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

RANDY JAY SMITH,

Plaintiff,

v.

NEIL JENSEN,

Defendant.[1]

OPINION AND ORDER

14-cv-226-wmc

Plaintiff Randy Jay Smith is presently in state custody at the Sand Ridge Secure Treatment Center in Mauston under Wis. Stat. ch. 980. He filed this proposed civil action pursuant to 42 U.S.C. § 1983, alleging denial of the right to practice his religious beliefs. Since Smith has already been found eligible to proceed *in forma pauperis* and made an initial, partial payment of the filing fee, the final step for the court is to screen plaintiff's complaint, dismissing any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2). After considering all of the pleadings and the applicable law, the court will grant Smith leave to proceed with all of his claims.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of

[1] The original complaint lists Steven Schneider as a defendant. In a supplement filed on July 21, 2014, Smith voluntarily dismisses Schneider as a defendant. (See Dkt. # 8.) According to that supplement, the only remaining defendant is Neil Jensen.

this order, the court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts.

At all times relevant to the complaint, Smith has been confined as a patient at the Sand Ridge Secure Treatment Center ("Sand Ridge"), where defendant Neil Jensen is employed by the Wisconsin Department of Health Services as a chaplain.

Smith practices the Wiccan religious faith and attends Wiccan services at Sand Ridge. Sand Ridge has a computer system in each housing unit that is called "Patient Land." For six years, Smith used this computer system to access religious study programs and "clip art" related to his Wiccan faith. In particular, Smith has used clip art of religious symbols in connection with his religious studies and unspecified Wiccan rituals.

In February 2013, Jensen advised Smith that he and other Wiccan patients could no longer use the computer system to access religious symbols. According to Smith, security personnel at Sand Ridge "questioned" the use of computer resources for religious purposes (rather than for treatment), but other religious groups are allowed to use the computer system to practice *their* religious beliefs. The Wiccan religious group was allegedly singled out for different treatment. As a result of being banned from the computer system, Smith claims to have been forced to find "other means" of receiving religious studies related to his Wiccan faith. Alleging that Jensen's interference violates his rights, Smith now seeks monetary damages for every day that he was denied the right to practice his religious beliefs.

OPINION

Smith seeks relief pursuant to 42 U.S.C. § 1983 for violations of his civil rights. To establish liability under § 1983, a plaintiff must establish that: (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989). A plaintiff must also establish each defendant's personal involvement in the constitutional violation. *See Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).

Construing his complaint generously, Smith contends that Jensen has violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc to 2000cc–5, which prohibits the government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the burden furthers "a compelling governmental interest" and does so by "the least restrictive means." *Cutter v. Wilkinson*, 544 U.S. 709, 714-15 (2005). Assuming that the RLUIPA even applies, Smith cannot prevail, however, because RLUIPA does not permit claims for money damages against states or prison officials in their official capacity, *see Sossamon v. Texas*, — U.S. —, 131 S. Ct. 1651, 1658-60 (2011), or against prison officials in their personal capacities, *see Vinning-El v. Evans*, 657 F.3d 591, 592 (7th Cir. 2011 (citing *Nelson v. Miller*, 570 F.3d 868 (7th Cir. 2009)).

To the extent that Smith seeks monetary damages, his claim may still be

actionable under the First Amendment Free Exercise Clause, which prohibits the state from imposing a "substantial burden" on a "central religious belief or practice." *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013) (citations omitted); *see also Hernandez v. Comm'n of Internal Revenue*, 490 U.S. 680, 699 (1989) (citing *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 760 (7th Cir. 2003)). The First Amendment Establishment Clause may also be violated *without* a substantial burden on religious practice if the government favors one religion over another (or religion over nonreligion) without a legitimate secular reason for doing so. *See Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir. 2005) (citing *Linnemeir v. Bd. of Trustees of Purdue Univ.*, 260 F.3d 757, 759 (7th Cir. 2001); *Metzl v. Leininger*, 57 F.3d 618, 621 (7th Cir. 1995); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1168–69 (7th Cir. 1993)); *see also Johnson-Bey v. Lane*, 863 F.2d 1308, 1311 (7th Cir. 1988) ("[T]he prison may not, because it is contemptuous or unreasoningly fearful of a particular sect, place arbitrary obstacles in the way of inmates seeking to participate in the sect's modes of observance.") (citing *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam)).

In this case, Smith appears to contend that Jensen imposed a substantial burden on his religious beliefs or practices by prohibiting members of the Wiccan faith from using the computer system for religious study. Because other religious groups are allegedly allowed to use the computer system to practice their faith, Smith's allegations appear to implicate the Free Exercise and Establishment Clause of the First Amendment, at least at this early screening stage of the case. Accordingly, the court will grant Smith's request for leave to proceed with claims under the First Amendment.

Although Smith's allegations pass muster under the court's lower standard for screening, he will have the initial burden to *prove* that (1) the religious beliefs he espouses are bona fide; (2) his beliefs are sincerely held; and (3) the desired activity is essential to the practice of his religion. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972). As mentioned, to prevail on a claim under the Free Exercise Clause in particular, he must also show that his religious exercise is substantially burdened. *Vision Church v. Village of Long Grove*, 468 F.3d 975, 996-97 (7th Cir. 2006). A "substantial burden" is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). In the prison context, a regulation that impinges on an inmate's constitutional rights, such as one imposing a "substantial burden" on free exercise, may be justified if it is "reasonably related to legitimate penological interests." *O'Lone v. Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

ORDER

IT IS ORDERED that:

1) Plaintiff Randy Jay Smith's request for leave to proceed with claims under the First Amendment against defendant Neil Jensen is GRANTED.

2) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

3) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

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

Entered this 16th day of March, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge