

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

REVEREND STEPHEN JARRARD,)
and OLLIE MITCHELL MORRIS,)

Plaintiffs,)

v.)

Civil Action File
No.: 4:20-CV-00002-MLB

SHERIFF JOHNNY MOATS,)
CHIEF DEPUTY AL SHARP, and)
DEPUTY DUSTIN STROP,)
individually and in their official)
capacities,)

JURY TRIAL DEMANDED

Defendants.)
_____)

SECOND AMENDED COMPLAINT

Plaintiffs, Stephen Jarrard and Ollie Mitchell Morris, bring this Complaint for damages and injunctive relief. Plaintiff Morris seeks small damages for the denial of his right to a baptism, and Jarrard seeks small damages and injunctive relief both as to the standards for approval of religious advisors and the retaliatory denial of Jarrard’s series of applications because of his advocacy of

baptisms for incarcerated persons that conflicted with the religious views of Defendants.¹ Plaintiffs raise claims under the First and Fourteenth Amendments.

PARTIES

1. Plaintiff Stephen Jarrard is an Evangelist of the Church of Christ who previously performed full immersion baptisms at the Polk County Jail, and Ollie Morris was formerly incarcerated in that facility.

2. Plaintiff Ollie Mitchell Morris is a former inmate at the Polk County Jail who was repeatedly denied the right to have a baptism at the Polk County Jail.

3. Defendant Sheriff Johnny Moats is the final policymaker for the Polk County Jail in relation to religious exercise restrictions on inmates.

¹ Plaintiffs file this Second Amended Complaint as the Polk County Jail has again changed its policies regarding baptisms, religious exercise, and the procedure for seeking to provide religious counseling. The most recent amendment took place after Plaintiffs filed their First Amended Complaint. [Doc. 16]. Plaintiffs became aware of this policy only when Plaintiff Jarrard prepared an application following this Court's order on Defendants' motion to dismiss. [Doc. 34]. Plaintiffs have waited over two months following Jarrard's most recent application, but have not received any response to his application.

This Second Amended Complaint also conforms the claims to reflect those dismissed by that Order. Finally, Plaintiffs attempt to resolve confusing passages in their original Complaint both about whether new policies rescinded prior policies, and the specific outcomes of each application by Mr. Jarrard, if known (some applications have not yielded any response from Defendants). Plaintiff apologizes to the Court for any confusion in this regard.

4. Defendants Chief Deputy Al Sharp and Deputy Dustin Strop have enforced the policy preventing baptisms and prevented baptism by Plaintiff Jarrard for Plaintiff Morris and other incarcerated persons.

5. At all relevant times, Defendants acted under color of state law.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under to 28 U.S.C. § 1331 because this case presents a federal question under the First and Fourteenth Amendments.

7. Venue is proper in the Rome Division of the Northern District of Georgia under 28 U.S.C. § 1391(b) because all actions complained of occurred within the boundaries of this district and Defendants are located within this district.

FACTUAL ALLEGATIONS

Baptism as Part of Jarrard's Ministry to Incarcerated Persons

8. Stephen Jarrard, along with other members of the Church of Christ, regularly visit jail and prison facilities in North Georgia, leading groups in bible study classes.

9. Mr. Jarrard is no stranger to jail and prison ministry, having worked for more than 13 years in his capacity as a volunteer at a number of state and local facilities.

10. In 2016, Mr. Jarrard began as a religious advisor in Polk County Jail.

11. Mr. Jarrard performed several baptisms at the Polk County Jail.

12. In December of 2016, Mr. Jarrard was allowed to perform two separate full immersion baptisms of inmates under the condition that the baptism occurred on a weekday and during office hours as per phone conversations with Chief Sharp. Those were performed without any incident or concern.

13. Mr. Jarrard utilized a horse trough that is approximately two feet wide, two feet deep, and eight feet long to facilitate full immersion baptisms for people who request them. The trough was filled at the jail facility. (Attached hereto and incorporated herein as Exhibit A -Trough Photograph).

14. The entire process for a baptism, once the trough is filled, takes five to ten minutes per person. The entire process was done with jail officials and guards in full view either outside or within the facility itself.

15. This process was consistent with how full immersion baptisms had been performed at another jail facility where Jarrard volunteered.

16. In jurisdictions across the United States, jails and prisons have been able to provide for full-immersion baptisms consistent with the beliefs of those requesting them.

17. In other jurisdictions, jails and prisons have been ordered to provide full-immersion baptisms or held liable for failing to provide for such baptisms. *See, e.g., Weir v. Nix*, 890 F.Supp. 769 (S.D. Iowa 1995) (denial of full immersion baptism with other inmates unlawful); *Collman v. Skolnik*, No. 3:10-CV-00090-LRH, 2012 WL 760934 (D. Nev. Jan. 26, 2012), *report and recommendation adopted*, 2012 WL 760926 (D. Nev. Mar. 6, 2012) (denial of full immersion baptism to death row inmate unlawful); *Hoeck v. Miklich*, 2014 WL 641734 (D. Col. 2014) (denial of full immersion baptism stated a claim).

Polk County Sheriff Bans Baptisms

18. At the time this lawsuit was filed, Polk County Jail Standard Operating Procedure 7.07.17 provided “Religious rituals such as baptism and wedding ceremonies will not be conducted for inmates, as the Polk County Jail is a short term facility.” (Incorporated herein and attached hereto as Exhibit B) (First Policy).

19. Sheriff Moats stated by letter dated May 2, 2019 that under his view of the Bible, “baptism can wait until after release since it is not a requirement for salvation.” (Incorporated herein and attached hereto as Exhibit C)

20. No full-immersion baptisms were allowed after the decision to prevent Mr. Jarrard from performing baptisms. Two of the three policies below prevent baptisms under all circumstances including the current policy.

Post-Lawsuit Policy Revision (Second Policy)

21. This lawsuit was filed on January 2, 2020. On March 12, 2020, Defendants enacted a new policy (Second Policy) that repealed the blanket ban on baptisms (and marriages), but that policy does not permit them either. This policy rescinded the first policy.

22. Instead, the Second Polk County Jail Policy 5.23 made their approval subject to the approval/denial of the facility based upon “evaluation of the cleric’s guidance and security concerns [and] the request will be honored only to the extent that will not jeopardize the safety, security, and good order of the facility.” Section II (C)(4). (Second/Post-Lawsuit Policy incorporated herein and attached hereto as Exhibit D) (Second Policy)

23. The post-lawsuit revised policy also purported to allow certain approved clergy members to offer “religious services,” although it is not clear whether a baptism falls under those categories. Section II (E) and (F).

24. To be approved under this new process to conduct “services and programs,” the applicant must “make a written application ... with supporting documentation, attend a training session and then be approved by the Jail Administrator. Section II (F).

25. No standards were stated for approving or denying an applicant.

26. Finally, the Second Policy appeared to allow inmates to also meet with “their clergy,” who have not gone through the approval process, and that those clergy may meet with their congregants. Section II (N) and (O). However, it was not clear whether baptisms could be conducted by this category of clergy who are not providing religious services to groups of inmates.

Most Recent Policy (Third Policy)

27. On September 17, 2020, the Polk County Jail adopted a third policy Polk County Jail SOP 7.07 regarding religious services. This policy rescinded the Second Policy. (Third Policy) (Incorporated herein and attached hereto as Exhibit E).

28. Section 7.07.18 again returns to an explicit ban on any “communion, baptism, wedding ceremonies, etc.”

29. Section 7.07.16 provides that “Clergy and religious advisors wishing to hold services or conduct programs in the jail must submit a volunteer application. Members of the clergy allowed within the inner security perimeter or allowed contact visitation must complete background checks, including the jail ministry program, [sic]”

30. No standards or time-frames for decision-making on applications are set out.

Jarrard is Barred from Facility because of Baptism Advocacy

31. Approximately five months into his ministry at the Polk County Jail, other ministers complained regarding Mr. Jarrard's teaching about baptism, leading to his being ejected from the program the following week. After over a year of lobbying the jail, Mr. Jarrard was allowed to return on New Year's Eve of 2015.

32. The other ministers' complaints about Mr. Jarrard were based on theological differences.

33. Mr. Jarrard continued his work until January of 2017 when jail officials told him he could no longer come into the facility as too many inmates had requested baptism.

34. At the time, Mr. Jarrard estimated some 20 men and 6 women were actively seeking baptism.

31. Chief Deputy Al Sharp began actively telling inmates that, as baptism was not required for their salvation, the facility would not provide that service.

32. In January 2017 (and again in June 2018), Mr. Jarrard wrote jail officials raising concerns about his inability to perform baptisms. (Letter incorporated herein and attached hereto as Exhibit F).

33. Members of the Church of Christ believe that baptism is an ordinance *necessary* for the salvation of an individual. *See* Mark. 16:15–16.

35. On December 31, 2017, the Polk County Jail stopped all religious programming.

36. For seven weeks, no religious programming of any kind was provided to inmates.

37. On February 1, 2016, the Polk County Jail adopted the First Policy that was a complete bar on baptisms. Polk County Jail SOP Jail Order Number 7.07.17 states “Religious rituals such as baptism and wedding ceremonies will not be conducted for inmates” (Exhibit B).

38. The First Policy also created a new set of regulations for religious programming, with there being a new requirement for a training course.

39. Mr. Jarrad applied under the First Policy (after being barred from the facility), but Mr. Jarrard’s application under the First Policy was denied, along with his wife who also applied and who also sought to perform baptisms. Both were also prevented from providing any religious support.

40. Other Christian organizations were allowed to continue their work (pre Covid-19), but none of these other organizations preach that baptism is required for salvation or seek to have baptisms at the jail.

41. Mr. Jarrard maintained an occasional protest outside the jail regarding his inability to perform baptisms for inmates. (Handout to motorists incorporated herein and attached as Exhibit G).

42. After this lawsuit was filed, and after the Second Policy was adopted after this lawsuit was filed, Mr. Jarrard again sought to be re-admitted to the religious programming at the Polk County Jail and sought to be permitted to perform baptisms. He submitted an application detailing:

- (1) His faith background and training;
- (2) References and Letters of Support;
- (3) His Georgia Secretary of State Registration;
- (4) Articles of Incorporation;
- (5) A detailed account of his State Prison and county jails ministries;
- (6) A program synopsis;
- (7) His agreement to a "dos and don'ts list";
- (8) A confidentiality agreement;
- (9) A criminal history search authorization; and
- (10) All other requirements of the application.

(Application attached hereto and incorporated herein as Exhibit H).

43. In less than two weeks, Mr. Jarrard's application under the Second Policy was denied.

44. The Second Policy had no standards for decision-making, and no time limits for decision-making, leaving jail officials with unbridled discretion to approve or disapprove applications based upon the religious viewpoint of the applicant.

45. The purported reason for the denial of his application was a claim that he had "a history of being involved in contentious behavior and conflict," that was not disclosed in his application. (Application Denial attached hereto and incorporated herein as Exhibit I).

46. Mr. Jarrard completed all aspects of the Application and asserts that the reason given for denial of his application is disputed, pre-textual and actually demonstrates hostility to his faith.

47. At a number of the facilities identified, Mr. Jarrard is still providing religious counseling and has assisted baptisms without incident, and those were listed on his application, but were not considered by Defendants.

48. Instead, Defendants identified in the denial letter only the jails in Cobb County, Paulding County and Floyd County. These too were identified in

Mr. Jarrard's application, and the reasons for departure were explained both in the application and more fully below.

49. At the Cobb County Jail, Mr. Jarrard's religious counseling was requested by inmates, and he had provided baptisms there. He was seeking to provide full immersion baptisms to additional inmates there, but the Chaplain there stated that he would get rid of the horse trough and there would never be a baptism there again. He also attempted to visit an inmate who had been beaten by other inmates at the request of the inmate's mother, but was denied the ability to conduct a visit. After those experiences, Mr. Jarrard voluntarily resigned.

50. Mr. Jarrard has and still provides religious services at the Paulding Probation Detention Center (a state facility) for the last fourteen years. He then applied to the Paulding County Jail and was interviewed Cyril Watness, a Baptist chaplain at the facility, who advised the administration to deny his application because Mr. Jarrard's teachings did not line up with his. He complained to the head jailor who in turn had the county lawyers look into the matter. New rules were drafted, and Mr. Jarrard was approved. After three years of service at the Paulding County Jail, Mr. Jarrard was informed by the same Chaplain that he was being rotated out so that other groups could come in. He never reapplied and eventually moved.

51. Mr. Jarrard provided religious ministry at the Floyd County Jail as well. In March of 2017, Mr. Jarrard was pulled into the Chaplain David Dicken's office in Floyd County Jail with a guard present and given an ultimatum: either Mr. Jarrard was to stop teaching that baptism was necessary for salvation or he would no longer be welcome at Floyd County Jail. When Mr. Jarrard later inquired from the Chaplain as to the name of the guard, the Chaplain refused to tell him. Chaplain Dickens had told him that all volunteers at the jail should teach only portions of the Bible. It is Mr. Jarrard's belief that Chaplain Dickens sought to prevent any teaching involving the baptism or eschatology, the part of theology concerned with death, judgment, and the final destiny of the soul and humankind. Ultimately, Mr. Jarrard was forced to turn in his cleric badge and told that he could reapply in six months, but only if he would teach that baptism was not necessary for salvation. Mr. Jarrard has not been back to Floyd County Jail since and was not given any kind of notice of his formal termination.

52. The reasons for departure at the three facilities identified in Mr. Jarrard's application demonstrate that those facilities too had religious personnel which disagreed with Mr. Jarrard's religious beliefs.

53. Defendants claim that Mr. Jarrard has a "history of being in contentious behavior and conflict," and their focus on particular facilities where

Mr. Jarrard was subjected to similar discriminatory treatment because of his faith demonstrates that the reason given is either pretextual or explicitly demonstrated religious animus of Defendants.

54. Defendants were aware that Jarrard's claimed "contention behavior and conflict" related to theological differences and not any conduct detrimental to facility security.

55. After the Third Policy was adopted, on August 12, 2021, Mr. Jarrard again applied to provide religious counseling and, consistent with his faith, baptisms. (Attached hereto and incorporated as Exhibit J).

56. Mr. Jarrard has received no response to his newest application in the over months that have followed.

57. Mr. Jarrard will expeditiously seek to return to the Polk County Jail as a religious adviser and to perform baptisms if allowed to do so.

Inmate Morris Denied a Baptism

58. Mr. Jarrard has met with Ollie "Mitchell" Morris, who was an inmate within Polk County Jail, on numerous occasions and provided religious consultation and ministry to Morris.

59. Morris was at the Polk County Jail beginning on September 26, 2016, until his release.

60. On February 11, 2018, Mr. Morris requested that he be baptized while in Polk County Jail as he had accepted Jesus Christ as his Lord and Savior and after learning about the purpose of baptism. A day later, he received a reply from Deputy Dustin Stroup stating that, “we don’t do baptisms or other religious rituals here.”

61. When Morris asked on February 16, 2018, why Rev. Jarrard was no longer allowed to preach, Mr. Morris was given a form with blank spaces where the response should be.

62. On February 22, 2018, Mr. Morris appealed the response to his grievance, asking that he be baptized in a manner consistent with his religious beliefs.

63. That same day, Deputy Stroup responded to Mr. Morris telling him he had no rights to be baptized and that, per Chief Sharp and Sheriff Moats, inmates at Polk County Jail will not participate in religious rituals.

64. Other inmates also requested baptisms and were denied the right as well.

65. Carlos Stallings, another inmate in Polk County Jail, requested and was denied a baptism.

Demand Letter and Response

66. Plaintiffs submitted a demand letter and ante-litem notice on April 26, 2019.

67. In response, Sheriff Moats stated by letter dated May 2, 2019, that under his view of the Bible, *“baptism can wait until after release since it is not a requirement for salvation.”* (Exhibit D) (emphasis added). Sheriff Moats’ view of the Bible on this subject is in direct conflict with that of Plaintiffs.

Pattern of Arbitrarily Denying Religious Requests

68. The Polk County Jail’s administration has a pattern of denying religious requests on wholly arbitrary grounds.

69. For example, Defendants Sharp and Stroup consult with the internet and friends to determine whether a given religious item is required for a person’s faith.

70. If, in this ad hoc research, they determine that an item is a “preference” rather than a “requirement,” the item is denied to the inmate.

71. This is true even for items that Defendants readily admit pose no security risk whatsoever.

CLAIMS FOR RELIEF

**Claim One: First and Fourteenth Amendments-Baptisms
(by Plaintiff Morris)**

72. The ban and limits on baptisms discriminate against those seeking full immersion baptisms, and manifest “a purpose to favor one faith over another” in violation of the First Amendment Establishment Clause. *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005).

73. Defendants violate the First Amendment Free Exercise Clause when they “discriminate[] against some or all religious beliefs or regulate[] or prohibit[] conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

74. Plaintiff Morris repeatedly requested to be baptized, but Defendants told him that he could not be baptized because they did not think it was important enough.

75. The complete ban on all baptisms violates the First Amendment rights in the prison and jail context.

76. Damages are sought for the inability of Plaintiff Morris to receive a baptism.

Claim Two: First and Fourteenth Amendments
Barring Plaintiff in Retaliation for Prior/Planned Baptisms
(by Plaintiff Jarrard)

77. The actions of Defendants show that the removal of, and refusal to permit religious counsel by Mr. Jarrard was explicitly because of the baptism issue -- retaliation for his exercise of and practice of his faith -- in violation of the First Amendment.

78. Plaintiff Jarrard was initially permitted to provide religious services and perform baptisms.

79. Jarrard was then barred from providing religious counseling and baptisms under each of the three consecutive policies.

80. Due to the Court's statute of limitation analysis, Plaintiff only seeks relief for the retaliatory denial of his 2020 application and the failure to respond to his 2021 application.

81. Jarrard's wife was also denied the ability to provide religious counseling and baptisms based on her religious views that matched those of her husband.

82. The allegations regarding religious animus to Jarrard are incorporated herein for this claim for relief.

83. Other religious persons, who had a different view on the necessity of baptisms, have been allowed to provide religious services and have been approved to do so.

84. Defendants violate the First Amendment Free Exercise Clause when they “discriminate[] against some or all religious beliefs or regulate[] or prohibit[] conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

85. Mr. Jarrard seeks small and/or nominal damages for this claim.

86. An injunction should issue allowing Mr. Jarrard to return to his previous status of ministry, as necessary, to perform the baptisms requested.

Claim Three: First and Fourteenth Amendments²
Unlawful Policies
(by Plaintiff Jarrard)

87. The Second Policy and the Third Policy for admitting religious advisors to the jail provide no standards for the exercise of any discretion, and no time limits for decision-making, thus allowing for arbitrary decisions or decisions based on the religious preferences of jail administrators.

88. The Second Policy and the Third Policy’s applications form for admitting religious clergy also contains rules that are vague, overbroad, and

² This claim was originally part of Claim 2. [Doc. 34 at 34 n.11].

amount to viewpoint discrimination, such as “DON’T TAKE SIDES AGAINST AUTHORITY,” which seemingly applies beyond the jail context to any authority, and within the jail context would seemingly preclude the exercise of Jarrard’s rights through this litigation.

89. The Second Policy and the Third Policy provide unbridled discretion in decision-making that can and historically has been exacted against Jarrard for his views on baptism that do not match those of Defendants. *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1221 (11th Cir. 2017) (“[T]he plainest example of an unconstitutional grant of unbridled discretion is a law that gives a government official power to grant permits but that provides no standards by which the official’s decision must be guided. . . . Such a grant of unconstrained power is unconstitutional under the First Amendment.”).

90. Mr. Jarrard seeks small and/or nominal damages for this claim for having been subjected to two unlawful application procedures.

91. An injunction should issue prohibiting the application of the Third Policy to his application to volunteer at the Polk County Jail.

PRAYERS FOR RELIEF

Plaintiff prays that this Court will grant the following relief:

- (1) A declaration that former Polk County Jail Standard Operating Procedure 7.07.16 (Third Policy) is unconstitutional, facially and as applied to Jarrard;
- (2) A permanent injunction preventing future enforcement of Polk County Jail Standard Operating Procedure 7.07.16 (Third Policy) both facially and as applied;
- (3) Injunctive relief permitting Mr. Jarrard to perform baptisms at the Polk County Jail under Polk County Jail Policy 7.07.18 if he can demonstrate that incarcerated persons are reasonably likely to seek baptisms;
- (4) Injunctive relief allowing Mr. Jarrard to return to his previous status of ministry to perform baptisms under Polk County Jail Policy 7.07.16;
- (5) Actual and nominal damages to each Plaintiff in an amount determined by a jury (A JURY TRIAL IS REQUESTED);
- (6) Prevailing party attorneys' fees and expenses as allowed by law;
- (7) Such other and further relief as this Court deems just and proper.

DATED: This the 13th day of January, 2022.

Respectfully Submitted,

/s/ Gerald Weber

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CERTIFICATION OF COMPLIANCE

The undersigned, in accordance with L.R. 7.1 and 5.1 hereby certifies that the typefont used herein is 13-Point Book Antiqua.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing upon all parties by electronic delivery through the CM/ECF system.

This 28th day of October, 2021.

/s/ Gerald Weber

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