



June 24, 2021

Via Email, Fax, USPS Mail

Angela Chevalier
Senior Warden
Thomas R. Havins Unit
500 FM 45 East
Brownwood, TX 76801
Fax: 916-322-0970

Texas Board of Pardons and Paroles
Legal Division
209 West 14th St. Suite 500
Austin, TX 78701
Fax: 512-406-5483

Re: Constitutional Violation

Dear Ms. Chevalier and members of the Texas Board of Pardons and Paroles,

I am writing on behalf of an American Humanist Association (AHA) member in your custody, [REDACTED], regarding a blatant constitutional violation occurring under your official authority. Specifically, [REDACTED] is being compelled by the state to participate in a faith-based treatment program in direct violation of the First Amendment as well the Equal Protection Clause of the Fourteenth Amendment. This letter is a courtesy. Please note our office is considering litigation and will take action if this matter is not resolved immediately.

The American Humanist Association (AHA) is a national nonprofit organization with tens of thousands of members across the country, including many in Texas. The mission of AHA's legal center is to protect the cornerstone of our democracy: the constitutional mandate of separation of church and state. We have litigated dozens of cases in federal courts from coast to coast, including in the U.S. Supreme Court. *See generally Am. Humanist Assoc. v. Greenville Cnty. Sch. Dist.*, No. 6:13-cv-2471-BHH (D. S.C. 2020) (awarding AHA \$456,242 in attorneys' fees and costs); *M.B. v. Rankin Cnty. Sch. Dist.*, No. 3:13cv241-CWR-FKB, 2015 U.S. Dist. LEXIS 117289, at *23 (S.D. Miss. Jul. 10, 2015) (in a case litigated by the undersigned, the court ordered the government to pay \$7,500 in damages "to compensate [the student] for the deprivation of her constitutional rights;" an additional \$10,000 for every Establishment Clause violation thereafter; awarding AHA \$57,367 in attorneys' costs and fees).

██████████ arrived at the Havens Unit on or about January 15, 2021 to complete a pre-release treatment program. He has since been told by various state-employed counselors that he is required to participate in Alcoholics Anonymous (AA) or risk forfeiting parole. Counselors have also specifically asked him to read and recite parts of “Bill’s Story” and other faith-based and spirituality-based material. The twelve steps of AA require ██████████ to believe in a “power greater than himself” and a subsequent decision to “turn his will and life over to the care of God, as he understands him.” As a Humanist, ██████████ does not believe in any “God” or “power” of this nature. He cannot complete AA without violating his own sincerely held convictions. ██████████ would like to attend the secular alternative that the State of Texas already apparently offers. See Texas Offender Orientation Handbook, VI.F.23 (Feb. 2017) (“Support Groups” includes “Secular Organization for Sobriety”). ██████████ has not been allowed to participate in this alternative and has been consistently told he must complete the religious-based program prior to parole release.

The foregoing actions amount to a clear violation of the First Amendment and the Equal Protection Clause.

The Establishment Clause “commands a separation of church and state.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). The Establishment Clause “absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” *Sch. Dist. v. Ball*, 473 U.S. 373, 385 (1985). The government must not “place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling non-adherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.” *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comport with the Establishment Clause, a challenged governmental activity must: (1) have a primary secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222-23 (1963); *Waltz v. Tax Commission*, 397 U.S. 664, 669-70 (1970).¹ Government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards*, 482 U.S. at 583. In addition to this *Lemon* test, the Supreme Court in *Lee* formulated the separate “coercion test,” declaring “at a minimum the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Lee*, 505 U.S. at 587 (emphasis added). Where, as here, government action violates the Establishment Clause under the coercion test, the courts bypass the three-part *Lemon* analysis.

No detailed analysis is necessary for a court to find your practice of forcing non-theistic inmates to attend AA is unconstitutional. The practice is “inconsistent both with the purposes of

¹ These requirements were enshrined in *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971), later known as the “*Lemon* test.” But these requirements long predate *Lemon*. See *Schempp*, 374 U.S. at 222 (“[W]hat are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment” violates “the Constitution.”); *Torcaso v. Watkins*, 367 U.S. 488, 489-90 (1961) (invalidating law because “the purpose or effect” favored god-believers over atheists).

the Establishment Clause and with the Establishment Clause itself.” *Engel v. Vitale*, 370 U.S. 421 433 (1962).

There is no doubt that compelled attendance in AA is unconstitutional. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 587 (1992) (the “government may not coerce anyone to support or participate in religion or its exercise”); *Torcaso v. Watkins*, 367 U.S. 488 (1961) (ruling that the government could not require persons who qualified for office to declare their belief in the existence of God); *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014) (“Randall Jackson has pled facts sufficient to state a claim that a parole stipulation requiring him to attend and complete a substance abuse program with religious content in order to be eligible for early parole violates the Establishment Clause of the First Amendment.”); *United States v. Logins*, 503 F. App’x 345, 352 n.4 (6th Cir. 2012) (abuse of discretion where probation officer required defendant to participate in substance abuse treatment program at odds with defendant’s religious beliefs); *Inouye v. Kemna*, 504 F.3d 705, 713-714 (9th Cir. 2007) (unconstitutional to compel attendance in AA or Narcotics Anonymous (NA)); *id.* at 717 (“An officer in Nanamori's position, having available near-unanimous judicial invalidation of religious coercion in this and similar contexts . . . should not have reasonably repeated the same mistake.”); *Kerr v. Farrey*, 95 F.3d 472, 474-80 (7th Cir. 2007) (unconstitutional to compel attendance in NA); *Warner v. Orange Cnty. Dep’t of Prob.*, 115 F.3d 1068, 1074-75 (2d Cir. 1997) (unconstitutional to compel attendance AA).

Should litigation become necessary, you should know that qualified immunity is likely to be denied. *See Inouye*, 504 F.3d at 712-15. It has long been a “tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Lee*, 505 U.S. at 596. It is therefore beyond apodictic at this point “that requiring a parolee to attend religion-based treatment programs violates the First Amendment.” *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007).

In *Hazle v. Crowfoots*, 727 F.3d 983, 996 (9th Cir. 2013), the Ninth Circuit reiterated that “a parolee's right to be free from coerced participation in a religious treatment program was a matter of 'uncommonly well-settled case law' that was 'enough for [the court] to hold that the law was clearly established sufficient to give notice to a reasonable parole officer, in 2001.’” (quoting *Inouye*, 504 F.3d at 716).

A year later, the Eighth Circuit reached the same conclusion:

The fact that Jackson did not have a constitutional right to, or statutory guarantee of, early parole does not preclude him from stating a claim of unconstitutional coercion. “It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Lee*, 505 U.S. at 596; *Kerr*, 95 F.3d at 474-75 ...*Griffin*, 673 N.E.2d at 106 (state’s requirement that inmates attend substance abuse treatment program’s AA meetings to be eligible for the jail's discretionary Family Reunion Program was coercive). The Missouri Board of Probation and Parole may have discretion in deciding whether to grant early parole to an OUP graduate, but that fact alone does not shield the defendants from potential liability for implementing a program that is alleged to violate the First Amendment.

Jackson v. Nixon, 747 F.3d 537, 543 (8th Cir. 2014).

Beyond being coercive, your refusal to offer secular treatment programs to non-theistic inmates (including Humanists and Buddhists) amounts to religious discrimination in violation of the First and Fourteenth Amendments. The law is well settled: “when making accommodations in prisons, states must treat atheism as favorably as theistic religion. What is true of atheism is equally true of humanism, and as true in daily life as in prison.” *Center for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869, 873 (7th Cir. 2014).

Federal courts have thus consistently held that correctional departments violate the Establishment Clause when they refuse to authorize atheist and Humanist study groups on the same terms as theistic groups. *See, e.g., Kaufman v. Pugh*, 773 F.3d 692 (7th Cir. 2014) (*Kaufman II*); *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (*Kaufman I*); *Am. Humanist Ass’n & Kwame Jamal Teague v. Perry*, 303 F. Supp. 3d 421 (E.D.N.C. 2018) (*Teague*); *Am. Humanist Ass’n & Jason Michael Holden v. United States*, 63 F. Supp. 3d 1274, 1283 (D. Or. 2014).

For instance, in *Teague*, the U.S. District Court for the Eastern District of North Carolina held that the North Carolina Department of Public Safety (“DPS”) violated the Establishment Clause and Equal Protection Clause for treating Humanist inmates different from other inmates. *Teague*, 303 F. Supp. 3d at 430. The court ruled that DPS violated the Equal Protection Clause by refusing to allow Humanists to hold meetings on equal terms with other religions, including other non-theistic religions. *Id.* at 431-32. The court found it particularly problematic that the inmate plaintiff “was subjected to additional requirements in his attempt to obtain DPS’s recognition of Humanism as a faith group, without explanation.” *Id.* at 430-31. The court explained that forcing the plaintiff to prove the validity of his Humanist beliefs above and beyond what is usually required of other religions evinced “discriminatory intent” and “DPS’s bias against Humanism.” *Id.* at 431.

The state may only offer a religious-based substance abuse program like AA if it also offers a *meaningful* secular alternative. *See Miner v. Goord*, 354 Fed. App’x. 489, 491-92 (2d Cir. 2009) (citations omitted) (state may offer religious-based substance abuse programs if a “secular alternative . . . is provided”); *Bausch v. Sumiec*, 139 F. Supp. 2d 1029, 1033 n.4, 1034 (E.D. Wis. 2001) (not only must secular alternatives be available, but the “secular alternatives must, of course, be meaningful, rather than available in name only”). It is clear that your secular alternative is “in name only” as [REDACTED] was refused the option.

There is an easy, ready fix to this issue. [REDACTED] simply wants to attend a secular alternative program. We are most hopeful that you will recognize the concerns raised by this letter and address them properly.

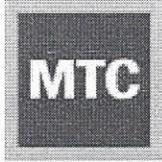
To avoid legal action, we demand written assurances that: (1) [REDACTED] will not be required to attend any faith-based or spirituality-based programs as a condition of his parole; and (2) that secular treatment options will be made known and available to anyone who is required by the State to complete a substance abuse program. Please respond within two weeks. We thank you in advance for your attention to this matter.

Very truly yours,

Monica Miller, Esq.
mmiller@americanhumanist.org

EXHIBIT

A



MANAGEMENT & TRAINING CORPORATION

Havins Unit • 500 FM 45 • Brownwood, Texas 76801

Phone: (325) 646-7999

MEMO

FROM: Janelle Murphy, PD
TO: TDCJ – PFCMOD
CC: Warden Chevalier; Ms. Betty Delgado, APD
SUBJECT: All Treatment and TDCJ Staff
DATE: Alternative Treatment
4/12/21

The treatment schedule will be modified on Monday, April 12, 2021 Feet on Floor and Feet off Floor will remain as normal treatment Schedule.

Monday April 12, 2021

First Hour of Programming – Good Intentions/Bad Choices

Phase 1/Phase 2 & 3: Session 4: Unrealistic Expectations “I have to make up for lost time” “I need to keep up with the Jones>”

Think of a situation in which since you are in recovery, you were you wanted to make up for lost time with loved ones, either through spending extra time or over extending yourself financially to prove yourself to others. Write a brief description of that situation. In 75 words or more be specific and detailed.

Second Hour- Orientation/Phase II/Phase III (Cognitive Intervention): Addiction Offender Cycle-

Phase 1: Orientation- Clients will read page 15-16 in the orientation packet and complete a 50-word or more essay of what they learned about a TC after reading.

Phase 2 & 3: “ I am a victim of others”

Describe a time when you felt you were a “victim of others” 250 words. Then answer the following questions: “In looking back over the situation how could I have avoid this all together?” “Realistically, what role did I play in this situation?”

Third Hour – Living in Balance: Session 13: Introduction of Self-Help

Most important, the process of recovery from different drugs is nearly identical. Some small differences may exist, but the principles of becoming and remaining drug free are the same. Therefore, the focus of your recovery will not be on the specific drug you used, but on the process of getting clean and sober.

Phase 1/Phase 2 & 3:

In what ways is addiction a process, rather than a single event or decision? In what ways is recovery a process, rather than a single event or decision?

Fourth Hour- Journaling- Step 3 says, "Made a decision to turn our will and our lives over to the care of God as we understood him." Initially you may have a hard time with this step because of conflicting feelings about religion or because they do not believe in God. However, this step isn't meant to be a religious obligation; it's meant to help you rely on something other than yourself, to help you abstain from using.

10-minute break between each group

*NOTE: The counseling staff will hand out the alternative treatment and paper the day before assuring each dorm has received it. The clients will be informed that who fail to complete the assignment that the original assignments are still due, and a second one will be completed focusing on the failure to complete the first assignment. If it is verified that a client cannot read/or write, he/she is to have someone help them do the writing. However, each client must show a completed paper answering each question. All assignments will be turned in the counseling staff the following day and counselor staff will review assignments.

Thank you,

Janelle Murphy, BA LCDC

Program Director