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**Pro hac vice application pending*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOWARD THOMPSON, JR.,

Plaintiff,

v.

MICHELLE R. RICCI, in her official capacity
as Administrator, New Jersey State Prison; and
GEORGE W. HAYMAN, in his official capacity
as Commissioner, New Jersey Department of
Corrections,

Defendants.

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Civil Action No.

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VERIFIED COMPLAINT

INTRODUCTION

The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) and the Free Exercise Clause of the First Amendment prohibit prison officials from substantially burdening the religious practice of inmates without sufficient justification. Howard Thompson, Jr., the Plaintiff in this case, is a prisoner at New Jersey State Prison (“NJSP”) and an ordained Pentecostal minister. For over a decade, he has been preaching at Sunday Protestant services at

NJSP and leading other inmates in religious activities such as choir and Bible study. Far from disrupting security at NJSP, Mr. Thompson's activities have been praised by NJSP chaplains as helpful to the rehabilitation of many of those confined at NJSP. Last year, however, NJSP implemented a new policy – without warning or justification – that bans Mr. Thompson and all other inmates from preaching in the prison.

NJSP's blanket prohibition on inmate preaching prevents Mr. Thompson from fulfilling his religious calling as a minister and a Pentecostal. Because the policy is not the least restrictive means of advancing any compelling governmental interest, it violates Mr. Thompson's rights under RLUIPA. And because, as currently formulated, it serves no legitimate penological interest, it contravenes the Free Exercise Clause as well. Mr. Thompson files this action to vindicate his right to religious liberty and, more specifically, to restore his ability to preach at NJSP.

JURISDICTION AND VENUE

1. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.* (“RLUIPA”). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

2. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

3. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(b), because all parties reside within the District of New Jersey and the events described in this Complaint occurred in the District of New Jersey.

PARTIES

4. Plaintiff Howard Thompson, New Jersey State Prisoner #204-289 / SBI # 97607B, is an inmate at New Jersey State Prison ("NJSP"). In 1986, Mr. Thompson was sentenced to 30 years to life in prison. As an ordained minister in the Pentecostal faith, Mr. Thompson feels compelled by his sincerely held religious beliefs to preach and minister to other inmates.

5. Defendant Michelle R. Ricci is employed by the New Jersey Department of Corrections ("NJ DOC") as the Administrator of NJSP. She is responsible for the daily operations of NJSP, including all policies relating to prisoners' freedom to preach and minister to others inmates. Ricci is sued in her official capacity.

6. Defendant George W. Hayman is the Commissioner of the NJ DOC. He is responsible for the overall operations of the prison facilities in the State of New Jersey, including NJSP. Hayman is sued in his official capacity.

FACTS

7. Since he entered NJSP in 1986, Mr. Thompson, an adherent of the Pentecostal faith, has been an active member of the prison's Christian community, participating in and preaching at Sunday services and other religious events, and founding the Protestant choir.

8. As a Pentecostal, Mr. Thompson believes that he has a religious calling to spread the Good News of the Kingdom of God through preaching, study of the Bible, and ministry to others.

9. Those beliefs are deeply and sincerely held by Mr. Thompson.

10. Mr. Thompson first preached in a service at NJSP over a decade ago, when he relieved Bishop Joseph P. Ravenell, the NJSP Protestant Chaplain at the time who was unable to lead the service due to temporary illness.

11. During the next decade, prior to his ordination as a Pentecostal minister, Mr. Thompson periodically preached at Sunday services, taught Bible study classes, and participated in and led the prison choir.

12. In October of 2000, in a service at NJSP overseen by then-Chaplain Samuel K. Atchison, and attended by Bishop Ravenell and two chaplaincy volunteers, Bishop Lawrence S. Thompson and Pastor Stephen Miller, Mr. Thompson was ordained as a Pentecostal minister.

13. Mr. Thompson received the call of ordination and deeply and sincerely believes he has a spiritual calling to preach and lead others in worship, study, and prayer.

14. Although Mr. Thompson began preaching at NJSP long before October of 2000, after his ordination, he assumed a more regular schedule of preaching at Protestant services in the prison and leading other activities, such as Bible study classes.

15. From October 2000 to September 2006, during Rev. Atchison's tenure as Protestant Chaplain, Mr. Thompson and Rev. Atchison worked together to provide a variety of religious services for Protestant inmates. With Rev. Atchison's express permission and cooperation, Mr. Thompson routinely preached the Sunday morning Protestant worship services at NJSP. Mr. Thompson estimates that he led approximately twelve of these Sunday services per year. Mr. Thompson also preached at additional services held for special occasions such as Holy Week.

16. On certain weeknights, Mr. Thompson taught Bible study classes. Although a volunteer usually attended these classes, Mr. Thompson – rather than the volunteer – led the classes.

17. At various times, inmates needed to prepare for baptismal services. Mr. Thompson conducted special courses for that purpose.

18. On several other occasions, Mr. Thompson held a special four-week course to train inmates to give five-minute testimonies during Sunday morning worship services.

19. Chaplain Atchison knew of and supported Mr. Thompson's provision of religious services to Protestant inmates. Atchison sometimes, but not always, attended the services and events that Mr. Thompson led.

20. In September 2006, the NJ DOC removed Atchison from NJSP and replaced him with an interim Protestant Chaplain, Rev. DeWitt Timmons, who was neither required nor expected to lead regularly scheduled Sunday services. During Chaplain Timmons' tenure, Mr. Thompson took on the responsibility of ensuring that religious services were available to Protestant inmates. With Chaplain Timmons's approval, and under the supervision of chaplaincy volunteers, Mr. Thompson set the order for services, preached, and provided pastoral care to the Protestant congregation.

21. Mr. Thompson continued to participate in these activities until June 25, 2007.

22. No problem or disturbance ever arose in any of the services or classes that Mr. Thompson led under Rev. Atchison's or Rev. Timmons's tenure.

23. On June 25, 2007, Rev. Pamela Moore took over as Protestant Chaplain at NJSP.

24. Shortly after her arrival, Chaplain Moore informed Mr. Thompson that the administration had banned all inmate preaching at NJSP.

25. Howard Thompson deeply and sincerely believes it is his religious obligation and calling to preach and teach his Pentecostal faith. He is willing to do so under the supervision of and in cooperation with NJSP staff; but under current prison policy, Mr. Thompson will be subject to administrative sanction if he attempts to preach to other inmates or lead them in religious services.

26. In addition to Mr. Thompson, numerous other prisoners at NJSP have assumed leadership positions in a variety of contexts, with the express knowledge and permission of the NJSP administration. Inmates at NSJP have leadership roles in, for example: the local NAACP

chapter; the Inmate Legal Association; Trenton Incarcerated Veterans; the L.I.F.E. (Learning Is For Everyone) Program; and Toastmasters.

27. Since June of 2007, when Mr. Thompson was first informed of the ban on inmate preaching, he has repeatedly sought to have that ban lifted so that he may preach again. Prison officials have declined to lift the ban or to provide any other way for Mr. Thompson to exercise his religious calling.

28. On April 9, 2008, Mr. Thompson filed an Inmate Remedy System Form at NJSP, seeking accommodation of his religious beliefs and permission to preach. *See* Exhibit A, Part 1 and continuation (attached hereto). In response, Mr. Thompson received an answer dated April 15, 2008. That response rejected Mr. Thompson's request, stating simply, "Staff and Volunteers are assigned the duties to provide religious services. Not inmates." *See* Exhibit A, Part 3.

29. Mr. Thompson filed a completed administrative appeal form on April 23, 2008. *See* Exhibit B, Part 4 and continuation (attached hereto).

30. Administrator Ricci rejected Mr. Thompson's appeal on April 28, 2008, stating, "Staff and volunteers will continue to provide religious services to the inmate population at NJSP." No further explanation was given. *See* Exhibit B, Part 5.

31. Mr. Thompson has exhausted his administrative appeals.

32. On October 2, 2008, counsel for Mr. Thompson sent Defendants Ricci and Hayman a demand letter, highlighting Mr. Thompson's statutory and constitutional right to preach at NJSP and seeking resolution of this issue, if possible, without resort to litigation. *See* Exhibit C (attached hereto).

33. In a letter to Mr. Thompson's counsel dated November 5, 2008, Marcus Hicks, Assistant Director for NJ DOC's Office of Community Programs and Outreach Services, purported to respond to the October 2 letter. Hicks's letter, however, addressed an entirely

separate issue (the procedure for inviting outside volunteers to minister to inmates). The letter offered no accommodation of Mr. Thompson's right to preach at NJSP; indeed, the letter did not discuss in any way the requests reiterated in the October 2 demand letter. *See* Exhibit D (attached hereto).

34. To date, Defendants have refused to lift the preaching ban and have failed to accommodate Mr. Thompson's sincere religious beliefs.

FIRST CLAIM FOR RELIEF

(RLUIPA 42 U.S.C. §§ 2000cc, *et seq.*)

35. The allegations of paragraphs 1-34 are incorporated herein.

36. The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.* ("RLUIPA"), bars federally funded institutions from imposing substantial burdens on inmates' religious exercise, unless the government demonstrates that imposition of the burden furthers a compelling governmental interest *and* is the least restrictive means of furthering that interest.

37. NJSP receives financial assistance from the U.S. government.

38. NJSP's policy banning inmate preaching, and its refusal to grant Plaintiff Thompson an accommodation under that policy, substantially burdens Mr. Thompson's religious exercise and sincerely held religious belief.

39. NJSP's policy banning inmate preaching, and its refusal to grant Plaintiff Thompson an accommodation under that policy, is not the least restrictive means of furthering any compelling governmental interest.

40. NJSP's policy and actions therefore violate RLUIPA.

SECOND CLAIM FOR RELIEF

(First Amendment; 42 U.S.C. § 1983)

41. The allegations of paragraphs 1-40 are incorporated herein.

42. The First Amendment of the U.S. Constitution protects the rights of all persons freely to exercise their religious beliefs.

43. Preaching and ministering to other inmates is central to Mr. Thompson's sincerely held religious beliefs.

44. Mr. Thompson's long-established practice of preaching to other inmates and leading them in religious activities such as Bible study was revoked for reasons that have no reasonable relationship to any legitimate penological interest.

45. By denying Mr. Thompson the chance to follow his religious calling, Defendants, acting under color of law, have improperly and unjustifiably infringed Thompson's right to the free exercise of religion, in violation of the First Amendment.

RELIEF REQUESTED

Wherefore, Plaintiff prays that this Court enter judgment:

- (a) Declaring that the Defendants, while acting under color of state law, violated RLUIPA and the U.S. Constitution by denying Plaintiff the right to practice his religious beliefs;
- (b) Enjoining Defendants from prohibiting Mr. Thompson from preaching and ministering to other inmates, from leading religious services, and from teaching religious classes, including Bible study;
- (c) Awarding Plaintiff nominal damages;
- (d) Awarding Plaintiff the costs of this action, including reasonable attorneys' fees; and

(e) Awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: December 3, 2008.

Respectfully submitted,

/s/ Ed Barocas

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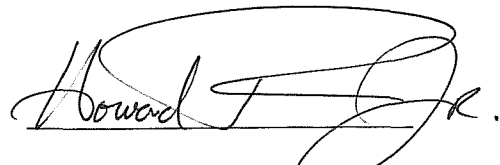
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Attorneys for Plaintiff

VERIFICATION

I, Howard Thompson, Jr., declare and verify under penalty of perjury that the foregoing Verified Complaint is true and correct, to the best of my information and belief.

Executed on Nov 20, 2008.


Howard Thompson, Jr.