

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

REVEREND STEPHEN JARRARD,)
and OLLIE MORRIS,)
))
Plaintiffs,)
))
v.)
))
SHERIFF JOHNNY MOATS,)
CHIEF DEPUTY AL SHARP, and)
DEPUTY DUSTIN STROP,)
individually and in their official)
capacities,)
))
Defendants.)

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

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs, Reverend Stephen Jarrard and Ollie Morris, bring this Complaint for damages and injunctive relief. Plaintiff Jarrard seeks injunctive relief to permit him to provide baptisms at the Polk County Jail, subject to constitutional limits and accommodations for security and other concerns. Both plaintiffs seek small damages for Plaintiff Jarrard’s inability to perform baptisms and Plaintiff Morris’ inability to receive a baptism. Plaintiffs raise claims under the First and Fourteenth Amendments and Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, *et seq.* (RLUIPA).

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 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.

4. Defendant 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 inmates.

JURISDICTION AND VENUE

5. 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 and RLUIPA. Upon service of process, this Court acquires personal jurisdiction over the Defendant under Fed. R. Civ. P. 4(k)(1)(a).

6. 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

Polk County Sheriff Bans Baptisms

7. 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.

8. 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 facilities.

9. Over, six years ago, Mr. Jarrard began as a minister in Polk County Jail.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

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

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

19. 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 Ex. B)

20. 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 Ex. D)

21. 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.

22. 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).

Post-Lawsuit Policy Revision

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

24. Instead, the new Polk County Jail Policy 5.23 makes 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). (Post-Lawsuit Policy incorporated herein and attached hereto as Exhibit E)

25. The post-lawsuit revised policy also purports 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).

26. 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).

27. No standards are stated for approving or denying an applicant.

28. Finally, the post-lawsuit revised policy appears 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 is not clear whether baptisms may be conducted by this category of clergy who are not providing religious services to groups of inmates.

Polk County Jail Ousts Mr. Jarrard and Denies His New Application

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

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

31. Jail officials to create a new set of regulations for religious programming, with there being a new requirement for a training course that was previously not needed.

32. Mr. Jarrard reapplied, but Mr. Jarrard’s application was denied, along with his wife who also sought to perform baptisms. Both were also prevented from providing religious support.

33. Other Christian organizations have been 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.

34. Policy in Place When Lawsuit Filed: On February 1, 2016, the Polk County Jail adopted a new and 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).

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

36. After the lawsuit was filed, and after the revised 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 F).

37. In less than two weeks, Mr. Jarrard’s request was denied.

38. 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 G).

39. 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.

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

41. 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.

42. At the Cobb County Jail, Mr. Jarrard 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 resigned.

43. 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.

44. 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.

45. 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. 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.

46. 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

47. 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.

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

49. 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.”

50. 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.

51. 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.

52. 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.

53. Other inmates also requested baptisms and were denied the right as well. Carlos Stallings, another inmate in Polk County Jail, requested and was denied a baptism.

Demand Letter and Response

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

55. 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.”* (Letter incorporated herein as 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

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

57. 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.

58. 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.

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

CLAIMS FOR RELIEF

Claim One: RLUIPA

60. Plaintiff-Morris incorporates the preceding allegations herein.

61. The ban on full immersion baptisms is unlawful under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

62. Under RLUIPA, “[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . , even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person – (1) is in

furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

63. The Polk County Jail is a recipient of federal funding and is subject to RLUIPA.

64. The complete ban on all baptisms and weddings that was in place at the time of Morris’ incarceration does not support a compelling government interest as (1) Baptisms are performed in other facilities throughout the country; (2) The asserted justification for the ban is premised on the Sheriff Moats’ own view of biblical teaching about baptisms; (3) Baptisms were previously performed at the Polk County Jail without incident.

65. Likewise, the complete ban on all baptisms and weddings that was in place at the time of Mr. Morris incarceration was not the least restrictive means of satisfying a compelling government interest as (1) Baptisms are performed in other facilities throughout the country; (2) The asserted justification for the ban is premised on the Sheriff Moats’ own view of biblical teaching about baptisms; (3) Baptisms were previously performed at the Polk County Jail without incident; (4) The complete ban is not fashioned narrowly to address particular baptisms or weddings that present security or other concerns to the institution.

66. Plaintiff-Morris seeks nominal and actual damages for the denial of his religious rights, and in particular, to being denied the right to participate in a baptism.

Claim Two: First and Fourteenth Amendments

67. Plaintiffs incorporate the preceding allegations herein.

68. 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).

69. 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).

70. The complete ban on all baptisms violates the First Amendment rights in the prison and jail context. The revised policy developed after this lawsuit was filed does not completely resolve the constitutional problems in the initial policy as it does not make it “absolutely clear” that the Defendants will now permit baptisms. Therefore, injunctive relief as to the original ban on all baptisms is not moot. *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*,

528 U.S. 167, 189-192 (2000) (Defendant “bears the formidable burden of showing that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur”). Injunctive relief is sought to (1) Enjoin the non-moot challenge to the original policy and (2) Permit baptisms to occur in the future subject to reasonable and constitutional restrictions.

71. Damages are also sought for the inability of Plaintiff Jarrard to perform baptisms, and Plaintiff Morris to receive a baptism.

72. The new policy for admitting religious clergy to the jail provides no standards for the exercise of any discretion, thus allowing for arbitrary decisions or decisions based on the religious preferences of jail administrators.

73. The new policy for admitting religious clergy also contains rules that are vague, overbroad, and amount to viewpoint discrimination, such as “DON’T TAKE SIDES AGAINST AUTHORITY.”

Claim Three: First and Fourteenth Amendments
Barring Plaintiff in Retaliation for Prior/Planned Baptisms

74. Plaintiff-Jarrard incorporates the preceding allegations herein.

75. 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).

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

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 the pre-lawsuit policy and a second time under the post-lawsuit newest policy.

80. Jarrard’s wife was also denied the ability to provide religious counseling and baptisms.

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

82. Others 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.

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

PRAYERS FOR RELIEF

Plaintiff prays that this Court will grant the following relief:

- (1) A declaration that former Polk County Jail Standard Operating Procedure 7.07.17 is unconstitutional, facially and as applied to Plaintiffs;
- (2) A permanent injunction preventing future enforcement of Polk County Jail Standard Operating Procedure 7.07.17 both facially and as applied;
- (3) Injunctive relief barring enforcement of Polk County Jail Policy 5.23 as applied to Mr. Jarrard;
- (4) Injunctive relief permitting Mr. Jarrard to perform baptisms at the Polk County Jail under Polk County Jail Policy 5.23;
- (5) Injunctive relief allowing Mr. Jarrard to return to his previous status of ministry to perform baptisms under Polk County Jail Policy 5.23;

- (6) Actual and nominal damages to each Plaintiff in an amount determined by a jury (A JURY TRIAL IS REQUESTED);
- (7) Prevailing party attorneys' fees and expenses as allowed by law;
- (8) Such other and further relief as this Court deems just and proper.

DATED: This the 18th day of May, 2020.

Respectfully Submitted,

/s/ Gerald Weber

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/s/ Zack Greenamyre

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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.

This 18th day of May, 2020.

/s/ Gerald Weber

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