

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CENTER FOR INQUIRY,
INC.; RICHARD HULL; and
ELAINE HULL,

Plaintiffs,

v.

Case No.: 2007-CA-1358

JULIE L. JONES, in her official capacity
as the Secretary of Corrections of
Florida; et al,

Defendants.

FINAL JUDGMENT

This Cause came before the Court on: (1) Plaintiff's Motion for Summary Judgment; (2) Defendants Prisoners of Christ and Lamb of God Ministries' Cross-Motion for Summary Judgment; and (3) Defendant Julie L. Jones' Cross Motion for Summary Judgment, with each Motion being directed to Plaintiff's Second Amended Complaint filed on May 7, 2012. A hearing on these motions was held on October 21, 2015. The Court having considered the parties' respective motions for summary judgment (and related filings), responses in opposition to such motions, and the evidence and authorities relied upon therein; and having heard arguments from counsel for all parties; the Court finds as follows:

THE RECORD

References cited in this opinion to the record in this case are cited as: Appx. The appendices referred to in this case are set forth in the trial court's docket as follows:

- 1) Appendix to Plaintiff's Motion for Summary Judgment filed 5/8/15 (pages 1-800).
- 2) Appendix [to Plaintiff's Motion for Summary Judgment] filed 5/8/15 (pages 801-1586).
- 3) Appendix to Cross Motion [for Summary Judgment] filed 9/29/15 (pages 1587-1801).
- 4) Appendix filed 10/1/15 (pages 1802-1809) – two affidavits – one from James Fugate, President and CEO of Lamb of God Ministries (pages 1802-1805) and another from J. Stephen McCoy, Executive Director of Prisoners of Christ (pages 1806-1809).

THE ISSUE

This case involves payments by the State of Florida, Department of Corrections to Prisoners of Christ, Inc. and Lamb of God Ministries, Inc. The payments are for substance abuse and transitional housing services offered pursuant to contracts authorized by Section 944.4731, Florida Statutes.¹ The question before this Court is does the statute and the payments violate Article I, Section 3 of the Florida Constitution, known as the "No Aid" provision based on the religious nature of the two faith based programs. The Plaintiffs assert taxpayer standing to bring this suit.

PARTIES AND THEIR ACRONYMS

- 1) Plaintiffs Richard and Elaine Hull are Florida residents and taxpayers. Plaintiff, Center for Inquiry, is a New York non-profit corporation and is the entity into which former

¹ In addition to Section 944.4731, Florida Statutes (which authorizes the contracts in dispute), the Plaintiffs had also originally challenged Section 944.473, Florida Statutes (which provides for an inmate substance abuse testing program). But at the summary judgment hearing, the Plaintiffs conceded that the latter statute is not pertinent to the issues in this case and is not in dispute.

Plaintiff Council for Secular Humanism, Inc. merged. The Center for Inquiry, Inc., hereinafter “CFI” has roughly 200 members in Florida. Its employees have traveled to Florida on several occasions and paid sales tax in the state.

2) Defendant Julie L. Jones is sued in her official capacity as the head of the Florida Department of Corrections, she is hereinafter referred to as “DOC.” The term “Program” is the DOC program which contracts with service providers (private organizations, including faith-based ones) for substance abuse and other services.

3) Lamb of God Ministries, Inc., hereinafter referred to as “LOG” is a contractor providing services to DOC.

4) Prisoners of Christ, Inc., hereinafter referred to as “POC” is a contractor providing services to DOC.

5) POC and LOG are collectively referred to herein as “the Contractors”.

SUMMARY

The No-Aid provision permits government contracts with religious organizations if the funds are not spent “in aid of” religion but rather to further the state’s secular goals. *See Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112 (Fla. 1st DCA 2010) (“CSH”).

Applying the CSH factors to the record in this case, the payments from DOC to the Contractors are not being made “in aid of” religion. The Program exists to promote the State’s anti-recidivism and anti-addiction interests, not religion. The Program is not “significantly sectarian”: it permits some religious content only to the extent the content is offered in a nondiscriminatory and wholly optional and voluntary fashion. Further, the record shows that the Program does not indoctrinate, require participation in religious ritual, or favor any one religion over another.

Instead, the record demonstrates that the Program provides social services purchased from the Defendant Contractors at or below market prices, which the State could have purchased from nonreligious private entities. Therefore the Court grants the Defendants' motions for Summary Judgment and denies the Plaintiffs' motion for Summary Judgment.

PROCEDURAL HISTORY

The case began in 2007 when the Plaintiffs filed a multi-count complaint attacking the payments from DOC to the Contractors, the DOC's contracts with the Contractors, statutes authorizing the contracts, and other matters which are no longer at issue in the case, all based upon the "No Aid" provision. The Contractors filed a motion to dismiss as to all claims, which was granted by this Court, and Plaintiffs appealed.

The First District Court of Appeal affirmed the decision of this Court as to all counts of the original Complaint except Count I. *CSH*, 44 So. 3d at 120. The First District held that the Plaintiffs do not have standing to challenge the Contractors' downstream performance of the contracts or the DOC's oversight of the contracts, but only to raise a constitutional challenge to specific legislative appropriations made to fund the contracts under Section 944.4731, Florida Statutes, as alleged in Count I. *Id.* The First District also set forth a list of factors to consider in evaluating whether payments made by DOC to the Contractors under the contracts violate the "No Aid" provision. *Id.* at 120. The case was remanded to this Court on the issues raised in Count I.²

After conducting discovery and developing a record, the Plaintiffs filed a Motion for Summary Judgment. The Plaintiffs seek a judgment:

² On remand, Plaintiffs filed a Second Amended Complaint again asserting multiple counts. Defendants filed motions to dismiss and strike, and after a hearing, this Court determined that Count II sought injunctive relief based upon the same allegations as Count I, and thus would be treated as a request for additional relief based upon the same claims. The Second Amended Complaint is the operative pleading here.

- 1) declaring that DOC payments to the Contractors for the substance abuse and transitional housing services at issue are unconstitutional;
- 2) declaring Section 944.4731, Florida Statutes, is also unconstitutional to the extent it authorizes such payments; and
- 3) enjoining the DOC from entering into future contracts with the Contractors.

The contractors, LOG and POC, as well as, the DOC filed Cross Motions for Summary Judgment and Responses Opposing the Plaintiffs' Motion for Summary Judgment. They contend that: (1) under the factors set forth in *CSH*, the record in this case does not support a finding that the "No Aid" provision is being violated; and (2) to rule in favor of the Plaintiffs would give the "No Aid" provision an expansive reading that would give rise to issues under the United States Constitution.

UNDISPUTED FACTS³

DOC Contracts with Providers

In 2000, the Legislature created a task force to study how to address the cycle of substance abuse and criminal recidivism. See Ch. 2001-110, Laws of Fla. The task force recommended a number of different solutions, which the Legislature adopted. *Id.* Among other things, it passed a statute allowing private organizations, including faith-based ones, to bid on contracts to provide substance abuse and transitional housing services. *Id.*; see also Section 944.4731, Florida Statutes ("the DOC Program"). The Contractors, LOG and POC, were awarded their contracts after a competitive public procurement process.⁴ They have provided

³ All parties informed the Court the matter was ripe for summary judgment and no affidavits were filed in opposition to any Motion for Summary Judgment.

⁴ Appx. at 1589 (Affidavit of DOC employee Kim Riley Conroy: p.2, ¶7)

services to the State for thirteen (13) years.⁵ There have been a series of contracts⁶ and amendments thereto over that period of time. The amendments will become important as they represent the DOC's response to Plaintiffs' complaints.

Under the contracts, participation in the DOC Program is voluntary.⁷ The DOC Program is open to clients of any faith, or no faith.⁸ The DOC Program has successfully graduated clients of several faiths and of no faiths.⁹ Any religious content is optional.¹⁰ Both Contractors are led by men with religious training and background.¹¹ These men lead optional religious meetings and have voluntary religious discussions with clients.¹² The organizations are faith-based, but neither organization operates as a traditional church; they do not maintain a congregation or hold services open to the general public.¹³

Under the Contracts, the Contractors provide housing, employment assistance, transportation, and food for their clients.¹⁴ This begins as soon as men are released from prison:

⁵ Appx. at 1590 (Affidavit of DOC employee Kim Riley Conroy: p.3,¶¶14-15)

⁶ Appx. at 1165 (Appendix G- list of contracts-early contracts); Appx. at 1389 (Appendix H-list of contracts-later contracts)

⁷ Appx. at 954-955 (Deposition of DOC employee Arnia Perpignand: p. 16:11-17:13); Appx. at 1114-1115 (Deposition of DOC employee Thomas Britton: p. 76:11-77:9); Appx. at 1391(DOC contract #C2680 with LOG, p.2,II.,A.); Appx. at1439 (DOC contract #C2681 with LOG, p.2,II.,A.);Appx. at 1483 (DOC contract #C2666 with POC, p.2,II.,A.); Appx. at 1590 (Affidavit of DOC employee Kim Riley Conroy: p.3,¶¶17-18)

⁸ Appx. at 72-73 (Deposition of James Fugate: p.69:19-70:10); Appx. at 1393 (DOC contract #C2680 with LOG, p.4,II.,E.,7); Appx. at1441 (DOC contract #C2681 with LOG, p.4,II.,E.,7.); Appx. at 1485 (DOC contract #C2666 with POC, p.4,II.,E.,7.)

⁹ Appx. at 73 (Deposition of James Fugate: p.70:1-10); Appx. at 452-453 (Deposition of J. Stephen McCoy: p.83: 16-84:4)

¹⁰ Appx. at 42 (Deposition of James Fugate: p.39:15-18); Appx. at 409-410 (Deposition of J. Stephen McCoy: p.40: 9-41:2);); Appx. at 1397 (DOC contract #C2680 with LOG, p.8,II.,I.,1,c,2); Appx. at1445 (DOC contract #C2681 with LOG, p.8,II.,I.,1,c,2); Appx. at 1489 (DOC contract #C2666 with POC, p.8,II.,I.,1,c,2.)

¹¹ Appx. at 13-15 (Deposition of James Fugate: p.10:14-12:18); Appx. at 379-380 (Deposition of J. Stephen McCoy: p.9:23-11:18)

¹² Appx. at 42-43 (Deposition of James Fugate: p.39:15-40:6; 47:16-24; 48:5-21); Appx. at 409-410 (Deposition of J. Stephen McCoy: p.40:2-41:2)

¹³ Appx. at 73-74 (Deposition of James Fugate: p.70:11-71:20); Appx. at 384-385 (Deposition of J. Stephen McCoy: p.15:22-16:10; Appx. at 401-402 (p.32:21-33:3); Appx. at 453 (p.84:17-18)

¹⁴ Appx. at 1395-1396,1399-1400 (DOC contract #C2680 with LOG, p.6-7,II.,H.,2,c-d; p.10-11,II.,I.,2,c); Appx. at1443-1444,1447-1448 (DOC contract #C2681 with LOG, p.6-7,II.,H.,2,c-d; p.10-11,II.,I.,2,c); Appx. at 1487-1488,1491-1492 (DOC contract #C2666 with POC, p.6-7,II.,H.,2,c-d; p.10-11,II.,I.,2,c)

the Contractors meet them at the bus stop and bring them to their facilities, where they help them to adjust to life outside prison and come up with a plan based upon each client's needs.¹⁵ In addition to food, shelter, clothing, and substance abuse treatment, those needs may include services such as obtaining social security cards, driver's licenses or ID cards. They also help clients to obtain services such as transportation, medical and dental services, mental health services, food stamps, GEDs, and post-secondary education. Securing and maintaining employment is a critical part of the Program, so the Contractors offer training in life skills, workplace demeanor, budgeting skills, grooming, and personal hygiene.¹⁶

A material issue in this case is related to the substance abuse programs. What is taught and how is it presented? The original DOC contracts provided the criteria for Substance Abuse Programming as follows:

- 2) Substance Abuse Programming
The Contractor shall provide substance abuse programming that meets at least one of the following criteria:
 - a) a curriculum that uses a cognitive-behavioral model of addiction recovery that is exclusively religious, spiritual, or ecclesiastical in nature, and thus exempt from licensure requirements under Chapter 65D-30, Florida Administrative Code; or
 - b) a curriculum that uses a cognitive-behavioral model of addiction recovery that is **not** exclusively religious, spiritual, or ecclesiastical in nature and provided in accordance with applicable requirements of Chapter 65D-30, Florida

¹⁵ Appx. at 39-40 (Deposition of James Fugate: p.36:6-37:19); Appx. at 383-384, 414-416 (Deposition of J. Stephen McCoy: p.14:22-15:8; p.45:13-47:9)

¹⁶ Appx. at 1309 (DOC contract #C2054 with POC, p.9,II.,B,2,e,3); Appx. at 1395-1396,1399-1400 (DOC contract #C2680 with LOG, p.6-7,II.,H.,2,c-d; p.10-11,II.,I.,2,c); Appx. at 1436, (DOC contract #C2680 with LOG, Amendment #4, p.1); Appx. at 1443-1444,1447-1448 (DOC contract #C2681 with LOG, p.6-7,II.,H.,2,c-d; p.10-11,II.,I.,2,c); Appx. at 1487-1488,1491-1492 (DOC contract #C2666 with POC, p.6-7,II.,H,2,c-d; p.10-11,II.,I.,2,c); Appx. at 1525, (DOC contract #C2666 with POC, Amendment #3, p.1)

Administrative Code; or

- c) a 12-step model of addiction recovery; or
- d) names and locations of community resources providing substance abuse re-entry and relapse prevention services to program participants needing this service.

On June 20, 2014,¹⁷ the DOC contracts with both LOG and POC, as it related to their substance abuse programs, were amended to provide:

In accordance with Section V., CONTRACT MODIFICATION; the following changes are hereby made:

1. Section II., I., 2., c., 2) Substance Abuse Programming, is hereby revised as read:

2) Substance Abuse Programming

The Contractor shall provide, at no cost to the Department, substance abuse programming that meets at least one of the following criteria:

- a) a curriculum that uses a cognitive-behavioral model of addiction recovery provided in accordance with applicable requirements of Rule 65D-30, Florida Administrative Code; or
- b) a self-help support group model of addiction recovery; or
- c) names and locations of community resources providing substance abuse re-entry and relapse prevention services to program participants needing this service.

The two programs in question, LOG and POC, are currently using the AA twelve –step model or a variation thereof.¹⁸

¹⁷ Appx. at 1436-1437 (DOC contract #C2680 with LOG, Amendment #4, p.1-2, dated June 20, 2014); Appx. at 1525-1526 (DOC contract #C2666 with POC, Amendment #3, p.1-2, dated June 20, 2014)

¹⁸ Appx. at 36-37,50-51 (Deposition of James Fugate: p.33:23-34:21, p.47:2-48:9); Appx. at 405,443 (Deposition of J. Stephen McCoy: p. 36:7-14; p.73:24-74:7)

Most DOC Program participants are post-release inmates who are not under State supervision.¹⁹ Offenders under probation may also choose to enter the DOC Program.²⁰ If they are discharged without completing the DOC Program, the probation officer must be notified. Like all other participants, offenders on probation remain free to leave a particular provider and seek a different one that meets their needs²¹

DOC provides a mechanism for anonymous complaints by Program participants, including complaints about any religious aspects of services.²²

DOC maintains that it cannot purchase these services as cheaply from other sources because the amounts paid do not even cover the Contractor's overhead. DOC's witness, Thomas Britton, testified when being question about the contract with POC:

[T]he small amount of money of State funds that are paid to this contract, there's no way that they would come close to covering the light bills and gasoline bills, just the upkeep on the houses.²³

and

Yes, I believe our payments are going toward the overhead. I don't think [state funding] would even come close to completing all their expenses.²⁴

DOC does not review or determine how the money paid to the contractors is used by the contractors.²⁵

¹⁹ Appx. at 954-955 (Deposition of DOC employee Arnia Perpignand: p.16:11-18)

²⁰ Appx. at 1397 (DOC contract #C2680 with LOG, p.8,II.,I.,1,c); Appx. at 1445 (DOC contract #C2681 with LOG, p.8,II.,I.,1,c); Appx. at 1489, (DOC contract #C2666 with POC, p.8,II.,I.,1,c)

²¹ Appx. at 955 (Deposition of DOC employee Arnia Perpignand: p. 17:6-13); Appx. at 1590-1591 (Affidavit of DOC employee Kim Riley Conroy: p.3-4,¶18)

²² Appx. at 1094 (Deposition of DOC employee Thomas Britton: p.56:3-11); Appx. at 1591 (Affidavit of Kim Riley Conroy: p.4,¶21)

²³ Appx. at 1094 (Deposition of DOC employee Thomas Britton: p.56:16-21)

²⁴ Appx. at 1096 (Deposition of DOC employee Thomas Britton: p.58:6-15)

²⁵ Appx. at 1094,1096 (Deposition of DOC employee Thomas Britton: p.56:22-57:9;58:16-59:17); Appx. at 1013-1014 (Deposition of DOC employee Arnia Perpignand: p.75:8-76:8)

The record supports a finding that the DOC has continued the Program and the contracts with these Contractors for more than ten (10) years,²⁶ and, importantly, the Contractors have found that the DOC Program with its optional faith components is effective for offenders who wish to integrate their faith with their recovery.²⁷

The Contract with Lamb of God

LOG runs a halfway house in Pompano Beach. The LOG's mission is to assist men transitioning back into the community from prison,²⁸ including by helping them recover from drug and alcohol addiction.²⁹ Lamb of God does not have any private donations³⁰ and only receives about a third to 25% of its revenue from DOC.³¹

LOG as a Contractor provides substance abuse treatment based on the "AA 12-step program."³² LOG is licensed as a substance abuse counseling center³³ and uses the self-help support group model of recovery identified in Section II.I.2.c.2(b) of the Contract,³⁴ as amended by Amendment #4.³⁵ LOG's director is licensed by the State as a substance abuse counselor.³⁶ LOG's leaders may refer to a variety of substance abuse recovery materials when preparing for their meetings, including religious materials.³⁷

²⁶ Appx. at 1166 (DOC contract #C1999 with LOG, Amendment#3, p.1); Appx. at 1301 (DOC contract #C2054 with POC, p.1)

²⁷ Appx. at 1805 (Affidavit of James Fugate: p.3, ¶¶14-15); Appx at 1808-1809 (Affidavit of J. Stephen McCoy: pp.2-3, ¶¶14-15)

²⁸ Appx. at 39-40 (Deposition of James Fugate: p.36:6-37:19)

²⁹ Appx. at 18 (Deposition of James Fugate: p.15: 5-7)

³⁰ Appx. at 56 (Deposition of James Fugate: p.53:12-18)

³¹ Appx. at 56-57 (Deposition of James Fugate: p.53:12-18); Appx. at 1804 (Affidavit of James Donald Fugate: p.2, ¶12)

³² Appx. at 36-37,50-51 (Deposition of James Fugate: p.33:23-34:21, p.47:2-48:9)

³³ Appx. at 55 (Deposition of James Fugate: p.52: 1-9)

³⁴ Appx. at 1399 (DOC contract #C2680 with LOG, p.10,II.,I.,2,c,2,b);

³⁵ Appx. at 1436, (DOC contract #C2680 with LOG, Amendment #4, p.1,sec.1,2)

³⁶ Appx. at 14-15 (Deposition of James Fugate: p. 11:24-12:2)

³⁷ Appx. at 36-38 (Deposition of James Fugate: p. 33:16-35:6); Appx. at 1804-1805 (Affidavit of James Donald Fugate: p.2-3, ¶¶13-14)

DOC pays LOG \$20 per client per day for those it serves under the contracts.³⁸ The budget for LOG is approximately \$325,000 and DOC provides about 25-33% of that amount.³⁹ LOG provides these services at a loss.⁴⁰ LOG even continues to house, feed, and provide services to State clients when the State funds run short and it is not receiving State money to provide services.⁴¹ LOG does not keep a separate checking account, all funds received, including those from DOC all go into a single account.⁴² LOG's President receives a ministerial allowance in addition to his regular salary.⁴³

LOG, by the terms of its contract with DOC, is contractually required not to "... attempt to convert a program participant toward a particular faith or religious practice."⁴⁴ LOG complies with the requirement not to proselytize.⁴⁵ Neither DOC nor LOG are aware of any complaints about optional faith-based content at LOG.⁴⁶

The Contract with Prisoners of Christ

POC runs several transitional living facilities in Jacksonville. POC's mission is to assist men in transitioning back into the community from prison⁴⁷, including helping them recover from drug and alcohol addiction.⁴⁸ POC as a Contractor provides substance abuse treatment

³⁸ Appx. at 1405 (DOC contract #C2680 with LOG, p.16,III.,A.); Appx. at 1453 (DOC contract #C2681 with LOG, p.16,III.,A.)

³⁹ Appx. at 56,57,64 (Deposition of James Fugate: p. 53:19-54:1, p.54:2-22, p. 61:10-20); Appx. at 1804 (Affidavit of James Donald Fugate: p.2, ¶12)

⁴⁰ Appx. at 1804 (Affidavit of James Donald Fugate: p.2, ¶11)

⁴¹ Appx. at 65 (Deposition of James Fugate: p. 62:10-24); Appx. at 1803 (Affidavit of James Donald Fugate: p.1, ¶6)

⁴² Appx. at 62-63 (Deposition of James Fugate: p. 59:13-60:10)

⁴³ Appx. at 23-24 (Deposition of James Fugate: p.20:9-21:4)

⁴⁴ Appx. at 1393 (DOC contract #C2680 with LOG, p.4,II.,E.,7); Appx. at 1441 (DOC contract #C2681 with LOG, p.4,II.,E.,7)

⁴⁵ Appx. at 44-45 (Deposition of James Fugate: p. 41:22-42:13); Appx. at 1804 (Affidavit of James Donald Fugate: p.2, ¶13)

⁴⁶ Appx. at 1099-1100 (Deposition of DOC employee Thomas Britton: p.61:22-62:24); Appx. at 1804 (Affidavit of James Donald Fugate: p.2, ¶13)

⁴⁷ Appx. at 383 (Deposition of J. Stephen McCoy: p.14: 9-12; p. 15:1-8; p. 16:4-5)

⁴⁸ Appx. at 1809 (Affidavit of J. Stephen McCoy: p. 3,¶15)

based on the “AA 12-step program.”⁴⁹ POC provides substance abuse treatment classes using the self-help support group model of recovery identified in Section II.I.2.c.2(b) of the contract, as amended by Amendment #3.⁵⁰ POC also provides optional religious materials to Program participants who want to integrate their faith with the recovery process.⁵¹

POC receives \$14.28 per client per day for the services it provides under State contracts.⁵² POC provides these services at a loss because it has a mission to serve those in need.⁵³ According to POC, the State funding does not cover the expense of housing, feeding, and providing transitional services to the clients.⁵⁴ The budget for POC is approximately \$245,000, DOC provides about 20% of that amount⁵⁵ and the remainder comes from substantial private donations.⁵⁶

The Program contract requires POC not to discriminate on the basis of belief in its provision of services,⁵⁷ and POC complies with the contract requirement that it not proselytize.⁵⁸ Neither DOC nor POC are aware of any complaints about optional faith-based content at POC.⁵⁹

⁴⁹ Appx. at 405,443 (Deposition of J. Stephen McCoy: p. 36:7-14; p.73:24-74:7)

⁵⁰ Appx. at 404-407 (Deposition of J. Stephen McCoy: p. 35:3-38:9); Appx. at 1525, (DOC contract #C2666 with POC, Amendment #3, p.1,sec.1)

⁵¹ Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶14)

⁵² Appx. at 452 (Deposition of J. Stephen McCoy: p. 83:5-15); Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶10)

⁵³ Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶11); Appx. at 383,384 (Deposition of J. Stephen McCoy: p. 14:9-12;15:1-8)

⁵⁴ Appx. at 451 (Deposition of J. Stephen McCoy: p. 82:6-10); Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶11)

⁵⁵ Appx. at 451 (Deposition of J. Stephen McCoy: p. 82:11-16); Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶12)

⁵⁶ Appx. at 420-421 (Deposition of J. Stephen McCoy: p. 5:19-52:25)

⁵⁷ Appx. at 1485, (DOC contract #C2666 with POC, p.4,II.,E.,7)

⁵⁸ Appx. at 395,409-410 (Deposition of J. Stephen McCoy: p.26:21-24; p.40:2-41:2); Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶13)

⁵⁹ Appx. at 1099-1100 (Deposition of DOC employee Thomas Britton: p.61:22-62:24); Appx. at 1808 (Affidavit of J. Stephen McCoy: p. 2,¶13)

CONCLUSIONS OF LAW

C. Legal Standard

1. The parties have filed cross-motions for summary judgment. All parties agree that there are no genuine issues of material fact and that the case is ripe for summary judgment. “Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law.” *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).
2. Plaintiffs seek prospective relief: a declaration that the contracts with Defendant Contractors violate the No-Aid provision, and that the statutes underlying those contracts, to the degree they authorize those contracts, to be declared unconstitutional. Second Amended Compl. ¶ 23. The challenged statute is “presumed valid,” and therefore “courts will construe statutes in such a manner as to avoid conflict with the constitution.” *McElrath v. Burley*, 707 So. 2d 836, 838, 839 (Fla. 1st DCA 1998). Any attempt to invalidate the underlying statutes requires “the plaintiff to demonstrate that the statute was not constitutional by negating every conceivable basis for upholding the law.” *Id* at 839.
3. Plaintiffs Richard and Elaine Hull have taxpayer standing to challenge the statutes. Because they have standing to raise the claims at issue, this Court does not reach whether Plaintiff CFI has standing. *See Prof'l Firefighters of Fla., Inc. v. Dep't of Health & Rehab. Svcs.*, 396 So. 2d 1194, 1196 (Fla. 1st DCA 1981).
4. Florida's No-Aid provision states, “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” Fla. Const. Art.

I, § 3. This provision does not bar state contracts with religious groups, but only state funding which is “in aid of” churches, sects, denominations, or “sectarian” institutions.

5. The “prohibitions of the no-aid provision are limited to the payment of public monies.” *Bush v. Holmes*, 886 So. 2d 340, 356 (Fla. 1st DCA 2004). Likewise, Plaintiffs may challenge only “legislative appropriations” since they allege only taxpayer standing. *CSH*, 44 So. 3d at 121. So the focus of this case is on the State’s use of public money.
6. Further, Plaintiffs cannot challenge the performance of State contracts which use State money, but only the statutory government-funded Program that authorizes those contracts. *Id.* at 122. If contractors misuse State funds outside the parameters of the Program, that is a matter for the State to police, not private parties. *Id.*
7. Accordingly, the question before this court is a narrow one: “whether the government-funded program” at issue “purchases at market prices secular services or products,” or whether the State is using “state funds to promote religious or sectarian activities.” *Id.* at 119-20.
8. In a prior appeal of this case, the First District Court of Appeals spelled out the governing legal standard for cases like this one, where the government is contracting for social services from a religious organization. “[T]o violate the no-aid provision, in addition to providing social services, the government-funded program *must* also advance religion.” *Id.* at 119-20 (emphasis added). Making this determination is “necessarily” a “case-by-case” determination and involves the following considerations: “whether the government-funded program:

[1] is used to promote the religion of the provider;

[2] is significantly sectarian in nature;

[3] involves religious indoctrination;

[4] requires participation in religious ritual; or

[5] encourages the preference of one religion over another.” *Id.* at 120.

D. Analysis of the No-Aid Provision

The First Factor

9. The first factor is “whether the government-funded program is used to promote the religion of the provider.” *CSH*, 44 So. 3d at 120. *CSH* makes clear even “church[es], synagogue[s], or mosque[s]” may contract with the State to provide “social services,” *id.* at 119. Thus, “promote” cannot be understood to refer to any State funds paying a religious organization for social services, even though such organizations could then use the funds at their discretion. Rather, the operative inquiry is whether the State money is being used by the State “to accomplish a nonsectarian purpose.” *Id.* at 120.
10. Prior No-Aid cases are instructive on this point. Where the State acts to “promote the general welfare of society,” the action is “valid” so long as “religious interests” are only “indirectly benefited.” *Johnson v. Presbyterian Homes of Synod of Fla.*, 239 So. 2d 256, 261 (Fla. 1970); *Nohrr v. Brevard Cty. Educ. Facilities Auth.*, 247 So. 2d 304, 307 (Fla. 1971) (same). This is because “an incidental benefit to a religious group resulting from” access to government resources does not impermissibly promote religion. *Southside Estates Baptist Church v. Bd. of Trs., Sch. Tax Dist. No. 1*, 115 So. 2d 697, 700 (Fla. 1959).
11. Thus, the question under this *CSH* factor is whether the purpose of the Program is to promote the general welfare of society or to promote a contractor’s religion, and, if the former, whether religion is only incidentally benefited.
12. *Johnson* concerned a State program that benefited church-owned religious nursing homes. This benefit was permissible because the purpose of the program was “care for the

aged,” an issue “of widespread governmental concern,” and any benefit to the homes’ religion was incidental to that purpose. 239 So. 2d at 262.

13. Similarly, as the *CSH* court approvingly noted, Georgia’s Supreme Court construed Georgia’s “virtually identical” no-aid provision to allow schools to lease classroom space from a church. *CSH*, 44 So. 3d at 120 (citing *Taetle v. Atlanta Indep. Sch. Sys.*, 625 S.E.2d 770 (Ga. 2006)). Just as in *Johnson*, this payment was permissible because the state money was being spent “to accomplish a nonsectarian purpose.” *Id.* (quoting *Taetle*, 625 S.E.2d at 771).
14. Here, the record shows that the Program accomplishes a “nonsectarian purpose” in addressing a social problem “of widespread governmental concern.” By statute, by the terms of the contract, and in the actual practice revealed by the record, the Program is not about promoting Contractor’s faith, but about reducing criminal recidivism associated with and exacerbated by drug addiction.
15. Based on testimony from “substance-abuse experts, governmental officials, and private organizations throughout Florida,” the Legislature created the Program because it found that “inmates with histories of substance abuse will most likely return to prison” without intervention, and that “research has proven” that private and faith-based organizations are “often more effective than government programs” and “can offer cost-effective substance-abuse treatment.” Ch. 2001-110, Laws of Fla.; *see also* Section 944.4731, Florida Statutes.
16. The Contracts make it clear that the State is expending funds for the:

The Contractor shall ensure that State funds are used for the sole purpose of furthering the secular goals of criminal rehabilitation,

the successful reintegration of offenders into the community, and the reduction of recidivism.⁶⁰

17. Further, the contracts require, and the record makes it clear, that the State is paying for legitimate social services such as housing, food, employment assistance, access to physical and mental health services, and transportation.
18. Contractors also provide substance abuse treatment that is modeled on widely-used 12-step models of treatment. Although the statutes authorize faith-based substance abuse programs, the Contractors now provide programs based upon the requirements set forth in the amendments to the standard provider contracts date June 20, 2014. Both LOG and POC use an Alcoholics Anonymous model. Clients who wish to discuss the integration of their faith and the 12 steps are welcome to do so, but never required, to do so. The record shows that religious content is permitted as a means of more effectively serving the State's rehabilitative purpose by accommodating offenders' efforts to draw on their faith to overcome their addictions, much as prison chaplains accommodate offenders' spiritual needs prior to release.
19. Moreover, Plaintiffs have submitted no evidence that State funds are expended on religious activities or content. *Id.* at 119-20. Instead, the record shows that the State funds are intended to cover the amount spent on housing, utilities, and insurance—though the funds do not quite even cover all of those costs. Further, to the extent any religious content is provided at all, that content is wholly optional for the Program participants.
20. This Court finds that, on the record in this case, the purpose of the Program is to address the widespread social problem of recidivism and substance abuse. The record reveals that, in terms of both the time and money expended, the focus of the Contractors' work is on social

⁶⁰ Appx. at 1393,1441,1485 (Contract provision II., E.,3 of all contracts of LOG and POC)

services of the sort that could be provided by secular agencies. Any benefits to Contractors' religious beliefs are merely incidental to that purpose.

The Second Factor

21. The purpose of the Program is reducing the cycle of drug abuse and recidivism. While the Program accommodates offenders' religious beliefs in accomplishing that goal, it does not make a particular religious faith (or lack thereof) part of the Program.
22. Plaintiffs provide no definition of "sectarian," nor does Florida law. *Holmes*, 886 So. 2d at 353 n.10 (noting lack of definition and declining to supply it). The term is fraught with conceptual imprecision. *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014) (trying to "sift[] sectarian from nonsectarian" is an exercise in "futility"); *Pelphrey v. Cobb Cty., Ga.*, 547 F.3d 1263, 1272 (11th Cir. 2008) (noting "the boundary between sectarian and nonsectarian" is far from clear).⁶¹ However, given the record in this case, a precise definition is not necessary to determine whether the Program is "significantly" sectarian.
23. The Court, for purposes of this decision, will equate "sectarian" as being similar in meaning to the word "religious," understanding that in other contexts those two words may be interpreted as being anything but similar.
24. Thus, while the record in this case does not require a precise definition, it is clear that a *significantly* sectarian program would have not just religious elements, but also pressure to follow a specific religion's doctrines or rituals and refusal to accommodate believers of other faiths.

⁶¹ This Court recognizes that the term "sectarian" is often pejorative and is connected to a "shameful pedigree" religious discrimination. *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality op.).

25. While DOC may “include[e] faith-based service groups” as part of its efforts to meet its secular purpose, DOC must “ensure” that “an offender’s faith orientation, or lack thereof, will not be considered in determining admission” to a faith-based service group’s recovery home. Section 944.4731(3)(b), Florida Statutes. DOC must further ensure that the group “does not attempt to convert an offender toward a particular faith or religious preference.” Section 944.4731(3)(b), Florida Statutes. To the extent a group chooses to offer religious content to offenders, the contracts emphasize that participation in all such content must be optional. Moreover, while the contracts require offenders “to participate in substance abuse programming” generally, it emphasizes that they cannot be required “to participate in faith-based components of the program.” Finally, offenders choose which providers they obtain services from and can transfer to a different provider if they wish.
26. The record shows that these Program parameters have been followed by the Contractors:
- a. It is clear that the Contractors are open to offenders of any faith, or no faith. Plaintiffs admitted that they have no evidence of “any preferential treatment” for certain religious groups.
 - b. It is clear that offenders of different faiths and no faith have participated in and successfully graduated from Contractors’ programs.
 - c. It is clear that Contractors do not impose their personal beliefs on others or otherwise proselytize.
 - d. It is clear that any and all religious activities provided by the Contractors are optional.
 - e. It is clear that offenders may choose whether to go to a particular contractor, and can choose to leave that contractor.
 - f. It is clear that offenders can file complaints if Contractors require participation in religious activities, that DOC occasionally monitors to see if any offenders have been so required, and the record contains no offender complaints about such a requirement by the Contractors.
27. The record also shows that Contractors use the Alcoholics Anonymous “Big Book” that

is widely used in prisons and other settings throughout Florida and the country. Despite its widespread acceptance in varied settings, the Plaintiffs argue that the Alcoholics Anonymous 12-step program is itself “significantly sectarian.”

28. Plaintiff cites a number of cases challenging state involvement in Alcoholic Anonymous 12-step programs, such as the one used by POC. Although these cases involved Establishment Clause claims – which involve different elements from a no-aid claim – they are relevant to show what constitutes “religion” for constitutional purposes. For example, in *Warner v. Orange County Department of Probation*, 115 F.3d 1068 (2d Cir. 1997), the plaintiff alleged that a probation condition requiring him to attend AA meetings violated the Establishment Clause because AA’s 12-step program is inherently religious. The Second Circuit agreed, noting that AA’s 12 steps:

included instruction that participants should “believe that a Power greater than ourselves could restore us”; “[make] a decision to turn our will and our lives over to the care of God as we [understand] Him”; “[a]dmit [] to God . . . the exact nature of our wrongs”; be “entirely ready to have God remove all these defects; [and] ask Him to remove our shortcomings”; and “[seek] through prayer and meditation to improve our conscious contact with God, as we [understand] Him.” 115 F.3d at 1070.

29. Similarly, in *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996), an inmate alleged that requiring him to attend meetings of Narcotics Anonymous, which uses a 12-step program substantially identical AA’s, or else be rated as a higher security risk, violated the Establishment Clause because the program was inherently religious. The district court granted summary judgment for defendants, accepting their argument that the program’s “higher being” concept could range from a religious view of God to the nonreligious concept of individual willpower. 95 F.3d at 475. The Seventh Circuit disagreed and reversed, explaining:

A straightforward reading of the 12 steps shows clearly that the steps are based on the monotheistic idea of a single God or Supreme Being. True, that

God might be known as Allah to some, or YHWH to others, or the Holy Trinity to still others, but the 12 steps consistently refer to “God, as we understand Him.” Even if we expanded the steps to include polytheistic ideals, or animalistic philosophies, they are still fundamentally based on a religious concept of a Higher Power. 95 F.3d at 480.

Accordingly, the court held that required participation in the 12-step program “impermissibly coerced inmates to participate in a religious program.” 95 F.3d at 474.

30. Plaintiff maintains these decisions hold the State cannot avoid constitutional prohibitions against supporting or requiring participation in religious activities simply by referring to belief in a generic “higher power” instead of a specific religion. Plaintiff suggest that if such an indefinite reference is enough to trigger prohibited state action, then supporting religious faiths of all kinds, as the Department and the contractors acknowledge DOC’s program does, certainly does so as well.
31. As Plaintiff noted, these are Establishment Clause cases and, beyond a reference to a non-descript “God” or “higher power,” there is nothing that would support a finding that the widely accepted AA program is “significantly sectarian” in nature.
32. Importantly, all offered religious content is optional and voluntary. No Program participants can be required to participate in *any* religious observances or other religious content. A “significantly sectarian” program would make religious observance essential or at least strongly encouraged, not entirely optional. Additionally, a “significantly sectarian” program would probably not cater to and accommodate people of all faiths, as this Program does and is required to do.
33. Finally, the Program does not—in policy or in practice—show favoritism for any particular faith in its selection of contractors. Both religious and nonreligious private

organizations are free to make competitive bids to participate in the Program. And Plaintiffs have submitted no evidence showing that the State has a practice of “giv[ing] preference” to some organizations over others due to their religious beliefs. *Southside Estates Baptist Church*, 115 So. 2d at 700.

34. This Court finds that, based on the record before the Court, the Program is not “significantly sectarian.”

The Remaining Factors

35. The analysis for the first two *CSH* factors for this case largely answers the remaining factors.

36. The Program, as administered by the Contractors, does not impermissibly indoctrinate. Contractors have testified that they do not attempt to proselytize, and that religious discussions are optional. Although Plaintiffs objected to various religious materials used in the programs, testimony establishes that those materials were used as study material by the program staff and either were not provided to clients or were only provided at a client’s request. The Contractors accommodate people from other faith groups. The record reflects that DOC does conduct on-site surveys of all programs, however, the record also reflects it has not received any complaints regarding optional religious activities.⁶² Offenders, even those under probation, attend the Program voluntarily and are free to leave the Program if it does not meet their needs. “Impermissible indoctrination” as used in the context of a *CSH* factor analysis is minimized in an environment where there is only optional discussion of religious ideas at the request of participants in a voluntary program.

⁶² Appx. 1591 at (Affidavit of DOC employee Kim Riley Conroy: p.4, ¶¶21-22)

37. The Program does not require participation in religious ritual. The record shows any worship services and prayer meetings are optional. Plaintiffs have not adduced any evidence of offenders being required to attend such services or being discriminated against for choosing not to attend.

38. The Program does not advance one particular faith over others. Contractors of any faith background or no faith background may compete for state contracts. The purpose of the Program is not to promote one faith or another, but to reduce substance abuse and recidivism. Any religious content offered by state contractors must be voluntary, and contractors may not discriminate in who they serve. The evidence presented clearly demonstrates the Contractors do not attempt to impose their beliefs through the Program, and they accommodate clients of other faiths.

E. Plaintiffs' Remaining Arguments Conflict with Binding Precedent

39. Plaintiffs have not demonstrated that the *CSH* factors are satisfied and that the challenged programs violate the Florida Constitution. The Plaintiffs primarily focused on the *Holmes* decision and on the religious identity of the Contractors.

40. Plaintiffs acknowledged at oral argument, *CSH* is the law of the case for this long-running litigation. While *Holmes* remains binding on this Court, *CSH* provided the clearest expression of what this Court "must" consider to find a No-Aid provision violation in the context of State contracts for social services. 44 So. 3d at 119-20.

41. Moreover, *Holmes* concerned state payments for school tuition that covered religious instruction. 886 So. 3d at 353. But this case concerns state payments for social services that, both by the terms of the contract and the record in this case, *do not pay for costs associated with religious instruction*. Hence *CSH*'s nuanced ruling, and its incorporation of considerations that

reflect the Florida Supreme Court's analysis in *Johnson* and *Southside Estates*. *Id.* at 119; accord *Holmes*, 886 So. 2d at 354 (noting the application of *Johnson* and *Nohrr* to cases where there is no evidence of actual state funding of religious activities by religious entities).

42. It is clear that Plaintiffs firmly believe that the two challenged programs advance religion in more than an incidental way. Plaintiffs' core argument is that Contractors are, simply put, too religious in their "nature" and their "Christian perspective." Indeed, at oral argument, Plaintiffs admitted that nonreligious contractors or State-employed chaplains could constitutionally provide *the exact same substance abuse counseling services* that Plaintiffs argue are impermissible for Contractors here. Thus, Plaintiffs admitted that the crux of their complaint does not concern the Program, but rather the religious nature of the Contractors. In Plaintiff's Response in Opposition to Defendants' Motions for Summary Judgment filed 10/19/2016, Plaintiffs clearly articulate their concern and expressed it as follows:

Indeed, Plaintiffs' argument is not based on the fact that Defendant Contractors are Christian organizations at all. Under the unambiguous language of the No-Aid Clause, state aid may not be given to *any* sectarian institution, whether it be affiliated with Christianity, Judaism, Buddhism, or any other religion.⁶³

43. Importantly, *CSH* established that the focus of the inquiry was not the nature of the private providers, but the nature of the Program. 44 So. 3d at 119-20. Further, *CSH* was clear that even "church[es], synagogue[s], or mosque[s]" may contract with the State to provide "social services." *Id.* at 119.

44. Moreover, accepting Plaintiffs argument—that a State-funded chaplain or the Center for Inquiry itself could permissibly provide the *exact same services* as the Contractors, but the Contractors must be banned *solely because of their religious identity*—"would . . . be

⁶³ Plaintiff's Response in Opposition to Defendants' Motions for Summary Judgment filed 10/19/2016.

discriminatory.” *Johnson*, 239 So. 2d at 262 (rejecting a similar argument that would exclude all “church-related” entities from a generally applicable benefit). Such a discriminatory interpretation would raise significant federal constitutional problems.⁶⁴

45. Finally, Plaintiffs’ interpretation of the DOC contracts would clearly conflict with other legally funded public services. For instance, Florida’s Medicaid program pays religious nonprofit hospitals to provide emergency medical care for the needy. *See, e.g.*, Section 409.905, Florida Statutes; *CSH*, 44 So. 3d at 118. Such hospitals and other health care facilities commonly employ chaplains, contain chapels, and provide religious materials. *See, e.g., Menna v. State*, 846 So. 2d 502 (Fla. 2003) (noting the standard presence of a hospital chaplain); Fla. Admin. Code R. 58A-2.015(1) (1997) (requiring that hospices “shall employ a clergy-person or pastoral counselor to provide spiritual counseling” and “spiritual support to the patient population”); Fla. Admin. Code R. 58A-14.007(7) (2010) (requiring that nursing homes “shall . . . ensure the provision of . . . participation in religious activities”). Further, such hospitals and health-care facilities, like many modern facilities, provide spiritual services as a part of the standard of care afforded to patients. *See, e.g.*, Fla. Admin. Code R. 59A-10.032(4) (2001) (health care regulation defining “[p]atient care” as “those services provided or rendered to meet the patient’s physical, emotional and spiritual needs.”); Section 765.102(5), (6)(a), Florida Statutes. (calling on “all health care professionals” and “professional regulatory boards” to

⁶⁴ Hence *CSH*’s refusal to interpret the No-Aid provision to constitute a “per se bar” on “contracting with religious entities for the provision of goods and services” in the context of its federal constitutional analysis. 44 So. 3d at 121. Such a discriminatory interpretation would “penalize” religious groups “for being religious” and is likely “impermissible based on the precepts of the Free Exercise, Establishment and Equal Protection Clauses.” *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1239 (11th Cir. 2004); accord *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1255 (10th Cir. 2008) (finding “wholesale exclusion of religious institutions” unconstitutional). It also likely runs afoul of the Free Speech Clause. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

“adopt appropriate standards” to ensure that “palliative care” manages “the physical, psychological, social, spiritual, and existential needs of patients”); § 400.6005, Fla. Stat. (legislative finding that meeting the “social, psychological, and spiritual needs of terminally ill patients” is part of the “basic standards” of “adequate care”); *accord* Fla. Admin. Code R. 65E-4.016(12)(c) (1998); Fla. Admin. Code R. 58A-6.007(3)(m) (2015). If the Court adopted Plaintiffs’ desired ban on state contracts with religious social service providers, the State would be banned from contracting with such religious health care entities.

46. Based on the clear facts in the lengthy record of this case, this Court finds that Plaintiffs have not met their burden to prove that the statutory Program as provided by the Contractors violates the No-Aid provision.

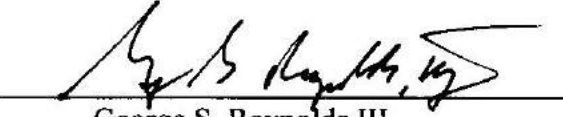
CONCLUSION

Under the undisputed facts of this case, based on 8 years of litigation and a lengthy record, Plaintiffs have not demonstrated that state funds are being unconstitutionally used “in aid of” a “church, sect, or religious denomination or . . . any sectarian institution.” Therefore, it is

ORDERED and ADJUDGED that Plaintiffs’ motion for summary judgment is **DENIED** and Defendants’ cross-motions for summary judgment are **GRANTED**. The Defendants’ summary judgments are hereby made a Final Judgment.

DONE AND ORDERED in Tallahassee, Leon County, Florida, on this 20 day of

January, 2016.


George S. Reynolds III
Circuit Judge

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