

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**FREEDOM FROM RELIGION
FOUNDATION, INC., PAUL
WEINBAUM, MARTIN J. BOYD,
M.D. AND JESSE V.CHAVEZ,**

Plaintiffs,

vs.

Civil No. CIV-05-1168 RLP/KBM

**SECRETARY JOE R. WILLIAMS,
HOMER GONZALES, BILL SNODGRASS,
in their official capacities, and
CORRECTIONS CORPORATION OF
AMERICA, INC.,**

Defendants.

**MEMORANDUM OPINION AND ORDER
DENYING ALL PENDING MOTIONS FOR SUMMARY JUDGMENT
ON ESTABLISHMENT CLAUSE CLAIMS**

The following Motions are before the court:

- 1) Plaintiffs' Motion for Partial Summary Judgment (Docket No. 63), to declare the Life Principles/Crossing Residential Faith-based Program as the New Mexico Women's Correctional facility in violation of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983;
- 2) Defendants Williams' and Gonzalez' ("State Defendants" herein) Motion for Summary Judgment for Failure to State A Claim addressing Plaintiffs' Establishment Clause claims (Docket No. 57), and
- 3) Defendants Correction Corporation of America's and Snodgrass's Motion for Summary Judgment on Plaintiffs' Claims of Establishment Clause Violation. (Docket No. 55).

It is axiomatic that before summary judgment can be granted, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any must show that there are no genuine issues of material fact, and the moving party must be entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). See Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986). The parties have submitted numerous “undisputed” facts which are in dispute, and many of the “disputes” have been disputed. On this basis alone the Motions should be denied.

The first clause in the First Amendment to the Federal Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Fourteenth Amendment imposes those substantive limitations on the legislative power of the states and their political subdivisions. Wallace v. Jaffree, 472 U.S. 38, 49-50, 105 S.Ct. 2479, 2485-2486 (1985).

The parameters of the Establishment Clause may appear concrete. For example, in Everson v. Board of Education, 330 U.S. 1, 15-16, 67 S.Ct. 504, 511 (1947) the Court stated that “No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt, to teach or practice religion.” In *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 302, 120 S.Ct. 2266, 2275 (2000) (citations omitted), the Court stated that the requirement that government accommodate the free exercise of religion does not trump the limitation that it may not establish religion. In Board of Ed. of Westside Community Schools (Dist.66) v. Mergens, 496 U.S. 226, 250, 110 S.Ct. 2356 (1990) (opinion of O'Connor, J.), Justice O'Connor stated that “[t]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.”

Despite these seemingly black and white pronouncements, there are recognized areas where government funds may benefit religion.

In Lemon v. Kurtzman, 403 U.S. 602, 612-613, 91 S.Ct. 2105, 2111 (1971), the Court set out a three- part test for evaluating the constitutionality of a state statute challenged on Establishment Clause grounds:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.”

The Lemon test was modified in Agostini v. Felton, 521 U.S. 203, 117 S.Ct. 1997(1997), at least as applied to school aid cases. In Agostini, only the first and second Lemon factors were considered, with entanglement issues folded into consideration of a statute’s effect.

The first Lemon prong requires asking “whether government’s actual purpose is to endorse or disapprove of religion.” Edwards v. Aguillard, 482 U.S. 578, 585, 107 S.Ct. 2573, 2578 (1987), quoted in Altman v. Bedford Cent. School Dist., 245 F.3d 49, 75 (2nd Cir. 2001). In this case, Plaintiffs contend, and provide evidence to support their view, that the actual purpose of the faith-based program to facilitate spiritual growth as a mechanism for behavior modification by inculcating a specific religion, Christianity. Defendants contend, and provide evidence to support their view, that they have a legitimate penological purpose: to reduce violent incidents and criminal activity while inmates are in prison, so that prisons are easier to administer; to permit inmates to gain better perspective in life, handle responsibility, be accountable for actions, and be able to work through conflicts. Accordingly, there remain questions of fact that can not be resolved through summary judgment.

The second Lemon prong was discussed in Mitchell v. Helms, where the Court stated that

whether government action would be found to constitute impermissible indoctrination (advancement of religion) depended upon the principle of neutrality.

In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality, upholding aid that is offered to a broad range of groups or persons without regard to their religion. If the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government. For attribution of indoctrination is a relative question. If the government is offering assistance to recipients who provide, so to speak, a broad range of indoctrination, the government itself is not thought responsible for any particular indoctrination. To put the point differently, if the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose, see Allen, 392 U.S., at 245-247, 88 S.Ct. 1923 (discussing dual secular and religious purposes of religious schools), then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose. The government, in crafting such an aid program, has had to conclude that a given level of aid is necessary to further that purpose among secular recipients and has provided no more than that same level to religious recipients.

Mitchell v. Helms, 530 U.S. 793, 809-810, 120 S.Ct. 2530, 2541 (2000).

In this case, Defendants have demonstrated that they offer inmates a variety of rehabilitative programs¹, that no inmate is required to participate in a faith based program, and no special incentives

¹Non-residential programs include:

--Educational programs (GED, Adult Basic Education Programs through a two-year associates degree and additional college courses taken on-line). The education department at NMWCF employs nine teachers and has approximately 329 inmate participants at a time.

-- Moral Recognition Therapy, a once weekly secular course directed to altering criminogenic thinking.

--SOAR (Success Outside After Release) which teaches post-release life skills;

--A twelve week carpentry-certification program serving approximately 12 inmates at a time offered four times per year. One instructor is employed by CCA to teach this program, and CCA purchases the tools and materials used in the program;

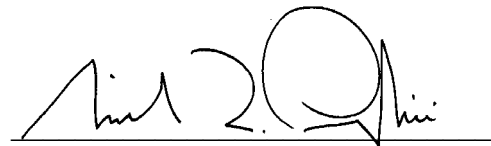
--Work programs in telemarketing, tourism information and document scanning;

--Mental Health services provided by a third-party provider offering classes in stress and mood management, anger management, medication relaxation techniques. The mental health program has eight clinicians, a mental health director and a clinical supervisor who provide therapy and counseling, clinical assessments, group treatment, individual treatment, crisis intervention and outpatient substance abuse treatment, and coordinates group addiction treatment utilizing a cognitive based treatment approach.

such as parole consideration is offered for participation in the program. However, choices for residential programming within the prison setting are limited. Whether the menu of programs offered at NMWCF results in neutrality is a question of fact.

There remain genuine issues of material fact, and no party is entitled to Judgment as a matter of Law. It is hereby **ORDERED** that the following motions are **Denied**:

- 1) Plaintiffs' Motion for Partial Summary Judgment (Docket No. 63);
- 2) Defendants Williams' and Gonzalez' ("State Defendants" herein) Motion for Summary Judgment for Failure to State A Claim addressing Plaintiffs' Establishment Clause claims (Docket No. 57), and
- 3) Defendants Correction Corporation of America's and Snodgrass's Motion for Summary Judgment on Plaintiffs' Claims of Establishment Clause Violation. (Docket No. 55).

A handwritten signature in black ink, appearing to read "Richard L. Puglisi", written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge
(sitting by designation)

In addition, the prison offers one other residential program the "Therapeutic Community Unit" serving approximately 80 inmates at a time, which addresses addictions, provides counseling, parenting classes and addiction treatment including the Twelve Step programs of Alcoholics Anonymous and Narcotics Anonymous.