UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

EDREES BRIDGES, Plaintiff, v. **PRINCE GEORGE'S COUNTY, MARYLAND**, a municipality; and, **PRISON MINISTRY OF AMERICA,** Defendants.	**Case No. 8:21-cv-01319**

PLAINTIFF'S REPLY IN SUPPORT OF PRELIMINARY INJUNCTION

The County's opposition to the Motion for a Preliminary Injunction is most notable for what it leaves out. The brief does not claim that the Constitution permits the County to have a "Statement of Applicant's Christian Faith" as part of an application to be a chaplain at its jail. The County fails to dispute the contents of the challenged application which, on its face, required an applicant to embrace the theological and spiritual commitments carefully enumerated by the "Statement of Applicant's Christian Faith." The County does not dispute that Bridges wanted to apply for the Chaplaincy position, and that he could not truthfully sign the "Statement of Applicant's Christian Faith" that was part of the application materials. And the County does not claim that Bridges was not harmed as a result of the fact that he was prevented from even applying for the job. These omissions all but resolve the matter.

Nevertheless, the County urges this Court to accept as a matter of faith the County's implausible explanation that the page-length "Statement of Applicant's Christian Faith" does

not mean what it says. It was all just a big misunderstanding, the County claims, that it is the fault of its own agent, and so the Court should not intervene to provide relief.

But these arguments are contrary to both the facts of this case and the law. The acts of Prison Ministry of America are attributable as a matter of law to PG County. For purposes of this case, they are one and the same. The County provides no support for the idea that this was a mistake and that, even if it were one, it being a mistake would somehow excuse the Constitutional violation. And the law has long explained that the infringement of Bridges' First Amendment rights causes irreparable injury as a matter of law and that the County has no legal interest in continuing to violate the Constitution.

ARGUMENT

I. Bridges is likely to succeed on the merits.

A. The Chaplaincy application discriminated against non-Christians.

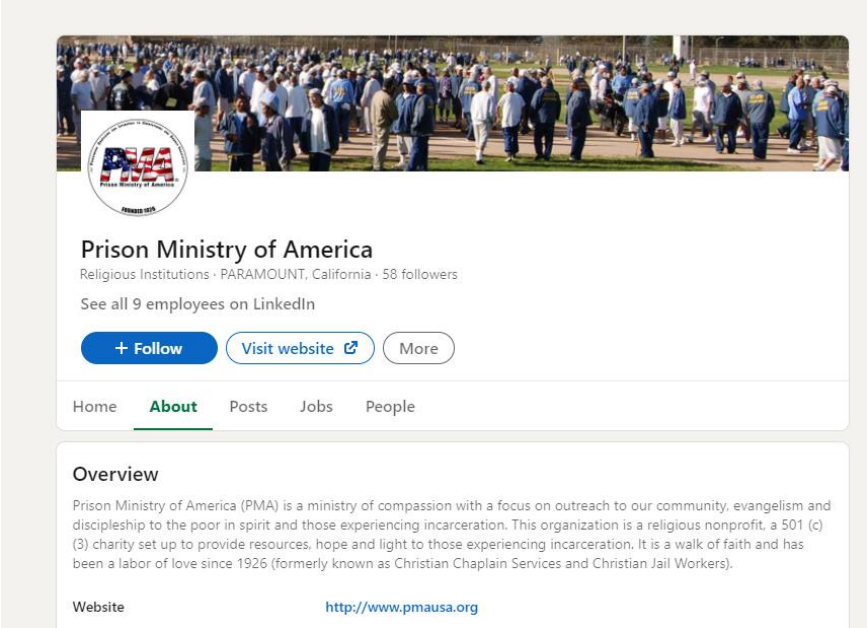
Mark Maceil is the Executive Director for Prison Ministry of America and submitted an affidavit in support of the County's response to Mr. Bridges motion for a preliminary injunction. (*Response*, Ex. 2, Mark Maceil Affidavit).

Maciel admits that he sent Mr. Bridges a job application package that included a declaration of faith of evangelical Christianity. (Ex 2, ¶ 18) He swears that, had Bridges only called to clear up the confusion, Maciel would have "informed him that was not required to sign it." *Id.* at 22. This leads to the most curious statement in the of affidavit: "It is only applicable to those of the Christian Faith." *Id.*

That statement is nowhere on the application or the Statement of Applicant's Christian Faith. Mr. Maciel's organization is unapologetically a proselytizing Christian organization. No reasonable applicant would believe that a Statement of Applicant's Christian Faith was

not a base job requirement if it was sent with the general job application. Indeed, a "Statement of Applicant's Christian Faith" that only must be signed by people who have "Christian Faith" would be a meaningless exercise.

The "Statement of Christian Faith" instead makes sense in the normal context of Prison Ministry's mission. The primary goals of Prison Ministry of America are "outreach to our community, evangelism, and discipleship to the poor." (See below, LinkedIn screen capture August 4, 2021). The original name of the organization was Christian Chaplain Services and Christian Jail Workers.[1]



The purpose of Prison Ministry is to "bring the message of abundant life through faith in Jesus Christ to citizens in their lowest hour, their time of greatest spiritual need." It would be antithetical to the goals of Prison Ministry to want to hire a head chaplain to be Muslim.

[1] https://www.linkedin.com/company/prison-ministry-of-america/about/, retried Aug. 13, 2021.

And no reasonable applicant would have viewed the "Statement of Applicant's Christian Faith" as optional versus a requirement that the applicant be Christian.

Yet, relying in large part on Macial's Affidavit, the County (at 7) argues "Furthermore, the PMA employment application contains no language requiring the applicant to complete the declaration of Christian faith portion of the application or run the risk of the application not being considered." The idea that a certification or declaration included as part of job application may be optional belies belief. Nor does the County even suggest what the point of a "Statement of Applicant's Christian Faith" might be except to discriminate against non-Christians. *Cf. Woodward v. Rogers*, 344 F. Supp. 974, 981 (D.D.C. 1972), *aff'd*, 486 F.2d 1317 (D.C. Cir. 1973) (noting that both an expressly optional and a mandatory oath in the form of the Pledge of Allegiance was unconstitutional).

And even if this was all some mistake by the County or Prison Ministry, none of it would be a defense to the First Amendment violation. Intent is not part of the equation. *See Larson v. Valente*, 456 U. S. 228, 244 (1982); *see also Abington School District v. Schempp*, 374 U. S. 203 (1963); *Engel v. Vitale*, 370 U. S. 421 (1962); *Everson v. Board of Education*, 330 U. S. 1 (1946) (all stating the test for Establishment Clause violations and none of them providing a defense for "mistake"). Nor does the County cite a single case purporting to hold there might be some "mistake" defense. The County is left without any argument that the "Statement of Christian Faith" violates the Establishment Clause.

II. The County is responsible for the conduct of its agents performing state functions.

In entering into an agreement with Prison Ministry, the County delegated to Prison Ministry and its agents public functions under the color of state law.

The County is subject to Section 1983 and the First and Fourteenth Amendments of the U.S. Constitution. Prison Ministry, as a government contractor fulfilling an essential

government service for the County in accordance with its agreement, is acting under color of law and is therefore also subject to Section 1983 and the First and Fourteenth Amendments of the U.S. Constitution.

The County cannot escape liability (as it tries to at 5) merely because they contracted out the role of hiring a Chaplain. It is long established that when a government delegates state functions to a private contractor, the delegation does "not relieve the State of its constitutional dut[ies]." *West v. Atkins*, 487 U.S. 42, 56 (1988); *see Ancata v. Prison Health Servs. Inc.*, 769 F.2d 700 (11th Cir. 1984); *King v. Kramer*, 680 F.3d 1013, 1020 (7th Cir. 2012); *see also Kahn v. Barela*, 15-cv-1151, 2020 WL 5977930, at *8 (D.N.M. Oct. 8, 2020) (chaplaincy context).

Hiring chaplains is a core function of a governmental unit that controls jails or prisons. Prisons are located at a unique area of tension between the establishment clause and the free exercise clause of the First Amendment. The state, through the establishment clause, cannot require persons to worship in particular ways and cannot aid, endorse, or promote particular religions. *Schempp*, 374 U.S. 203; *Engel*, 370 U.S. 421; *Everson*, 330 U.S. 1. Thus, "in the prison setting the establishment clause has been interpreted in the light of the affirmative demands of the free exercise clause." *United States v. Kahane*, 396 F.Supp. 687, 698 (E.D. N.Y. 1975).

The County has a duty to provide chaplaincy services to its inmates. The government must be neutral between sects. *Zorach v. Clauson*, 343 U. S. 306, 314 (1952). "[Government] may not . . . aid, foster, or promote one religion or religious theory against another." *See, e.g., Epperson v. Arkansas*, 393 U. S. 97, 104 (1968). As *West* and its progeny show, the Government can neither render the First Amendment a nullity nor avoid responsibility for the First Amendment violations that occur merely by delegating its obligations to a private entity.

The preliminary injunction must issue against Defendants. Otherwise, state actors who contract out core governmental functions will be allowed to skirt accountability when those core functions are not met. A preliminary injunction will ensure that this constitutional violation will be remedied, by requiring it not only of Prison Ministry but also the entity that has the ultimate Constitutional responsibility in the first instance: the County. And the County has all but already admitted it can control Prison Ministry actions under the Establishment Clause in any event. *See* Opposition at 9 (noting Prison Ministry "voluntarily" revised its procedures).[2]

III. PG County's History of delegated First Amendment violations only makes the need for a preliminary injunction more compelling.

History here provides further context. The affidavit of Mr. Saunders describes a longstanding hostile environment toward Muslims at the jail. *Declaration of Melvin Saunders*, Dkt. 12-1. A Christian himself, he previously taught bible study at the jail as an inmate. *Id.* ¶ 5. Generally, the affidavit describes the free range that Christian bible study and worship was given. *Id.* ¶¶ 6-21. However, when Muslims tried to gather for worship their gathering would be broken up by jail staff. *Id.* ¶¶ 23-29. The County considered Muslim gatherings to be a "religious breech." *Id.* ¶30. However, as a bible study leader of Christian inmates who gathered for worship and religious education, Mr. Saunders was never told congregating Christians were a security breach. *Id.* ¶ 31.

The previous chaplaincy contractor, Good News Jail and Prison Ministry, were allowed to disfavor Muslim inmates by, among other things, not providing them with literature to assist with their religious studies. Good News did supply Christians with ample religious

[2] Prison Ministry did not file an opposition to the Motion for a Preliminary Injunction.

literature. *Id*. ¶34, 35. Prison Ministry, if their own website is accurate, is of the same cloth. Its website mentions no religious support for Muslims and, as far as religious literature goes, it claims to be "one of the last remaining organizations in the country that provides an in-prison evangelistic program where prisoners can acquire Bibles and Christian literature at no cost."[3]

IV. Bridges will suffer irreparable injury absent an injunction.

The County suggests (at 9) that the Court should deny the Preliminary Injunction as moot. But "a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. SEIU,* 567 U.S. 298, 307 (2012) (cleaned up) (quoting Erie v. Pap's A.M., 529 U.S. 277, 287 (2000), *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992), and *Mills v. Green*, 159 U.S. 651, 653 (1895)). And the County already posits (at 10) that this Court could grant relief in the form of "an injunction requiring the County to redo the entire hiring process."

The County's other arguments that Bridges has suffered no irreparable relief fail with the same vigor. The County states (at 9) "there remains an opportunity for Bridges to gain employment with PMA and serve the County's incarcerated as one of the dedicated staff members providing religious services to the incarcerated Muslims at the jail." This is mere unsupported speculation. Even if a job did materialize, it would not be the "Chaplaincy Supervisor" position in charge (County's Opp. at 2), the job Bridges wants.

As the Motion for a Preliminary Injunction noted (at 6-7), the violation of Bridges' First Amendment rights itself constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373

[3] Prison Ministry website retrieved on August 11, 2021, available at: http://pmausa.org/about-pma.html.

(1976). None of this changes because Bridges might be given a chance in the future to apply for some other, lesser job.

V. The Government has no legal interest in continuing to violate the First Amendment.

The County suggests a variety of harms (at 10) caused by an injunction, but none have any legal heft to them. The County first claims that "an injunction requiring the County to essentially fire the recently hired chaplain, advertise the position as requested by Bridges, and engage in the hiring process again would" (1) "open the County to litigation from the fired chaplain", (2) and "delay the coordination of religious services."[4] Neither of these things are true, though. In order to open up the position, the County would not need to terminate the new hire until a replacement is found. Meanwhile, the County and PMA are just as capable of offering that new hire another position as it is Bridges, whose lawsuit already exists and whose claims are real and valid. Were the hired Chaplain bring a claim in tort or under Section 1983, the Government's defense would be obvious: the Chaplain's first hiring was tainted by illegal conduct and the previously-hired Chaplain was not selected on merit when the hiring was lawful and competitive.

And to the extent the previously-hired Chaplain has a cause of action in contract, the County should not be able to protect its unconstitutional actions by wrapping them in contract. As Bridges said in his initial Motion, "'[a]ny administrative delay or expense is insufficient to outweigh the harm of a First Amendment violation'. *Summers v. Adams*, 8-cv-2265, 2008 WL 11347422, at *1 (D.S.C. Dec. 11, 2008)." Motion at 7. "And, in any event, the County is "'in no way harmed by issuance of a preliminary injunction which prevents it from

[4] The County makes the same arguments as to why an injunction is not in the public interest.

enforcing a regulation, which, on this record, is likely to be found unconstitutional." *Newsom ex rel. Newsom v. Albemarle County Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003).[5] This Court should reject the County's attempt to protect its unlawful hire from scrutiny forever just because it violated the Constitution quickly.

CONCLUSION

The Court should grant the preliminary injunction.

Dated: August 13, 2021

Respectfully submitted,

CAIR LEGAL DEFENSE FUND

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[5] The County complains that the County has trained the Chaplain, *id.* at 2, 9, and 10, but makes no argument that the training represents any irreparable injury or harm caused by an injunction. In any event, the County makes no attempt to explain or quantify what or how much training this new hire has. Imam Bridges, who has volunteered for years at the County's Jail, almost certainly has more effective training than the new hire.

CERTIFICATE OF SERVICE

I certify under the penalty of perjury that above Reply in Support of Preliminary Injunction was sent by counsel on August 13, 2021, by email to the following individuals:

For Defendant Prison Ministry of America
Mark Maciel
Executive Director
Prison Ministry of America
Pmausa03@yahoo.com

The County has now entered an appearance and is served by ECF.

/s/ Lena F. Masri
Lena F. Masri