

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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CLERK OF DISTRICT COURT

FREEDOM FROM RELIGION
FOUNDATION, INC., PETER VIVIANO,
ERNE HIRSHMAN, SABINA HIRSHMAN,
PAUL WEINBAUM, MARTIN J. BOYD,
M.D., and JESSE V. CHAVEZ,

Plaintiffs,

v.

CIV No.

CIV - 05 - 1168

RLP KBM

GOVERNOR BILL RICHARDSON,
SECRETARY JOE R. WILLIAMS, HOMER
GONZALES, BILL SNODGRASS, in their
official capacities, and CORRECTIONS
CORPORATION OF AMERICA, INC.,

Defendants.

CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983

The plaintiffs, by and through their attorneys Adam S. Baker and Richard L. Bolton, bring this complaint against the defendants for violations of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

JURISDICTION AND VENUE

1. The Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
2. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391, because one or more of the defendants resides within this judicial district and the acts forming the basis of Plaintiff's claims occurred in New Mexico.

PARTIES

3. Plaintiff Freedom From Religion Foundation, Inc., is a Wisconsin non-stock corporation with its principal office in Madison, Wisconsin.

4. Freedom From Religion Foundation has more than 5,500 members, who are opposed to government endorsement of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

5. Freedom From Religion Foundation has membership that includes New Mexico residents who pay taxes to the State of New Mexico.

6. Freedom From Religion Foundation has the organizational purpose to protect the fundamental constitutional principle prohibiting government endorsement of religion by representing and advocating on behalf of its members.

7. Freedom From Religion Foundation in its representational capacity, and including its resident New Mexico taxpayers, are opposed to the use of state taxpayer appropriations to advance and promote religion.

8. Plaintiff, Peter Viviano is an adult individual residing in Rio Rancho, New Mexico, and he is a New Mexico state taxpayer who is opposed to the use of state taxpayer appropriations to advance, endorse and/or promote religion.

9. Plaintiffs Ernie and Sabina Hirshman are adult individuals residing in Deming, New Mexico, and they are New Mexico state taxpayers who are opposed to use of state taxpayer appropriations to advance, endorse and/or promote religion.

10. Plaintiff Paul Weinbaum is an adult individual residing in Las Cruces, New Mexico, and he is a New Mexico state taxpayer who is opposed to use of state taxpayer appropriations to advance, endorse and/or promote religion.

11. Plaintiff Martin J. Boyd, M.D., is an adult individual residing in Las Cruces, New Mexico, and he is a New Mexico state taxpayer who is opposed to use of state taxpayer appropriations to advance, endorse and/or promote religion.

12. Plaintiff Jesse V. Chavez is an adult individual residing in Las Cruces, New Mexico, and he is a New Mexico state taxpayer who is opposed to use of state taxpayer appropriations to advance, endorse and/or promote religion.

13. Each of the individual plaintiffs are members of the plaintiff organization, Freedom From Religion Foundation.

14. Defendant Bill Richardson is the Governor of the State of New Mexico.

15. Defendant Richardson is sued in his official capacity as the Governor of the State of New Mexico.

16. Defendant Joe R. Williams is the Secretary of the New Mexico Corrections Department.

17. Defendant Williams is sued in his official capacity as the Secretary of the New Mexico Corrections Department.

18. Defendant Homer Gonzales is the Coordinator of Faith-Based Programs for the New Mexico Corrections Department

19. Defendant Gonzales is sued in his official capacity as the Coordinator of Faith-Based Programs for the New Mexico Corrections Department.

20. Defendant Bill Snodgrass is the Warden at the New Mexico Women's Correctional Facility ("the NMWCF") in Grants, New Mexico.

21. Defendant Snodgrass is sued in his official capacity as the Warden at the NMWCF.

22. Defendant Corrections Corporation of America, Inc., (“Defendant CCA”), has contracted with the State of New Mexico to operate the NMWCF, at 1700 East Old Highway 66, Grants, New Mexico.

23. Defendant CCA exercises powers traditionally exclusively reserved to the state, and New Mexico has delegated a state function to Defendant CCA pursuant to contract.

24. The New Mexico Corrections Department is a duly organized state governmental entity that is funded from New Mexico state taxpayer appropriations.

25. Defendants Richardson, Williams, Gonzales, and Snodgrass are state actors whose actions have been, and continue to be, taken under color of state law. Further, each of the defendants are responsible for disbursing and spending New Mexico state taxpayer appropriations as alleged herein.

NATURE OF THE CASE

26. The New Mexico Corrections Department provides faith-based programming to inmates which is designed to encourage the inmates involved to establish or strengthen a relationship with God.

27. Defendant Gonzales is responsible for overseeing the New Mexico Corrections Department’s faith-based programming.

28. Defendant Gonzales’ activities are funded by appropriations of tax revenues received by the State of New Mexico from state taxpayers.

29. The goal of the New Mexico Corrections Department’s faith-based programming is to teach and model a Christian lifestyle that will help the inmates accomplish goals identified by the New Mexico Corrections Department, including (1) to learn to live in a faith community; (2) to help

inmates overcome hurts, addictive habits and hang-ups; (3) to strengthen family relationships; and (4) to form new relationships within the Christian community.

30. The goal of faith-based programming provided by the New Mexico Corrections Department further is to encourage inmates to become involved in faith-based programming in their local community upon release from prison.

31. The underlying premise of faith-based programming provided by the New Mexico Corrections Department is that a relationship with God, and involvement in a Christian faith community, is necessary to prevent criminal recidivism.

32. The most intensive faith-based programming provided by the New Mexico Corrections Department is presently conducted at the NMWCF.

33. Defendant CCA operates the NMWCF with appropriations authorized to be made by Defendants Richardson, Williams, Gonzales, and Snodgrass.

34. Defendant CCA provides an exclusively faith-based segregation pod at the NMWCF, which program has been and continues to be enthusiastically supported by the defendants.

35. Defendant CCA has provided intense faith-based programming at the NMWCF previously through the Life Principles Community/Crossings Program and has recently begun providing religious programming in partnership with a fundamentalist Christian ministry, *i.e.*, the Institute in Basic Life Principles.

36. Defendant CCA is the nation's largest provider of corrections management services to government and it is the nation's largest owner and operator of correctional and detention facilities, after the federal government and four states, operating at least 63 facilities with a total design capacity of approximately 67,000 beds in 19 states and the District of Columbia. The faith-

based programming provided by Defendant CCA at the NMWCF, in partnership with the Institute in Basic Life Principles, is intended to facilitate a “franchise-like” approach to providing faith-based programming in all prisons operated by Defendant CCA.

37. The content of the faith-based programming provided by Defendant CCA at the NMWCF is intended to convert people to a fundamentalist interpretation of Christianity.

38. The written materials used in the faith-based programming by Defendant CCA at the NMWCF include statements such as “Have you received Jesus Christ as your Personal Savior?,” “The first function of faith is to believe in Christ for salvation,” “The Holy Spirit takes up residence in your Spirit and confirms that you are a Christian...Disobeying the promptings of the Holy Spirit will cause Him to be grieved and will quench His power in your life.”

39. The faith-based programming provided by Defendant CCA based on its partnership with the Institute in Basic Life Principles, makes no claim of secularism or respect for other world religions or world views; the Institute in Basic Life Principles was officially established “for the purpose of introducing people to the Lord Jesus Christ,” which it does by providing “training on how to find success by following God’s principles found in Scripture.”

40. The interpretation of Scripture underlying the faith-based programming of the Institute in Basic Life Principles, provided at the NMWCF represents a very literal, overtly patriarchal, and highly authoritarian understanding of the proper relationship with Jesus Christ.

41. The faith-based programming material provided by the Institute in Basic Life Principles considers that all social institutions, including church and government, exist solely because of God’s will.

42. The present partnership between Defendant CCA and the Institute in Basic Life Principles is not the first partnership between Defendant CCA and Christian Evangelical groups.

43. Defendant CCA in fact, has taken a leadership role and extended a commitment in its mission to bring faith-based programs to prisons.

44. Defendant CCA has previously partnered with groups such as Good News Jail and Prison Ministry, School of Christ International, Child Evangelism Fellowship, Champions for Life, Kairos Horizon, and Theotherapy.

45. Defendant CCA is avowedly convinced of the value of faith-based programs such as that offered by the Institute in Basic Life Principles, to the extent that it plans to institute such faith-based segregation pods in every one of the prisons that it operates; Defendant CCA considers faith-based programs to be the preferred tool to change inmate behavior and to attain a higher quality of life.

46. Defendant CCA is committed to faith-based programming because of its belief that such programming is necessary to prevent criminal recidivism, and it has therefore partnered exclusively with Christian Evangelical and Fundamentalist groups to provide faith-based programming; cultures of respect, responsibility and accountability, however, can be achieved without promoting religious indoctrination, contrary to the belief held by Defendant CCA.

47. The faith-based segregation pod at the NMWCF is known as the "God Pod" by some of the inmates; the pod includes Scripture-based books and movies, and an intimate living room area offers inmates the comfort of couches, a microwave and a peaceful ambiance that is not available to other inmates.

48. The environment of the faith-based pod at the NMWCF provides an environment that is more nicely furnished and less noisy and hectic than other prison pods, in part because fewer women reside in the "God Pod" than in other pods.

49. The faith-based segregation unit at the NMWCF is explicitly and rigorously religious with a program involving spiritual counseling and religious meetings, prayer walks, meditation, memorization of the New Testament, and a mandate that the inmates stay involved in a faith community after their release from prison.

50. Inmates in the faith-based segregation unit at the NMWCF are encouraged to dedicate themselves exclusively to their relationships with God and family.

51. The defendants believe that faith-based programming for prison inmates is a superior approach to reducing criminal recidivism, which effect the defendants believe is caused by the transformative belief in a higher power, *i.e.*, because the inmates allegedly realize that there is a God, and that the inmates are helpless, and that God is in control if they allow Him to be.

52. The defendants intend to increase the faith-based programming at the NMWCF to the extent that at least 245 women will be involved in faith-based programming at any one time.

53. The faith-based programming at the NMWCF is premised on God always coming first, and family second, and all else being secondary.

54. The goal of state-wide faith-based programming provided by the New Mexico Corrections Department is to instill beliefs by inmates that there is a Creator and Higher Power able to help them turn their lives around, and that inmates do not have to be locked into the lifestyle that led them to prison.

55. The faith-based programming procured by the New Mexico Corrections Department, and authorized by these defendants, is funded by New Mexico taxpayer appropriations.

56. Planning, development and implementation of faith-based programming by the New Mexico Corrections Department are accomplished by these defendants.

57. The activities of the defendants are subsidized through state taxpayer supported efforts and are undertaken at the direction of the defendants, including Defendant Gonzales whose only job is to promote and coordinate faith-based programming.

58. Faith-based programming provided by the New Mexico Corrections Department touts the alleged importance and power of Christian faith as being necessary to lead a crime-free life.

59. The actions of the defendants are integral to the faith-based programming of the New Mexico Corrections Department, including the mission of religious indoctrination.

60. The defendants engage in and authorize activities that promote religious spirituality and faith.

61. The faith-based programming provided by the New Mexico Corrections Department, under the authorization and supervision of the defendants, considers that inmate values, resulting in lifestyle choices, must be changed through the integration of faith, religion and spirituality into their lives.

62. The defendants, through their actions, seek to promote the integration of Christian religious spirituality and faith, as inherent components, into the New Mexico Corrections Department's rehabilitative delivery model of services.

**COUNT I: SECTION 1983 CLAIM AGAINST DEFENDANTS FOR VIOLATION OF
THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE UNITED
STATES CONSTITUTION**

63. The plaintiffs hereby incorporate paragraphs 1 through 62 as though fully set forth herein.

64. The defendants' actions as set forth above violate the fundamental principle prohibiting government endorsement of religion by using state taxpayer funds for the provision of prison faith-based programming and activities that promote the integration of religion into the lives of inmates, such that the religious objective is indivisible from any possible secular objective.

65. The use of New Mexico taxpayer funds, to promote faith-based programming by the New Mexico Corrections Department, violates the Establishment Clause to the First Amendment to the United States Constitution because taxpayer funds are used to support activities whose mission is to integrate religious indoctrination as an indivisible component of the programming provided to prison inmates.

66. Religious indoctrination is an integral component of the faith-based programs provided by the New Mexico Corrections Department, which indoctrination is supported by taxpayer appropriations from the State of New Mexico, through the actions of the defendants.

67. New Mexico state taxpayer appropriations are disbursed to fund the organization and procurement of faith-based programming by the New Mexico Corrections Department, including the faith-based programming at the NMWCF, as a result of decisions made under color of state law by state actors including the defendants herein.

68. Patently religious principles dominate the approach to faith-based programming advocated and procured by the defendants, which faith dominated approach includes explicitly

religious content designed to be integrated into the programming offered by the New Mexico Corrections Department.

69. The involvement and actions of the defendants constitute governmental approval of the religious content of the faith-based programming being integrated into the New Mexico prison system.

70. The defendants' actions give the public appearance, to reasonable observers, of state endorsement of religion.

71. The defendants' actions convey a message that religion is favored, preferred and promoted, in contrast to non-belief, and the faith-based programming of the New Mexico Corrections Department is clothed in traditional indicia of government endorsement.

72. The funds appropriated by the defendants to apply to faith-based programming by the New Mexico Corrections Department are derived from taxes paid by residents of the State of New Mexico, including resident New Mexico taxpayers who are members of the plaintiff organization, Freedom From Religion Foundation.

73. In sum, the defendants' activities as set forth above impermissibly advance, endorse and promote the establishment of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

74. The actions taken by the defendants in violation of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983 are injurious to the plaintiffs' interests because the defendants' actions compel the plaintiffs to support the establishment, endorsement and advancement of religion through state taxpayer funding of programmatic religious indoctrination, to which the plaintiffs object.

WHEREFORE, the plaintiffs demand judgment as follows:

- (a) For a declaration that the actions of the defendants violate the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983;
- (b) For an order enjoining the defendants from continuing to promote, operate, manage, fund and direct activities in furtherance of any faith-based programming by the New Mexico Corrections Department;
- (c) For an order enjoining the defendants from continuing to provide faith-based programming by the New Mexico Corrections Department, including at the NMWCF, which programming impermissibly endorses and promotes religion;
- (d) For an order enjoining the defendants from using state funds to promote, advance and/or endorse the establishment of religion, including funding for the faith-based segregation unit at the NMWCF;
- (e) For judgment awarding such further relief as the Court deems just and equitable; and
- (f) For judgment awarding the plaintiffs their reasonable costs, disbursements and attorneys fees as allowed by law, including 42 U.S.C. § 1988.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. S. Baker', written over a horizontal line.

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