

# FREEDOM FROM RELIGION *foundation*

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December 5, 2017

**SENT VIA EMAIL & U.S. MAIL:**

jon.litscher@doc.state.wi.us

Secretary Jon Litscher  
Wisconsin Department of Corrections  
PO Box 7925  
Madison, WI 53707-7925

Re: Unconstitutional Religious Degree Program

Dear Secretary Litscher:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation occurring at Waupun Correctional Institution ("WCI"). FFRF is a Wisconsin-based, national nonprofit organization with 30,000 members across the country, including more than 1,300 members in Wisconsin. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters relating to nontheism.

We understand that Trinity International University ("Trinity") has recently begun offering a Bachelor of Arts in Biblical Studies at WCI. We understand that, despite Trinity offering 35 Bachelor's Degree programs at campuses around the country, the only program offered at WCI is Biblical Studies.<sup>1</sup> We further understand that, upon completion of the program, inmates become "field mentors" and are encouraged to minister to other inmates at WCI or any facility they may reside at in the future.<sup>2</sup>

It is our information and understanding that WIDOC works with the Wisconsin Inmate Education Association ("WIEA"), a 501(c)(3) non-profit organization, to facilitate the relationship between WIDOC and Trinity. WIEA refers to the Biblical Studies program as "Operation Transformation."<sup>3</sup> Of the seven members of WIEA's Board of Directors, four hold degrees related to Christian ministry (including three from Trinity), and two others highlight their experience bringing Christianity to incarcerated populations, with one member proclaiming his "passion for working to positively reach the prison population with the Gospel of Jesus Christ."<sup>4</sup>

We write to bring your attention to the grave Establishment Clause ramifications of this program.

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<sup>1</sup> [www.hlcommission.org/component/directory/?Action=ShowBasic&Itemid=192&instid=1935&lang=en](http://www.hlcommission.org/component/directory/?Action=ShowBasic&Itemid=192&instid=1935&lang=en)  
(NOTE: The Higher Learning Commission lists WCI as an out-of-state campus of Trinity.)

<sup>2</sup> [wisinmateedu.org/operation-transformation/](http://wisinmateedu.org/operation-transformation/).

<sup>3</sup> [wisinmateedu.org/operation-transformation/how-it-works/](http://wisinmateedu.org/operation-transformation/how-it-works/).

<sup>4</sup> [wisinmateedu.org/operation-transformation/role-of-wiea/](http://wisinmateedu.org/operation-transformation/role-of-wiea/).

The First Amendment “requires the state to be neutral in its relations with groups of religious believers and non-believers.” *Everson v. Bd. of Educ.*, 303 U.S. 1, 18 (1947). The Supreme Court has explained that “the prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.’” *Cty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989). This general prohibition applies with equal force to law enforcement and corrections. *See Milwaukee Deputy Sheriff’s Ass’n v. Clarke*, 588 F.3d 523, 525–26 (7th Cir. 2009) (holding religious speech by a sheriff, bible readings, and distribution of Christian literature during mandatory employee meetings unconstitutional under the Establishment Clause).

It is illegal for correctional institutions to condition any benefit to inmates on their attendance at religious programs. The Court of Appeals for the Seventh Circuit, which has jurisdiction over Wisconsin, ruled as such in *Kerr v. Ferrey*, 95 F.3d 472, 480 (1996) (holding that a higher security risk rating for inmate who did not attend religious substance abuse program violated the Establishment Clause). *See also Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014) (conditioning early parole on completion of substance abuse program with religious content violated the Establishment Clause); *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007) (requiring parolee attendance in religious 12-step program was unconstitutional); *Warner v. Orange Cty. Dept. of Probation*, 115 F.3d 1068 (2d Cir. 1996) (conditioning probation on attendance at religious substance abuse program was unconstitutional).

“[T]he state cannot compel or even encourage inmates’ attendance at religious services.” *Montano v. Hedgepeth*, 120 F.3d 844, 850 n.10 (8th Cir. 1997). The opportunity to earn a Bachelor’s Degree is undoubtedly a substantial benefit, one which is particularly attractive to those who might otherwise never have a chance at higher education. However, as it stands, any WCI inmate wishing to better himself through education must also be subjected to religious instruction. While this Biblical Studies program is not a Sunday church service, it is beyond reasonable dispute that this is an overtly religious program. The plain facts are these: this is a Christian course of study, offered by an Evangelical Christian university, working in concert with a non-profit run by individuals who have laid bare their proselytizing intent. Simply put, “[t]his is not separation of Church and State.” *McCullum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).

Please note that it is no defense to assert that participation in this program is voluntary. The Supreme Court has summarily rejected arguments that voluntariness excuses a constitutional violation. *See Lee v. Weisman*, 505 U.S. 577, 596 (“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.”); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

If WIDOC is serious about positively impacting inmates' lives through learning, there is a glut of secular degree programs that would accomplish that venerable goal far better than a course in Biblical Studies, and no shortage of secular universities and non-profit organizations to administer them. But by all outward appearances, "Operation Transformation" has never been about transforming inmates' lives through education—it is about transforming prisoners into preachers. The Constitution simply does not allow this. Whatever the metes and bounds of the Establishment Clause may be, it is beyond reasonable dispute that a state cannot turn a cellblock into a seminary.

We ask that you immediately suspend WIDOC's partnership with WIEA and Trinity. Please respond in writing detailing the steps that you will take to ensure that WIDOC fulfills its Constitutional obligations to remain neutral in matters of religion, and to respect each and every inmate's freedom of conscience.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. McNamara", with a long horizontal flourish extending to the right.

Colin E. McNamara, Esq.  
*Robert G. Ingersoll Legal Fellow*  
*Freedom From Religion Foundation*

Cc: Warden Brian Foster  
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