

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

Petitioner,

v.

PETER HUIBREGSTE, MATTHEW  
FRANK, Secretary of the Wisconsin  
Department of Corrections, CITY OF  
BOSCOBEL,

Respondents.  
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ORDER

06-C-0407-C

In this civil lawsuit brought pursuant to 42 U.S.C. § 1983, was granted leave to proceed in forma pauperis on his claims that (1) defendants Peter Huibregste and Matthew Frank deprived him of his First Amendment right to free speech by instituting a policy at the Wisconsin Secure Program Facility that prohibits the distribution of the Boscobel Dial to prisoners and (2) defendant City of Boscobel's ordinance prohibiting the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility violates petitioner's First Amendment right to free speech. Now plaintiff has filed a motion to amend his complaint and a proposed amended complaint and defendants have moved for an enlargement of time within which to respond to plaintiff's amended complaint. Both

motions will be denied.

A cursory review of plaintiff's proposed amended complaint reveals that plaintiff may be attempting to reinstate claims and defendants against whom I have denied him leave to proceed and to add new claims. However, it is extremely difficult to discern what is new in the proposed amended complaint and what claims remain of those I have already screened. Therefore, to avoid any confusion about exactly what plaintiff wishes to add or subtract from his proposed amended complaint, he will have to submit the proposed amended complaint in the following format: he should begin with a duplicate copy of his original complaint. He must then draw a line through the allegations that concern matters upon which I already have ruled fail to state a claim and circle allegations he is adding to the complaint. (When he submitted his proposed amended complaint, plaintiff indicated he was not allowed to have a highlighter, so he could not highlight his new allegations. Circling the new material will serve the same purpose.) If plaintiff does this, it will allow the court to screen plaintiff's changes quickly and rule more promptly on his motion.

One further matter warrants comment. To the extent that plaintiff believes the court will reinstate his claims against Morris Multimedia Incorporated, Morris Newspaper Corporation of Wisconsin, Charles H. Morris, Peter Jackson, Michael Sunderman, William S. Hale, John D. Ingebritsen and David Krier ("the newspaper defendants") so long as he alleges that these defendants "acted under color of state law," he is mistaken. The mere fact

that a person or organization has *followed* a law that it is allegedly unconstitutional is insufficient to subject the person or organization to constitutional scrutiny under 42 U.S.C. § 1983.

Plaintiff points out that he was granted leave to proceed on a § 1983 claim against a non-state entity in another case pending before this court, 06-C-12, and suggests that the court's decision in this case is inconsistent. However, the defendant in that case is a private prison corporation and plaintiff was granted leave to proceed against the corporation because that defendant was performing a fundamental "public function" that "traditionally [had been] the exclusive province of the state." See, e.g., West v. Atkins, 487 U.S. 42 (1988). That exception does not apply to the newspaper defendants in this case.

Because I am denying plaintiff's motion to amend his complaint at this time, I will deny defendants' motion for an enlargement of time within which to file an answer to the amended complaint as moot.

#### ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED without prejudice.

Further, IT IS ORDERED that defendants' motion for an enlargement of time within

which to file an answer to the amended complaint is DENIED as moot.

Entered this 11th day of December, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge