

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

JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

07-C-45-C

RICHARD SCHNEITER (WSPF Warden);
PETER HUIBREGTSE (WSPF Deputy Warden);
RANDALL HEPP (JCI Warden); CARI TAYLOR
(JCI Deputy Warden); CYNTHIA THORPE,
MARY MILLER and MS. T. GERBER (WSPF
Business Office),

Defendant.

In this civil action for declaratory, injunctive and monetary relief, plaintiff James Kaufman is proceeding on claims that (1) defendant Randall Hepp transferred him to the Wisconsin Secure Program Facility because plaintiff sued him in Case No. 06-C-205-C; (2) defendants Richard Schneider and Peter Huibregtse violated his First Amendment rights by upholding a prison policy under which he is denied all publications; (3) defendant Cari Taylor violated his rights under the First Amendment by not delivering his September 5, 2006 letter; (4) defendants Schneider and Huibregtse violated his right to practice his atheist

beliefs by preventing him from ordering publications about atheism in violation of the free exercise clause and RLUIPA; and (5) defendant Schneter violated his rights under the Eighth Amendment by forcing him to choose between out-of-cell exercise and time spent in the prison law library.

Now before the court is plaintiff's motion for reconsideration of the court's February 15, 2007 screening order, in which I granted him leave to proceed in forma pauperis on the claims listed above and denied him leave to proceed on a number of additional claims. In his motion, plaintiff contends that the court erred by dismissing his claims that (1) defendants Taylor and Hepp violated his right to practice his atheist beliefs by refusing to approve a study group for inmates who designate themselves as atheists, humanists, freethinkers and "other" and inmates who have no religious preference, in violation of the free exercise clause and RLUIPA and (2) defendant Huibregtse violated his right to practice his atheist beliefs by refusing to provide him with publications about atheism in violation of the free exercise clause and RLUIPA. In addition, plaintiff asserts that the court failed to analyze each of these claims under the establishment clause, under which he intended to proceed.

As I explained in the February 15, 2007 screening order, plaintiff's request for an interfaith study group, while perhaps laudable, does not fall within the ambit of the protections afforded by RLUIPA or the free exercise clause of the First Amendment.

Plaintiff's right to freely exercise his religious beliefs does not extend to a right to communal gatherings designed to permit him to share his religious beliefs with others who do not share his beliefs. Although prison officials are obligated to provide fora in which prisoners may communally celebrate their shared religious traditions when doing so is not inconsistent with legitimate penological concerns, they are not required to provide occasion for inmates of different religious traditions to gather for communal dialogue. Such events might be educational and enriching; however, they do not constitute an exercise of sincerely held religious beliefs. Consequently, plaintiff's motion for reconsideration will be denied with respect to his request to proceed in forma pauperis on his claim that defendants Taylor and Hepp violated his rights by refusing to approve a study group for inmates who designate themselves as atheists, humanists, freethinkers and "other" and inmates who have no religious preference.

The same holds true with respect to plaintiff's request for religious materials. Petitioner alleged in his complaint that the prison chaplain provided him with 12 pages of printed material on atheism, which was all the information the chaplain had in his possession. Although plaintiff wanted more to read, the prison is not required under either RLUIPA or the free exercise clause to subsidize plaintiff's religious pursuits by purchasing religious reading material for him. Therefore, plaintiff has failed to state a claim against defendant Huibregtse for his alleged refusal to provide plaintiff with publications about

atheism.

Nevertheless, I now understand plaintiff to contend that defendant Huibregtse violated his rights under the establishment clause by refusing to provide plaintiff with more reading material on atheism while providing “thousands upon thousands of pages” of similar material to Christian inmates. Plaintiff’s allegations are sufficient to state a claim under the establishment clause. Consequently, I will grant him leave to proceed on his claim that defendant Huibregtse violated his rights under the establishment clause by refusing to provide plaintiff with atheist reading material while providing religious reading material to Christian inmates.

ORDER

IT IS ORDERED that plaintiff James Kaufman’s motion for reconsideration of the court’s February 15, 2007 order is

1. DENIED with respect to his claims that

a) defendants Taylor and Hepp violated his rights under RLUIPA and the free exercise clause by refusing to approve a study group for inmates who designate themselves as atheists, humanists, freethinkers and “other” and inmates who have no religious preference; and

b) defendant Huibregtse violated his right to practice his atheist beliefs by

refusing to provide him with publications about atheism in violation of the free exercise clause and RLUIPA.

2. GRANTED with respect to his claim that defendant Huibregtse violated his rights under the establishment clause by refusing to provide plaintiff with atheist reading material while providing religious reading material to Christian inmates.

Entered this 30th day of April, 2007.

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