

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

JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY, SGT. McCARTHY,
JAMES MUENCHOW, RENEE RONZANI,
SANDY HAUTAMAKI, JOHN RAY,
CYNTHIA O'DONNELL, and JAMYI WITCH,

Defendants.

ORDER

03-C-027-C

On March 27, 2003, I granted plaintiff leave to proceed on claims that his First Amendment rights had been violated by prison officials. Defendants filed a motion for summary judgment, which was granted on February 9, 2004, with respect to each of plaintiff's claims. On August 19, 2005, the Court of Appeals for the Seventh Circuit reversed summary judgment on plaintiff's claim that defendants had violated his rights under the First Amendment's establishment clause when they refused to grant his request to form an atheist study group and remanded the case to this court. On January 6, 2006, defendants filed a new motion for summary judgment, which the parties are briefing.

Now before the court is plaintiff's "Motion for Clarification" in which he alleges for the first time that his complaint in this case states two additional claims that the court has not addressed previously. Specifically, he contends that his complaint alleges violations of his religious rights under 42 U.S.C. § 2000cc, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and of his equal protection rights under the Fourteenth Amendment. To say that plaintiff's request is untimely would be an understatement. Because plaintiff has waived these alleged claims by not pursuing them earlier in the life of the case, his motion will be denied.

Plaintiff contends that "throughout the record" he has "address[ed] [his] RLUIPA claims." This is simply not true. Although plaintiff filed timely motions for reconsideration following almost every order issued by this court during the prosecution of his case, a thorough review of the record reveals no mention of a RLUIPA claim. The Court of Appeals for the Seventh Circuit came to the same conclusion when it noted specifically that plaintiff "ha[d] not tried to take advantage of the added protections of the Religious Land Use and Institutionalized Persons Act." Kaufman v. McCaughtry, 419 F.3d 678, 681 (7th Cir. 2005). Similarly, although plaintiff contends that he "presented the issue of atheists as a suspect class," he did not properly move for reconsideration of the court's March 27, 2003 screening order with respect to his equal protection claim. It is too late for him to do so now.

ORDER

IT IS ORDERED that plaintiff's "Motion for Clarification" is GRANTED; however, to the extent that plaintiff requests leave to proceed at this late juncture on his claims that defendants violated his rights under the Fourteenth Amendment and under RLUIPA, his request is DENIED.

Entered this 15th day of February, 2006.

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