

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

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NATHANIEL ALLEN LINDELL,

Petitioner,

v.

ORDER

02-C-473-C

SCOTT McCALLUM, Governor of Wisconsin; JON LITSCHER, Secretary of Wisconsin Department of Corrections; DICK VERHAGEN, former Administrator of Wisconsin's Department of Adult Institution; STEVEN CASPERSON, current Administrator of Wisconsin's Dept. of Adult Institutions; LAURA WOOD, policy advisor for D.A.I.; GARY R. McCAUGHTRY, former Warden of Waupun Correctional Institution; GERALD BERGE, Warden of Supermax; CINDY O'DONNELL, assistant deputy of Jon Litscher; JOHN RAY, Corrections Complaint Examiner; SANDY HAUTAMAKI, former inmate complaint examiner at W.C.I., now a C.C.E.; CATHY JESS and JODINE DEPPISCH, deputy wardens at W.C.I.; N. SALMON, secretary of Gerald Berge; PETER HUIBREGTSE, former security director at W.C.I., now deputy warden at Supermax; MARC CLEMENTS, Security Director at W.C.I.; CURT JENSSEN, Manager of W.C.I.'s Health and Segregation Unit; DEB TETZLAFF, W.C.I.'s program director; CAPTAIN STEVE SCHUELER, a Captain at W.C.I.; CAPTAIN MURASKI, a Captain at W.C.I.; LINDA ALSUM-O'DONOVAN, and JAMES MUENCHOW, both inmate complaint examiners (I.C.E.) at W.C.I.; ELLEN RAY, TOM "DOE," both I.C.E.'s at Supermax; SANDRA GRONDIN, C.O. SHANNON, SGT. HOTTENSTEIN and SGT. O'ROURKE - all guards at Supermax; J.C. SMITS, Mailroom employee at W.C.I.; JIM WEGNER, Supervisor of W.C.I.'s chapel; CHAPLAINS NORTH and FRANCIS, at W.C.I.; C.O. WATSON, guard at W.C.I.; CAPTAIN

TODD OVERBO at Supermax; VICKI SHARPE, Supermax's Program Director; JOHN SHARPE, Manager of Delta Unit, formerly Fox Trot Unit at Supermax; CAPTAIN LINJER at Supermax; WILLIAM SCHULTZ; LT. RANDALL GARRITSON and CAPT. ECKSTEIN, staff at W.C.I.; MR. HOMBE, SGT. HOTTENSTEIN, Supermax staff,

Respondents.

Petitioner Nathaniel Lindell, a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, filed two lawsuits in this court in 2001 and three lawsuits in 2002 before he filed this one in late August. Each of petitioner's earlier complaints set out numerous issues presented in a random fashion and took significant judicial time to screen. Three of the five cases filed before this one are presently active. On January 3, 2003, the Court of Appeals for the Seventh Circuit remanded Lindell v. Doe, 01-C-209-C, for consideration of petitioner's First Amendment claim that respondent Doe intentionally deprived him of his copy of *Pagan Revival* magazine in violation of his right to freedom of speech. In Lindell v. Litscher, 02-C-21-C, petitioner is proceeding on claims that defendants Litscher, Berge, Mueller, Huibregtse, O'Donnell, Ellen Ray and John Ray violated his First Amendment right to free expression by refusing to allow him to keep writing paper mailed to him; that defendants Litscher, Berge, Grondin and Wetter violated his First Amendment rights by enforcing a prison policy prohibiting prisoners from receiving items cut out of

magazines, newspapers or books, or photocopies of such materials, that defendants Clark, Janzen, O'Donnell, Huibregtse, Ellen Ray and John Ray violated his First Amendment rights by not allowing him to send mail on two occasions, that defendants Berge, Huibregtse, O'Donnell, Ellen Ray, John Ray and Litscher violated the Religious Land Use and Institutionalized Persons Act by not allowing him to keep writing paper mailed to him, that defendants Litscher, Berge and Biggar violated his rights under the Religious Land Use and Institutionalized Persons Act by enforcing prison regulations controlling telephone access that interferes with his exercise of religion, that defendants Berge and Ellen Ray denied him his constitutional right of access to the courts by denying him paper, envelopes and postage between May 21, 2001 and June 5, 2001, which forced him to dismiss state court case number 01-CV-000868, and that defendants Sharpe, Huibregtse, O'Donnell, John Ray and Ellen Ray retaliated against him on November 14, 2001, for pursuing a pending lawsuit.

In Lindell v. Litscher, 02-C-459-C, petitioner is proceeding on claims that defendants Sgt. Burns and “unidentifi[ed] members of the Program Review Committee” violated his Eighth Amendment rights by being deliberately indifferent to his safety and ordering him to share a cell with an inmate gang member, knowing petitioner had been involved previously in altercations with two members of the same gang, that defendants Belgado, Dittman, Zunker, Daley, Hasselhoff and Bartels violated his Eighth Amendment rights by being deliberately indifferent to his serious medical needs in failing to treat his broken nose,

that defendant Ken Lange violated petitioner's Eighth Amendment rights by intentionally mistreating petitioner's facial pain by prescribing him laxatives instead of pain relievers, that defendants Friday, Clements, Schultz and Houser retaliated against him for filing inmate grievances relating to prison officials' failure to protect him and to treat injuries he sustained in the December 8, 2000 altercation in violation of petitioner's First Amendment rights, and that defendants Schultz and Houser violated his First Amendment rights by retaliating against him because of his efforts to obtain white nationalist literature.

In this case, petitioner names 41 respondents and summarizes in his request for relief his 62-page complaint covering four years of alleged wrongdoing:

Lindell seeks [a] declaratory judgment that: Wotanism is a religion; that [Wisconsin Correctional Institution's (in Waupun, Wisconsin)] policy of not allowing prisoners in [Health and Segregation Complex] at least 6 of their personal publications violates the First Amendment; that W.C.I.'s policy of not allowing H.S.C. prisoners to request specific titles of books/magazines from W.C.I.'s library violates the First Amendment; that any rule or practice that only allows prisoners to receive any non-hard-cover book if such non-hard cover publication was mailed from the publisher or a store with the receipt violates the First Amendment and [the Religious Land Use and Institutionalized Persons Act]; that W.C.I.'s failure to provide Wotanist books to prisoners in H.S.C. violates the First Amendment and the R.L.U.I.P.A., as they provide Christian books; that refusal to allow prisoners in W.C.I.'s H.S.C. their Wotanist books, any of them, violates the First Amendment and R.L.U.I.P.A.; that W.C.I., Supermax and the D.O.C. have harassed Wotonist Pagans; that Lindell's proposed Wotanist group is a religious organization and the exercises, ceremonies and practices sought are religious in nature; that the D.O.C.'s policy of only funding activities of recognized religions violates the First and Fourteenth Amendments; that any rule or practice that doesn't allow prisoners to receive or possess publications or materials that promote ethnic

or racial purity or supremacy or separatism and which bans materials that promote hate violates the First and Fourteenth Amendments along with R.L.U.I.P.A.; that “Temple of Wotan” is a legitimate religious text, and the D.O.C.’s ban on it violates the First and Fourteenth Amendment as well as R.L.U.I.P.A.; that any rule or practice preventing Lindell from being able to mail a Wotanist order form to another prisoner violates the above laws; that Wis. Stats. § 46.066(2) & (3) require the defendants to provide Lindell with what is his Bible and the sacraments for his religion, otherwise the statute violates the Equal Protection and Establishment clauses; that the programs at Supermax are opposed to Wotanism and compelling Lindell to take them under threat of harm violates the Establishment, Equal Protection and R.L.U.I.P.A. and free speech laws; that Overbo’s refusal to make Wotanist literature available for other prisoners violates the First and Fourteenth Amendments along with the R.L.U.I.P.A.; that Supermax’s policy and practice of not allowing prisoners on levels or steps lower than level 3 to possess and receive their religious magazines/tracts/pamphlets and all other religious publications violates the D.O.C.’s own rules, the R.L.U.I.P.A. and the First and Fourteenth Amendments; that the defendants’ refusal to accommodate Lindell’s religious diet violated the R.L.U.I.P.A., the D.O.C.’s own rules and the First and Fourteenth Amendments; that the use of in-cell cameras at Supermax violates the R.L.U.I.P.A., First and Fourteenth Amendment and unreasonable search prohibition as applied to Lindell; that the defendants’ practice of segregating Wotanists and denying them congregate services for religious rituals/studies violates the above laws; that the defendants’ broadcast of a satellite Protestant Christian t.v. channel without similarly assisting Wotanism violates the above laws.

Plaintiff Lindell seeks the following injunctive relief: Granting of any and all relief requested and/or warranted under the laws by any of Lindell’s fore mentioned Administrative Complaints. Any injunctive relief needed to end permanently any civil-rights violations noted above, to include appropriate changes in the policies, practices, procedures, rules, etc. of the defendants which caused the foregoing civil-rights violations. Permanently enjoin the defendants, their subordinates, agents, employees and all others acting in concert with them from subjecting plaintiff to the unconstitutional practices set forth in this complaint.

Lindell seeks compensatory and punitive damages from each defendant in amounts to be determined by a jury for each and every civil rights violation and the psychological distress caused.

Lindell seeks such other relief this court deems just and proper, including attorney fees and costs, should one later appear.

As is clear from petitioner's lengthy list of claims, this will be an expensive lawsuit to prosecute, even after it is stripped of its legally frivolous claims. Several of petitioner's claims under R.L.U.I.P.A. are likely to survive screening, even if some of his constitutional claims fail. Petitioner will need expert testimony on the requirements of his religion and evidence to prove allegedly illegal practices and policies at two separate institutions.

Last month in case no. 02-C-21-C, petitioner moved this court to order prison officials to extend him legal loan privileges beyond the limits established in Wis. Admin. Code § DOC 309.51. At that time, petitioner alleged that he had nine lawsuits pending in state and federal court. In an order dated December 22, 2002, Magistrate Judge Stephen Crocker found that the department had granted petitioner legal loan extensions of \$500 beyond the \$200 legal loan limit allowed under the code. Reluctantly, and in keeping with this court's inherent authority to oversee the progress of pending lawsuits and insure their timely completion, the magistrate judge ordered the following:

. . . plaintiff is not entitled to photocopying of any documents in this case without prepaying the cost of photocopying. The only exception is for photocopies of documents that are not handwritten or not typed by plaintiff himself, that he actually must submit to the court as exhibits in support of a

bona fide motion or response. The institution shall provide photocopies of such documents without prepayment by plaintiff and shall add the cost to plaintiff's legal loan debt. To the extent that plaintiff has served requests for production of documents on the defendants, they must provide plaintiff the opportunity to inspect documents that are discoverable, but they need not make copies for plaintiff until plaintiff, after reviewing the documents, avers that he will be submitting specific documents to the court as exhibits in this case.

IT IS FURTHER ORDERED that the institution shall provide paper, envelopes and postage to plaintiff to file and serve motions and responses in this lawsuit. The institution shall add the cost of these items to plaintiff's legal loan debt. At the conclusion of this case, the court invites the institution to present a tally to the court listing the cost of photocopying, paper, and postage that plaintiff incurred litigating the instant lawsuit.

I do not intend to allow petitioner to begin another lawsuit that he cannot afford to prosecute, particularly where, as here, at least half the claims for declaratory and injunctive relief have been mooted by petitioner's transfer to the Wisconsin Secure Prison Facility, and his claims about religious freedom could have been raised with the religious freedom claims he raised in his previous lawsuits. The constitutional right of access to the court does not require that petitioner receive unlimited access to the courts or access that is subsidized by state and federal taxpayers. See Bounds v. Smith, 430 U.S. 817 (1977); Lewis v. Sullivan, 279 F.3d 526 (7th Cir. 2002). Petitioner does not seem to understand this. He avoids the restraints Congress intended to place on frivolous prisoner litigation under 28 U.S.C. § 1915(g) by loading his complaints with so many issues that a handful inevitably survive the liberal pleading review applicable to pro se litigation. He has paid nothing toward his filing

fees in case nos. 02-C-21-C and 02-C-459-C, nothing toward the \$105 fee for filing an appeal in case no. 01-C-209-C, and only \$9.40 toward the \$150 fee for filing his complaint in 01-C-209-C. The trust fund account statement petitioner filed with the complaint in this case shows that he earns no income at all and, as of August 19, 2002, had \$14.37 in his release account. On January 30, 2003, the Fourth District Court of Appeals for the State of Wisconsin affirmed an order directing that Lindell's trust fund account be frozen until Lindell has accumulated sufficient funds to pay the outstanding balance of his filing fee in one of his state court cases, Lindell v. Litscher, 01-CV-1757. Petitioner drained his legal loan account in 2002 and, with nine lawsuits pending, will most likely drain the account again this year.

Once a lawsuit has begun, it is almost impossible to predict how much it will cost to prosecute it. It is evident, however, that plaintiff will not be able to pay the cost of mailing, let alone photocopying, for this case and nine others without exceeding his legal loan limits. If he is allowed to file this suit, the costs of prosecuting it will reduce the funds available to prosecute his other cases, leaving courts in the quandary of having to choose between dismissal or an order directing the state to advance funds to petitioner in excess of the statutory limit. To avoid this, I will deny petitioner leave to proceed in forma pauperis. If petitioner wants to bring another lawsuit in this court, he will have to show first that he has the money to prosecute the suit to completion or that he is under imminent danger of

serious physical injury if the lawsuit is not allowed. As a practical matter, petitioner will be unable to make the financial showing required so long as he has any other lawsuit pending in this district.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis in this action is DENIED. Because this case does not involve a claim that supports a finding that petitioner is under imminent danger of serious physical injury, he may not refile this lawsuit except upon a showing that he has the means to prosecute the case to completion.

Entered this 31st day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge