

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAYSHAWN VONPERBANDT,)	
)	
Plaintiff,)	
)	
v.)	
)	
JOHN BALDWIN, <i>in his official capacity</i> ,)	
JOHN NUNLEY, NIKKI ROBINSON,)	
WESTCARE FOUNDATION, INC.,)	
MR. HARVEY, MELISSA LEE, DELORES)	
LANE, DARLENE JOHNSON, AMANDA)	
STOTTLER, JEFF ADAMS, MARK J.)	
KONOPKA, CRYSTAL N. LATIGO,)	
JOHN DOE 1, and JOHN DOE 2,)	
<i>in their official and personal capacities</i> ,)	
Defendants.)	

No. 16-cv _____

COMPLAINT

INTRODUCTION

This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of the Plaintiff’s rights under the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the Illinois Religious Freedom Restoration Act.

Defendants expelled Plaintiff Rayshawn Vonperbandt, a prisoner at Sheridan Correctional Center, from a substance abuse program, and they are subjecting him to solitary confinement—all because he honored his convictions by declining to stand during a prayer to God. He brings suit to secure his freedom of religion and conscience.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

2. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b) because the events giving rise to the claims asserted in this complaint occurred in this judicial district.

PARTIES

3. Plaintiff Rayshawn Vonperbandt is, and has been at all relevant times, an Illinois Department of Corrections prisoner confined at Sheridan Correctional Center in Sheridan, Illinois.

4. Defendant John Baldwin is the Acting Director of the Illinois Department of Corrections. He has final responsibility for establishing, supervising, and operating substance abuse treatment programs in the Illinois Department of Corrections.

5. Defendant John Nunley is the Manager of Addiction Recovery Management Services Unit for the Illinois Department of Corrections and is responsible for establishing, supervising, and operating substance abuse treatment programs in the Illinois Department of Corrections.

6. Defendant Nikki Robinson is the Warden of Sheridan Correctional Center. She is responsible for all operations of the facility.

7. Defendant WestCare Foundation, Inc. ("WestCare") is a nonprofit corporation headquartered in the State of Nevada. Defendant WestCare contracts with the Illinois Department of Corrections to provide the substance abuse program at Sheridan Correctional Center.

8. Defendant Harvey is the Program Supervisor at Sheridan Correctional Center. Upon information and belief, Defendant Harvey is an employee of Defendant WestCare.

9. Defendant Melissa Lee is the Head Counselor at Sheridan Correctional Center. Upon information and belief, Defendant Lee is an employee of Defendant WestCare.

10. Defendants Delores Lane, Darlene Johnson, Amanda Stottler, and Jeff Adams are Counselors at Sheridan Correctional Center. Upon information and belief, these Defendants are employees of WestCare.

11. Defendant John Doe 1 is an Illinois Department of Corrections hearing investigator, and Defendant John Doe 2 is an Illinois Department of Corrections reviewing officer.

12. Defendant Mark J. Konopka and Defendant Crystal N. Latigo are Illinois Department of Corrections Hearing Officers.

13. In committing the acts and omissions described herein, WestCare and its employees named in this Complaint acted under color of state law. They exercised power over the substance abuse program and acquired the power to discipline Plaintiff and to issue Illinois Department of Corrections disciplinary tickets against Plaintiff. This power was made possible only by the fact that WestCare and its employees, by acting in close collaboration with the Illinois Department of Corrections and operating the substance abuse program at Sheridan Correctional Center, were clothed with authority of state law.

FACTUAL ALLEGATIONS

14. Plaintiff does not believe in the existence of God. This belief is deeply important to him. It is central to his religious identity, his conception of self, and his moral universe.

15. Plaintiff has struggled with substance abuse for much of his life. It began after Plaintiff was diagnosed, in high school, with a brain malformation that required brain surgery. Plaintiff was prescribed a number of addictive drugs for the pain. Substance abuse treatment is critical to his recovery.

16. In October of 2015, Plaintiff began a substance abuse treatment program provided by Defendant WestCare at Sheridan Correctional Center. The program was very beneficial to Plaintiff's recovery.

17. Plaintiff was forced to stand during a prayer to God (the Serenity Prayer) that regularly began the substance abuse treatment program. The prayer begins: "God grant me . . ." Plaintiff was forced to stand during this prayer to God seven times a week.

18. Participation in other aspects of the substance abuse programming at Sheridan Correctional Center also violated Plaintiff's beliefs. The readings repeatedly and frequently refer to God directly and to a "higher power," which Plaintiff understands as a reference to God.

19. The Twelve Steps system is used in substance abuse programming at Sheridan. Plaintiff does not have the 12 steps memorized word for word, but they closely resemble the following:

1. We admitted that we were powerless over our addiction, that our lives had become unmanageable.
2. We claim to believe that a power greater than ourselves could restore us to sanity.
3. We made a decision to turn our will and our lives over to the care of God as we understood Him.
4. We made a searching and fearless moral inventory of ourselves.
5. We admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. We were entirely ready to have God remove all these defects of character.
7. We humbly asked Him to remove our shortcomings.
8. We made a list of all persons we had harmed, and became willing to make amends to them all.

9. We made direct amends to such people wherever possible, except when to do so would injure them or others.

10. We continued to take personal inventory, and when we were wrong promptly admitted it.

11. We sought through prayer and meditation to improve our conscious contact with God, as we understood Him, praying only for knowledge of His will for us, and the power to carry that out.

12. Having had a spiritual awakening as a result of those steps, we tried to carry this message to addicts and to practice these principles in all our affairs.

20. There is no secular substance abuse program that is offered or available to Plaintiff.

21. Complying with the mandates of the program, including the requirement that Plaintiff stand during prayers to God, substantially burdened Plaintiff's ability to practice his own beliefs because participation in these religious observances was irreconcilable with his moral convictions.

22. Beginning in January 2016, Plaintiff remained seated during the Serenity Prayer. Plaintiff did not say anything or cause any disruption. Plaintiff remained seated, silently, because standing violated his beliefs and conscience.

23. Defendants Head Counselor Melissa Lee, Counselor Dolores Lane, and Counselor Darlene Johnson told Plaintiff that if he persisted in declining to stand during the Serenity Prayer, he would be punished with expulsion from the substance abuse program and transferred to a different prison.

24. Plaintiff attempted to work with staff, including Counselors Lee and Lane, to resolve his concerns. Plaintiff proposed sitting at the back of the group, so as to minimize any conceivable disruption that sitting silently would cause. They rejected these proposals. They told

Plaintiff that Program Supervisor Harvey instructed them that Plaintiff would be punished if Plaintiff did not stand during the prayer to God.

25. On or about January 29, 2016, Plaintiff received a major disciplinary ticket for not standing during the prayer. The ticket was issued by Counselor Lee. The witnesses listed on the ticket are Counselors Defendant Jeff Adams, Defendant Amanda Stottler, Defendant Delores Lane, and Defendant Darlene Johnson.

26. The ticket was approved by Defendant John Doe 1, a hearing investigator whose signature is illegible on the relevant form and Defendant John Doe 2, a reviewing officer whose signature is illegible on the relevant form.

27. Although the ticket accused Plaintiff of insolence, disobeying a direct order, and violation of the rules, the only supposedly insolent act involved was remaining quietly seated during the prayer.

28. On February 2, 2016, Plaintiff's counsel sent a letter to Defendant Warden Robinson and Illinois Department of Corrections Chief Legal Counsel LaShonda Hunt asserting that punishing Plaintiff would violate clearly established law and enclosing the Seventh Circuit's decision in *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996).

29. In early February, Plaintiff submitted an emergency grievance requesting that Plaintiff not be forced to stand during the prayer because of its invocation of God. Plaintiff has yet to receive any response.

30. On or about February 8, Plaintiff's hearing on the major disciplinary ticket occurred. Defendant Konopka was the hearing officer. Defendant Latigo signed off on the disposition, as did Defendant Warden Robinson.

31. At the hearing, Plaintiff presented Defendant Konopka with the letter from Plaintiff's counsel described above as well as the Seventh Circuit's decision in *Kerr*.

32. At the conclusion of the hearing, Plaintiff was expelled from the substance abuse program, expelled from the portion of the prison that houses only those prisoners participating in the program, and placed in general population. As additional punishment, Plaintiff was prohibited from leaving his cell for the dayroom and from using the exercise yard, gym, and phone for a period of 90 days.

33. Plaintiff was, in essence, placed in solitary confinement as punishment.

34. On or about February 16, Plaintiff appealed from the hearing officer's decision through the prison's administrative process. Plaintiff has yet to receive a response to the appeal.

COUNT I: ESTABLISHMENT OF RELIGION

Against All Defendants

35. Defendants punished Plaintiff for declining to stand during a prayer to God, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

COUNT II: RETALIATION

Against All Defendants

36. Defendants retaliated against Plaintiff, in violation of the First Amendment to the United States Constitution, for exercising his constitutional right not to stand during a prayer to God.

COUNT III: FREE EXERCISE OF RELIGION

Against All Defendants

37. Defendants substantially burdened Plaintiff's right to the free exercise of his religion (atheism) by punishing him for not standing during prayers to God without any legitimate penological rationale, in violation of the First Amendment to the United States Constitution.

COUNT IV: RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

Against All Defendants

38. Defendants substantially burdened Plaintiff's exercise of his religion (atheism) by punishing him for not standing during prayers to God, in violation of the Religious Land Use and Institutionalized Persons Act. The punishment to which Plaintiff was subjected was not the least restrictive means of advancing any compelling government interest.

COUNT V: EQUAL PROTECTION

Against All Defendants

39. Defendants discriminated against Plaintiff on the basis of religion by conditioning the availability of substance abuse treatment on his participation in religions indoctrination.

COUNT VI: ILLINOIS RELIGIOUS FREEDOM RESTORATION ACT

Against All Defendants

40. Defendants substantially burdened Plaintiff's exercise of his religion (atheism) by punishing him for not standing during prayers to God, in violation of the Illinois Religious Freedom Restoration Act. The punishment to which Plaintiff was subjected was not the least restrictive means of advancing any compelling government interest.

COUNT VII: ORGANIZATIONAL LIABILITY

Against Defendant WestCare Foundation, Inc.

41. WestCare and its employees and/or agents acted under color of state law in establishing a substance abuse program founded upon religion. WestCare is liable in respondeat superior for the actions of its employees and/or agents. In the alternative, WestCare is liable for the custom, policy, or practice of infusing religion into its substance abuse treatment program provided at Sheridan Correctional Center and of requiring participants to stand during prayers to God.¹

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendants in the following manner:

a. Adjudge and declare that the policies, practices, and conduct described in this Complaint are in violation of the rights of Plaintiff under the First Amendment and the Religious Land Use and Institutionalized Persons Act.

b. Enjoin the Defendants, their agents, employees, and all persons under their control from subjecting Plaintiff to the unlawful policies, practices, and conduct described in this Complaint.

c. Enjoin Defendants to return Plaintiff to the substance abuse treatment program, to lift the 90-day restrictions placed upon him as punishment for declining to stand, and to establish a secular substance abuse program.

¹ Under current law, Plaintiff must plead a policy or practice under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), in order to recover under Section 1983 against a private corporation that contracts with a government actor—*respondeat superior* does not apply. However, the Seventh Circuit has questioned whether the *Monell* policy or practice requirement, as opposed to ordinary *respondeat superior*, should apply in this circumstance. See *Shields v. Illinois Dep't of Corr.*, 746 F.3d 782, 786 (7th Cir. 2014). Accordingly, *Monell* and *respondeat superior* liability are pled in the alternative. The *respondeat superior* claim is pled on the basis of “a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b)(2).

- d. Award nominal, compensatory, and punitive damages to Plaintiff.
- e. Retain jurisdiction of this case until such time as the Defendants have fully complied with all orders of the Court, and there is reasonable assurance that the Defendants will continue to comply in the future with these orders.
- f. Award Plaintiffs reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988.
- g. Order all other just, appropriate, and proper relief.

DATED: February 29, 2016

Respectfully Submitted,

RAYSHAWN VONPERBANDT

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