IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES J. KAUFMAN, individually and as representative of a class of persons similarly situated,

Petitioner,

v.

MATTHEW FRANK; THOMAS E. KARLEN; RANDALL R. HEPP; CYNTHIA L. O'DONNELL; RICHARD RAEMISCH; DANIELLE LACOST; MYRON OLSON; ALAN MINSHALL; PERRY NICHOLS, and APRIL OLIVERSON, and their employees, agents and representatives,

Respondents.

OPINION AND ORDER

06-C-205-C

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In this civil action for monetary, declaratory and injunctive relief, petitioner James J. Kaufman, a prisoner at the Jackson Correctional Institution in Black River Falls, Wisconsin, maintains that respondents violated his rights under the Constitution and under Wisconsin law. Petitioner requests leave to proceed in forma pauperis, as authorized by 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. He has made the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). Nevertheless, when the litigant is a prisoner, the court must dismiss the complaint if the claims contained in it are legally frivolous, malicious, fail to state a claim upon which relief may be granted or seek money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915A.

Because petitioner has alleged facts from which it may be inferred that respondents violated his constitutional rights, petitioner will be granted leave to proceed on his claims that respondent Hepp violated his rights under the establishment clause by refusing to permit him to obtain and possess a silver circle as an emblem of his atheist beliefs; unidentified respondents violated his rights under the establishment clause by making Christian literature readily available to inmates while impeding prisoners' access to atheist literature; respondents Nichols, Oliverson, Hepp, Karlen, Raemisch and unidentified prison staff members violated the establishment clause by prohibiting petitioner from receiving free nonreligious items and publications while permitting other inmates to receive free religious items and publications; respondents Karlen, O'Donnell, Hepp, Raemisch and unidentified prison mailroom staff violated his rights under the First Amendment by permitting his legal mail to be opened outside his presence on May 9, 2003, August 13, 2005, and November 21, 2005; respondents Karlen, O'Donnell, prison staff member "P.S." and unidentified prison mailroom staff violated his Constitutional rights by opening his legal mail outside his

presence on March 23, 2003, May 19, 2003, July 1, 2003, September 22, 2003, October 6, 2003, February 5, 2004, June 23, 2005, and July 5, 2005; respondent Hepp and unidentified prison officials violated his right to free speech by refusing to deliver "several" months' worth of "several" magazines by returning them to the publisher for no legitimate reason; respondents Karlen, O'Donnell and unidentified prison officials violated his right to free speech by confiscating his "Loompanics Unlimited" book catalog for no legitimate reason; respondents Hepp and Raemisch violated his right to free speech by refusing to deliver six books sent to petitioner on December 16, 2005 because the books allegedly contained offensive jokes; respondents Oliverson, Hepp and Raemisch violated his right to free speech by refusing to deliver six magazines to him on August 29, 2005 because they arrived without a receipt; respondents LaCost and Karlen retaliated against him by issuing conduct reports in connection with his request for law library material and letters to his lawyer and the Wisconsin Supreme Court clerk; and respondents Karlen and O'Donnell exhibited deliberate indifference to his serious health needs by refusing to provide him with adequate quantities of soap.

Because petitioner has not stated a claim that his constitutional rights were violated with respect to the following actions he will be denied leave to proceed on his claims that the Wisconsin Constitution violates the establishment clause by making reference to God; Wis. Stat. § 46.066(3) violates the establishment clause by guaranteeing prisoners access to the

Bible if they request it; Wis. Stat. § 301.47(2) violates the free exercise clause or RLUIPA by prohibiting him from changing his name; Wis. Admin. Code § DOC 309.51 violates his rights under the First or Eighth Amendments by requiring 100% of his income to be credited toward the outstanding balance on his legal loans; Internal Management Procedure 29 for Wis. Admin. Code § DOC 309.51 violates his right to free speech; respondents Oliverson and Nichols violated his right to free speech by opening letters from the Wisconsin Court of Appeals, the U.S. Bankruptcy Court, and the U.S. District Court outside petitioner's presence on June 6, 2003, July 8, 2004, and February 1, 2005; respondents Karlen, O'Donnell, Nichols, Olson, Raemisch, Oliverson, Hepp and unidentified prison staff violated his right to free speech by failing to deliver to him materials they deemed pornographic; respondents Oliverson, Nichols, Hepp and Raemisch violated his right to free speech by refusing to deliver the November 2005 issue of "Spin" magazine and the March 9, 2006 issue of "Rolling Stone" magazine because each item allegedly contained gang signs; respondents Karlen, Raemisch, Hepp and unidentified prison officials violated petitioner's right to free speech by refusing to allow him to receive used books from the Michigan City Prisoner Outreach program and the Prison Book Program; unspecified prison officials violated his due process rights by preventing him from entering sex offender therapy, classifying him as a moderate security risk and preventing him from attending programs while in program segregation status; and unspecified prison officials violated his right to due

process by prohibiting him from reviewing denied publications.

Finally, the following claims will be dismissed without prejudice because they arise under state law only: petitioner's claims that respondents Olson and Hepp applied the wrong standard in deciding to deny petitioner's request for a nonreligious inmate study group; respondent Hepp and unidentified prison mailroom staff violated Wis. Admin. Code § DOC 309.04(3)(d) by opening a letter sent to petitioner from Senator Herb Kohl in November 15, 2004; respondents Oliverson and Nichol violated Wis. Admin. Code § DOC 309.04(3)(i) by opening mail sent to him from the Wisconsin Court of Appeals, the United States Bankruptcy Court and the United States District Court outside his presence; unspecified prison officials violated § DOC 303.70(7) by denying him access to programs while he was confined in program segregation status; and Internal Management Procedure 29 violates Wis. Admin. Code § DOC 309.51(1) by interpreting the provision too narrowly.

From the allegations of petitioner's complaint, I draw the following facts.

FACTUAL ALLEGATIONS

A. Parties

Petitioner James J. Kaufman is an inmate at the Jackson Correctional Institution in Black River Falls, Wisconsin.

Respondent Matthew Frank is Secretary of the Wisconsin Department of Corrections.

Respondent Cynthia L. O'Donnell is the former Deputy Secretary of the Wisconsin Department of Corrections.

Respondent Richard Raemisch is Deputy Secretary of the Wisconsin Department of Corrections.

Respondent Thomas E. Karlen is the former warden of the Jackson Correctional Institution.

Respondent Randall R. Hepp is Warden of the Jackson Correctional Institution.

Respondent Danielle LaCost is program director of the Jackson Correctional Institution.

Respondents Myron Olson and Alan Minshall are chaplains at the Jackson Correctional Institution.

Respondents Perry Nichols and April Oliverson are correctional officers at the Jackson Correctional Institution.

B. Challenges to Wisconsin Law

The Preamble to the Wisconsin Constitution reads:

> We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution.

Article I, section 18 of the Wisconsin Constitution states:

> The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Petitioner objects to the use of the term "Almighty God."

Wisconsin Statutes section 46.066 states:

> (1) Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall be given an opportunity, at least once each week, to conduct religious services within the state institutions under the control of the department. Attendance at the services is voluntary.
> (2) Religious ministration and sacraments according to the inmate's faith shall be allowed to every inmate who requests them.
> (3) Every inmate who requests it shall have the use of the Bible.

The Wisconsin legislature will not delete Wis. Stat. § 46.066(3) from the official statute books even though courts have ruled that the provision is unconstitutional.

C. Denial of Religious Materials

1. Religious emblems

On June 3, 2003, petitioner submitted a request to respondent Minshall seeking permission to order a religious emblem called a "Wheel of the Year." In his request, petitioner provided the name of the emblem and its vendor and listed the cost of the item.

Petitioner explained that the wheel of the year is a symbol of the seasons or cycles of nature and asserted that the symbol was an appropriate emblem of his atheist beliefs. On July 8, 2003, respondent Minshall dismissed petitioner's request. Petitioner filed an inmate complaint numbered ICRS 2003-23896, which was dismissed by respondent Karlen on August 1, 2003. Petitioner appealed the dismissal. On August 17, 2003, respondent O'Donnell denied the appeal and dismissed petitioner's complaint.

On March 25, 2005, petitioner submitted a request to respondent Hepp asking permission to order a religious emblem in the form of a silver circle. In his request, petitioner provided the name of the emblem and its vendor and listed the cost of the item. Petitioner explained why the symbol was an appropriate expression of his atheism. Respondent Hepp denied petitioner's request. Petitioner filed an inmate complaint numbered ICRS 2005-21700, which was dismissed by respondent Hepp on July 19, 2005. Petitioner appealed the dismissal. On August 1, 2005, respondent Raemisch denied the appeal and dismissed petitioner's complaint. When the Court of Appeals for the Seventh Circuit issued its decision in Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005), on August 19, 2005, petitioner filed a second grievance, numbered ICRS 2005-29657, regarding the denial of his silver circle. On October 4, 2005, respondent Hepp rejected petitioner's complaint.

2. Atheist literature

In the summer of 2003, petitioner arranged to have a large box of atheist literature donated to the Jackson Correctional Institution's library. At the time, the only literature available that made reference to atheism did so in a negative way. Over the following two years, petitioner submitted multiple inquiries to prison librarian Michelle McCaughtry, Education Director Jeffrey Schelfeler, and Program Director respondent LaCost, asking them when the books would be made available. The only staff member to respond to petitioner was respondent LaCost, who made a phone call to McCaughtry in an attempt to have the books processed more quickly.

By September 2005, the books had not been made available to prisoners. Petitioner filed an inmate complaint, numbered ICRS 2005-28547. On September 30, 2005, respondent Hepp affirmed petitioner's complaint and directed that the books be placed on the library shelves. As of February 5, 2006, only five of the books had been added to the library's collection. The prison library has thousands of Christian books available for immediate checkout.

3. Denial of non-theist group

On March 5, 2003, petitioner submitted a request to form a non-theistic inmate religious group. Using a standardized prison form (DOC-2075), petitioner listed all required

information. He described the purpose of the group, listed a summary of proposed group activities and attached information regarding non-theistic beliefs (including contact information for community resources regarding atheism, humanism and freethinkers) and listed literature pertaining to non-theistic belief systems. Petitioner's request was denied by respondent Olson on March 8, 2003, by respondent LaCost on March 26, 2003, and by respondent Karlen on March 27, 2003.

Petitioner filed an inmate complaint numbered ICRS 2003-13523. On April 21, 2003, respondent Karlen dismissed the complaint. Although department policy prohibits a warden from considering whether a religious belief is premised on belief in a supernatural creator, respondent Karlen explained his decision to deny the group by stating, "Atheism is not a religion [because] religion is defined as belief in or reverence of a supernatural power accepted as the creator and governor of the universe while atheism is defined as disbelief in or denial of the existence of God." Petitioner appealed the denial of his complaint. On May 26, 2003, respondent O'Donnell dismissed the complaint.

On April 13, 2004, petitioner made two requests to form an inmate group. The first request was completed using a standardized prison form (DOC-2075). In his 14-page request, petitioner asked to form a non-theistic inmate religious group. Petitioner stated that the group was intended for all non-theistic inmates (atheists, freethinkers, humanists and all inmates who had selected "none" or "no preference" on their prison religious preference

forms). The request listed all required information. Petitioner described the purpose of the group, listed a summary of proposed group activities, provided information about inmate participants and attached information regarding non-theistic beliefs (including contact information for community resources regarding atheism, humanism and freethinkers) and attached several articles on atheism and freethought.

On July 23, 2004, respondents Hepp and Olson denied petitioner's request. Petitioner filed an inmate complaint numbered ICRS 2004-24950. On September 22, 2004, respondent Hepp dismissed the complaint. Petitioner filed an appeal, which respondent Raemisch denied on October 7, 2004. Respondents Hepp, Olson and Raemisch made no attempt to contact any of the community resources listed on petitioner's request form and did not address "the issue of non and no preference inmates."

Petitioner's second request was identical to his first in content. However, he completed the second request on a form given to him by respondent LaCost. In the second request, petitioner did not designate his proposed group as "religious." On July 19, 2004, petitioner's request was denied by respondents Olson and Hepp, who applied the wrong standards in analyzing petitioner's request.

Petitioner filed an inmate complaint numbered ICRS 2004-22787. On August 6, 2004, respondent Hepp dismissed the complaint. Petitioner filed an appeal, which respondent Raemisch denied on September 2, 2004. Respondents Hepp, Olson and

Raemisch made no attempt to contact any of the community resources listed on petitioner's request form and did not address "the issue of non and no preference inmates."

4. Name change

Wisconsin law forbids registered sex offenders from legally changing their names to a name other than the one by which the department identifies them. Petitioner has always intended to change his name, because his current name "James Jonathan" is Christian in nature, and is offensive to him because he is an atheist.

D. Legal Mail

On numerous occasions prison officials have opened petitioner's legal mail outside his presence. The chart below summarizes each incident:

Date	Mail from	Grievance No.	Outcome
3-23-2003	Office of the Wisconsin Attorney General containing legal materials	2003-10475	Dismissed by respondents Karlen and O'Donnell
5-9-2003	attorney/client letter from the American Civil Liberties Union	2003-16713	Dismissed by respondents Karlen and O'Donnell
5-19-2003	Wisconsin Department of Justice	2003-18111	Dismissed by respondents Karlen and O'Donnell

6-6-2003	U.S. District Court for the Western District of Wisconsin	2003-19662	Affirmed by respondent Karlen
7-1-2003	U.S. Department of Justice	2003-22342	Affirmed by respondent Karlen
9-22-2003	U.S. Dept. of Health & Human Services Office for Civil Rights	2003-31555	Affirmed by respondent Karlen
10-6-2003	U.S. Dept. of Health & Human Services Office for Civil Rights	2003-33835	Affirmed by respondent Karlen
2-5-2004	U.S. Department of Justice Civil Rights Division (returned mail)	2004-5004	Dismissed by respondents Karlen and O'Donnell
7-8-2004	Wisconsin Court of Appeals	2004-22000	Affirmed by respondent Hepp
11-15-2004	Senator Herb Kohl	2004-35845	Affirmed by respondent Hepp
2-1-2005	U.S. Bankruptcy Court	2005-3712	Affirmed by respondent Hepp
6-23-2005	U.S. Department of Justice	2005-20251	Affirmed by respondent Hepp
7-5-2005	U.S. Department of Homeland Security	2005-21054	Affirmed by respondent Hepp
8-13-2005	Atty. Laurence J. Dupuis (marked as legal mail)	2005-21121	Affirmed by respondent Hepp
11-21-2005	Atty. Benjamin S. Wolf (marked as legal mail)	2005-35878	Dismissed by respondents Hepp and Raemisch

Respondent Nichols opened petitioner's June 6, 2003 mail. Petitioner's July 1, 2003 mail was opened by an unknown officer with the initials "P.S." Respondent Oliverson opened petitioner's mail on July 8, 2004 and February 1, 2005. Petitioner does not know who opened legal mail outside his presence on all other occasions.

E. Denial of Publications

1. Denial of catalogue

On or about February 28, 2003, shortly after petitioner arrived at the Jackson Correctional Institution, his copy of the "Loompanics Unlimited" book catalog was confiscated. Petitioner filed an inmate complaint numbered ICRS 2003-7873. On March 4, 2003, respondent Karlen dismissed the complaint. Respondent O'Donnell denied petitioner's appeal on March 23, 2003.

2. Pornographic materials

On February 4, 2004, petitioner received a book catalog from StarBooks Press, a publisher of homosexual fiction novels. Respondent Nichols rejected the catalog, alleging that it was pornographic. Respondent Nichols stated that the catalogue "contained" nudity but did not allege that it "featured" or "promoted" nudity. Petitioner filed an inmate complaint numbered ICRS 2004-4257. On March 1, 2004, respondent Karlen dismissed the

complaint. Respondent O'Donnell denied petitioner's appeal on March 25, 2004.

On February 9, 2004, respondent Olson confiscated petitioner's copy of the "2002 Damron Men's Travel Guide," a travel publication, asserting that the book was pornographic because it showed images of men's buttocks and genitals on pages 513 and 780. (No genitals were shown on the pages to which respondent Olson referred.) Petitioner had received earlier editions of the travel guide without incident when he was incarcerated at the Waupun Correctional Institution and was allowed to keep those issues when he was transferred to the Jackson Correctional Institution. Petitioner filed an inmate complaint numbered ICRS 2004-5002, which respondent Karlen rejected on February 20, 2004.

On April 1, 2004, petitioner received a copy of a monthly newsletter discussing issues related to sex offenders. Respondent Nichols rejected the publication, alleging that the newsletter discussed "an activity which, if completed, would violate the laws of Wisconsin, the United States or the Administrative Rules of the Wisconsin Department of Corrections. Respondent Nichols did not identify the allegedly illegal activity discussed in the newsletter or indicate which laws would be violated by engaging in the unidentified activity. Petitioner filed an inmate complaint numbered ICRS 2004-11626. On April 20, 2004, respondent Karlen dismissed the complaint. On May 6, 2004, respondent Raemisch denied petitioner's appeal.

On May 6, 2004, petitioner received an issue of "POZ" magazine, a publication on

HIV/AIDS education, prevention, and treatment. Respondent Oliverson rejected the magazine, alleging it was a "nude men's magazine." Petitioner filed an inmate complaint numbered ICRS 2004-15434. On May 18, 2004, respondent Karlen dismissed the complaint, stating that any publication that contains nudity is considered pornography. Respondent Raemisch denied petitioner's appeal on May 27, 2004.

On May 14, 2004, petitioner received a publication from "Internaturally," a cultural organization. Respondent Oliverson rejected the publication, alleging that it contained nudity. Petitioner filed an inmate complaint numbered ICRS 2004-15432. On May 18, 2004, respondent Karlen dismissed the complaint. Respondent Raemisch denied petitioner's appeal on May 27, 2004.

On December 16, 2004, unknown prison officials confiscated a book catalog from petitioner's property although the catalogue had been approved by respondent Oliverson on or about November 10, 2004. Prison officials stated that the publication was contraband because it contained a single image of a penis hidden amongst a collage of other pictures. Petitioner filed an inmate complaint numbered ICRS 2004-40150. On January 12, 2005, respondent Hepp dismissed the complaint. On January 25, 2005, respondent Raemisch denied petitioner's appeal.

On February 14, 2005, petitioner received a catalog from Taschen Books, a publisher of "art materials." Respondent Oliverson rejected the catalog, alleging that it was

pornographic because it contained nudity. Petitioner filed an inmate complaint numbered ICRS 2005-5498, alleging that prison policies permitted inmates to receive materials that contained "artistic nudity." On March 21, 2005, respondent Hepp dismissed petitioner's complaint, stating that the catalog contained books that were themselves pornographic. In April 2005, respondent Raemisch denied petitioner's appeal.

On February 21, 2005, petitioner received the February 2005 issue of "GQ" magazine. The magazine was rejected because it contained a single page of nudity. Petitioner filed an inmate complaint numbered ICRS 2005-7415. On March 4, 2005, respondent Hepp dismissed petitioner's complaint, alleging that the magazine featured a photo of a minor's breasts. On March 18, 2005, respondent Raemisch denied petitioner's appeal.

On March 22, 2005, petitioner received three books from the Bound Together retail bookstore. An unknown property officer informed petitioner that one of the books was being rejected because it was allegedly pornographic. The book contained only written words and did not display any nudity. When petitioner informed the officer that sexually explicit written materials were allowed under prison policy, the officer disagreed and asserted that written descriptions of sexual activity would be treated as contraband. Petitioner filed an inmate complaint numbered ICRS 2005-9913. On April 7, 2005, respondent Hepp dismissed the complaint. On April 27, 2005, respondent Raemisch denied petitioner's

appeal.

On April 1, 2005, Petitioner received a book titled Leather Men Speak Out, Volume 2. The book was rejected because it contained sexually explicit language. Petitioner filed an inmate complaint numbered ICRS 2005-10710. On April 7, 2005, respondent Hepp dismissed the complaint. On April 19, 2005, respondent Raemisch denied petitioner's appeal.

On or about September 26, 2005, petitioner received travel literature from All Worlds Resort. The mail was rejected by respondent Oliverson because the brochure allegedly showed nudity. Petitioner filed an inmate complaint numbered ICRS 2005-29376. On September 30, 2005, respondent Hepp dismissed the complaint. On October 10, 2005, respondent Raemisch denied petitioner's appeal.

On January 21, 2005, petitioner received two books, entitled National Lampoon's Big Book of Love and The Smoking Gun. The books were denied because of their "content," although the property officer gave no explanation or description of what "content" was offensive or why it was not allowed. Petitioner filed an inmate complaint numbered ICRS 2005-30049, contending that prison officials had given no meaningful explanation for their decision. On October 14, 2005, respondent Hepp dismissed the complaint with modification, allowing petitioner to have The Smoking Gun but denying him the Big Book of Love. Respondent Hepp did not explain why the second book was not permitted.

Petitioner appealed and on October 24, 2005, respondent Raemisch denied the appeal and dismissed the complaint.

On March 12, 2006, petitioner was denied a retail catalog sent to him from "10percent.com," a gay retail store. Prison officials refused to deliver the catalog because it allegedly "contain[ed] pornography." Petitioner filed an inmate complaint numbered ICRS 2006-8108, complaining that the rejection notice did not contain a description of the pornographic material contained in the catalog. Respondent Hepp dismissed the complaint on March 27, 2006, stating that the Department of Corrections "does not require the mailroom staff to provide explicit details" regarding rejected items. Petitioner filed an appeal, which respondent Raemisch denied.

Each of the items listed above was destroyed by prison officials without petitioner's permission.

Wisconsin law defines "pornography" to include "sadomasochistic abuse," which includes but is not limited to "flagellation, bondage, brutality to or mutilation or physical torture of a human being." Petitioner filed an inmate complaint numbered ICRS 2003-27091, challenging the definition of "sadomasochistic abuse" as overly broad. On August 17, 2003, respondent Karlen dismissed the complaint. On September 8, 2003, respondent O'Donnell denied petitioner's appeal.

3. Returned magazines

For several months during the fall of 2005, petitioner did not receive any copies of several magazines. On October 3, 2005, he discovered that prison mailroom staff had been returning the magazines to the publisher each month, marking them "Return to Sender." Mailroom staff did not inform petitioner of their actions. Petitioner filed an inmate complaint, which was returned to him unprocessed. Prison officials stated that petitioner would have to contact the United States Postal Service and that the institution would "never return magazines in that manner." Petitioner sent all of the documents he had received (what documents these were, he does not say) to the local postmaster. On November 10, 2005, the postmaster returned the materials to petitioner, along with a copy of the federal postal regulations for institutions, and a note stating that the post office would return magazines to their sender only if the prison had marked the materials "Return to Sender." Petitioner forwarded the entire packet of papers to respondent Hepp, because the time for filing an inmate complaint had passed. Respondent Hepp did not respond.

4. Pre-owned publications

On June 12, 2005, petitioner was summoned to the property room and informed that nine books sent to him by the Michigan City Prisoner Outreach program would not be delivered because they were allegedly pre-owned books. The books looked new to petitioner.

Petitioner filed an inmate complaint numbered ICRS 2005-18541, objecting to the non-delivery. After respondent Karlen dismissed the complaint, petitioner filed an appeal, which respondent Raemisch denied. Prison officials destroyed the books without petitioner's permission.

On December 16, 2005, petitioner received two books from the Prison Book Program, a prisoner literature program. The books arrived with a proper typed receipt, containing the titles and prices of each book. Property officer Nelson refused to deliver the books to petitioner because they were allegedly used. When petitioner inspected them, they appeared to be new. The corners of several pages were folded over on the lower right hand side of the book, as may happen during shipping. Prison officials stated that the books were rejected also because they were free; however the books arrived with a receipt. Petitioner filed an inmate complaint, numbered ICRS 2005-39190. On February 1, 2006, respondent Hepp dismissed the complaint. and on February 14, 2006, respondent Raemisch denied petitioner's appeal. Prison officials destroyed the books without petitioner's permission.

5. Gang-related and "offensive" publications

On November 29, 2005, petitioner received notice from respondent Oliverson that his November 2005 issue of "Spin" magazine would not be delivered because it contained "gang signs" on pages 24, 30, and 104. The notice provided no further details. Petitioner

filed an inmate complaint numbered ICRS 2005-36442, alleging that he "is not a member of any gang, does not believe in gangs, and would not know what a gang sign was if [he] saw one." On December 2, 2005, respondent Hepp dismissed the complaint and on December 13, 2005, respondent Raemisch denied petitioner's appeal. Prison officials destroyed petitioner's magazine without his permission.

On March 9, 2006, petitioner received notice from respondent Nichols that his March 9, 2006 issue of "Rolling Stone" magazine would not be delivered because it contained an article titled "Imperial Gangster" on page 81. Petitioner filed an inmate complaint numbered ICRS 2006-7481, in which he alleged that he was not a member of a gang, and never would be and that reading about gangs would have no effect upon him. On March 25, 2006, respondent Hepp dismissed the complaint. Petitioner filed an appeal, which respondent Raemisch denied.

On December 16, 2005, petitioner received six books from a retail bookstore, (Hamilton Books) paid for by his family. Respondent Nelson refused to deliver four of the books because they contained allegedly racial or sexual jokes. Respondent Nelson and property sergeant Sadloske told petitioner that books containing "derogatory" text were not permitted in the prison.

Petitioner filed an inmate complaint numbered ICRS 2005-39191, in which he asserted that many of the books in the prison library contained text that was offensive

towards race, religion, ethnicity, gender and sexual orientation. Petitioner also asserted that many magazines to which inmates subscribed contained "derogatory" jokes, but were delivered nonetheless. On February 1, 2006, respondent Hepp dismissed the complaint and on February 14, 2006, respondent Raemisch denied petitioner's appeal. Prison officials destroyed the books without petitioner's permission.

6. Free publications

The Jackson Correctional Institution's inmate handbook states, "Except for approved religious items, free items are not allowed." This policy permits religious inmates to receive free religious literature but bans free non-religious literature, regardless of its content. (The prison makes an exception to this policy for retail catalogs and college literature.)

On July 20, 2003, petitioner filed an inmate complaint numbered ICRS 2003-24766, directly challenging this policy. The complaint was rejected by respondent Karlen on July 25, 2003. Petitioner renewed his challenge on November 29, 2003, in an inmate complaint numbered ICRS 2003-38320, which respondent Karlen rejected.

Under the policy banning free non-religious publications, prison officials rejected the following publications sent to petitioner:

Date	Item(s) Rejected	Grievance No.	Outcome
4-17-2003	14 books from retail publisher	2003-13721	Dismissed by respondents Karlen and O'Donnell
5-7-2003	4 books from the Lucy Parsons Bookstore	2003-17192	Dismissed by respondents Karlen and O'Donnell
10-21-2003	1 issue of "Quest" magazine from publisher	2003-35432	Dismissed by respondent Karlen
11-11-2003	1 issue of "Quest" magazine from publisher	2003-37616	Rejected by respondent Karlen
12-7-2003	1 issue of "Quest" magazine from publisher	2003-40553	Rejected by respondent Karlen
1-11-2004	1 issue of "Quest" magazine from publisher	2004-1681	Rejected by respondent Karlen
1-25-2004	1 issue of "Quest" magazine from publisher	2004-3503	Rejected by respondent Karlen
2-12-2004	1 issue of "Quest" magazine from publisher	2004-5364	Rejected by respondent Karlen
12-19-2004	RFD magazine and catalogue from publisher	2004-41166	Dismissed by respondents Hepp and Raemisch
1-27-2005	several books from retailer through "prisoner literature program"	2005-3041	Dismissed by respondents Hepp and Raemisch
1-23-2005	1 issue of "HX" magazine from publisher	2005-3682	Dismissed by respondents Hepp and Raemisch
1-31-2005	3 books from bookstore through prisoner literature program	2005-4277	Dismissed by respondents Hepp and Raemisch

2-19-2005	6 books from retail bookstore through prisoner literature program	2005-7422	Dismissed by respondents Hepp and Raemisch
3-13-2005	4 books from retail bookstore through prisoner literature program	2005-8905	Dismissed by respondents Hepp and Raemisch
6-20-2005	6 issues of Odyssey magazine	2005-19000	Dismissed by respondents Hepp and Raemisch
8-23-2005	1 issue of "QV" magazine	2005-25763	Dismissed by respondents Hepp and Raemisch

Respondent Nichols rejected petitioner's December 7, 2003, January 25, 2004 and February 12, 2004 issues of "Quest" magazine. Respondent Oliverson rejected petitioner's copy of December 19, 2004 copy of "RFD" magazine and its accompanying catalog; January 23, 2005 issue of "HX" magazine; August 23, 2005 issue of "QV" magazine; and the June 20, 2005 issue of "Odyssey" magazine. All other publications were rejected by unidentified prison officials. Prison officials destroyed all of the publications listed in the chart above without petitioner's permission.

7. Publications without receipts

On or about August 29, 2005, petitioner received six issues of "QV" magazine, for which he had paid $30.00. Respondent Oliverson rejected the magazines because they had

arrived without a receipt. Petitioner filed an inmate complaint numbered ICRS 2005-26443. On September 12, 2005, respondent Hepp dismissed the complaint, alleging that receipts are required for "all items." Despite respondent Hepp's assertion that "all items" require receipts, prison officials permit inmates to receive many items without receipts, including single issues of magazines, college literature and retail catalogs.

Petitioner appealed respondent Hepp's dismissal of his complaint. Respondent Raemisch denied the appeal on September 30, 2005. Prison officials destroyed the magazines without petitioner's permission.

8. Policy of non-review

On December 12, 2005 and March 21, 2006, petitioner filed inmate complaints numbered ICRS 82005-37580 and ICRS 2006-8114, challenging the prison policy that prohibits inmates from reviewing non-delivered mail prior to filing an inmate complaint about the denial. Respondent Hepp rejected the second complaint on March 24, 2006.

F. Retaliation

On June 30, 2003, petitioner submitted a letter for indigent mailing, addressed to Christopher Varas, class counsel for the inmate petitioner class in Aiello v. Litscher, Case No. 98-C-791-C, a class action lawsuit in which petitioner is a class member. Respondent

LaCost confiscated the letter and wrote conduct report #1084165. Petitioner was found guilty and given 15 days' cell confinement. The letter was destroyed. Respondent Karlen affirmed the conduct report on September 22, 2003.

On July 25, 2003, petitioner submitted a letter for indigent mailing, addressed to the Clerk of the Wisconsin Supreme Court. Respondent LaCost confiscated the letter and issued petitioner conduct report #1390053. Petitioner was found guilty and given 10 days' loss of recreation and 5 days' extension of his mandatory release date. His letter was destroyed. Respondent Karlen affirmed the conduct report on September 22, 2003.

On August 6, 2003, while petitioner was confined in his cell as a result of conduct report #1390053, he submitted a written request for access to law library materials. Prison policy requires prison officials to provide inmates with restricted out-of-cell movement with access to the same case law provided to unrestricted inmates. Prison library officer K. Bauer refused petitioner's requests and issued conduct report #1353418. Petitioner was found guilty of the conduct report and was given 8 days' loss of recreation. Respondent Karlen affirmed the conduct report on September 22, 2003.

Petitioner filed multiple inmate complaints to prison officials alleging that he was being retaliated against and harassed. Each of those inmate complaints was either rejected or dismissed by respondent Karlen and dismissed on appeal by respondent O'Donnell.

G. Denial of Programming

1. Sex offender programs

Petitioner is a convicted sex offender, subject to parole under Wisconsin's presumptive mandatory release law. After evaluating petitioner's treatment needs, the Department of Corrections determined that petitioner needed to complete a sex offender treatment program before he would be considered for parole release.

In June 2003, petitioner asked to enter the Jackson Correctional Institution's sex offender treatment program. Dr. Rick McKee placed petitioner on the waiting list for the "CORE" S[ex] O[ffender] T[reatment] group, stating that the long-term CORE program would meet petitioner's treatment needs.

In November 2003, petitioner met with members of the prison's Program Review Committee, who reiterated that petitioner was on the waiting list for the CORE program and that his program needs could be met through that program. In November 2004, petitioner met again with the program review committee and with the parole board. At that time, both groups told petitioner that he was on the waiting list for the CORE program and that completion of the program would meet his treatment needs. The parole board denied petitioner parole release and deferred reconsideration of his parole eligibility for 12 months, with the expectation that petitioner would be halfway through the CORE program at the time of his next parole review hearing. The parole board emphasized that petitioner would

not be eligible for parole until he completed the CORE program.

In February 2005, petitioner was told that he would not be permitted to participate in any sex offender treatment groups available through the Department of Corrections because there were not enough appropriate treatment programs available and because petitioner did not have enough time left in his sentence to complete any of the available treatment programs. (Petitioner's maximum discharge date is June 13, 2007, which meant that he had more than 18 months left to serve at the time he was denied treatment. The CORE program lasts only 12 months.)

Petitioner filed an inmate complaint numbered ICRS 2005-4286, alleging that the prison's refusal to provide him with sex offender treatment was a denial of his due process rights. On March 3, 2005, respondent Hepp dismissed the complaint, asserting that petitioner had "failed" the sex offender treatment program offered at the Oshkosh Correctional Institution and that he had "refused" treatment from the Racine Correctional Institution's Beacon program (another sex offender treatment program). Petitioner had done neither of these things. Petitioner appealed the dismissal of his complaint, and on March 18, 2005, respondent Raemisch denied the appeal.

On October 19, 2005, petitioner filed a second complaint, ICRS 2005-32231, contending again that his due process rights were being violated by the prison's refusal to offer him sex offender treatment. On October 28, 2005, respondent Hepp rejected the

complaint.

2. Segregation programs

On September 22, 2003, petitioner was placed in program segregation. Under Wisconsin law, inmates in program segregation are given opportunities to participate in prison programs. Petitioner submitted multiple written requests to Captain Tegels, respondent Karlen, and Dr. Rick Wee, asking to participate in a treatment program. McKee responded, telling petitioner that he could not continue his treatment program in the general population, but could "contact any staff member in [the segregation unit] to learn how to enroll" in the programs offered to inmates in the segregation unit.

Petitioner spoke with Sergeant Dahlstrom, Sergeant Kirschner, Officer Hale, Officer Yaung, and Officer Eckelberg, all of whom worked in the segregation unit and asked each of them how he could participate in available programs. Each one told petitioner that no such programs were offered to inmates in segregation.

Petitioner filed an inmate complaint numbered ICRS 2003-31899, in which he asserted that he was being denied "mandated programs." On October 7, 2003, respondent Karlen dismissed the complaint and on October 21, 2003, respondent O'Donnell denied petitioner's appeal. Petitioner filed a second complaint, ICRS 2003-33834, which respondent Karlen dismissed on October 14, 2003. Respondent O'Donnell denied

petitioner's appeal of the dismissal on October 27, 2003. On November 7, 2003, respondent Karlen wrote to petitioner, telling him that the prison did not offer programs for segregation inmates.

H. Security Classification

The Wisconsin Department of Corrections promulgates "risk rating guidelines," which say that an inmate should be classified as a "low" security risk in the category of "program participation" if the inmate is willing and able to participate in required or recommended treatment programs, even if he is unable to participate because the programs are not available or he does not have enough time remaining on his sentence to permit him to complete the recommended programming. Petitioner has a need for sex offender treatment and is willing to participate in recommended programs; however, as described above, the Department of Corrections has not made the necessary programs available to him. Nevertheless, the prison's Program Review Committee refuses to classify petitioner as "low risk" in the program participation category, instead labeling him as "moderate risk." Prison officials contend that there is an "unwritten exception" to the general risk policy for inmates who require sex offender treatment.

Petitioner filed an inmate complaint numbered ICRS 2005-20392, challenging his risk classification. On July 26, 2005, respondent Hepp dismissed the complaint and on

August 15, 2005, respondent Raemisch denied petitioner's appeal.

I. Legal Loan Policy

On May 14, 2003, respondent LaCost told petitioner that he could not take advantage of the prison's "indigent legal postage" to send letters to any lawyer who had not agreed previously to represent petitioner in an ongoing case. Respondent LaCost repeated her order in a written memo dated June 30, 2003, in which she clarified that petitioner was not permitted to use indigent legal postage to ask any lawyer for legal advice unless petitioner had previously retained the lawyer to represent him. Petitioner filed an inmate complaint numbered ICRS 2003-22965. On July 25, 2003, respondent Karlen dismissed the complaint. Petitioner filed an appeal, which respondent O'Donnell denied on August 11, 2003.

On July 10, 2003, petitioner submitted an unstamped letter addressed to David C. Fathi, requesting his advice on a contemplated civil matter. On July 18, 2003, respondent LaCost returned the letter to petitioner, refusing to mail it. On July 21, 2003, petitioner submitted the letter for mailing again. Respondent LaCost returned the letter to petitioner on July 24, 2003. Petitioner filed an inmate complaint numbered ICRS 2003-24705. On July 31, 2003, respondent Karlen dismissed the complaint and on August 17, 2003, respondent O'Donnell denied petitioner's appeal.

On August 7, 2003, petitioner submitted a letter for mailing without postage addressed to Judge Barbara Crabb. On August 26, 2003, respondent LaCost returned the letter to petitioner, refusing to mail it. On August 27, 2003, petitioner submitted the letter again. Respondent LaCost returned the letter to petitioner on August 29, 2003. Petitioner filed an inmate complaint numbered ICRS 2003-29541. On September 15, 2003, respondent Karlen dismissed the complaint and on October 21, 2003, respondent O'Donnell denied petitioner's appeal.

On January 1, 2005, the Department of Corrections implemented a new legal loan policy for indigent prisoners. In relevant part, the policy states that "inmates may obtain legal loans for challenging their criminal convictions or sentences on a direct appeal, but not via habeas corpus"; the department will not "honor briefing schedules or orders issued by any court"; indigent postage may only be used to correspond with "authorized" lawyers; photocopies may be made only of items that "cannot be hand copied;" loans may not be used for open records requests; and postage "will be denied" if an inmate refuses to allow institution staff to open outgoing legal mail to review and inspect it.

Petitioner filed a group inmate complaint numbered ICRS 2005-1394, challenging the provisions of the new legal loan policy. On March 25, 2005, respondent Hepp dismissed the complaint, stating that inmates "do not have a constitutional right to attack their conviction collaterally through . . . a habeas action"; the department "will not consider

generic briefing schedules or discovery deadlines orders imposed by the court to be 'court orders'"; inmates would not be permitted to use indigent postage to contact lawyers for legal advice, even when proceeding on a pro se basis; and inmates could not use legal loan funds to obtain open records requests because such requests were "not necessarily related to legal matters." Regarding the requirement that inmates permit prison officials to inspect all outgoing legal mail requiring postage from legal loan funds, respondent Hepp wrote:

> [I]f the inmate does not wish to disclose the content of his mail pursuant to this inspection requirement he will not get the legal loan. It is up to the inmate to decide whether it is more important for him to maintain confidentiality of the contents of his letter [to the courts and to lawyers] or obtain the state paid postage to send it.

Petitioner filed an appeal that respondent Raemisch denied on April 6, 2005.

J. Denial of Hygiene Supplies

Prison policy provides for inmates to be given three free bars of soap each month. Each bar of soap lasts for approximately one to two days. Although inmates may purchase additional soap from the prison canteen with their own funds, petitioner cannot afford to purchase additional soap, hygiene supplies or over the counter medical items from the prison canteen. (This is because prison officials confiscate all of petitioner's income to pay the debt he owes for filing civil lawsuits. See Section J below.) Therefore, for approximately three weeks each month petitioner is unable to wash with soap while showering or to wash his

hands with soap after using the restroom. Recently, the prison installed liquid hand soap in the prison bathrooms, which allows petitioner to wash his hands, but he still does not have adequate soap for showering.

Petitioner filed an inmate complaint numbered ICRS 2003-16328, asserting three bars of soap did not last a month when used for regular showering and hand-washing. On May 23, 2003, respondent Karlen dismissed the complaint. Petitioner filed an appeal, which respondent O'Donnell denied. Petitioner filed a second complaint numbered ICRS 2003-18374, which respondent Karlen rejected.

K. Confiscation of Wages and Gifts

Wisconsin law provides that when an indigent inmate files a civil lawsuit without pre-paying the costs of litigation, all money deposited to the inmate's prison trust account, whether from wages or from gifts, will be withheld until the cost of the filing fee is recouped. On April 10, 2003, petitioner sent a request to the Jackson Correctional Institution business office asking that only 75% of his income be withheld to pay court filing fees. On April 14, 2003, business office staff replied: "This [percentage] is determined by the courts . . . There is no way this can be changed."

The following day, petitioner again asked the office to withhold less money from his account. This time, prison officials asserted that the withholding amount "[wa]s determined

by the Internal Management Review Committee of the D[epartment] o[f] C[orrections]" and "c[ould] not be changed." Petitioner filed an inmate complaint numbered ICRS 2003-15551, which respondent Karlen rejected.

On October 12, 2005, petitioner filed a second inmate complaint numbered ICRS 2005-31413, alleging that the prison's policy of taking 100% of inmate income to pay filing fees forced inmates to choose between access to the courts and contact with their families or the purchase of hygiene supplies. Petitioner asserted that the policy punishes inmates who seek "judicial relief." On October 19, 2005, respondent Hepp rejected the complaint.

L. Inmate Grievance System

Under Wisconsin law, an inmate whose grievance is dismissed at the institutional level must appeal the dismissal within 10 days in order for the appeal to be considered timely. The policy does not specify whether the appeal must be mailed within 10 days or received by the prison complaint examiners' office in Madison, Wisconsin by the end of the 10 day period. Several of petitioner's inmate complaints have been dismissed because they were not received at the Madison office within 10 days.

On July 11, 2003, petitioner filed an inmate complaint numbered ICRS 2003-23668, contending that ICRS appeals should be considered filed on the date that the envelope is placed into the institution mailbox. Petitioner asserted that once a grievance is placed in the

mailbox, a prisoner has no control over delays caused by prison officials in processing that mail for postage and mailing. On July 31, 2003, respondent Karlen dismissed petitioner's complaint, stating that Wisconsin law does not recognize the so-called "prison mailbox rule." Petitioner filed an appeal, which was denied by respondent O'Donnell on August 17, 2003.

On October 10, 2005, petitioner filed a second inmate complaint, numbered ICRS 2005-30978, challenging the manner in which prison officials calculated the time limit for appealing the dismissal of an inmate complaint. Petitioner's complaint was prompted by the fact that two of petitioner's inmate complaint appeals had not left the institution for 12 days after he had placed the appeals in the prison mailbox. On October 18, 2005, respondent Hepp dismissed the complaint. Respondent Raemisch denied petitioner's appeal on October 31, 2005, stating, "There are no provisions in W[isconsin] C[ode] Chapter 310 for the mailbox rule."

DISCUSSION

A. Class Certification

In his complaint, petitioner asserts that his lawsuit involves a petitioner class, consisting of all inmates in the custody and control of the Wisconsin Department of Corrections. He alleges that the rights and interests in common to his self-styled class consist of the right of all inmates to correspond with lawyers of their choice and with the

courts without fear of censorship or retaliation; the right to receive information, ideas and literature free of censorship; to possess symbols or emblems consistent with individual religious beliefs; the right of all atheist inmates (however they may designate themselves) to assemble and learn equal to that of inmates who profess a more traditional religion; and the right of all inmates to seek and maintain contact with their families and the community.

I construe petitioner's assertions as a request for certification of this lawsuit as a class action. Before the court may certify a class action, four prerequisites must be met:

> (1) The class [must be] so numerous that joinder of all members is impracticable, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties [must] fairly and adequate protect the interests of the class.

Fed. R. Civ. P. 23(a).

Petitioner proposes to name all inmates in the custody of the Wisconsin Department of Corrections as petitioners in this lawsuit. There is no question that it would be impracticable to join the approximately 22,000 inmates currently incarcerated in Wisconsin prisons. Wisconsin Division of Adult Institutions FY04 Profile, available online at http://www.wi-doc.com/index_adult.htm (last visited June 28, 2006). Nevertheless, petitioner has failed to show that the claims he raises in this lawsuit are either common to the class or typical of complaints shared by other members of his proposed class. Petitioner's complaint contains an eclectic compilation of issues related to concerns of personal

importance. His claims pertain to matters ranging from the practice of his atheist beliefs to obtaining literature prison officials have deemed pornographic to having broader access to prison-sponsored loans for purchasing paper and making photocopies for his many lawsuits. There is no identifiable class that shares with petitioner a common interest in the outcome of any readily identifiable portion of the claims he has raised in his complaint. This fact alone cautions strongly against class certification.

Moreover, petitioner is not represented by a lawyer. Since absent class members are bound by a judgment whether for or against the class, they are entitled at least to the assurance of competent representation afforded by licensed counsel. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also King v. Frank, 328 F. Supp. 2d 940, 950 (W.D. Wis. 2004); Huddleston v. Duckworth, 97 F.R.D. 512, 514-15 (N.D. Ind. 1983) (prisoner proceeding pro se not allowed to act as class representative). Consequently, class certification will be denied.

B. Constitutional Claims

Petitioner's federal claims fall into five general categories: religion, free speech, due process, cruel and unusual punishment and "miscellaneous." I will address each in turn.

1. Religious rights

According to petitioner, respondents have violated his rights under the First Amendment's free exercise and establishment clauses, and under the Religious Land Use and Institutionalized Persons Act (RLUIPA) in a variety of ways. From the general to the specific, petitioner claims that his rights have been violated by (1) references to God in the Wisconsin Constitution; (2) the provision of Wis. Stat. § 46.066 that guarantees inmates access to Bibles; (3) the provision of Wis. Stat. § 301.47 that prohibits sex offenders from changing their names; (4) the Jackson Correctional Institution's refusal to allow petitioner to possess a "religious emblem"; (5) the institution's refusal to authorize study groups for atheist and agnostic inmates; and (6) the institution's refusal to make donated atheist literature available in the prison library.

a. The Wisconsin Constitution

The Wisconsin Constitution contains two references to God. The preamble to the Constitution begins with the sentence, "We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution." The word appears again in Article I, section 18, which guarantees that "the right of every person to worship Almighty God according to the dictates of conscience shall never be infringed" and that no person may be forced "to attend, erect or support any place of worship" and that

no "preference [shall] be given by law to any religious establishments or modes of worship." Petitioner finds both of these references to God offensive and believes their inclusion in the document to be an infringement of the rights section 18 purports to grant, as well as a violation of the First Amendment's establishment clause.

There are several problems with petitioner's proposed claim. First, under Article III of the Constitution of the United States, a petitioner must have standing to bring an action in federal court. To have standing, the petitioner must allege (1) that he has suffered an injury in fact (2) that is fairly traceable to the action of the respondent and (3) that will likely be redressed with a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Books v. City of Elkhart, Indiana, 235 F.3d 292, 299 (7th Cir. 2000). In this case, petitioner has failed to plead facts that would permit the court to infer that he has suffered an injury or that any injury is traceable to the action of the named respondents.

"To allege adequately an injury in fact, a petitioner must show an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." Books, 235 F.3d at 299 (citing Lujan, 504 U.S. at 560). When a petitioner objects to the display of a religious object, he might allege an injury by indicating that he has "undertaken a special burden or has altered his behavior to avoid the offensive object" or that he has been "forced to view a religious object that he wishes to avoid but is unable to avoid because of his right or duty to attend the government-owned place

where the object is located." Id. at 299, 301. Although the references to God contained in the Wisconsin Constitution are not objects per se, that distinction does not excuse petitioner from alleging some kind of injury in fact.

In Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982), a group of aggrieved tax payers filed suit challenging a decision by government officials to convey government land to the Valley Forge Christian College for no fee in order to expand its religiously focused educational institution. While acknowledging that the petitioners had stated a claim of illegal action by the government, the United States Supreme Court held that federal courts had no authority to hear the case because the petitioners had not established injury in fact:

> Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms. It is evident that respondents are firmly committed to the constitutional principle of separation of church and State, but standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy.

Id. at 485-486. Similarly, petitioner in this case alleges nothing more than that he finds the word "God" offensive. He does not indicate that he has been forced to read the Wisconsin Constitution repeatedly—or on any occasion. In short, he has failed to establish standing

to bring suit at all on this claim.

Second, the respondents petitioner has named in this lawsuit have no connection to the injury he alleges and he suggests none who might be. Before a court may hear a claim, it must be clear that the party seeking judicial resolution of a dispute can "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct" of the other party. Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979). In this case, the respondents petitioner has identified are all prison officials. Petitioner's complaint does not even hint that respondents had any authority to amend the constitutional provisions he challenges or that any of their allegedly illegal actions were authorized by the challenged provisions. Because petitioner has not alleged injury or named proper respondents, he will be denied leave to proceed on his claim that the references to God in the Wisconsin Constitution violate his rights under the First Amendment's establishment clause.

b. Wis. Stat. § 46.066(3)

For the same reason petitioner will be denied leave to proceed on his claim regarding the Wisconsin Constitution, he could be denied leave to proceed on his claim that Wis. Stat. § 46.066(3) violates the establishment clause: he lacks standing. In addition, petitioner faces another fundamental obstacle. Contrary to his assertions, the statute has been held to

be constitutional.

Wisconsin Statutes section 46.066(3) provides that "every inmate who requests it shall have the use of the Bible." Although petitioner contends that the provision was found to be "unconstitutional on its face" in Pitts v. Knowles, 339 F. Supp. 1183, 1184 (W.D. Wis. 1972), he is mistaken. In fact, the district court held the opposite. Id. at 1185 ("Inherent in the statute is no sponsorship of one religion over another, nor establishment of any religion."). Although the court ordered prison officials to provide a non-Christian inmate with the Qur'an under the same terms Bibles were provided to Christian inmates, the court did not find § 46.066(3) to be unconstitutional. Because the statute has been found to be constitutional, the State of Wisconsin is under no obligation to repeal it. Petitioner will be denied leave to proceed on this claim as well.

c. Name change

Under Wis. Stat. § 301.47(1), a "sex offender" is any person who has been convicted of a sex offense and is required under Wis. Stat. § 301.45 to provide his personal information (including physical description, name and address) to the Wisconsin Department of Family Services for inclusion in the state's publicly accessible sex offender registry. While subject to reporting requirements, a registered sex offender is prohibited from (1) changing his name or (2) identifying himself by a name other than the name by

which the department identifies him. Wis. Stat. § 301.47(2).

According to petitioner, he finds his given name, James Jonathan Kaufman, to be religiously offensive because James and Jonathan are "Christian" names. Laying aside the fact that the names James and Jonathan are Hebrew, not Christian names, see Behind the Name, http://www.behindthename.com/php/view.php?name=james; http://www.behindthename.com/php/view.php?name=jonathan (last visited June 29, 2006), it is unclear whether prohibiting petitioner from changing his name could be said to place a substantial burden on a sincere expression of *any* religious belief (as required to prevail on a RLUIPA claim), much less on a *central* religious practice (as required to prevail under the free exercise clause of the First Amendment). Cutter v. Wilkinson, 125 S. Ct. 2113, 2114 (2005); see also Matthews v. Morales, 23 F.3d 118, 119 (5th Cir. 1994) (upholding state law banning prisoners and probationers from obtaining legal name change for any reason). Nevertheless, at this stage of the proceedings it would be improper to dismiss petitioner's claim on its legal merits when it is even remotely possible that he could support this claims at a later stage. Although proof problems abound, petitioner has no obligation to do any more in his complaint than put respondents on notice of the wrongs they are alleged to have committed. Lekas v. Briley, 405 F.3d 602, 606 (7th Cir. 2005).

But therein lies the problem. Unlike the petitioners in Azees v. Fairman, 795 F.2d 1296, 1300 (7th Cir. 1986), petitioner is not challenging any action taken by the

respondent prison officials with respect to his proposed name change. In fact, petitioner does not indicate that he has *ever* tried to change his name; he merely states that he has "always intended" to do so at some future time. Because petitioner has not indicated that the respondents he has named have attempted to enforce § 301.47 against him or that they have any authority to suspend it (and it is impossible to see how they could), he will be denied leave to proceed on his claim that the statute violates his right to the free exercise of his religious beliefs.

d. Religious emblems and atheist study groups

Petitioner alleges that on various occasions prison officials refused to allow him to order and possess religious emblems and to form a group for discussion of his atheist beliefs because they did not recognize his beliefs as "religious." He contends that these decisions violated his rights under the free exercise and establishment clauses of the First Amendment and the Religious Land Use and Institutionalized Persons Act.

With respect to these claims, a distinction must be drawn between alleged wrongs that preceded the August 19, 2005 decision of the Court of Appeals for the Seventh Circuit in Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005), and those that did not. In Kaufman, 419 F.3d at 682, the court of appeals held that petitioner's atheism qualified as a religion and that prison officials violated petitioner's rights under the establishment clause

(but not under the free exercise clause or RLUIPA) when they refused to consider his application for an atheist study group in the same manner they would have considered an application for a traditional religious group. By extension, the same reasoning would apply to decisions to deny petitioner religious emblems on the ground that his interest in possessing the emblems was inherently "nonreligious."

As petitioner is well aware, following the decision in Kaufman, this court ruled that prison officials were entitled to qualified immunity for treating his atheism as something other than a religious belief because it was not clearly established at the time their decision was made that atheists (as opposed to freethinkers, humanists or adherents of other belief systems premised upon some type of affirmative belief system, however secular) were to be treated as religious adherents. Kaufman v. McCaughtry, 422 F. Supp. 2d 1016, 1023 (W.D. Wis. 2006). Consequently, petitioner may not proceed against prison officials on claims that they failed to extend the same privileges to him as an atheist that they extended to Christians, Jews, Muslims, Pagans, and inmates of other faiths recognized by the prison prior to August 19, 2005.

With one exception, all of petitioner's religious study group and religious emblem claims arose before August 19, 2005. Petitioner alleges that he submitted requests to form a "nontheist religious inmate study group" on March 5, 2003, and April 13, 2004. Both requests were denied. Petitioner submitted a request for a religious emblem (a "Wheel of

the Year") on June 3, 2003. This request was denied also. Because these decisions occurred before the Kaufman decision was issued, respondents are entitled to qualified immunity for these actions.

Petitioner alleges that he submitted a second request for a religious emblem (a silver circle) on March 25, 2005, and that respondents Hepp and Raemisch denied petitioner's request and dismissed his inmate complaint regarding the denial. Again, because these actions were taken before August 19, 2005, respondents are immune from suit with regard to these decisions.

However, petitioner alleges that after the Kaufman decision was issued he filed a new grievance (ICRS 2005-29657) regarding the denial of his silver circle, and that respondent Hepp dismissed this complaint as well. It is unclear why the complaint was dismissed. It is possible that respondent Hepp dismissed petitioner's complaint on its merits, that is, he refused to recognize that petitioner was entitled to a religious emblem under the same terms and conditions as inmates of other religious faiths. If so, respondent Hepp's actions may have violated petitioner's rights under the establishment clause. Consequently, petitioner will be granted leave to proceed on his claim that respondent Hepp violated his rights under the establishment clause by refusing to permit petitioner to obtain and possess a silver circle as an emblem of his atheist beliefs.

e. Atheist literature

The establishment clause is violated when officials take actions that favor one religion over another. Petitioner alleges that prison officials have made "thousands" of Christian books available to the inmates through the prison library. In 2003, petitioner arranged to have a large box of atheist literature donated to the library. Three year later, only five books on atheism have been placed in the prison library. Despite efforts by respondents LaCost and Hepp, reasonable amounts of the donated materials were not made available for checkout.

Although petitioner has stated a claim that his rights under the establishment clause have been violated, he has not named any viable respondents to his claim. By petitioner's own admission, respondent LaCost tried to hasten the processing of the donated books and respondent Hepp affirmed petitioner's complaint, directing prison staff to make the books available. Neither respondent LaCost nor respondent Hepp violated petitioner's rights. Petitioner indicates that respondent McCaughtry is the prison librarian and that respondent Schelfeler is the prison program director. It is possible that petitioner is unaware of the officials responsible for placing the donated books in the prison library; after all, his case caption is worded broadly to include unnamed "employees, agents and [] representatives". "When the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not specifically named in the caption of the complaint, the district

court must provide the petitioner with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Dept., 95 F.3d 548, 555 (7th Cir. 1996); but see Myles v. United States, 416 F.3d 551, 552 (7th Cir. 2005) ("[P]ro se litigants are masters of their own complaints and may choose who to sue—or not to sue . . . District judges have no obligation to act as counsel or paralegal to pro se litigants.") Because it is unclear whether petitioner has failed to name proper respondents by choice or because he is unable to identify the proper respondents to his claim, I will grant him leave to proceed on his claim that unidentified respondents violated his rights under the establishment clause by making Christian literature readily available to inmates while impeding prisoners' access to atheist literature.

f. Free publications

Prison policy permits inmates to receive free religious items and publications, but prohibits inmates from receiving free non-religious items and publications. (Exceptions are made for retail catalogs and college literature.) Petitioner does not challenge the validity of the ban on free publications; rather, he challenges the exception made for religious items, contending that the policy violates the establishment clause by favoring religion over nonreligion.

According to petitioner, under this policy respondents Nichols, Oliverson and

unidentified prison staff members denied him 14 books from a retail publisher on April 17, 2003; 4 books from the Lucy Parsons Bookstore on May 7, 2003; issues of "Quest" magazine on October 21, 2003, November 11, 2003, December 7, 2003, January 1, 2004, January 25, 2004, and February 12, 2004; one issue of RFD magazine and an accompanying catalogue on December 19, 2004; several books sent to him from a retailer through a prisoner literature program on January 27, 2005, January 31, 2005, February 19, 2005, and March 13, 2005; one issue of "HX" magazine on January 23, 2005; 6 issues of Odyssey magazine on June 20, 2005; and one issue of "QV" magazine on August 23, 2005. Petitioner filed inmate complaints regarding these decisions, all of which were rejected or dismissed by respondents Hepp, Karlen and Raemisch.

Not all differential treatment provided to religious inmates constitutes a violation of the establishment clause. Cutter v. Wilkinson, 544 U.S. 709, 719 (2005) (citing Sherbert v. Verner, 374 U.S. 398, 422 (1963) (Harlan, J., dissenting)) ("The constitutional obligation of 'neutrality' is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation."). When a prison makes an exception to a policy of general applicability in order to accommodate religious practice by removing unnecessary government-imposed burdens, the accommodation may be permissible. Id. at 720; Board of Ed. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 705 (1994) (government need not "be oblivious to impositions that legitimate exercises of state power may place on

religious belief and practice"). However, when a prison provides religious inmates with privileges not accorded to nonreligious inmates for no purpose beyond that of favoring religion, the establishment clause may be violated. McCreary County, Kentucky v. American Civil Liberties Union of Kentucky, 125 S. Ct. 2722, 2733 (2005) ("When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides.")

In this case, petitioner has alleged that free religious items are given to prisoners while free nonreligious items are not. It is not clear that such a policy alleviates any special burden on religious inmates or serves any other penological interest. Consequently, petitioner will be granted leave to proceed on his claim that respondents Nichols, Oliverson, Hepp, Karlen, Raemisch and unidentified prison staff members violated the establishment clause by prohibiting petitioner from receiving free nonreligious items and publications while permitting other inmates to receive free religious items and publications.

2. Free speech

Petitioner's free speech claims fall into two categories: alleged violations related to his incoming mail and alleged acts of retaliation by prison staff. According to petitioner, prison staff (some identified and some not) opened his legal mail outside his presence and

refused to deliver mail to him on the grounds that it was pornographic, "pre-owned," gang-related, offensive, "free," or lacked a receipt. In addition, petitioner alleges that he was disciplined twice in retaliation because of his attempts to correspond with his lawyer and the Wisconsin Supreme Court and to obtain access to the prison law library collection.

a. Incoming mail claims

1) Opening legal mail

Although prison officials are permitted to examine incoming and outgoing mail to insure that it does not contain contraband, legal mail is afforded "somewhat greater protection" than other kinds of mail. Kaufman, 419 F.3d at 685-686 (citing Wolff v. McDonnell, 418 U.S. 539, 576 (1974)) "When a prison receives a letter for an inmate that is marked with a lawyer's name and a warning that the letter is legal mail, officials potentially violate the inmate's rights if they open the letter outside of the inmate's presence." Id.

Petitioner alleges that unidentified prison mailroom staff opened letters sent to him by lawyers on May 9, 2003, August 13, 2005 and November 21, 2005, and that respondents Karlen, O'Donnell, Hepp and Raemisch dismissed petitioner's inmate complaints regarding the May 9, 2003, August 13, 2005, and November 21, 2005 letters. Petitioner alleges that the August 13 and November 21, 2005 letters were marked as legal

mail. He does not indicate whether the May 9, 2003 letter was marked also as legal mail. Drawing all inferences in petitioner's favor, it appears that respondents Karlen, O'Donnell, Hepp, Raemisch and unidentified prison mailroom staff may have violated petitioner's rights under the First Amendment by permitting his legal mail to be opened outside his presence on May 9, 2003, August 13, 2005, and November 21, 2005.

In addition, petitioner alleges that a respondent with the initials "P.S." and unidentified prison mailroom staff opened letters sent to him from the Office of the Wisconsin Attorney General, the Wisconsin Department of Justice, the United States Department of Justice, the United States Department of Health and Human Services Office for Civil Rights, the United States Department of Homeland Security and Senator Herb Kohl. According to petitioner, respondents Karlen and O'Donnell dismissed his complaints regarding the opening of several of these letters outside his presence on February 23, 2003, May 9, 2003, May 19, 2003 and February 5, 2004. (Respondents Karlen and Hepp affirmed complaints regarding the opening of petitioner's letters on July 1, 2003, November 22, 2003, October 6, 2003, November 15, 2004, and July 5, 2005.)

It is not clear whether any of the correspondence petitioner received from these government agencies and officials was privileged "legal correspondence" related to his ongoing litigation or to other legal matters he was asking these agencies to pursue on his behalf. If it were, and if it were clearly marked as legal mail, under federal law petitioner

would have been entitled to be present when the mail was opened. More likely is that petitioner was entitled to be present when the mail was opened under the more expansive protections given to inmate mail under Wisconsin law.

Wisconsin Administrative Code § DOC 309.04(3) states:

> Institution staff may not open or read for inspection mail sent by an inmate to any of the parties listed in pars. (a) to (j), unless the security director has reason to believe that the mail contains contraband. Institution staff may open mail received by an inmate from any of these parties in the presence of the inmate . . .This subsection applies to mail clearly identifiable as being from one or more of the following parties:

The parties listed in subsection 3 include lawyers, the governor of Wisconsin, members of the Wisconsin legislature or the United States Congress, the secretary or administrator of a state department or division, the Attorney General or an assistant attorney general of Wisconsin, an investigative agency of the federal government, the clerk or judge of any state or federal court and the president of the United States. Wis. Admin. Code § DOC 309.04(3)(a-j). Similarly, petitioner's November 15, 2004 letter from Wisconsin Senator Herb Kohl was not entitled to constitutional protection, although it may have been entitled to protection under § DOC 309.04(3) . Therefore, petitioner will not be given leave to proceed on his claim that his constitutional rights were violated when prison officials opened the letter outside his presence. (As discussed in section C. below, I will decline to exercise supplemental jurisdiction over petitioner's claim under Wis. Admin. Code § DOC

309.04(3)(d) because he is not proceeding on his related constitutional claim.)

However, because it is possible that petitioner's letters from the Office of the Wisconsin Attorney General, the Wisconsin Department of Justice, the United States Department of Justice, the United States Department of Health and Human Services Office for Civil Rights and the United States Department of Homeland Security were marked as attorney correspondence from lawyers within those offices, he will be given leave to proceed on his claim that respondents Karlen, O'Donnell, prison staff member "P.S." and unidentified prison mailroom staff violated his constitutional rights by opening his legal mail outside his presence on March 23, 2003, May 19, 2003, July 1, 2003, September 22, 2003, October 6, 2003, February 5, 2004, June 23, 2005, and July 5, 2005. (One caveat: petitioner will not be permitted to proceed against respondent Karlen with respect to any complaints Karlen affirmed because the actions Karlen took that affirmed petitioner's constitutional rights did not constitute violations of the Constitution .)

Finally, petitioner alleges that respondents Oliverson and Nichols opened mail sent to him from the Wisconsin Court of Appeals, the United States Bankruptcy Court and this court. Unlike mail from lawyers or government officials, which may not be opened outside the presence of an inmate, "with minute and irrelevant exceptions all correspondence from a court to a litigant is a public document, which prison personnel could if they want inspect in the court's files." Martin v. Brewer, 830 F.2d 76, 78 (7th Cir. 1987). Consequently,

prison officials may lawfully open mail sent by a court to an inmate without violating the inmate's constitutional rights. Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996). Again, it may be that respondents Oliverson and Nichol violated Wis. Admin Code § DOC 309.04(3)(i) by opening these letters outside petitioner's presence. However, because petitioner will be denied leave to proceed on his constitutional claim regarding the opening of mail sent to him from courts, I will decline to exercise supplemental jurisdiction over his state law claims relating to that mail.

2) Undelivered magazines and catalogues

Petitioner alleges that prison officials did not deliver "several" months' worth of copies of "several magazines" to petitioner in the fall of 2005. When petitioner inquired about the magazines, prison officials denied having returned them to the publisher. However, petitioner alleges that his correspondence with the local post office led him to believe that prison officials did return the magazines to the publisher. Petitioner filed an inmate complaint on the subject, which was "returned to him unprocessed." He did not file a second complaint because "the time for filing an inmate complaint had passed." Petitioner sent respondent Hepp "proof" that prison officials had failed to deliver the magazines to him but received no reply. Furthermore, on February 28, 2003, an unidentified prison official confiscated petitioner's "Loompanics Unlimited" book catalog even though petitioner had

possessed the catalogue without incident at a previous prison. Respondents O'Donnell and Karlen dismissed petitioner's complaint challenging the taking of his magazine.

Regulations that restrict a prisoner's ability to receive publications are "valid if [they are] reasonably related to legitimate penological interests." Thornburgh v. Abbott, 490 U.S. 401, 413 (1989) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). Conversely, when such a connection is lacking, the restriction may constitute an impermissible infringement of an inmate's right to free speech. In this case, petitioner implies that prison officials confiscated his catalogue and returned his magazines to the publisher without a legitimate reason for doing so. Petitioner's allegations are sufficient to state a claim under Thornburgh.

Moreover, although petitioner's failure to file an inmate complaint regarding the non-delivery of his magazines may prove to be a problem as this lawsuit progresses, I cannot say that his failure to exhaust "is so plain from the face of the complaint that the suit can be regarded as frivolous," Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002), because it is unclear why his first complaint was not processed by prison officials. Consequently, petitioner will be granted leave to proceed on his claims that respondent Hepp and unidentified prison officials violated his right to free speech by refusing to deliver "several" months' worth of "several" magazines in the Fall of 2005 and that respondents Karlen, O'Donnell and unidentified prison officials violated his right to free speech by confiscating his "Loompanics Unlimited" book catalog.

3) Pornography

Finally, petitioner challenges the refusal of prison officials to deliver magazines, catalogs and other items they classified as pornographic. As petitioner has been told by both this court and the Court of Appeals for the Seventh Circuit, as a member of the class in Aiello v. Litscher, Case No. 98-C-791-C, he is bound by the settlement agreement reached in that case regarding the types of descriptions and depictions of sex and nudity that would be permitted within the Wisconsin prison system. Any class member who believes that prison officials have wrongly denied him materials permissible under the settlement agreement has two potential remedies: he may bring suit in state court or he may contact the lawyer representing the class in Aiello. What the inmate may not do is bring an individual law suit in federal court regarding the alleged violations. Kaufman v. McCaughtry, No. 03-C-27-C, 2003 WL 23218305 (W.D. Wis. Apr. 24, 2003); see also Kaufman, 419 F.3d at 685 ("Kaufman claims that he objected to the settlement agreement in Aiello, but he never opted out of the class, and so he remains bound by the outcome of the class action notwithstanding his objections."). Therefore, petitioner will be denied leave to proceed on all claims relating to prison officials' decisions to deny him publications they have deemed pornographic.

4) Pre-owned publications

Petitioner alleges that property officer Nelson (who is not named as a respondent in this lawsuit) and one or more unidentified prison staff members refused to deliver nine books he received on June 12, 2005, from the Michigan City Prisoner Outreach program and two books he received on December 16, 2005, from the Prison Book Program. The books from the Michigan City program were "religious in nature." The books received June 12 were rejected because they were allegedly "pre-owned" and the books received December 16 were rejected because they were allegedly pre-owned and because they were allegedly free (despite the fact that the books arrived with a receipt showing their purchase price). According to petitioner the books "looked new;" however, he does not say whether they were used in fact.

It is difficult to understand petitioner's complaints regarding the rejection of these books. Nowhere in his complaint does he specifically challenge the policy that prohibits inmates from receiving used books but it is difficult to see what other claim he could be raising. In Lindell v. Frank, 377 F.3d 655, 659 (7th Cir. 2004), the Court of Appeals for the Seventh Circuit discussed prison policies prohibiting inmates from receiving publications from sources other than publishers:

> There is no question that "publishers only" rules that restrict prisoners from receiving hardcover books from any noncommercial sources are reasonably related to a prison's interest in preventing contraband from being smuggled

> into the prison. Bell v. Wolfish, 441 U.S. 520, 555 (1979). Courts have extended the reasoning in Bell to other types of materials from noncommercial sources that could easily conceal smuggled contraband, such as magazines and softbound books. See Ward v. Washtenaw County Sheriff's Dept., 881 F.2d 325, 329 (6th Cir. 1989) ("publishers only" rule that restricted receipt of magazines reasonably related to legitimate interests in controlling smuggled contraband and saving staff resources); Hurd v. Williams, 755 F.2d 306, 308-09 (3d Cir. 1985) ("publishers only" rule that restricted receipt of newspapers, periodicals, and softbound volumes reasonably related to government interest in controlling smuggled contraband and saving staff resources); Kines v. Day, 754 F.2d 28, 30 (1st Cir. 1985) ("publishers only" rule that restricted receipt of hardcover, softcover, and newspaper publications reasonably related to prison's interest in "internal security"); Cotton v. Lockhart, 620 F.2d 670, 672 (1980) ("publishers only" rule that restricted receipt of hard and softcover books reasonable response to interest in "institutional security").

The rationale underlying a "publishers only" rule applies with equal force to the policy prohibiting prisoners from receiving used books, which would necessarily come to the prisoner from a source other than the publisher; in this case, from the Michigan City Prisoner Outreach program and the Prison Book Program. Because there can be "no question" that prison officials have a legitimate security reason for prohibiting used books, petitioner will be denied leave to proceed on his claim that respondents Karlen, Raemisch, Hepp and unidentified prison officials violated his right to free speech by refusing to allow him to receive used books from the Michigan City Prisoner Outreach program and the Prison Book Program.

5) Gang-related and "offensive" publications

Petitioner alleges that prison officials have violated his right to free speech by refusing to deliver a number of publications to him because of the content of the items. Specifically, petitioner alleges that respondent Oliverson refused to deliver his November 2005 issue of "Spin" magazine because it contained "gang signs"; respondent Nichols refused to deliver his March 9, 2006 issue of "Rolling Stone" magazine because it contained an article titled "Imperial Gangster"; and prison property officer Nelson refused to deliver six books sent to petitioner from a retail bookstore because they contained derogatory racial or sexual jokes. Petitioner filed inmate complaints regarding each of these incidents, which respondents Hepp and Raemisch dismissed.

As discussed above, prison regulations restricting incoming mail are legitimate insofar as they are reasonably related to legitimate penological interests, and courts are obligated to give prison officials wide-ranging deference, particularly on matters that implicate institutional security. Bell v. Wolfish, 441 U.S. 520, 547 (1979); see also Overton v. Bazzetta, 539 U.S. 126, 132 (2003); Westefer v. Snyder, 422 F.3d 570, 575 (7th Cir. 2005). Insofar as petitioner challenges the decision to deny him his magazines containing gang symbols, he alleges that because he is not a gang member the symbols and articles would have no effect on him. Even assuming petitioner's allegations to be true, prison officials were well within their rights to deny the publications. Once literature has entered

the prison, it "reasonably may be expected to circulate among prisoners, with the concomitant potential for coordinated disruptive conduct." Thornburgh, 490 U.S. at 412-413. Consequently, whether the article would affect petitioner is largely irrelevant. If the signs and articles implicate security concerns, as gangs surely do, they may be confiscated or denied. See, e.g., Wilkinson v. Austin, 125 S. Ct. 2384, 2396 (2005) ("Clandestine, organized, fueled by race-based hostility, and committed to fear and violence as a means of disciplining their own members and their rivals, gangs seek nothing less than to control prison life and to extend their power outside prison walls."). Consequently, petitioner will be denied leave to proceed on his claim that respondents Oliverson, Nichols, Hepp and Raemisch violated his right to free speech by refusing to deliver the November 2005 issue of "Spin" magazine and the March 9, 2006 issue of "Rolling Stone" magazine because each item allegedly contained gang signs.

It is less clear that respondents had a legitimate security reason for denying petitioner the books purchased for him from his family that contained allegedly offensive jokes. Although prison officials may have reasons for refusing to deliver material that may be inflammatory, it is also true that many works of literature contain statements that could be classified as offensive or derogatory, if read in isolation. At this stage of the proceedings it would be premature to take prison officials at their word and assume that the denied publications contained jokes that would jeopardize the security of the institution. Those are

facts to be developed on summary judgment or at trial. Consequently, petitioner will be granted leave to proceed against respondents Hepp and Raemisch on his claim that they violated his right to free speech by refusing to deliver six books sent to petitioner on December 16, 2005 because they allegedly contained offensive jokes.

6) Publications without receipts

Petitioner's challenge to the prison policy regarding receipts appears to echo his challenge to the policy prohibiting pre-owned publications. According to petitioner, respondent Oliverson refused to deliver six issues of a magazine sent to petitioner on August 29, 2005, because the magazines arrived without receipts. When petitioner filed an inmate complaint regarding the decision, respondents Hepp and Raemisch dismissed it, stating that receipts are required for "all items" received by the prison. Petitioner contends that numerous items, including single issue magazines, college literature and retail catalogues are delivered to inmates without receipts.

It is unclear whether petitioner disputes that any "receipt only" policy exists or whether he is contending that the exceptions swallow the rule, making the policy meaningless. Insofar as petitioner is challenging the prison's refusal to deliver him items without a penological reason for doing so, he has stated a claim under the First Amendment. Consequently, petitioner will be granted leave to proceed on his claim that respondents

Oliverson, Hepp and Raemisch violated his right to free speech by refusing to deliver six magazines to him on August 29, 2005 because they arrived without a receipt.

b. Retaliation

To state a retaliation claim, a prisoner must allege that he engaged in constitutionally protected conduct and that his protected actions prompted one or more prison officials to take adverse action against him. Mt. Healthy Board of Education v. Doyle, 429 U.S. 274, 287 (1977); Johnson v. Kingston, 292 F. Supp. 2d 1146, 1153 (W.D. Wis. 2003). Petitioner contends that respondent LaCost issued him a conduct report when he tried to send letters to a lawyer representing the prisoner class in Aiello (see section B.2.a.3), above) and the Clerk of the Wisconsin Supreme Court, and that respondent Karlen affirmed the conduct report on appeal. In addition, petitioner contends that prison staff member K. Bauer (who is not named as a respondent) issued him a conduct report in retaliation for his request to gain access to materials in the prison law library (presumably in order to aid his ongoing litigation efforts), and that respondent Karlen upheld that conduct report as well.

Inmates have a right of access to the courts. Lewis v. Casey, 518 U.S. 343, 351 (1996). Researching the law and corresponding with lawyers and courts are necessary components of accessing courts to litigate claims. Drawing all inferences in petitioner's favor, I infer that writing to his lawyer and the Wisconsin Supreme Court clerk and asking

for access to prison law library materials were constitutionally protected activities. Because petitioner alleges that he was punished because of these activities, he has stated a claim that respondents LaCost and Karlen retaliated against him by issuing conduct reports in connection with his request for law library material and letters to his lawyer and the Wisconsin Supreme Court clerk.

3. Due process

The Fourteenth Amendment prohibits states from depriving "any person of life, liberty or property without due process of law." U.S. Const. Amend. XIV. For petitioner to state a claim that his due process rights have been violated by prison officials, he must show that (1) he has a protected property interest and (2) government officials used inadequate procedures before depriving him of his property. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). Therefore, the first question in any due process analysis is whether a protected liberty or property interest has been infringed. In the prison context, liberty interests are "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose [ ] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). In other words, liberty interests are implicated when a prisoner's

sentence is prolonged or he is subjected to conditions that are not the typical ones encountered by prisoners. Petitioner contends that he was deprived of due process in connection with his access to prison programming, his security classification and his ability to obtain legal loans.

a. Prison programming and security classification

Because petitioner is a sex offender subject to Wisconsin's presumptive mandatory release law, he is eligible for discretionary parole release under Wis. Stat. § 302.11(1g). Inmates subject to § 302.11(1g) may be denied parole release if the parole commission determines that release would endanger public protection or the inmate has refused to participate in recommended counseling or treatment while incarcerated. Wis. Stat. § 302.11(1g)(b). Petitioner does not challenge the fact that he has no liberty interest in obtaining discretionary parole, nor should he since the argument would be unavailing. Instead, petitioner challenges his ability to obtain antecedents to parole: sex offender treatment and a lower security classification.

Petitioner contends that respondents' refusal to permit him to enter a sex offender treatment program impinges on his ability to secure parole release. It is true that petitioner's prospects for parole are bleak unless he completes sex offender programming; however, incarcerated persons have no constitutional right to rehabilitative programming, such as the

sex offender therapy petitioner seeks. Although providing prisoners with access to these programs may be desirable, denying them access does not constitute an "atypical and significant hardship," particularly when inmates have no protected interest in obtaining the tangible reward the program promises, which is the possibility of parole.

To the extent that petitioner contends that his classification as a "moderate" security risk is a violation of his due process rights, he fares no better. According to petitioner, he is classified as a moderate security risk because has not received sex offender treatment. Because the unavailability of treatment is beyond his control, petitioner contends, his right to due process is infringed by prison officials' failure to classify him as a low security risk, making him eligible for less restrictive conditions of confinement. However, the due process clause does not extend to prisoner security classifications (at least insofar as those classifications do not require prisoners to be placed in atypical, super-maximum security custody, see Wilkinson, 125 S. Ct. at 2395). Moody v. Daggett, 429 U.S. 78, 88 n. 9 (1976) (no legitimate statutory or constitutional entitlement sufficient to invoke due process in prisoner classification); Harbin-Bey v. Rutter, 420 F.3d 571, 576 (6th Cir. 2005) (no constitutional right to be placed in specific security classification); Neal v. Shimoda, 131 F.3d 818, 828 (9th Cir. 1997) (prisoner does not have constitutional right to receive particular security classification); Meriwether v. Faulkner, 821 F.2d 408, 415 n. 7 (7th Cir. 1987) ("An inmate has no legitimate expectation under the Due Process Clause of being

assigned to a particular institution or in receiving a particular security classification").

Because petitioner has no liberty interest in obtaining sex offender therapy or in being classified as a low security risk, he will be denied leave to proceed on his claim that unspecified prison officials violated his due process rights by preventing him from entering sex offender therapy, classifying him as a moderate security risk and dismissing his inmate grievances on those issues.

Petitioner contends also that he has a due process right to participate in programs during the time he was held in program segregation status in the fall of 2003. Again, because in itself the denial of programming does not constitute an atypical and significant hardship in relation to the incidents of ordinary prison life, petitioner has no protected liberty interest that would entitle him to due process protection. Petitioner relies heavily on the fact that Wis. Admin. Code § DOC 303.70(7) provides that:

> The institution shall provide social services, clinical services, program opportunities and an opportunity to exercise for inmates in program segregation and disciplinary separation, but the institution shall provide these services at the individual's cell, unless otherwise authorized by the warden.

To the extent that denying petitioner programming violated § DOC 303.70(7), petitioner's claim is a state law claim, over which I will decline to exercise supplemental jurisdiction.

b. Legal loan policy

Wisconsin Administrative Code § DOC 309.51(1) governs the disbursement and repayment of legal loans made to prisoners and provides that:

> Correspondence to courts, attorneys, parties in litigation, the inmate complaint review system under ch. DOC 310 or the parole board may not be denied due to lack of funds, except as limited in this subsection. Inmates without sufficient funds in their general account to pay for paper, photocopy work, or postage may receive a loan from the institution where they reside. No inmate may receive more than $200 annually under this subsection, except that any amount of the debt the inmate repays during the year may be advanced to the inmate again without counting against the $200 loan limit. The $200 loan limit may be exceeded with the superintendent's approval if the inmate demonstrates an extraordinary need, such as a court order requiring submission of specified documents.

Petitioner asserts that the prison's interpretation of the administrative code provision is recorded in Internal Management Procedure (IMP) 29, which requires prisoners wishing to use legal loan funds to submit their legal correspondence unsealed so that prison staff can insure that the loan funds are being used for legal purposes only. Petitioner believes that by requiring him to choose between sending sealed mail and having access to legal loans, the prison is violating his right to free speech by requiring him to open otherwise privileged mail. Petitioner contends also that by prohibiting legal loan funds from being used in connection with habeas petitions, the policy denies prisoners their right of access to the courts.

There are several problems with petitioner's claim. First, although he objects to the policy on principle, he has not indicated that he has suffered any concrete injury that would give him standing to challenge the policy. Moreover, the policy he challenges, which took

effect January 1, 2005, was abandoned three months later when prison officials adopted a revised version of the policy that suffers from none of the infirmities petitioner alleges. See DOC 309 IMP 29 (eff. March 21, 2005).

Wisconsin is under no constitutional obligation to provide petitioner with any assistance in pursuing his civil litigation. Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003). There is "no constitutional entitlement to subsidy" to prosecute civil lawsuits. Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002). Therefore, even if the prison had forced petitioner to choose between submitting otherwise privileged mail unsealed and obtaining legal loan funds, there would be no constitutional violation. Prison officials are free to place conditions on the receipt of the funds as they wish. Because petitioner has not alleged facts sufficient to establish his standing to challenge § DOC 309 IMP 29 and because he has no right to the legal loan funds authorized by § DOC 309.51(1), he will be denied leave to proceed on his claim that IMP 29 violates his right to free speech. To the extent that petitioner is contending that IMP 29 violates Wis. Admin. Code § DOC 309.51(1) by interpreting the provision too narrowly, his claim arises under state law and will be dismissed without prejudice.

c. Policy of "non review"

Petitioner contends that prison officials have violated his rights (by which I infer he

means his right to due process) by refusing to permit him to review publications they have refused to deliver in order to facilitate his ability to challenge the denial in inmate complaints. Although prison officials must provide some notice to petitioner when his mail is not delivered, Procunier v. Martinez, 416 U.S. 396, 417 (1974) (holding that the "decision to censor or withhold delivery of a particular letter must be accompanied by minimum procedural safeguards"), overruled on other grounds, they are under no obligation to permit him to see the publications they have determined would compromise safety, rehabilitation or would otherwise be inappropriate for the prison environment. To require them to do so would be to render meaningless the prison's ability to screen incoming mail. Petitioner admits that he was notified of decisions to reject his mail and was provided an opportunity to challenge those decisions. No more is required. Because the policy prohibiting inmates from reviewing denied publications is not unconstitutional, petitioner will be denied leave to proceed on his claim that it is.

4. Cruel and unusual punishment

Petitioner contends that respondents Karlen and O'Donnell exhibited deliberate indifference to his serious medical needs when they refused to provide him with more than three free bars of soap a month for showering. Although the prison has begun providing free liquid hand soap in the restrooms for hand washing (but not for showering), for some time

the prison provided only bar soap for both hand washing and bathing.

The Eighth Amendment is violated only when prison officials are deliberately indifferent to inmate health or safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). The Supreme Court has said that in the context of prisoner litigation, "deliberate indifference" means that an official (1) was aware of facts that could lead to the conclusion that a prisoner was at substantial risk of serious harm and (2) actually came to the conclusion that the prisoner was at substantial risk of serious harm. Id. at 837. Under this legal standard, it is not enough that an official "should have known" of a risk to petitioner. Rather, the official must actually know of a risk and consciously choose to disregard it. Higgins v. Correctional Medical Services of Illinois, 178 F.3d 508, 511 (7th Cir. 1999).

Prisons must provide inmates with materials sufficient to meet basic levels of sanitation and hygiene, Sanders v. Sheahan, 198 F.3d 626, 629 (7th Cir. 1999), to "combat[] illness and contribute[] to the prevention of future health problems," Board v. Farnham, 394 F.3d 469, 482-483 (7th Cir. 2005). Soap is perhaps the most basic hygenic product.

Petitioner contends that each bar of soap lasts two to three days, and that he consumes his supply of soap within one week, leaving him without soap for approximately three weeks of each month. Prisoners do not have a constitutional right to a daily shower, so to the degree that petitioner is contending that he ought be given enough soap to permit

him to shower and scrub daily, his claim is doomed to failure. See, e.g., Davenport v. DeRobertis, 844 F.2d 1310, 1316 (7th Cir. 1988) (finding no support in "constitutional doctrine" for proposition that inmates are entitled to three showers a week). To prove that respondents Karlen and O'Donnell exhibited deliberate indifference to his health, petitioner would have to show that before the prison began providing free hand soap, he was given an inadequate amount of soap to prevent him from becoming ill, that respondents turned a blind eye to the danger in which they placed him and that he did in fact suffer injury from the lack of adequate soap. Although the hurdles petitioner faces are legion, at this stage of the proceedings I cannot say that he will be unable to surmount them. Therefore, petitioner will be granted leave to proceed on his claim that respondents Karlen and O'Donnell exhibited deliberate indifference to his serious health needs by refusing to provide him with adequate quantities of soap.

5. Miscellaneous

In his complaint, petitioner raises a number of challenges to prison practices and policies he believes violate his rights in unspecified ways. Petitioner does not assert that these practices violate state law, but rather that they are fundamentally unfair.

a. Confiscation of gifts and wages

Petitioner challenges the Wisconsin Department of Corrections' policy under which 100% of deposits made to a prisoner's trust fund account are applied first to debts incurred by the prisoner, regardless whether the deposited funds come from wages earned or gifts made to the prisoner by friends or family members. Petitioner objects to this policy because he believes that it forces him to choose between pursuing his extensive civil ligation efforts (according to publicly available records, in the past five years petitioner has filed at least 16 civil suits in Wisconsin state courts and three in federal court) and engaging in other activities, such as purchasing stamps and paper for the purpose of corresponding with his family. Although he does not specify how the policy violates his rights, he implies that it impinges on his right to free speech (by limiting the funds he has available to purchase paper and stamps) and his right to be free from cruel and unusual punishment (by diminishing the funds with which he may purchase extra hygiene products; for more on that subject, see section B.4., above.)

As discussed in section 3.B. above, Wis. Admin. Code § DOC 309.51(1) provides that inmates may receive loans of up to $200 each year to purchase "paper, photocopy work, or postage" for "correspondence to courts, attorneys, parties in litigation, the inmate complaint review system or the parole board." These funds are loans, not grants, and are therefore subject to repayment:

The institution shall charge any amount advanced under this subsection to the

> inmate's general account for future repayment. An inmate *may be permitted* to retain in the inmate's general account an amount of money specified, in writing, by the bureau of adult institutions that is not subject to repayment of the loan.

Id. (Emphasis added.) Wisconsin law permits prison officials to allow inmates to retain funds not subject to automatic collection, but it does not mandate such generosity. The loans authorized by § DOC 309.51 are not "funds which are disbursed or credited to an inmate's account to be used as he wishes but rather [are] simultaneous credits and debits . . . for the sole purpose of enabling prisoners to purchase paper, photocopy work, or postage on credit." Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003) (citing Luedtke v. Bertrand, 32 F. Supp. 2d 1074, 1076 (E.D. Wis. 1999)). Petitioner has "no constitutional entitlement to subsidy" in prosecuting his civil lawsuit. Id.; Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002). Like all people on tight budgets, petitioner will have to make judicious choices about how he allocates his limited income. Neither the federal Constitution nor Wisconsin law requires prisons to allow prisoners to give priority to their personal purchases over repayment of their debts. Therefore, prison officials have not acted wrongly by requiring petitioner to repay the amounts he has borrowed before allowing him to purchase other items. Petitioner will be denied leave to proceed against respondents Karlen and Hepp on his claim that they violated his rights under federal law by applying 100% of the funds deposited into his prison account toward repayment of his legal loans.

b. Inmate grievance system

Before a prisoner may file a civil case in federal court, he must first exhaust the administrative remedies available to him under state law. Dole v. Chandler, 438 F.3d 804, 809 (7th Cir. 2006). To exhaust his administrative remedies, "a prisoner must file complaints and appeals in the place, and at the time, the prison's administrative rules require." Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). Under Wisconsin law, all inmate grievances are reviewed first at the institutional level. If an inmate's complaint is dismissed, the aggrieved inmate may "appeal th[e institution's] decision by filing a written request for review with the corrections complaint examiner on forms supplied for that purpose." Wis. Admin. Code § DOC 310.13(1). The appeal must be filed "within 10 calendar days after the date of the [institution's] decision." Id.

Petitioner contends that he has been prevented from exhausting "several complaints" because on several occasions it has taken 12 days from the time he placed appeals in the prison mailbox for the appeals to leave the institution. In those cases, his appeals were rejected as untimely. When petitioner has filed grievances asking prison officials to consider his appeals filed on the date he places them in the prison mailbox, he has been told that Wisconsin does not adhere to the "mailbox rule."

Standing alone, petitioner's complaints regarding the manner in which Wisconsin prison officials calculate the timeliness of his inmate grievances do not state a claim of any constitutional violation. Moreover, because exhaustion is an affirmative defense which respondents bear the burden of proving. Dale v. Lappin, 376 F.3d 652, 655 (7th Cir. 2004), I need not decide at this stage of the proceedings whether petitioner has exhausted his administrative remedies with regard to each claim on which he has been given leave to proceed. However, to the extent that petitioner is anticipating arguments prison officials may raise later in this lawsuit, I direct the parties' attention to Dole, 438 F.3d at 811, which outlines the considerations to be made in determining whether an inmate has filed a timely grievance.

6. Respondent Frank and unidentified respondents

Among the respondents petitioner has named is Matthew Frank, Secretary of the Wisconsin Department of Corrections. Because petitioner does not allege that respondent Frank was involved personally in any of the alleged violations against him, Frank is not a proper respondent to this lawsuit and will be dismissed.

I note that petitioner has alleged that numerous unnamed staff members participated in opening his legal mail, delaying the placement of books on atheism in the prison library, refusing to deliver mail on the ground that it was free, used or arrived without a receipt,

confiscating his Loompanics Unlimited catalogue, and returning "several" months' worth of "several magazines" to the publisher in the fall of 2005 for no reason. However, petitioner has named respondent Hepp, the warden of the Jackson Correctional Institution, as a respondent to many of his claims in this action. As warden, respondent Hepp is in a better position than petitioner to identify these unnamed respondents. Duncan v. Duckworth, 644 F.2d 653, 656 (7th Cir. 1981).

Early in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed respondents and will set a deadline within which petitioner is to amend his complaint to include the unnamed respondents.

C. State Law Claims

When a district court has dismissed claims over which it has original jurisdiction, it may decline to exercise supplemental jurisdiction over state law claims related to the dismissed federal claims. 28 U.S.C. 1367(c)(3); Carr v. CIGNA Securities, Inc., 95 F.3d 544, 546 (7th Cir. 1996). Although petitioner will be granted leave to proceed in forma pauperis with respect to many of the claims he has raised in this lawsuit, a number of state law claims remain that are unrelated to the federal claims on which he is proceeding. These

include petitioner's claims that respondents Olson and Hepp applied the wrong standard in deciding to deny petitioner's request for a nonreligious inmate study group; respondent Hepp and unidentified prison mailroom staff violated Wis. Admin Code § DOC 309.04(3)(d) by opening a letter sent to petitioner from Senator Herb Kohl in November 15, 2004; respondents Oliverson and Nichol violated Wis. Admin Code § DOC 309.04(3)(i) by opening mail sent to petitioner from the Wisconsin Court of Appeals, the United States Bankruptcy Court and the United States District Court outside petitioner's presence; unspecified prison officials violated § DOC 303.70(7) by denying petitioner access to programs while he was confined in program segregation status; and IMP 29 violates Wis. Admin. Code § DOC 309.51(1) by interpreting the provision too narrowly. Each of these claims will be dismissed without prejudice to petitioner's filing them in state court.

ORDER

IT IS ORDERED that petitioner James J. Kaufman's request for class certification is DENIED.

FURTHER, IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is

1. GRANTED with respect to his claims that

    a) respondent Hepp violated his rights under the establishment clause by

refusing to permit petitioner to obtain and possess a silver circle as an emblem of his atheist beliefs;

b) unidentified respondents violated his rights under the establishment clause by making Christian literature readily available to inmates while impeding petitioner's access to atheist literature;

c) respondents Nichols, Oliverson, Hepp, Karlen, Raemisch and unidentified prison staff members violated the establishment clause by prohibiting petitioner from receiving free nonreligious items and publications while permitting other inmates to receive free religious items and publications;

d) respondents Karlen, O'Donnell, Hepp, Raemisch and unidentified prison mailroom staff violated petitioner's rights under the First Amendment by permitting his legal mail to be opened outside his presence on May 9, 2003, August 13, 2005, and November 21, 2005;

e) respondents Karlen, O'Donnell, prison staff member "P.S." and unidentified prison mailroom staff violated petitioner's constitutional rights by opening his legal mail outside his presence on March 23, 2003, May 19, 2003, July 1, 2003, September 22, 2003, October 6, 2003, February 5, 2004, June 23, 2005, and July 5, 2005;

f) respondent Hepp and unidentified prison officials violated petitioner's right to free speech by refusing to deliver "several" months' worth of "several" magazines in

the Fall of 2005 by returning them to the publisher for no legitimate reason;

g) respondents Karlen, O'Donnell and unidentified prison officials violated petitioner's right to free speech by confiscating his "Loompanics Unlimited" book catalog for no legitimate reason;

h) respondents Hepp and Raemisch violated petitioner's right to free speech by refusing to deliver six books sent to petitioner on December 16, 2005, because the books allegedly contained offensive jokes;

i) respondents Oliverson, Hepp and Raemisch violated petitioner's right to free speech by refusing to deliver six magazines to him on August 29, 2005 because they arrived without a receipt;

j) respondents LaCost and Karlen retaliated against petitioner by issuing conduct reports in connection with his request for law library material and letters to his lawyer and the Wisconsin Supreme Court clerk; and

k) respondents Karlen and O'Donnell exhibited deliberate indifference to petitioner's serious health needs by refusing to provide him with adequate quantities of soap.

2. DENIED with respect to petitioner's claims that

a) the Wisconsin Constitution violates the establishment clause by making reference to God;

b) Wis. Stat. § 46.066(3) violates the establishment clause by guaranteeing

prisoners access to the Bible if they request it;

c) Wis. Stat. § 301.47(2) violates the free exercise clause or RLUIPA by prohibiting him from changing his name;

d) Wis. Admin. Code § DOC 309.51 violates petitioner's rights under the First or Eighth Amendments by requiring 100% of his income to be credited toward the outstanding balance on his legal loans;

e) Internal Management Procedure 29 for Wis. Admin. Code § DOC 309.51 violates petitioner's right to free speech;

f) respondents Oliverson and Nichols violated petitioner's right to free speech by opening letters from the Wisconsin Court of Appeals, the U.S. Bankruptcy Court, and the U.S. District Court outside petitioner's presence on June 6, 2003, July 8, 2004, and February 1, 2005;

g) respondents Karlen, O'Donnell, Nichols, Olson, Raemisch, Oliverson, Hepp and unidentified prison staff violated petitioner's right to free speech by failing to deliver materials they deemed pornographic;

h) respondents Oliverson, Nichols, Hepp and Raemisch violated petitioner's right to free speech by refusing to deliver the November 2005 issue of "Spin" magazine and the March 9, 2006 issue of "Rolling Stone" magazine because each item allegedly contained gang signs;

i) respondents Karlen, Raemisch, Hepp and unidentified prison officials violated petitioner's right to free speech by refusing to allow him to receive used books from the Michigan City Prisoner Outreach program and the Prison Book Program;

j) unspecified prison officials violated petitioner's due process rights by preventing him from entering sex offender therapy, classifying him as a moderate security risk and preventing him from accessing programs while in program segregation status; and

k) unspecified prison officials violated petitioner's right to due process by prohibiting him from reviewing denied publications.

3. Respondents Matthew Frank, Alan Minshall and Myron Olson are DISMISSED from this lawsuit;

4. The following state law claims are DISMISSED without prejudice to petitioner's filing them in state court:

a) respondents Olson and Hepp applied the wrong standard in deciding to deny petitioner's request for a nonreligious inmate study group;

b) respondent Hepp and unidentified prison mailroom staff violated Wis. Admin Code § DOC 309.04(3)(d) by opening a letter sent to petitioner from Senator Herb Kohl in November 15, 2004;

c) respondents Oliverson and Nichol violated Wis. Admin Code § DOC 309.04(3)(i) by opening mail sent to him from the Wisconsin Court of Appeals, the United

States Bankruptcy Court and the United States District Court outside petitioner's presence;

d) unspecified prison officials violated § DOC 303.70(7) by denying petitioner access to programs while he was confined in program segregation status;

e) Internal Management Procedure 29 violates Wis. Admin. Code § DOC 309.51(1) by interpreting the provision too narrowly.

5. For the remainder of this lawsuit, petitioner must send respondents Thomas Karlen, Randall Hepp, Cynthia O'Donnell, Richard Raemisch, Danielle LaCost, Perry Nichols and April Oliverson a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondents or to respondents' lawyer.

6. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. The unpaid balance of petitioner's filing fee is $341.97; petitioner is obligated to pay this amount when he has the means to do so, as described in 28 U.S.C. § 1915(b)(2).

8. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney

General for service on respondents.

Entered this 13th day of July, 2006.

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