IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

DONNA DAWN KONITZER
a/k/a Scott Konitzer,

Plaintiff,

v. Case No. 03-C-717

BYRAN BARTOW, MATTHEW J. FRANK, TOM MICHLOWSKI, MARIO CANZIANI, SHARON ZUNKER, TOM BURNETT, and TOM SPEECH,

Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants Byran Bartow, Matthew J. Frank, Tom Michlowski, Mario Canziani, Sharon Zunker, David Burnett, and Tom Speech, by their attorneys, Peggy A. Lautenschlager, Attorney General, and Jody J. Schmelzer, Assistant Attorney General, hereby submit this brief in support of their motion for partial summary judgment.

ISSUES PRESENTED

1. Are the defendants are entitled to judgment as a matter of law on recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 for injunctive relief because there is no evidence that the defendants have or would be deliberately indifferent to any serious medical need Konitzer may have absent such injunctive relief?

2. Should the court decline to issue injunctive relief, as a matter law, refusing to implement the recommendations that Konitzer receive searches from female guards only, makeup, female undergarments, a female name, and the use of hair removal/growth products where such recommendations are contrary to WRC and DOC's legitimate institutional interests and are

beyond the scope of injunctive relief available under the Prisoner Litigation Reform Act ("PLRA")?

STATEMENT OF THE CASE

This is a 42 U.S.C. § 1983 action brought by Scott (a/k/a Donna Dawn) Konitzer (Konitzer), an inmate confined to the Wisconsin Department of Corrections (DOC). It was initiated on August 11, 2003. Konitzer is a male inmate currently housed at the Wisconsin Resource Center (WRC), a State of Wisconsin Department of Health and Family Services (DHFS) facility for inmates with mental health needs. The defendants are all employees and/or officials of DOC and DHFS. In an order dated September 24, 2003, the court granted Konitzer leave to proceed in forma pauperis on his claim that the defendants were inadequately treating his Gender Identity Disorder (GID) in violation of the Eighth Amendment. The only claim that Konitzer makes is that the defendants have violated his Eighth Amendment rights. *See* Third Amended Complaint.

Konitzer seeks injunctive relief for the following: (1) enjoining the defendants, their employees, agents, and successors in office from providing medical care and treatment to the plaintiff that is inconsistent with the standards of medical care and treatment for GID in the State of Wisconsin as a whole; (2) enjoining the defendants, their employees, agents, and successors in office from refusing to provide and delaying provision of necessary medical treatment and care for GID to the plaintiff either at suitable and adequate facilities within the WRC or elsewhere; (3) enjoining the defendants and their successors in office from failing to instruct, supervise and train their employees and agents in such a manner as to assure the delivery of medical treatment and care to the plaintiff which is consistent with the standards of medical care in the State of Wisconsin as a whole; and (4) that the Court establish a panel of independent medical experts to

regularly evaluate the delivery of medical treatment and care administered to the plaintiff and insure the compliance of the defendants and their successors in office with the Court's Orders (*See* Third Amended Complaint, p. 6, ¶ (B)(1)-(4).

Presumably, the specific injunctive relief[1] sought by Konitzer is set forth by his retained experts in this case, Dr. Randi Ettner and Dr. Frederic Ettner. Dr. Randi Ettner recommends that Konitzer receive the following while incarcerated in order to receive the appropriate, acknowledged treatment for GID: (1) evaluation by a physician who specializes in the care of these patients so that Konitzer's hormonal protocol be accurately reconfigured; (2) follow-up with this medical specialist every six months, or as necessary; (3) non-medical examinations for security purposes executed by female personnel; (4) periodic access to a mental health caregiver with expertise in treatment of this class of disorder, i.e. a member of the Harry Benjamin International Gender Dysphoria Association; (5) access to a modest amount of make-up; (6) use of female undergarments; (7) privacy in toilet and shower; (8) the ability to use a female name in addressing oneself, and to be so addressed by others; and (9) the ability to use products such as depilatories and/or hair growth stimulators that are harmless and enhance one's ability to live in the preferred gender role (DFOF ¶ 50).

Dr. Frederic Ettner recommends that in order to provide for the health and welfare of Konitzer, he must receive the following protocol: (10) complete physical examination and laboratory testing including hormonal assessment; (11) HRT (hormone replacement therapy), specifically non-conjugated estrogens, i.e. estradiol valerate (bio-identical) in the form of patch, gel, or cream; (12) anti-androgen finesteride in order to block exogenous androgens and stimulate

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[1] *See* Fed. R. Civ. P. 65(d).

scalp hair and decrease body hair; (13) consistent follow-up every 3 months; and (14) coordination with psychiatrists and psychological recommendations (DFOF ¶ 62).

Through their motion for partial summary judgment, the defendants submit that there is no dispute of material facts in this case as to recommendation No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14, and that they are entitled to summary judgment on Konitzer's requests for prospective relief based upon these recommendations.[2] This brief is submitted in support of that motion.

STANDARD OF REVIEW

Under Federal Rules of Civil Procedures 56(c), summary judgment "shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

The opposing party "may not rest upon the mere allegations or denials" in the pleadings, but "must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e). Also, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Co. v. Zenith Radio Corporation,* 475 U.S. 574, 586

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[2] The only recommendation that the defendants do not submit is ripe for summary judgment is recommendation No. 11, that Konitzer continue on hormone replacement therapy. While there is no dispute that DOC has provided hormone therapy to Konitzer since December of 1999 (DFOF ¶ 216), the newly enacted Wis. Stat. § 302.386(5m) prevents DOC from continuing the administration of hormones to inmates. The defendants submit that given the new law, and DOC's obligation to follow the new law, recommendation No. 11 now creates a disputed issue of material fact. A preliminary injunction hearing

(1986). "[A] party must produce specific facts showing that there remains a genuine issue for trial and evidence 'significantly probative' as to any [material] fact claimed to be disputed." *Branson v. Price River Coal Company*, 853 F.2d 768, 771-72 (10th Cir. 1988). In order for a party "to avoid summary judgment that party must supply evidence sufficient to allow a jury to render a verdict in his favor." *Williams v. Ramos*, 71 F.3d 1246, 1248 (7th Cir. 1995).

Presenting only a scintilla of evidence is not sufficient to oppose a motion for summary judgment. *Walker v. Shansky*, 28 F.3d 666, 671 (7th Cir. 1994). Moreover, more than mere conclusory allegations are required to defeat a motion for summary judgment. *Mills v. First Fed. Sav. & Loan Ass'n of Belvidere*, 83 F.3d 833, 840 (7th Cir. 1996).

The requirements for a valid injunction are found in Fed. R. Civ. P. 65(d), which provides, so far as pertinent here, that "[e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d). Before a court may award permanent injunctive relief, a party must demonstrate (1) it has succeeded on the merits; (2) no adequate remedy at law exists; (3) the moving party will suffer irreparable harm without injunctive relief; (4) the irreparable harm suffered without injunctive relief outweighs the irreparable harm the nonprevailing party will suffer if the injunction is granted; and (5) the injunction will not harm the public interest. *Old Republic Ins. Co. v. Employers Reinsurance Corp.*, 144 F.3d 1077, 1081 (7th Cir. 1998), citing, *Amoco Prod. Co. v. Village of Gambell,* 480 U.S. 531, 546 n. 12 (1987).

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is scheduled for August 24, 2006, to address recommendation No. 11, namely, the continuation of hormone therapy for Konitzer in the wake of Wis. Stat. § 302.386(5m).

In this case, the scope of injunctive relief must also comply with the requirements of the *Prison Litigation Reform Act*, 18 U.S.C. § 3626 (PLRA). The PLRA requires that, prior to granting prospective relief, a court must find that the relief is: (1) narrowly drawn; (2) extends no further than necessary to correct the violation of the Federal right; and (3) is the least intrusive means necessary to correct the violation of the Federal right. 18 U.S.C. § 3626(a)(1). Not only must these findings be made, but the court must also give "substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.* Moreover, in order to obtain an injunction an inmate must prove that a prison official is, at the time of trial, "knowingly and unreasonably disregarding an intolerable risk of harm, and…will continue to do so." *Farmer v. Brennan,* 511 U.S. 825, 846 (1994).

ARGUMENT

I. THE DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW ON RECOMMENDATIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 AND 14 FOR INJUNCTIVE RELIEF BECAUSE THERE IS NO EVIDENCE THAT THE DEFENDANTS HAVE OR WOULD BE DELIBERATELY INDIFFERENT TO ANY SERIOUS MEDICAL NEED KONITZER MAY HAVE ABSENT SUCH INJUNCTIVE RELIEF.

A. Introduction.

Before the court could order any of the injunctive relief sought by Konitzer, he must first succeed on the merits of his Eighth Amendment claim. *See Hunter v. Quinlan*, 815 F. Supp. 273, 275 (N.D. Ill. 1993). Even though Wis. Stat. § 302.386(5m) may ultimately force Konitzer's withdrawal from hormone therapy, the undisputed facts in this case support summary judgment on all the remaining recommendations. The court cannot find that the defendants were or would act with deliberate indifferent to Konitzer's GID absent these specific requests for

injunctive relief. Therefore, they are entitled to summary judgment on recommendation Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14.

B. The Constitution does not mandate comfortable prisons where inmates are entitled to the medical treatment of his or her choice.

At the outset, it must be emphasized that this case is about what the Constitution requires. The Eighth Amendment forbids cruel and unusual punishment; it does not require the most intelligent, progressive, humane, or efficacious prison administration. *Oliver v. Deen,* 77 F.3d 156, 161 (7th Cir. 1996). What Konitzer seeks here is the sort of federal court "micromanagement" of a state prison that the Seventh Circuit deplored in *Anderson v. Romero,* 72 F.3d 518 (7th Cir. 1995); *see Oliver,* at 161.

The Constitution "does not mandate comfortable prisons," *Rhodes v. Chapman,* 452 U.S. 337, 349 (1981), but neither does it permit inhumane ones. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). It is well established that prisoners have a right to receive adequate medical care. *Estelle v. Gamble,* 429 U.S. 97 (1976). There can be little doubt that this right encompasses a right to receive mental health treatment. *Jones 'El v. Berge,* 164 F. Supp.2d 1096 (W.D. Wis. 2001) (citing *Meriwether v. Faulkner,* 821 F.2d 408, 413 (7th Cir.1987); *Wellman v. Faulkner,* 715 F.2d 269, 272 (7th Cir.1983)). *But see Lewis v. Sullivan,* 279 F.3d 526, 529 (7th Cir. 2002) (prisoners "do not have a *fundamental* right to psychiatric care at public expense") (dicta) (emphasis in original).

The Supreme Court's decision in *Wilson v. Seiter*, 501 U.S. 294 (1991), makes it clear that there is both an objective component of an prisoner's Eighth Amendment claim (was the deprivation sufficiently serious?), as well as a subjective component (did the official act with a sufficiently culpable state of mind?). *Id*. at 298. After incarceration, only the unnecessary and

wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment. It is obduracy and wantonness, not inadvertence or error in good faith, that characterize conduct prohibited by the Cruel and Unusual Punishment Clause. *Whitley v. Albers*, 475 U.S. 312, 319 (1986). Therefore, it is necessary that an inquiry into the prison official's state of mind be made when it is claimed that the official has inflicted cruel and unusual punishment. *Wilson*, 501 U.S. at 299. In the context of provision of medical care to prison inmates, the requisite wantonness is defined as deliberate indifference to a prisoner's serious medical needs. *Estelle*, 429 U.S. at 104; *Wilson*, 501 U.S. at 302.

"Deliberate indifference" is recklessness in the criminal law sense, that is recklessness implying "an act so dangerous that the defendant's knowledge of the risk [of harm resulting from the act] can be inferred." *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985). The Seventh Circuit in *Duckworth* determined that deliberate indifference to an inmate's safety could not constitute cruel and unusual punishment unless the defendant had "actual knowledge of impending harm easily preventable." *Id*. at 653. Ordinary negligence and even gross negligence in the tort sense are not enough. *McGill v. Duckworth*, 944 F.2d 344, 348 (7th Cir. 1991).

A prison inmate's dissatisfaction with the adequacy of medical treatment actually received does not state a claim under 42 U.S.C. § 1983. Courts will not attempt to second-guess licensed physicians as to the propriety of a particular course of medical treatment for a given prisoner-patient. *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir. 1974), *vacated on other grounds sub nom Cannon v. Thomas,* 419 U.S. 813 (1974) (a difference of opinion does not raise a material issue of fact). A difference of opinion between physician and patient concerning the adequacy of medical treatment actually provided does not rise to a claim under § 1983. *Davis v. Schmidt*, 57 F.R.D. 37, 41 (W.D. Wis. 1972). Where medical experts disagree, a prison official

does not act indifferently by following the advice of one of the experts. *Thomas,* 493 F.2d at 158; *Jorden v. Farrier,* 788 F.2d 1347 (8th Cir. 1986) (states in dicta that following the advice of one treating medical official over another does not raise a constitutional claim); *see also United States v. Rovetuso*, 768 F.2d 809, 825 (7th Cir. 1985), *cert. denied,* 474 U.S. 1076 (1986) (a prisoner has no right to a doctor of his own choice).

Questions of medical judgment simply do not form the basis of Eighth Amendment claims:

> [T]he question whether an X-ray–or additional diagnostic techniques or forms of treatment–is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, and as such the proper forum is the state court….

Estelle, 429 U.S. at 107-108. As the Seventh Circuit reformulated the applicable standard, a prisoner alleging that prison officials inflict cruel and unusual punishment must demonstrate that those officials actually wish to harm him, or at least, are totally unconcerned with his welfare. *Duane v. Lane*, 959 F.2d 673, 677 (7th Cir. 1992).

The Supreme Court in *Farmer*, defined the standard in the following terms:

> We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an **excessive** risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer, 511 U.S. at 837 (emphasis added.)

Farmer requires that medical professionals exercise medical judgment. If a decision is made by a health care professional, it is presumably valid. *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261 (7th Cir. 1996). The constitution does not require prison officials to administer

the least painful treatment. *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996). The constitution is not a medical code that mandates specific treatment. *Id.*

C. Defendants have treated Konitzer's serious medical need and any disagreement over the course of treatment he receives does not constitute deliberate indifference to that serious medical need.

1. Summary of argument.

For purposes of this summary judgment only, the defendants do not dispute that Konitzer has a serious medical need given his overall mental health diagnosis and diagnosis of GID. The defendants, however, strongly dispute that they have been deliberately indifferent to Konitzer's GID and his mental health care, or that the court must order recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 to prevent/cure any Eighth Amendment violation. Konitzer's treatment in these regards has been constitutionally thorough and complete—a far cry from being a demonstration of deliberate indifference (DFOF ¶¶ 210-589). At its core, this action is nothing more than an attempt by Konitzer to garner his preferred form of "treatment" for GID while at the same time ignoring his more severe and overlaying personality pathologies. Simply put, the defendants disagree with Konitzer's preferred form of treatment for GID and have instead treated all of his serious medical needs. Given that recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 amount to nothing more than a disagreement over what form of treatment should be implemented, Konitzer fails to state an Eighth Amendment claim. The defendants are entitled to summary judgment.

2. There is no universal consensus as to what "the" treatment for GID is or what constitutes a medical necessity in the treatment of GID.

There is no dispute that Konitzer has been diagnosed with GID (DFOF ¶ 28).[3] However, there is no universal consensus in the psychiatric community about what constitutes "the" treatment for GID or what constitutes medical necessity in the treatment of GID (DFOF ¶ 32). In fact, a patient diagnosed with GID chooses how they want to live the remainder of their life after they have acknowledged that they have GID (DFOF ¶ 33). Each transgendered individual decides which options to pursue and how far and how fast to go with regard to those life-changing options (DFOF ¶ 40). Age, physical characteristics, income, employment, personality, pain tolerance, and desired lifestyle all factor into the equation when a transgendered individual makes his or her decision as to how to live (*id.*).

The Harry Benjamin International Gender Dysphoria Association's *Standards of Care for Gender Indentity Disorder* ("Harry Benjamin standards") provide guidelines that have been helpful in professionalizing the treatment of GID (DFOF ¶ 30). The Harry Benjamin standards "are intended to provide flexible directions for the treatment of persons with gender identity disorders" (DFOF ¶ 37). The standards provide: "[m]any adults with gender identity disorder find comfortable, effective ways of living that do not involve all the components of the triadic treatment sequence" (DFOF ¶ 38), which is the sequence of hormone therapy, real life experience in the preferred gender, and reassignment surgery discussed in the standards. Hence, for individuals with GID, the Harry Benjamin standards emphasize the person's choices and options rather than diagnosis that requires necessary "treatment" (DFOF ¶ 35).

However, the Harry Benjamin standards require being crime free (DFOF ¶ 41). This is without exception accepted as the community standard in gender clinics throughout the world (*id.*). Prison life presents an inherent and irresolvable contradiction to this standard (*id.*), and is a context that renders existing standard treatment guidelines for GID unrealistic and impossible (DFOF ¶ 42). New treatment guidelines for GID within prisons, with awareness of and in consideration of the complexities created by that situation, have not been developed (*id.*).

3. Konitzer's medical record overwhelmingly demonstrates that he has been receiving care and treatment.

Konitzer is, and has been, receiving exhaustive treatment by the defendants for his mental health needs, including his GID (*see* DFOF ¶¶ 210-589). This treatment includes countless psychiatric evaluations, physical examinations, hormone therapy[4] (most recently in the non-conjugated form), laboratory testing, assessment and reassessment of his prescription medications, referral to the University of Wisconsin Hospitals and Clinic to see an endocrinologist, and consistent follow-up with his treatment providers (*id.*) The psychiatric and medical care provided to Konitzer has been exhaustive and complete. To now argue otherwise is to simply ignore the voluminous medical record. This is not a case where treatment has been abruptly halted and no treatment provided. *See e.g. Wolfe v. Horn,* 130 F.Supp.2d 648 (E.D.Pa. 2001). It is precisely the opposite. The court should grant defendants' motion for summary judgment.

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[3] GID is defined as a persistent desire to live as a member of the opposite sex (DFOF ¶ 29). The condition is manifested by an intense desire to adopt the social role, and to acquire the physical appearance, of the opposite sex (*id.*). GID is largely a self-diagnosed condition (DFOF ¶ 33).
[4] *See,* note 2, *supra.*

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4. Disagreements over Konitzer's course of treatment do not constitute an Eighth Amendment violation.

Simply put, Konitzer's requests reflect a desire to be more comfortable in prison and receive his preferred form of treatment for GID. Once again, this amounts to nothing more than a disagreement about Konitzer's treatment, not whether the defendants have been deliberately indifferent to him. Although the government has a duty to provide medical care for those it punishes by incarceration, *Snipes*, 95 F.3d at 590, it is equally true that a prisoner is not entitled to whatever treatment he desires. *Means v. Cullen*, 297 F. Supp.2d 1148, 1154 (W.D. Wis. 2003). "[D]ifferences in opinion between the patient and the doctor [regarding medical treatment] never give rise to a constitutional claim." *Higgins v. Correctional Medical Services of Illinois, Inc.*, 8 F. Supp.2d 821, 830 (N.D. Ill. 1998). Hence, no Eighth Amendment claim lies to support a court order implementing recommendations Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, or 14. Just because Konitzer believes he has a right to a particular type of treatment for GID, that particular type of treatment does not set the parameters of the Eighth Amendment. In fact, just the opposite is true.

For instance, case law from analogous Eighth Amendment cases is in accord with defendants' position here. Transsexual inmates have no constitutional right to any particular type of treatment. *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987); *Supre v. Ricketts*, 792 F.2d 958 (10th Cir. 1986); *Lamb v. Maschner*, 633 F. Supp. 351 (D. Kansas 1986); *White v. Farrier*, 849 F.2d 322, 327 (recognizing other courts' holdings that inmates are not constitutionally entitled to hormone therapy); *Tiller v. Owens*, 719 F. Supp. 1256, 1308 (W.D. Penn. 1989); *Long v. Nix*, 877 F. Supp. 1358 (S.D. Iowa 1995). Moreover, the controlling case in the Seventh Circuit is even more deferential to the defendants.

In *Maggert v. Hanks*, 131 F.3d 670 (7th Cir. 1997), a prisoner sought estrogen therapy under the Eighth Amendment for his gender dysphoria. The court affirmed dismissal of the case, holding that:

> except in special circumstances that we do not at present foresee, the Eighth Amendment does not entitle a prison inmate to curative treatment for his gender dysphoria.

Id. at 672. In so holding, the court reasoned that:

> A prison is not required by the Eighth Amendment to give a prisoner medical care that is as good as he would receive if he were a free person, let alone an affluent free person. (Citation omitted). He is entitled only to minimum care.

Id. at 671. The court went on to state:

> Gender dysphoria is not, at least not yet, generally considered a severe enough condition to warrant expensive treatment at the expense of others than the person suffering from it. That being so, making the treatment a constitutional duty of prisons would give prisoners a degree of medical care that they could not obtain if they obeyed the law.

Id. at 672.

Here, Konitzer and his experts disagree with the defendants and their experts about the proper course of mental health treatment (*see* DFOF ¶¶ 44-71, 130-131, 150, 176, 186-188, 209). While Konitzer's expert, Dr. Randi Ettner, advocates allowing Konitzer to feminize his appearance, be treated as a female, and to see GID medical and mental health specialists, the defendants have instead (and quite properly) focused Konitzer's treatment on adjustment rather than cross gender transition (DFOF ¶¶ 50, 61). Instead of concentrating solely on Konitzer's GID, the defendants have also been treating Konitzer's other mental health needs. These mental health needs include the following DSM-IV Axis I and Axis II diagnoses: Cocaine Dependence in Remission in a Controlled Environment, Post Traumatic Stress Disorder, Major Depression, and Personality Disorder with Cluster B traits (DFOF ¶ 43).

Defense expert Professor Cynthia Osborne believes this is a clinically sound and ethically wise stance (DFOF ¶ 61). For Konitzer, treatment must be carefully designed to address not just the GID, but GID in the context of severe and overlaying personality pathologies (DFOF ¶ 49). In the opinion of Professor Cynthia Osborne, to not do so will likely result in disappointing outcomes for both Konitzer and the defendants (*id.*). Juxtaposed with Osborne's opinion is that of Konitzer's own expert, Dr. Randi Ettner. However, Dr. Randi Ettner does not even know the status of Konitzer's medical treatment, does not have experience treating incarcerated individuals, and has never made a finding as to what was causing Konitzer to experience extreme stress and psychological distress (DFOF ¶¶ 51, 53, 55). Any recommendations regarding Konitzer's course of treatment ring particularly hollow when his own expert knows so little about him and his treatment.

Defense expert, Dr. Daniel Claiborn, is in accord with Professor Osborne. Dr. Claiborn asserts that Konitzer manifests severe and chronic personality disorders, characterized by self-centeredness, drama, volatile emotions, and erratic behaviors. The very nature of these combined personality disorders (Antisocial, Borderline, Histrionic, and Narcissistic) militates against honest self-exploration, trust, commitment, and taking responsibility for change (DFOF ¶ 46). According to Dr. Claiborn, Konitzer's Antisocial Personality Disorder is his most severe disorder (DFOF ¶ 47). Since Konitzer has other more severe disorders in addition to GID, it logically follows that defendants' course of treatment is appropriate and not an example of deliberate indifference.

As for any of Konitzer's potential medical needs, Konitzer's expert, Dr. Frederic Ettner, recommends specific types of medical treatment for Konitzer (DFOF ¶¶ 62). However, he wavers on whether such recommendations are even medically necessary (DFOF ¶¶ 62-71). This

is not surprising since there are no "official" guidelines for the best medical treatment of male-to-female transsexuals (DFOF ¶ 63). This of course begs the following questions: How can the defendants be acting deliberately indifferent toward Konitzer's GID when there are **no** official guidelines for treating male-to-female transsexuals? How can the defendants be acting deliberately indifferent toward Konitzer's GID when his very own expert concedes that his recommendations are not even medically necessary? The answer to both questions is that they cannot.

Konitzer's complaint that defendants are being deliberately indifferent to his GID by not implementing recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 simply does not hold any water. It ignores the voluminous medical record detailing the thorough and complete psychiatric and medical treatment that Konitzer has received. This is not a case in which the defendants have done nothing for Konitzer or ignored Konitzer. On the contrary. The defendants have provided treatment for Konitzer's long list of disorders and continue to do so. With little doubt, the type of care and attention that Konitzer has received has gone far beyond the type of care and attention he would have received if he had not been in state custody over the past decade. In addition, a disagreement between experts over what treatment Konitzer should receive does not state an Eighth Amendment violation. In turn, Konitzer's request for injunctive relief on recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14 fails. Konitzer's request for injunctive relief goes way beyond what the Eighth Amendment requires, is overly broad, and overly intrusive. Defendants' motion for summary judgment must be granted.

II. THE COURT SHOULD DECLINE TO ISSUE INJUNCTIVE RELIEF AND NOT ADOPT THE RECOMMENDATIONS THAT ONLY FEMALE OFFICERS CONDUCT STRIP SEARCHES OF KONITZER, PROVIDE HIM MAKEUP, PROVIDE HIM FEMALE UNDERGARMENTS, A FEMALE NAME, AND THE USE OF HAIR REMOVAL/GROWTH PRODUCTS BECAUSE SUCH RECOMMENDATIONS ARE CONTRARY TO WRC AND DOC'S LEGITIMATE INSTITUTIONAL INTERESTS AND BEYOND THE SCOPE OF INJUNCTIVE RELIEF ALLOWED UNDER THE PLRA.

A. Introduction.

In his Complaint, Konitzer alleges that the defendants have implemented policies that conflict with his needs as a biological male inmate with GID (Third Amended Complaint). Presumably, these would include conditions of Konitzer's confinement that are contrary to recommendations made by Konitzer's experts. These conditions include: (a) the requirement that Konitzer be searched by same-sex guards (male) (contrary to recommendation No. 3); (b) the prohibition of possession and use of makeup (contrary to recommendation No. 5); (c) the prohibition of possession and use of female undergarments (contrary to recommendation No. 6); (d) the prohibition of use of a female name since such name would be considered a false names or title (contrary to recommendation No. 8); and (e) the denial of hair removal and/or hair growth products (contrary to recommendation Nos. 9 and 12). The policies supporting these types of conditions, however, are reasonably related to legitimate institutional interests in safety, security, management, and administration. Therefore, they do not violate the Eighth Amendment, regardless of Konitzer's desired treatment.

B. When determining whether an inmate's conditions of confinement violate the Constitution, security concerns of correctional officials must be given great deference.

1. Deference to prison officials' decisions regarding security is essential.

Courts are obligated to defer to prison officials' adoption of policies necessary to preserve security and internal order. *Hewitt v. Helms*, 459 U.S. 460, 474 (1983). In the prison environment, "safety of the institution's guards and inmates is perhaps the most fundamental responsibility of the prison administration." *Id.* at 473.

"[P]rison officials are to remain the primary arbiters of the problems that arise in prison management." *Shaw v. Murphy*, 532 U.S. 223, 230 (2001).

> Judges should be cautious about disparaging disciplinary and security concerns expressed by the correctional authorities. American jails are not safe places, and judges should not go out of their way to make them less safe.

Keeney v. Heath, 57 F.3d 579, 581 (7th Cir. 1995).

> The nature of operating a penal institution, including the management of inmates and prevention of escapes, requires "moment-to-moment decisions and crisis management" which requires that correctional officers have discretion on how they will deal with any situation that arises.

Ottinger v. Pinel, 215 Wis. 2d 266, 279, 572 N.W.2d 519 (Ct. App. 1997) (quoting from *Barillari v. City of Milwaukee*, 194 Wis. 2d 247, 260, 533 N.W.2d 759 (1995)).

In determining whether prison policies are reasonably related to the government's interests in maintaining security and order and operating the institution in a manageable fashion, courts heed the Supreme Court's admonition that "[s]uch considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." *Childs v. Duckworth*, 705 F.2d

915, 920 (7th Cir. 1983); *Pell v. Procunier*, 417 U.S. 817, 827 (1974); *Bell*, 441 U.S. at 540 n. 23. As stated in *Turner v. Safley*, 482 U.S. 78, 84-85 (1987):

> A second principle identified in *[Procunier v.] Martinez*, [416 U.S. 396 (1974)] ... is the recognition that "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." As the *Martinez* Court acknowledged, "the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree." Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.

(Citations omitted.)

An illustration of judicial restraint comes from *Sandin v. Conner*, 515 U.S. 472 (1995). There, the Court overturned the rule in *Hewitt* that mandatory prison regulations created protectible liberty interests in prisoners. In doing so it said:

> Second, the *Hewitt* approach has led to the involvement of federal courts in the day-to-day management of prisons, often squandering judicial resources with little off-setting benefit to anyone. In so doing, it has run counter to the view expressed in several of our cases that federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment.

515 U.S. at 482.

The Seventh Circuit has identified as "*the* animating theme" of the Supreme Court's prison jurisprudence for the last 20 years as being "the requirement that judges respect the hard choices made by prison administrators." *Johnson v. Phelan*, 69 F.3d 144, 145 (7th Cir. 1995) (emphasis in the original). As indicated, *Sandin* expresses disapproval of excessive judicial involvement in day-to-day prison management, which often squanders judicial resources with little offsetting benefit to anyone. 515 U.S. at 482. Remember, these are convicted felons who have lost some of their rights. Imprisonment "necessarily makes unavailable many rights and privileges of the

ordinary citizen, 'a retraction justified by the considerations underlying our penal systems.'" *Wolf v. McDonnell*, 418 U.S. 539, 555 (1974).

2. When determining the constitutionality of a prisoner's conditions of confinement courts must always give great deference to security concerns and corrections officials' obligation to take reasonable measures to protect prisoners from violence at the hands of other prisoners.

Like most other claims under the Eighth Amendment, a claim asserting cruel and unusual conditions of confinement must satisfy a two-part test, with a subjective and an objective component. *Farmer*, 511 U.S. at 835. Generally, the standard for determining whether prison conditions satisfy the objective component of the Eighth Amendment focuses on whether the conditions are contrary to "the evolving standards of decency that mark the progress of a maturing society." *Id.* at 833-834 (internal quotations omitted). To meet this standard, the deprivation must be "extreme;" mere discomfort is not sufficient. *Hudson v. McMillan*, 503 U.S. 1, 8-9 (1993). "Only those deprivations denying the minimal civilized measures of life's necessities … are sufficiently grave to form the basis of an Eighth Amendment violation." *Craig v. Eberly*, 164 F.3d 490, 495 (10th Cir. 1998) quoting, *Wilson v. Seiter,* 501 U.S. 294, 298 (1991).

The duty imposed by the Eighth Amendment on prison officials to "provide humane conditions of confinement," *Farmer*, 511 U.S. at 832, requires prison officials to take reasonable measures to "'protect prisoners from violence at the hands of other prisoners." *Farmer*, 511 U.S. at 833 (quoting *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir.), *cert. denied*, 488 U.S.823 (1988)). Violent assaults, of course, are not "part of the penalty that criminal offenders pay for their offenses." *Rhodes v. Chapman*, 452 U.S.337, 347 (1981).

A prison official may enact a security measure, even one that impinges on medical needs, if the measure "was applied in a good faith effort to maintain or restore discipline." *Whitley v. Albers,* 475 U.S. 312, 320-21 (1986). In such situations, an official is liable only for acting "maliciously and sadistically for the very purpose of causing harm." *Id.* Constraints facing a prison official are relevant to whether his conduct can be characterized as "wanton." *Wilson,* 501 U.S. at 303. Thus, the "realities of prison administration" are relevant to the issue of deliberate indifference. *Helling v. McKinney,* 509 U.S. 25, 37 (1993).

Hence, prison officials, acting reasonably and in good faith, do not violate the Eighth Amendment because the resulting infliction of pain on the inmate would not be unnecessary or wanton. Rather, such a decision would be reasonable. Prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause. *Farmer*, 511 U.S. at 845.

> In addition, prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure 'reasonable safety,'…a standard that incorporates due regard for prison officials' 'unenviable task of keeping dangerous men in safe custody under humane conditions.'

Id. (citations omitted); *see also White v. Farrier,* 849 F.2d 322, 325 (8th Cir.1988) ("Denial of medical care that results in **unnecessary** suffering in prison is inconsistent with contemporary standards of decency and gives rise to a cause of action under 42 U.S.C. § 1983. Actions **without penological justification** may constitute an unnecessary infliction of pain.") (emphasis added).

C. Preventing Konitzer from possessing makeup, female undergarments, and hair growth/removal products in a male prison is reasonably related to WRC and DOC's legitimate interests in safety and security.

Preventing Konitzer from possessing makeup, female undergarments, and hair growth/removal products in a male prison is reasonably related to WRC and DOC's legitimate

interests in safety, security, and fair administration. The reasons supporting DOC's position are many. *See also Star v. Gramley,* 815 F.Supp. 276, 278 (C.D.Ill. 1993) (denial women's makeup and apparel at male prison upheld); *Wolfe v. Horn,* 130 F.Supp.2d 648, 654 (E.D.Pa. 2001) (denial of female clothing and makeup is not a constitutional violation); *Lamb v. Maschner*, 633 F. Supp. 351 (D. Kansas 1986) (denial of female clothing and cosmetics to GID inmate not a constitutional violation); *Long v. Nix*, 86 F.3d 761 (8th Cir. 1996) (denial of women's clothing and makeup upheld); *Murray v. United States Bureau of Prisons*, 106 F.3d 401, 1997 WL 34677 (deprivation of hair and skin products for GID inmate do not state a constitutional claim. Cosmetics are not among the civilized measure of life's necessities as to be required under constitution).

Allowing Konitzer these items would create a serious security risk. When an inmate enhances his differences in appearance or identity, such as appearing more feminine in a male prison population, it significantly increases the likelihood that the inmate will be the target of aggression or the center of conflict among the prison population. The inmate's use of female undergarments, the use of hair removal products, and makeup gives a loud message to all observers. It says to all inmates that the person is of the female gender and is available for sexual conduct. It is seen by all inmates as an open invitation to compete for that person's attention and invites assaults (DFOF ¶ 81). The consequences of providing Konitzer with property items typically associated with females, such as makeup and female undergarments, while he is housed in a male correctional environment, could compromise his safety and security, especially considering his lengthy sentence structure (DFOF ¶ 84). It is not unusual to find that over 50% of the incidents of violence in prison are related to sexual partnering among inmates where conflict has developed in the form of jealous partners, failed relationships, or competition from

other inmates. (DFOF ¶ 90). The level of risk of incidents of violence in prison is further elevated when any of the participants have a history of violent, assaultive behavior, such as Konitzer (DFOF ¶ 91).

Allowing Konitzer to have these items would also interfere with fair administration of the institution. Anytime an inmate is the recipient of an exception to rules and practices, then all other inmates immediately consider themselves candidates for the same exceptions. The logical extension of flexing the rules for all inmates, in operational terms, can be a condition that is unsafe and unmanageable in the correctional environment (DFOF ¶ 82). Prison riots often times occur because staff may not be uniformly enforcing rules. This creates tension within the inmate population and confusion among staff (DFOF ¶ 83). Any time an inmate is allowed to make himself a target of attention by enhancing his femininity in the form of clothing and makeup, it automatically increases the work demand of existing staff resources (DFOF ¶ 95). The feminization of an inmate increases the work demand of existing staff resources by: creating additional property management challenges such as making sure that an inmate is not doing a brisk business in the sales or bartering of cosmetics or undergarments; resolving disputes over who is eligible to possess such items and who is not eligible; determining whether hair removal products or hair growth stimulators are an appropriate product for the general inmate population; finding an opportunity for peaceful integration of an inmate to a new living condition as he is being moved from another location; or continuously observing an inmate based upon a perception of increased risk (DFOF ¶ 96). Staff resources that would be required due to the increases of work demand created by the feminization of an inmate are exceptional, and staff will be drawn from attending to other operational duties in the institution that are also likely to involve safety and control (DFOF ¶ 97). The logical extension of flexing the rules for all inmates,

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in operational terms, can be a condition that is unsafe and unmanageable in the correctional environment (DFOF ¶ 101). *See also* DFOF ¶¶ 81-109; 170; 181.

Allowing makeup also creates a security risk because Konitzer could use it to disguise his appearance and escape from the institution (DFOF ¶ 177). For example, an inmate at Waupun Correctional Institution almost successfully escaped from that institution after a visitor of the inmate came in and provided makeup to the inmate. This inmate almost made it past the guard station wearing the makeup that made him look like a female visitor (DFOF ¶ 178). When correctional staff is trained to look for males leaving the institution, it is much more difficult when they have to be concerned about males made up to look like females. (DFOF ¶ 179). Given Konitzer's sentence structure and escape history, he is classified as a high risk for an escape attempt (DFOF 180) and it would make absolutely no sense to allow him to possess makeup. It could not only be used to disguise his identity, but it could also be used to feign an injury, such as a black eye, in order to lure a staff member or other inmate in their room (DFOF ¶ 185).

Allowing makeup could also put Konitzer in a position of being in control of something that other inmates may want (DFOF ¶ 182). Contraband moves, and Konitzer could be offered money for things that other inmates want. This would put him in a power position over other inmates (DFOF ¶ 183). Allowing Konitzer to possess makeup could create a black market for people wanting it. (DFOF ¶ 184).[5]

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[5] Dr. Randi Ettner does not believe that makeup, per se, treats GID. (DFOF ¶ 186). In Dr. Claiborn's opinion, the use of makeup is a choice on the part of Konitzer's and a privilege with possible safety ramifications. There is no reasonable basis for considering this a necessary "treatment" for GID. (DFOF 188). The same is true regarding female undergarments (DFOF ¶¶ 160-61) and hair products (DFOF ¶¶ 198-209).

D. Refusing to accommodate Konitzer's request to be searched by female guards only is reasonably related to WRC and DOC's legitimate penological interests in prison management, administration, and security.

Refusing to accommodate Konitzer's request to be searched by female guards only is reasonably related to WRC and DOC's legitimate penological interests in prison management, administration, and security. DOC rules require that a person of the same sex as the inmate being searched conduct the strip search, although any staff member may conduct pat searches (DFOF ¶ 121). Although WRC does not and will not tolerate deliberate mistreatment related to strip searches conducted on Konitzer, such as unnecessary onlookers, WRC will not adopt practices that are different from DOC related to strip searches (DFOF ¶ 122). It is essential that WRC staff treat DOC inmates under its control in a consistent manner. If staff were to treat inmates differently or grant special favors, it would become a serious management issue and would compromise the ability of staff to maintain order in the facility (DFOF ¶ 123).

In addition, it would become a difficult management issue if WRC were required to have only female officers strip search and pat search Konitzer. This is because officers are assigned to a certain post and have certain job responsibilities (DFOF ¶ 124). Each correctional institution is operated with a specific number of established "Posts." These are locations where specific tasks are performed critical to the safe and controlled operation of the facility (DFOF ¶ 125). It is essential that the posts in correctional institutions remain in operation. Staff is seldom pulled from posts except in the most extreme circumstances (DFOF ¶ 126). Institution shift commanders must have the discretion to make assignments as he or she sees fit (DFOF ¶ 127).

It is not possible for DOC to ensure that Konitzer be pat searched or strip searched only by female staff. Staffing patterns and staff resources may not allow for this to occur. The

availability of female correctional officers is controlled by the number of female officers employed at an institution, and staff who may be on leave. Labor contracts also affect the number of male and female correctional staff at institutions. There may be occasions when a female on any given shift is not available due to these factors (DFOF ¶ 137). To create work positions merely for the purpose of ensuring that a female is available at all times to pat search or strip search Konitzer is impractical and cost prohibitive (DFOF ¶ 138).

Another management issue that would arise if WRC were required to have only female officers strip search and pat search Konitzer would be the effect that it would have on the rest of the inmate population. WRC houses many people who would much rather be searched by females than by males for reasons not related to GID (DFOF ¶ 128). This creates a managerial problem and security risk because once you treat one inmate with special favors, other inmates will feel entitled. This creates disorder in the prison and therefore, a security risk (DFOF ¶ 129).

Finally, Konitzer's situation is not unique or new to DOC. There have been other inmates with breast development or gender issues that have been managed in adult male institutions. These inmates have been safely managed without special accommodations for searches. Male officers perform the strip searches of these other inmates with breast development or gender issues (DFOF ¶ 136).[6]

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[6] Dr. Randi Ettner cannot predict that being searched by a male guard would cause Konitzer to inflict harm, only that it would be extremely agitating for Konitzer (DFOF ¶130). In Dr. Claiborn's opinion, requiring that Konitzer be searched only by female security officers does not constitute a necessity and cannot be construed at "treatment" for Konitzer. Dr. Claiborn believes that examination by male personnel will not harm Konitzer (DFOF ¶ 131).

E. Refusing to accommodate Konitzer's request to be referred to by a female name is reasonably related to WRC and DOC's legitimate interests in prison management and administration.

1. Allowing Konitzer the use of a female name would create a security risk, cause administrative problems, and give him special privileges in comparison to other prisoners.

Allowing Konitzer the use of a female name would create a security risk, cause administrative problems, and give him special privileges in comparison to other prisoners. Konitzer wants WRC staff to address him by using a female name and female pronouns. However, Konitzer is in a male institution and he was incarcerated under the name of Scott Konitzer (DFOF ¶ 145). WRC already accommodates Konitzer. Staff refers to him as "Konitzer," avoiding the use of his legal first name, Scott (DFOF ¶ 149).

Calling inmates by names other than their legal names creates order and maintenance issues at a prison. It presents identity problems, escape issues, and power and control issues with inmates. Staff needs to know who an inmate is at all times wherever they are, and they need to be accountable for the inmate's first and last name and inmate number. That is how WRC identifies people, how staff maintains order, and how staff ensures that inmates do not have power over other inmates (DFOF ¶ 147).

Administrative code provisions and policies are also designed to protect the public. Allowing inmates to identify themselves as something other than their legal name would enable them to misrepresent themselves to the public and could lead to predatory behavior and victimization (DFOF ¶ 153). Wisconsin Administrative Code § DOC 303.31 makes it a disciplinary offense for any inmate to use a name other than the name by which the inmate was committed to the department unless the name was legally changed. This is uniformly enforced

for legitimate penological purposes (DFOF ¶ 151). Allowing inmates to use nicknames or other titles would allow inmates to have a power relationship relative to other inmates. In the past, inmates have used these terms to exert their will, control, influence and power over other inmates (DFOF ¶ 152).

In addition, the database system used by DOC's Division of Adult Institutions (CIPIS) does not allow for more than one name to be used for the DOC number assigned to the offender. This system carries essential information concerning each inmate offender, including background information, convictions, institutional transfer histories, and program review actions (DFOF ¶ 155). DOC staff needs to be able to quickly and uniformly identify any given inmate at any given time in order access essential information about the inmate. If an inmate does not use their legal name, staff may be delayed in finding, utilizing, and recording necessary information, including inmate health records, security information, disciplinary records, and other records that are necessary in order for DOC to perform its necessary duties and obligations in a timely fashion (DFOF ¶ 156).

Allowing an inmate to use a name other than his legal name could also cause tracking problems for victim notifications. Victims may be confused if a notification letter came that did not have the offender's legal name listed. In addition, if a victim is not already in the system but later wishes to enroll for notification and only provides the inmates' old name, DOC may have difficulty finding the offender in the system (DFOF ¶ 157).

2. The court is prevented from issuing an order requiring the defendants and everyone else from referring to Konitzer by a female name under the *Rooker-Feldman* doctrine.

Among the recommendations made by Konitzer's expert Dr. Randi Ettner is that the court order the defendants and everyone else to refer to Konitzer by a female name. Presumably this name is "Donna Dawn Konitzer." However, such a request is inextricably intertwined with the state court petition for a name change that took place and which was ultimately denied (DFOF ¶¶ 141-44). Therefore, the *Rooker-Feldman* doctrine is controlling, and this court lacks subject matter jurisdiction to collaterally review the appropriateness of that state court determination.

The *Rooker-Feldman* doctrine is based on 28 U.S.C. § 1257, which grants the Supreme Court jurisdiction to review the decisions of the highest state courts for compliance with the Constitution. *See* 28 U.S.C. § 1257; *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 467 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). In *Rooker*, the Supreme Court held that no matter how wrong a state court decision may have been, a federal district court had no jurisdiction to reverse or modify it. *Rooker*, 263 U.S. at 415-416; *Garry v. Geils*, 82 F.3d 1362, 1366 (7th Cir. 1996). The *Feldman* Court similarly held that federal district courts "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *Feldman*, 460 U.S. at 486. The *Rooker-Feldman* doctrine has since emerged to stand for the proposition that lower federal courts do not have authority to review the judgments of the state courts even when a federal question is presented. *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 700 (7th Cir. 1998). If the injury complained of resulted from the state court judgment itself, or if the plaintiffs ask the district court to consider collateral attacks on

state court judgments, the doctrine will apply. *See GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 727 (7th Cir. 1993).

The *Rooker-Feldman* doctrine extends beyond issues actually raised in state court to issues that are "inextricably intertwined" with the state court proceedings. *Feldman*, 460 U.S. at 483 n.16; *Johnson v. Collins*, 58 F. Supp. 2d 890, 897 (N.D. Ill. 1999). The Seventh Circuit noted that there is "no bright line that separates a federal claim that is 'inextricably intertwined' with a state court judgment from a claim that is not so intertwined." *Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993). The crucial point is whether the district court is in essence being called upon to review the state-court judgment. *Id.* Thus, while 42 U.S.C. § 1983 creates a civil cause of action against public officials for violating a person's constitutional rights, that cause of action is constrained by the jurisdictional principles of *Rooker-Feldman*. *Young v. Murphy*, 90 F.3d 1225, 1230-31 (7th Cir. 1996).

Konitzer has already litigated a petition for a name change in Brown County Case No. 00 IP 32 captioned *In the Matter of a Change of Name of Scott Allen Konitzer*, where he requested that his name be changed to Donna Dawn Konitzer (DFOF ¶ 141). Through this action, a state court was called on to determine both Konitzer's rationale for wanting the name change, and DOC's rationale for opposing such a change (*see* DFOF ¶ 142). As such, the present request to be referred to as "Donna Dawn Konitzer" is "inextricably intertwined" with the state court proceedings. Konitzer is, in essence, requesting a federal district court to review the state-court judgment denying his name change petition. This is not permissible under the *Rooker-Feldman* doctrine, and summary judgment is proper.

CONCLUSION

This court should grant the defendants' motion for partial summary judgment as to the plaintiff's request for injunctive relief to implement recommendations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14.

Dated at Madison, Wisconsin, this 28th day of February, 2006.

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