

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

RECEIVED

04 DEC 16 AM 11:13

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

MICHAEL D. REMMERS and
ROBERT LONEY,

*

NO. 4:72-cv-00177

*

Plaintiffs,

*

vs.

*

**DEFENDANTS' 60 (B)
MOTION**

LOU V. BREWER, et al.

*

Defendants.

*

Pursuant to Fed. R. Civ. P. 60(b)(5) the defendants seek relief from the injunctive relief entered in *Remmers v. Brewer*, 361 F. Supp 537 (S.D. Iowa 1973) *aff'd*, 494 F. 2d 1277 (8th Cir.) (per curiam), *cert. denied*, 419 U.S.1012 (1974) and its progeny, including *Loney v Scurr*, 474 F. Supp. 1186 (S.D. Iowa 1979) and *Wycoff, et al. v. Scurr, et al.*, Civ No. 81-303-D (S.D. Iowa., April 29, 1986, *as modified*, June 22, 1987) recognizing the Church of the New Song (CONS) as a religion protected by the First Amendment and mandating its equal treatment with other religions at the Iowa State Penitentiary, and for ground state:

1. The plaintiffs, who were inmates at the Iowa State Penitentiary in the 1970s and 1980s, obtained rulings in these cases which found that the Church of the New Song (CONS) was a religion entitled to protection under the First Amendment.

2. Based on those rulings, the court entered orders requiring prison officials to treat CONS as a religion with privileges equal to other religions practiced at the prison.

3. Since the entry of those orders, circumstances have materially changed, making prospective application of the orders no longer equitable.

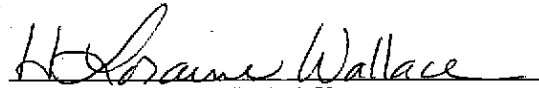
4. The CONS is not a religion and serves no religious purpose protected by the First Amendment.

5. The CONS is a white supremacist prison gang involved in threatening, coercive and illegal conduct which poses a threat to the security and well being of inmates and staff in the prison.

6. Allowing CONS to participate with privileges accorded legitimate religious practice is dangerous and unjust.

Wherefore, Defendants pray that the court will grant relief from judgment in *Remmers v. Brewer*, 361 F. Supp 537 (S.D. Iowa 1973) *aff'd*, 494 F. 2d 1277 (8th Cir.) (per curiam), *cert. denied*, 419 U.S.1012 (1974) and its progeny, including *Loney v Scurr*, 474 F. Supp. 1186 (S.D. Iowa 1979) and *Wycoff, et al. v. Scurr, et al.*, Civ No. 81-303-D (S.D. Iowa., April 29, 1986, as modified, June 22, 1987) recognizing the Church of the New Song (CONS) as a religion protected by the First Amendment and mandating its equal treatment with other religions at the Iowa State Penitentiary.

THOMAS J. MILLER
Attorney General of Iowa


LAYNE M. LINDEBAK
H. LORAIN WALLACE
ATTORNEYS FOR DEFENDANTS
Assistant Attorney General
Special Litigation-Corrections
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5319
FAX: (515) 281-4902
Email: llindeb@ag.state.ia.us
Email: lwallac@ag.state.ia.us

Copy to:

Mr. John Whiston
Clinical Law Programs
College of Law
University of Iowa
Iowa City, IA 52242-1113

Mr. Patrick E. Ingram
MEARS LAW OFFICE
209 East Washington St.
Paul-Helen Bldg., Suite 203
Iowa City, IA 52240

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of
the foregoing was

☒ personally delivered
☐ mailed
☐ sent via telefax

to each party of record at their last known address

on December 16 19 2004
Kathleen A. Pittman