representative, sponsored House Joint Resolution 2 in the First Regular Session of the Ninety-Sixth General Assembly.

35. McGhee's resolution referred Amendment 2 to the voters.

36. Amendment 2 will cause Article I, § 5 of the Constitution of 1945 of the State of Missouri to read:

That all men and women have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his or her religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his or her person or estate; that to secure a citizen's right to acknowledge Almighty God according to the dictates of his or her own conscience, neither the state nor any of its political subdivisions shall establish any official religion, nor shall a citizen's right to pray or express his or her religious beliefs be infringed; that the state shall not coerce any person to participate in any prayer or other religious activity, but shall ensure that any person shall have the right to pray individually or corporately in a private or public setting so long as such prayer does not result in disturbance of the peace or disruption of a public meeting or assembly; that citizens as well as elected officials and employees of the state of Missouri and its

political subdivisions shall have the right to pray on government premises and public property so long as such prayers abide within the same parameters placed upon any other free speech under similar circumstances; that the General Assembly and the governing bodies of political subdivisions may extend to ministers, clergypersons, and other individuals the privilege to offer invocations or other prayers at meetings or sessions of the General Assembly or governing bodies; that students may express their beliefs about religion in written and oral assignments free from discrimination based on the religious content of their work; that no student shall be compelled to perform or participate in academic assignments or educational presentations that violate his or her religious beliefs; that the state shall ensure public school students their right to free exercise of religious expression without interference, as long as such prayer or other expression is private and voluntary, whether individually or corporately, and in a manner that is not disruptive and as long as such prayers or expressions abide within the same parameters placed upon any other free speech under similar circumstances; and, to emphasize the right to free exercise of religious expression, that all free public schools receiving state appropriations shall display, in a conspicuous and legible manner, the text of the Bill of Rights of the Constitution of the United States; but this section shall not be

construed to expand the rights of prisoners in state or local custody beyond those afforded by the laws of the United States, excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

37. The initiative was placed on the ballot for the August 7, 2012, election.

38. It appears that a majority of those casting a vote regarding the adoption of Amendment 2 have voted in favor of adopting Amendment 2.

39. Subsequent to the election, the Secretary of State will convene the board of state canvassers to total the votes and certify the results of the election.

40. In cases where the majority votes in favor of a proposed constitutional amendment, the amendment goes into effect 30 days after the election.

41. Plaintiffs and other members of the putative class will be chilled in their religious expression if deprived of the broader protection of religious liberty afforded by the Missouri Constitution because, without the further layer of security for religious liberty, they fear lesser protection of their rights.

42. The withdrawal from Plaintiffs and other members of the putative class of the broader protection of religious liberty afforded by the Missouri Constitution inhibits their practice and exercise of religion and religious expression.

43. Plaintiffs are further harmed because Amendment 2 imposes a barrier that makes it more difficult for prisoners, as a group, to obtain the benefit of the Missouri Constitution's safeguards of religious liberty, than for other groups.

44. Plaintiffs are further harmed because Amendment 2 stigmatizes prisoners, a disfavored group, as innately inferior and, therefore, less worthy of the protection of the Missouri Constitution.

45. In addition, Plaintiffs are harmed in that Amendment 2 perpetuates archaic and stereotypic notions of prisoners, a disfavored group, as inferior and less worthy of the protection of the Missouri Constitution.

46. In this case, Plaintiffs challenge only the following provision inserted by Amendment 2: “but this section shall not be construed to expand the rights of prisoners in state or local custody beyond those afforded by the laws of the United States[.]”

47. The challenged provision is severable and may be enjoined or stricken without affecting any other portion of Article I, § 5 of the Constitution of 1945 of the State of Missouri.

48. In the alternative, the challenged provision is not severable because it is interrelated to the remaining portions of Amendment 2 and Amendment 2 does not contain a severability clause.

49. The challenged provision does not rationally or actually advance a neutral and legitimate government interest.

50. Plaintiffs have no alternate means of exercising the rights withdrawn by the challenged provision.

COUNT I
42 U.S.C. § 1983
Equal Protection Clause

51. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as if set forth verbatim.

52. The challenged provision withdraws an existing right or benefit from one group—prisoners—but from no other individuals.

53. Prisoners are a politically unpopular group.

54. The challenged provision, without a legitimate reason, withdraws from prisoners an existing right or benefit.

55. The General Assembly does not possess expert judgment about legitimate penological objectives or how to achieve them.

56. As a group, the voters who cast ballots in favor of Amendment 2 do not possess expert judgment about legitimate penological objective or how to achieve them.

COUNT II
42 U.S.C. § 1983
Establishment Clause

57. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as if set forth verbatim.

58. The challenged provision has the principal or primary effect of inhibiting religion among prisoners in Missouri.

WHEREFORE Plaintiffs pray this Court:

- A. Upon proper motion, certify a Plaintiff Class;
- B. Upon proper motion, issue a temporary restraining order, preliminary injunction, or both;
- C. Enter declaratory judgment pursuant to 42 U.S.C. § 1983 that the challenged provision of Amendment 2 is unconstitutional;
- D. Permanently enjoin enforcement or implementation of Amendment 2 or the challenged provision of Amendment 2;
- E. Award Plaintiffs costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 or any other applicable law;
- F. Allow to Plaintiff such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
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