

Freedom from Religion *foundation*

P.O. Box 750 • Madison, WI 53701 • (608) 256-8900 • www.ffrf.org



1777 T Street NW, Washington DC 20009-7125 | T 800.837.3792 202.238.9088 | F 202.238.9003 | legal@americanhumanist.org | www.humanistlegalcenter.org

January 12, 2017

SENT BY MAIL AND EMAIL TO:

Theron Perez
Pennsylvania Department of Corrections
Office of the Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

Andrew Filkosky, Agency Open Records Officer
Department of Corrections
Right-to-Know Law Office
1920 Technology Parkway
Mechanicsburg, PA 17050
RA-docrightrighttoknow@pa.gov

Re: Public Records Request: religious content in Therapeutic Community program

Dear Chief Counsel Perez and Mr. Filkosky:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) and the American Humanist Association's Appignani Humanist Legal Center (AHA) to alert you to concerns over unconstitutional religious promotion within the Pennsylvania Department of Corrections (DOC). FFRF and the AHA are national nonprofit organizations representing thousands of members and supporters across the country, including many in Pennsylvania. Our missions include protecting one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Both organizations include a network of cooperating attorneys from around the country and we have litigated constitutional cases in state and federal courts from coast to coast, including in Pennsylvania.

A concerned inmate at SCI Chester recently reported that he is being coerced into participating in a religious program. We are informed that as part of his DC-43 Correctional Plan, this inmate is required to attend a Therapeutic Community program, which he describes as a religious drug treatment program. We are told that when the inmate objected to participation because he identifies as an atheist, he was told that participation was mandatory. When he asked to be enrolled in an alternative, secular treatment program, he was told that his only alternative was to remain imprisoned for his maximum sentence.

We write to ensure that the DOC is not requiring participation in religious programs as a condition to early parole.

As a government entity, the DOC may not endorse one religion over others, or religion generally over nonreligion. While it is laudable for the DOC to provide inmates with treatment programs to curb addiction, compelling attendance in a religion-based program violates an inmate's free exercise rights, as well as the Establishment Clause of the First Amendment.

Numerous federal courts of appeals have ruled that being required to attend and complete a nonsecular substance abuse treatment program, such as Alcoholics Anonymous, in order to be eligible for early parole violates the Constitution. *See, e.g., Jackson v. Nixon*, 747 F.3d 537 (8th Cir. 2014); *Inouye v. Kemna*, 504 F.3d 705, 714 n.9 (9th Cir. 2007) (holding that "the AA/NA program involved here has such substantial religious components that governmentally compelled participation in it violated the Establishment Clause"); *Warner v. Orange Cnty. Dept. of Probation*, 115 F.3d 1068 (2nd Cir. 1997) (finding an Establishment Clause violation when the state required a probationer to attend AA meetings); *Kerr v. Ferrey*, 95 F.3d 472, 480 (7th Cir. 1996) (holding mandatory AA participation unconstitutional).

In *Jackson*, the Eighth Circuit Court of Appeals held that an inmate who had stipulated to participation in a Therapeutic Community treatment program with religious components as a condition to be eligible for early parole had properly stated a claim for a violation of the Establishment Clause. 747 F.3d at 543 ("While inmates have no constitutional right to early parole . . . [an inmate] does have the right to be free from unconstitutional burdens when availing himself of existing ways to access the benefit of early parole."). The court further held that a Department of Corrections director could be held personally liable under § 1983 for failing to ameliorate the alleged constitutional violation. *Id.* at 545.

Moreover, many courts, including in Pennsylvania, have found mandatory participation in the TC program unconstitutional. *E.g., Harris v. Risbon*, No. 3:CV-15-0121, 2015 U.S. Dist. LEXIS 14548, at *4-5 (M.D. Pa. Feb. 6, 2015) ("it appears likely that Plaintiff will succeed on the merits: as applied to a prisoner who is an atheist and does not wish to be a part of TC for reasons of religious freedom, the prison's actions violate the Establishment Clause of the First Amendment."); *Bey v. Pa. Bd. of Prob. & Parole*, No. 1:10-CV-02597, 2015 U.S. Dist. LEXIS 177261, at *21 (M.D. Pa. Aug. 14, 2015).

The PA DOC lists SMART Recovery among the Alcohol and Other Drugs Treatment Programs available at some of its facilities. SMART Recovery is one of many secular treatment programs that could be made available to all inmates. Beyond the well-established illegality of providing only religious options, there are strong policy reasons to provide inmates with secular treatment programs. A secular option is inclusive of everyone, since secular programming is religiously neutral. Conversely, a religion-based treatment program sends the message to any participant who is not religious that he or she is somehow ill-equipped to succeed in the program. It makes program participants who do not practice the prescribed religion feel like they are outsiders.

Currently 23% of Americans, and about 35% of millennials—those born after 1981—are nonreligious.¹ And the segment of the population that is not motivated by religious ideology is on the rise. Atheists and agnostics now make up 7% of the total U.S. population, which is more than Mormons, Jews, Hindus, Muslims, Jehovah's Witnesses, and Buddhists combined.² The DOC must offer secular programs in order to accommodate all inmates, regardless of their religious or nonreligious beliefs. It cannot cater solely to the shrinking religious majority.

Public Records Request

Pursuant to Pennsylvania Right to Know Law (65 P.S. § 66.1 et seq.), we hereby request a copy of all informational or introductory materials regarding the Therapeutic Community program, including materials describing the requirements of the program and what is expected of program participants. We further request all Therapeutic Community program materials concerning religion or religious concepts, such as faith or a higher power.

We request a response within ten days. If all or any part of this request is denied, we request a written statement of the grounds for the denial. If your agency does not maintain these public records, please provide the names and addresses of the proper custodians of these records. If any records are available in electronic format, they can be emailed to sgrover@ffrf.org. If we can provide any clarification that will help expedite your attention to this records request, please contact Sam Grover at (608) 256-8900.

We further request that the DOC conduct an investigation into the Therapeutic Community and other addiction treatment programs available at SCI Chester and its other facilities. All facilities must offer, and all inmates must be given the opportunity to attend, secular treatment programs that meet the requirements of their DC-43 Correctional Plans. Thank you for your time and attention to this matter.

Sincerely,



Sam Grover
Staff Attorney
Freedom From Religion Foundation



Monica L. Miller
Senior Counsel
Appignani Humanist Legal Center

¹ *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

² *Id.*