IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES J. KAUFMAN,

Plaintiff,

v.

OPINION and ORDER

11-cv-168-bbc

JEFFREY PUGH, CRAIG W. LINDGREN,
SANDRA COOPER, TERRY SHUK,
ISMAEL OZANNE, CAROL GARCEAU,
MARC W. CLEMENTS, and RANDALL HEPP,

Defendants.

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Plaintiff James Kaufman, an inmate at the Stanley Correctional Institution, is proceeding on claims that defendant prison officials violated his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and free exercise and establishment clauses of the United States Constitution by denying his requests for an Atheist study group and a "knowledge thought ring," as well as refusing to make Atheist books donated by plaintiff available to the inmates at the Stanley prison library. Defendants have filed a motion for summary judgment, which the parties have completed briefing.

As an initial matter, I note that plaintiff was granted leave to proceed against defendant Randall Hepp on his claim regarding the knowledge thought ring because there are allegations against Hepp in the body of plaintiff's complaint. However, Hepp is not

mentioned in either parties' proposed findings of fact, is not listed in the caption in plaintiff's complaint or defendants' filings and is not listed as a defendant in the state court proceedings from which this case was removed. Because neither side seems to be proceeding as if Hepp were a party in this action, and because Hepp's presence makes no difference to the outcome of this case, I will dismiss Hepp from the case.

The case will be dismissed as to the remaining defendants. There is no genuine issue as to any material fact and defendants have shown that they are entitled to judgment as a matter of law on plaintiff's claims of violations of his rights under RLUIPA and the free exercise and establishment clauses of the First Amendment. The lack of a study group imposes only a slight burden on plaintiff's ability to study Atheism, which is outweighed by the prison's legitimate penological interests, including the lack of funds to support study groups with only one or two members. The denial of a ring does not impose a substantial burden on plaintiff's ability to practice Atheism and the prison's legitimate penological interest in security supports banning rings with such individualized expression. Finally, plaintiff has not submitted any evidence indicating that the named defendants had any personal responsibility for his donated books being lost.

From the parties' proposed findings of fact and supporting evidence, I find that the following facts are undisputed and material.

UNDISPUTED FACTS

A. Background

Plaintiff James Kaufman has been incarcerated at the Stanley Correctional Institution since September 17, 2009. At the times relevant to this action, defendants Jeffrey Pugh, Craig Lindgren, Sandra Cooper and Terry Shuk were employed at the Stanley prison; Pugh was the warden, Lindgren was a chaplain, Cooper was a captain assigned to supervise the mail/property room and Shuk was a sergeant. Defendant Ismael Ozanne was the deputy secretary of the Wisconsin Department of Corrections. Defendants Carol Garceau and Marc Clements were on the department's Religious Practices Advisory Committee.

The department's Division of Adult Institutions oversees all adult correctional institutions in Wisconsin. The religious practices inmates at Wisconsin prisons are allowed to exercise are set forth in DAI Policy # 309.61.01. This policy establishes the concept of Umbrella Religion Groups, which are "inclusive groups designed to appeal to a wide range of religious beliefs within a given faith group." The Umbrella Religion Groups are Protestant, Islam, Native American, Catholic, Jewish, Eastern Religions and Pagan. Atheism is not included in any of these groups.

The use of umbrella groups allows the department to use its limited resources as efficiently as possible to accommodate the religious practices of the greatest number of inmates. The department utilizes the umbrella groups to insure that inmates have the opportunity to pursue religious practices of the faith tradition of their choice, taking into account the requirement that religious practices must conform to security practices and

principles, rehabilitative goals of inmates, health and safety concerns and the allocation of limited resources. Before a new umbrella group can be established, a group of inmates must show that they share common ethical, moral or intellectual views.

DAI Policy #309.61.01 requires an inmate seeking to participate in the religious services or study groups associated with a given umbrella group to complete a DOC-1090 ("Religious Preference") form, designating a religion within that group as that inmate's religious preference. An inmate may choose not to designate one of the umbrella groups as his religious preference on the form DOC-1090. If the inmate prefers a religion that is not an umbrella group listed on the form DOC-1090, he may indicate "Other" and write in his religious preference or he may choose the option of "No Preference." If an inmate indicates a religious preference on the DOC-1090 other than one of the umbrella groups, he is not entitled to attend umbrella group religious services or umbrella religion study groups.

B. Atheist Study Group

On October 22, 2009, plaintiff signed and dated a "Request for New Religious Practice," form DOC-2075, in which he requested a new religious umbrella group that he identified as "a study group for inmates who are Atheists (also possibly listed as Humanists, Freethinkers, Rationalists, Agnostics, and who may possibly have checked "No Preference" because there is no Atheist option on the preference form), or any other inmates who may be interested in such studies. . ." Plaintiff stated that the study group "would be for the study of the history of religion, where and how religious beliefs originated, the origins of

belief, and the possible future of belief systems; responsibilities and privileges in society; right versus wrong, and ethical issues." He stated also that "Atheism 'requires' no specific activities, but neither does any other belief system. It is 'related' to Atheism because of the general human need/urge to learn about everything around us, how we relate to and function with other people, how and why things (life) are the way they are, our relationship with other people."

Defendant Chaplain Lindgren received and reviewed plaintiff's October 22, 2009 DOC-2075 request. In recommending denial of plaintiff's request on October 30, 2009, Lindgren stated,

> An agnostic atheist is atheistic because they don't believe in the existence of a deity, and agnostic because they don't claim to have definitive knowledge that a deity does not exist. Religion or being under a Religious Umbrella Group would require a system of human thought which usually includes symbols, beliefs and practices that give meaning to the practitioner's experiences through a higher power, deity or deities. Inmate Kaufman has not defined any of these proofs. He is requesting to study the history of religions, where they originated, and origins along with other items mentioned in his request which can all be referenced through the SCI general library, the SCI Chapel library, the Education Department and other resources. For this reason I believe the needs requested by this inmate can be met without creating another Religious Umbrella Group.

Stanley Correctional Institution Program Director Cheryl Webster concurred with defendant Lindgren's recommendation on October 30, 2009. Defendant Clements, acting as head of the Religious Practices Advisory Committee, also recommended denying the request on November 17, 2009, stating that the request "is not viewed as a religious request." Defendant Warden Pugh ultimately decided to deny plaintiff's request for a study group on December 7, 2009.

On December 24, 2009, plaintiff submitted another Request for New Religious Practice form. This time, plaintiff described his desired group activity in part as follows:

> This would be a group for the study of, and discussion of the history of Atheism, where and how beliefs originated/developed, and the possible futures of Atheism. Also for discussion of Atheist privileges and responsibilities in society, right versus wrong, and ethical issues. (The group is needed because (1) the SCI Library only has ONE Atheist book, and (2) even if more books were available, a group of Atheists would be able to share interpretations and ideas, just as is done in Christian Bible study group.) Cannot meet informally because Atheists are scattered among 5 units and not allowed to interact.
>
> Atheism "requires" no specific activities, other than honesty and espousing reality over fairy tales. But then, Christianity also does not "require" any specific activities, either. A study group is "related" to Atheism because of the general human need/urge to learn about the world around us, how we relate to and function with other people, how and why life is the way it is (if there is, in fact, any such logical explanation). You may not consider the lack of a belief in a deity, per Federal court ruling as well as Wis. Admin. Code 309.61.

On December 30, 2009, defendant Lindgren recommended denying the request, stating in part that

> Atheists are not recognized . . . as an approved religious group. Inmate Kaufman states that "Atheism requires no specific activities . . ." Atheists are atheistic because they do not have belief in the existence of any deity. As to resources in the general library, he may follow procedures to request additional materials through the SCI Librarian or Education Department. As Atheism recognizes no deity or higher power, and as by Kaufman's own statement that it requires no activities, I recommend denial of his request.

Webster concurred with Lindgren's recommendation on December 30, 2009. Defendant Garceau, a member of the Religious Practices Advisory Committee, reviewed the request and recommended denial on January 25, 2010, stating:

> Inmate request states a staff member would be needed to facilitate the discussion group. To utilize institution resources in a responsible and

> equitable way the DOC has established 7 umbrella religious groups to meet the needs of the majority of inmates practicing a variety of established religions. Inmates are also allowed to declare 'other' so they can practice their individual beliefs, however, resources are not available to set up study groups for all individual requests. The types of discussions listed as examples are more educational and philosophical in nature, therefore would not be considered a religious study group.

Defendant Pugh denied plaintiff's request on March 3, 2010.

At the time of plaintiff's study group requests, only one other inmate had expressed interest in an Atheist study group to defendant Chaplain Lindgren. Plaintiff is the only Department of Corrections inmate who has ever submitted a request for an Atheist study group on a form DOC-2075, "Request for New Religious Practice," since the central office began tracking such requests in the database beginning in approximately 2006.

C. Knowledge Thought Ring

All Department of Corrections inmates are allowed to obtain and possess personal property. Allowable personal property varies from institution to institution depending on specific security and treatment programs. An inmate's personal property may also include religious personal property. Religious property items must be in compliance with the restrictions set forth in the religious property chart attached to § DOC 309 IMP 6A. Religious property includes religious emblems that are generally recognized by the inmate's religion as having religious significance. An inmate who is not a member of one of the umbrella groups may not possess any of the emblems on the chart.

As chaplain, defendant Lindgren is responsible for reviewing inmates' requests for a

religious emblem. He is required to adhere to the policy related to allowed religious property, including the Religious Property Chart specifically setting forth the religious property items that are approved for the seven umbrella groups.

Gangs are constantly seeking some way to stand out in the inmate population. The presence and influence of inmates asserting a leadership role or gang affiliation pose a security risk to inmates and to staff who are required to intervene. The use of symbols, inscriptions or codes in a correctional environment can be used as a form of communication and expression that is not easily monitored by security staff and can be adopted by gangs to show hierarchy and status.

Inmates in Wisconsin correctional institutions are known to utilize religious items as identifiers for purposes other than religion, such as gang involvement, and unauthorized gangs have been known to usurp religious items as indicators of membership. For example, Islamic inmates have repeatedly requested kufi caps that were distinctive in some way. Many times, the distinct color or pattern requested was also an identifiers for known street gangs to which members of that religious group are known to belong. The Department of Corrections does not possess the resources necessary to investigate the potential security issues that could arise when potential code words are chosen by inmates for individual inscriptions on their property.

On approximately November 13, 2009, defendant Lindgren received a "Request for New Religious Emblem" form DOC-1585 signed by plaintiff, in which he requested a "thought ring," which he described as a sterling silver circle, engraved with the word

"knowledge." In his request, plaintiff stated, "The choice of an Atheist symbol is individualized, unique to each person based on personal preference. One general Atheist symbol which some Atheists have selected is a simple circle a [sic] ring shape, which reflects common characteristics with Atheism, such as: (1) It is simple; (2) It is whole; (3) It is unbroken; (4) it is obvious; (5) It is all-encompassing; (6) It is strong; (7) It represents the eternal nature of the universe as viewed by Atheism (i.e., no beginning, no end, just one continuous loop of time)." Aff. of Kimberly Richardson, dkt. #36, exh. 106, at 2, ¶ 2. Defendant Lindgren denied the request, stating. "There is no Atheist emblem in Religious IMP. Must meet general property requirements through Sgt. Shuk or Capt. Cooper." Id.

D. Atheist Books

Inmates are allowed to obtain and possess personal property in accordance with DAI policy 309.20.01. This includes printed materials such as newspapers, magazines, pamphlets and books. Under this policy, publications can be received through the U.S. Mail addressed to inmates, but such publications must be mailed directly by publishers, approved retail outlets or other recognized commercial sources and include a receipt. This requirement reduces the likelihood that contraband will be introduced into the institution through these property items. The use of mail and personal property items is a common way inmates work with persons outside the facility to introduce drugs, money and other contraband items.

When an inmate indicates that he wants to donate publications that were sent to him and were denied as unallowable personal property, the publications become the property of

the institution. Defendant Cooper decides whether to approve used books for donation to one of the prison's libraries or to dispose of them. (The Stanley Correctional Institution includes a chapel library, a main library and a library in the segregation housing unit.)

If publications are donated to the chapel through the mail/property room, staff will complete a Property Receipt/Disposition form and place the item in a bin in the mail/property room reserved for items being donated to the chapel. Defendant Lindgren goes to the mail/property room on a weekly basis to check the bin and review any items intended for donation. Lindgren accepts as donations only items that relate specifically to one or more of the umbrella religion groups, because the individuals attending services and study groups at the chapel all belong to one of these umbrella groups. The chapel library has limited space, so Lindgren places books in the chapel library that are more likely to be used by the individuals attending services in the chapel. If Lindgren thinks that books not pertaining to one of the umbrella groups may appeal to a broader range of inmates, he sends them to the general prison library where they are more easily accessible. If Lindgren receives an item that does not relate to one of the umbrella religion groups, he passes it along to the security captain for review and disposition.

On February 9, 2010, Correctional Officer Schwier completed a DOC-237 "Property Receipt/Disposition" form for three books that were received through the U.S. Mail addressed to plaintiff. The book titles were "Essays in Free Thinking," "Pagan Origins of the Christ Myth" and "Ages of Gold & Silver." These books were denied delivery to plaintiff because they were used books. Schwier indicated on the form that the books should be

donated to the library, although he did not have the authority to determine what books should be donated to the library. Defendant Cooper was the designated staff person to review all donations made by the public, staff or inmates that came to the institution through the U.S. Mail. Defendant Cooper does not know what Schwier did with the books after filling out the DOC-237 form and she never reviewed the books. Neither defendant Lindgren nor defendant Shuk was involved in reviewing or disposing of the books. These books are not in the chapel library. Five other books donated by plaintiff to the general library in 2009 and 2010 are maintained in the general library.

Defendants performed a cursory examination of the general library and found that at least eleven Atheist books located there. (Plaintiff disputes this in part, stating that eight of these eleven books are not Atheist books. Defendants do not disagree with plaintiff, but state that there "may be many more Atheist books upon closer examination of the 17,000 books in the library and depending how [plaintiff's] Atheist beliefs are defined.") In the segregation library, there are at least three Atheist books. (Plaintiff disputes this, stating that "not all" of these books are Atheist.)

DISCUSSION

In his complaint, plaintiff contended that defendants violated RLUIPA and the free exercise and establishment clauses of the First Amendment in three ways: (1) defendants Pugh, Lindgren, Garceau, Clements and Ozanne denied plaintiff's requests to form a study group for inmates who are Atheists; (2) defendant Lindgren denied plaintiff's request for a

"knowledge thought ring," a religious emblem; and (3) defendants Lindgren, Shuk and Cooper refused to make Atheist books donated by plaintiff available to the inmates at the Stanley prison library.

A. Study Group

1. RLUIPA

Under RLUIPA, plaintiff has the initial burden to show that he has a sincere religious belief and that his religious exercise was substantially burdened. Koger v. Bryan, 523 F.3d 789, 797-98 (7th Cir. 2008); Vision Church v. Village of Long Grove, 468 F.3d 975, 996-97 (7th Cir. 2006). Plaintiff's Atheism qualifies as a religion for the purposes of this analysis. Kaufman v. McCaughtry, 419 F.3d 678, 681-82 (7th Cir. 2005) ("we have suggested in the past that when a person sincerely holds beliefs dealing with issues of 'ultimate concern' that for [him] occupy a 'place parallel to that filled by . . . God in traditionally religious persons,' those beliefs represent [his] religion.") (quoting Fleischfresser v. Directors of School District 200, 15 F.3d 680, 688 n.5 (7th Cir. 1994)); Reed v. Great Lakes Cos., 330 F.3d 931, 934 (7th Cir. 2003) ("If we think of religion as taking a position on divinity, then atheism is indeed a form of religion."). Once a plaintiff shows a substantial burden on a religious exercise, defendants must show that the restriction furthers "a compelling governmental interest," and does so by "the least restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 712 (2005).

Defendants do not dispute plaintiff's contention that he has a sincere religious belief

in Atheism. Rather, they argue that plaintiff fails to show that defendants' denial of an Atheism study group substantially burdened his religious practice. A "substantial burden" is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003).

Plaintiff states that "[i]t is his sincere belief, as an Atheist, that in order to practice Atheism effectively, he must be able to read, study, and discuss the issues Atheism deals with, with other Atheists," that group study is necessary because "Atheism can involve some very complex issues and concepts" and that the group could give him advice and help him ponder these issues. He contends that "[w]ithout being able to discuss Atheist issues with other Atheists, [he] believes that his practice of Atheism is stagnating, virtually in limbo."

Plaintiff's assertions show that the study group is not necessary for doctrinal reasons in the sense that he is being deprived of a ritual important to the practice of Atheism. (In plaintiff's requests for the study group, he states that Atheism has no "required" activities.). Rather, I understand plaintiff to be saying that he needs the study group to help him understand issues raised in his study of Atheism. However, he provides no reason for believing that group study is the only method for a person to ponder complex issues in Atheism, as opposed to other methods of study or inquiry.

An inmate is not entitled to follow every aspect of his religion; the prison may restrict the inmate's practices if its legitimate penological interests outweigh the prisoner's religious interests. Tarpley v. Allen County, 312 F.3d 895, 898 (7th Cir. 2002). Just as in plaintiff's

previous case regarding study groups, Kaufman, 419 F.3d at 683, it is undisputed that plaintiff may study Atheism in other ways, such as through personal meditation, referring to books, communicating with other Atheist prisoners on an informal basis, requesting a pastoral visit or corresponding with fellow believers. Id. (Plaintiff "introduced no evidence showing that he would be unable to practice atheism effectively without the benefit of a weekly study group. The defendants apparently allow him to study atheist literature on his own, consult informally with other atheist inmates, and correspond with members of the atheist groups he identified, and [plaintiff] offered nothing to suggest that these alternatives are inadequate.")

In the present case, plaintiff argues that he cannot study individually because of the lack of Atheist books and literature and, because prison trust fund account policies withdraw 100% of his income to pay for state court fees and medical co-pays, he is prevented from spending his own funds on new publications for himself. He states also that prison policies keep him from interacting with inmate on other units so that he is "entirely in the dark as to exactly who the other Atheists in the facility might be," and in any case, trust fund account policies prevent him from buying writing materials.

These arguments are not persuasive; plaintiff is allowed to buy new books as long as they are purchased from a vendor with a receipt and he may arrange for more used books to be donated to the library. As discussed below, nothing in the record suggests that the named defendants in this case had anything to do with the disappearance of "Essays in Free Thinking," "Pagan Origins of the Christ Myth" and "Ages of Gold & Silver"; books he had

previously donated to the library are on the shelves and there is no indication that the three books at issue in this case were disposed of intentionally. To the extent that plaintiff cites the lack of funds as a reason for finding in his favor in this case, his status as a prisoner does not entitle him to a government subsidy for the items necessary to practice his religion. E.g., Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002) ("[T]here is no constitutional entitlement to subsidy."); Henderson v. Frank, 2007 WL 5479071, at *2 (W.D. Wis. Feb. 15, 2007) (Prison officials are required only to refrain from interfering with prisoners' ability to locate, purchase and obtain religious materials on their own . . . .").

It is not the prison's fault that plaintiff's other financial obligations consume his budget. In any case, his proposed facts are contradicted by his own exhibits showing recent correspondence with the president of the Humanists of Minnesota and a former Atheist inmate at the Stanley prison. Finally, plaintiff does not allege that he is restricted from contacting prisoners on his unit and prison officials are not obligated to give plaintiff the names of other inmates who are Atheists.

2. Free exercise clause

The contours of plaintiff's free exercise claim are less precise. Generally, claims brought by prisoners under the First Amendment are governed by the standard set out in Turner v. Safley, 482 U.S. 78 (1987), which is whether the restriction is reasonably related to a legitimate penological interest. In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: (1) whether there is a "valid, rational

connection" between the restriction and a legitimate governmental interest; (2) whether alternatives for exercising the right remain to the prisoner; (3) what effect accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Id. at 89.

However, in the context of claims brought under the free exercise clause, some courts have suggested other questions must be answered as well. Among those are (1) whether the plaintiff's claim involves "religious" beliefs that are "sincere"; (2) whether defendants placed a "substantial burden" on the plaintiff's exercise of religion; (3) whether the plaintiff's claim involves a "central religious belief or practice"; and (4) whether the restriction targets the plaintiff's religion for adverse treatment or is a neutral rule of general applicability. This court and the court of appeals have treated one or more of these issues as an element in some past cases brought by prisoners, e.g., Borzych v. Frank, 2006 WL 3254497, *4 (W.D. Wis. 2006) (requiring all of these elements), but in other prisoner cases at least some of the elements have been ignored. E.g., Ortiz v. Downey, 561 F.3d 664, 669 (7th Cir. 2009) (applying Turner without discussing other elements). See also Mayfield v. Texas Dept. of Criminal Justice, 529 F.3d 599, 608 (5th Cir. 2008) (applying Turner without imposing other requirements).

Most recently, this court has analyzed the various permutations of the elements discussed in free exercise cases and assumed for purposes of summary judgment that a plaintiff must satisfy the Turner test and prove both that defendants substantially burdened his religious exercise and that the restriction was discriminatory. Liebzeit v. Thurmer, 10-cv-

170-slc, at 16 (W.D. Wis. June 13, 2011). For purposes of defendants' present motion for summary judgment, I will assume the same. Therefore, as explained above in the context of plaintiff's RLUIPA claim, his free exercise claim fails because he fails to show that his practice of Atheism is substantially burdened.

To the extent that it is possible that the substantial burden element should no longer be considered while analyzing free exercise claims, defendants would still prevail at summary judgment under qualified immunity grounds. The doctrine of qualified immunity "gives public officials the benefit of legal doubts" by insuring that "officers are on notice that their conduct is unlawful" before they are subject to suit. Saucier v. Katz, 533 U.S. 194, 206 (2001). Defendants will be denied qualified immunity only when the rights that have been violated are sufficiently particularized to have put potential defendants on notice that their conduct was unlawful. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Given the lack of clarity in courts' interpretation of free exercise claims, defendants have not been put on notice that the substantial burden element has been eliminated. This is particularly true in this case because the Department of Corrections defendants have prevailed previously against plaintiff on a very similar claim regarding an Atheist study group. Kaufman, 419 F.3d at 683 (plaintiff failed to show that denial of study group burdened his right to practice Atheism in any significant way).

3. Establishment clause

Turning to plaintiff's establishment clause claim, the three-prong test set out by the

Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971), "remains the prevailing analytical tool for the analysis of [such] claims." Books v. City of Elkhart, 235 F.3d 292, 301 (7th Cir. 2000); see also Doe ex rel. Doe v. Elmbrook School District, 687 F.3d 840, 849 (7th Cir. 2012). Under the Lemon test, a governmental practice violates the establishment clause if it (1) lacks a legitimate secular purpose; (2) has the primary effect of advancing or inhibiting religion; or (3) fosters an excessive entanglement with religion. Lemon, 403 U.S. at 612–13.

The establishment clause also prohibits the government from favoring one religion over another without a legitimate secular reason. Linnemeir v. Board of Trustees of Purdue University, 260 F.3d 757, 759 (7th Cir. 2001); Metzl v. Leininger, 57 F.3d 618, 621 (7th Cir. 1995) ("[T]he First Amendment does not allow a state to make it easier for adherents of one faith to practice their religion than for adherents of another faith to practice their religion, unless there is a secular justification for the difference in treatment.")

In a previous case filed by plaintiff with a virtually identical claim, prison officials denied plaintiff's request for an Atheist study group because it was not a "religious" request. This court accepted that premise, but the court of appeals remanded the claim, concluding that the proposed Atheist study group was religious in nature and noting that the state ventured no secular reason for denying the request. Kaufman, 419 F.3d at 684. Ultimately, summary judgment was granted to the state on the theory of qualified immunity because Atheism's status as a religion was unclear at the time the allegedly unconstitutional actions were taken. Kaufman v. McCaughtry, no. 03-cv-27-bbc, at 15 (W.D. Wis. Mar. 23, 2006).

In the present case, some of defendants' responses to plaintiff's requests contain troubling language suggesting that they believe Atheism is not a religion (such as defendant Lindgren's statement that "[a]s Atheism recognizes no deity or higher power," or defendant Garceau's statement that "The types of discussions listed as examples are more educational and philosophical in nature . . . ."). This confusion is somewhat understandable; many people view Atheistic beliefs as being "non-religious" by definition. However, the court of appeals has made it clear that "matters of ultimate concern" such as Atheism qualify as a religion.

At any rate, defendants set forth a secular reason for denying the study group: plaintiff is one of only two inmates who have expressed any interest in an Atheist study group and limited resources militate against creating a new umbrella group for Atheists and allocating staffing and funds for that group. This is a legitimate secular reason for denying the request. Defendants set forth facts showing that it would be impractical for the department to create a new umbrella group, arrange for a volunteer or staff member to lead the study group and allocate time and a meeting place every time a group of two inmates wished to form a religious study group. Cf. Cruz v. Beto, 405 U.S. 319, 322 (1972) ("A special chapel or place of worship need not be provided for every faith regardless of size; nor must a chaplain, priest or minister be provided without regard to the extent of the demand."); Mack v. O'Leary, 80 F.3d 1175, 1181 (7th Cir. 1996) (grouping prison's denominations into four umbrella groups for purposes of festal occasions "is all that the law could reasonably be thought to require of so religiously heterogeneous a prison.")

Plaintiff argues that the scope of his request was never that narrow; he states that he seeks to have a study group formed under an umbrella group encompassing "all non-theistic beliefs, such as Atheist, Humanist, Secular Humanist, Agnostic, Freethinker, and others." Even assuming that this proposed group has numbers large enough to put it on par with the other umbrella groups (data that plaintiff does not present other than to note a few other prisoners who are Atheist and cite almanacs suggesting that 10% of the population identify as "Humanist, Agnostic, Freethinker, or Atheist"), neither of plaintiff's requests fully supports this argument. For instance, plaintiff's second request is clearly focused only on Atheism rather than a larger umbrella group.

Plaintiff's first request for a study group included the various sub-groups listed above, but even so, this request was appropriately denied as non-religious in nature because it sought to form a study group for the "history of religion." Kaufman v. Schneiter, 474 F.Supp. 2d 1014, 1026-27 (W.D. Wis. 2007) (denial of request for study group for "atheists, freethinkers, humanists and 'other' and those who have identified themselves to prison officials as having no religious preference" does not violate plaintiff's rights because "gathering of inmates of different religious or philosophical persuasions for the purpose of facilitating inter-religious dialogue" is not protected). Accordingly, I conclude that defendants' motion for summary judgment on plaintiff's claims regarding an Atheist study group should be granted.

B. Knowledge Thought Ring

Plaintiff also brings RLUIPA, free exercise and establishment clause claims regarding the denial of his request for a "knowledge thought ring," an emblem he wished to wear to symbolize his Atheist beliefs. The emblem is a sterling silver ring engraved with the word "knowledge." Plaintiff states that the wearing of this emblem is "integral" to his practice of Atheism and is "his personal method of affirming and expressing his adherence to the tenets and ideals of Atheism."

Defendants say that this emblem is not listed on the religious property chart and cannot be given to plaintiff because allowing an "individualized religious emblem" would "create[] an intolerable risk that inmates could communicate in code and/or use the emblem as a gang identifier to promote gang activities." In particular, defendants are concerned that allowing inmates to possess rings with individualized inscriptions would invite gangs to request rings reflecting gang mottos, signs, symbols or displays of hierarchy, all under the guise of religion.

Plaintiff's RLUIPA and free exercise claims regarding the knowledge thought ring fail for reasons similar to those governing his study group claims. He has shown no reason to believe that his exercise of his religion is rendered impracticable without possessing a ring. As explained above, plaintiff retains many outlets for practicing his religion, such as personal meditation, reading books, communicating with other Atheist prisoners on an informal basis, requesting a pastoral visit or corresponding with fellow believers.

Moreover, defendants defeat each of plaintiff's claims, including his establishment

clause claim, by showing that allowing jewelry with individualized expressions would threaten prison security. Given the deference courts must give to prison administrators in these matters, Cutter v. Wilkinson, 544 U.S. 709, 723 (2005), the security rationale suffices whether one considers RLUIPA's compelling governmental interest standard, Turner's legitimate penological interest standard or Lemon's legitimate secular purpose standard. E.g., Cutter, 544 U.S. at 722 ("We do not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety."); Kaufman, 270 Fed. Appx. 442, 445 (7th Cir. 2008) (insuring that symbols do not identify prisoners with gangs is a valid secular purpose); Charles v. Frank, 101 Fed. Appx. 634, 635-36 (7th Cir. 2004) (limiting size and display of prayer beads serves compelling interest of suppressing gang activity).

Plaintiff argues that defendants concocted this security rationale in response to this lawsuit. But Lindgren's motive in denying plaintiff's request is irrelevant because the test is an objective one: the question is whether the rule against individualized expressions on jewelry is related rationally to the legitimate, compelling goal of maintaining prison security. Hammer v. Ashcroft, 570 F.3d 798 (7th Cir. 2009) ("It is not clear why one bad motive would spoil a rule that is adequately supported by good reasons."); see also Akright v. Hepp, 434 Fed. Appx. 543, 544-45 (7th Cir. 2011) (challenge to propriety of relying on interests identified only after onset of litigation foreclosed by Hammer).

Plaintiff argues that this security rationale is essentially a sham because the prison allows ownership of many different types of property that could be used to convey

"individualized expressions," such as religious emblems on the department's property chart, wedding rings and the titles on book covers (plaintiff states that the prison library has twelve books with "knowledge" in the title). This places too much emphasis on the contours of the written policy and ignores defendants' proposed findings regarding the department's position on gang activity and security interests. The fact that the wedding ring policy does not specifically ban "individualized expressions" does not mean that the prison would allow wedding rings substantially similar to a knowledge thought ring. For instance, it seems highly unlikely that the prison would allow a prisoner to wear a wedding ring that had gang slogans inscribed on it even though the wedding ring policy does not *explicitly* forbid such language. Plaintiff has proposed no facts indicating that the prison has allowed such items. Moreover, the fact that books might contain words that are forbidden from appearing on religious jewelry merely underscores the difficult task prison officials have in combating coded communications. That plaintiff can identify a possible way to thwart officials' efforts is not a sufficient reason to invalidate reasonable limitations on prison property.

C. Atheist Books

Finally, plaintiff brings RLUIPA, free exercise and establishment clause claims that defendants Lindgren, Shuk and Cooper refused to make available to the inmates at the Stanley prison library Atheist books donated by plaintiff . Defendants' motion for summary judgment on these claims can be granted without a discussion of the burden on plaintiff's religious practice or the interests furthered by Department of Corrections property rules

because plaintiff has not submitted any evidence indicating that defendants Lindgren, Shuk and Cooper had any personal responsibility for the failure of the books to reach the library shelves; it is undisputed that these defendants were not involved in processing the books. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir.1995) (liability under § 1983 must be based on defendant's personal involvement in constitutional violation). Rather, the books were lost at some point after Correctional Officer Schwier received them and recommended donating them to the library. However, Schwier is not named as a defendant in this lawsuit, and in any case, it is unclear whether plaintiff could even have proceeded with a claim against Schwier because there is no evidence that the books' disappearance was the result of anything but negligence. Kincaid v. Vail, 969 F.2d 594, 602 (7th Cir. 1992) (a "mere isolated incident of negligence . . . does not rise to the level of a constitutional violation actionable under section 1983").

ORDER

IT IS ORDERED that

1. Defendant Randall Hepp is DISMISSED from this action.

2. The motion for summary judgment filed by defendants Jeffrey Pugh, Craig Lindgren, Sandra Cooper, Terry Shuk, Ismael Ozanne, Carol Garceau and Marc Clements, dkt. #29, is GRANTED.

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 13th day of September, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge