

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WILLIAM A. STANLEY
Plaintiff

V. CIVIL ACTION NO: _____

**JIM RUBENSTEIN in both his personal and official capacity as
COMMISSIONER of the West Virginia
Department of Military Affairs, Division of Corrections,
THE WEST VIRGINIA DEPARTMENT OF MILITARY AFFAIRS,
DIVISION OF CORRECTIONS,
DELBERT HARRISON, in both his personal and official capacity as
DIRECTOR OF PAROLE SERVICES of the West Virginia
Department of Military Affairs, Division of Corrections, and
JASON McGRAW, in both his personal and official capacity as
PAROLE OFFICER of the West Virginia Department of Military Affairs,
Division of Corrections
Defendants.**

COMPLAINT

I. Venue

Venue is proper in this Court, pursuant to W.Va. Code §14-2-2.

II. The Parties

1. The Plaintiff, William A. Stanley is a citizen and resident of the State of West Virginia, who currently resides in Moundsville, Marshall County, West Virginia. Mr. Stanley is a parolee subject to the authority of the Defendants.

2. The Defendant Jim Rubenstein is the Commissioner of the West Virginia Department of Military Affairs, Division of Corrections, an executive branch department of State Government. The Defendant Rubenstein is named in both his personal and official capacity in connection with the unconstitutional actions of which complaint is made. The Defendant Rubenstein, at all times relevant to the unconstitutional deprivations of which complaint is made, acted under color of state law.

3. The Defendant West Virginia Department of Military Affairs, Division of Corrections is an executive branch department of State Government. The Department is sued in connection with the unconstitutional actions, under the West Virginia Constitution, of which complaint is made.

4. The Defendant Delbert Harrison is the Director of Parole Services of the West Virginia Department of Military Affairs, Division of Corrections. The Defendant Harrison is named in both his personal and official capacity in connection with the unconstitutional actions of which complaint is made. The Defendant Harrison, at all times relevant to the unconstitutional deprivations of which complaint is made, acted under color of state law.

5. The Defendant Jason McGraw is a Parole Officer of the West Virginia Department of Military Affairs, Division of Corrections. The Defendant McGraw is named in both his personal and official capacity in connection with the unconstitutional actions of which complaint is made. The Defendant McGraw, at all times relevant to the unconstitutional deprivations of which complaint is made, acted under color of state law.

II. Nature of the Cause of Action

6. This is an action for declaratory relief, as well as for personal injury. Mr. Stanley's claims are based upon the Defendants' role in violating the Constitutional Rights guaranteed him by both the United States Constitution and West Virginia Constitution, including but not limited to his Liberty Interests under the Due Process Clause of the 14th Amendment to the United States Constitution and Article 3 Sections 1 and 10 of the West Virginia Constitution, his right to Religious Freedom guaranteed by the 1st Amendment to the United States Constitution and Article III Section 15 of the West Virginia Constitution, as well as his Equal Protection

guarantees under the 14th Amendment to the United States Constitution and Article 3 Section 10 of the West Virginia Constitution. Mr. Stanley seeks a declaratory judgment that West Virginia's Anti-Cohabitation Statute, W.Va. Code §61-8-4, is violative of both the United States Constitution and West Virginia Constitution. In addition, Mr. Stanley seeks judgment against the Defendants for all those damages he sustained as both a result and proximate result of the unconstitutional deprivations of which he makes complaint, as set forth with greater particularity *infra*.

III. The Facts

7. Plaintiff William A. Stanley, a former prisoner within the West Virginia Department of Military Affairs, Division of Corrections was granted parole on June 7, 2005.

8. In accordance with the supervision requirements associated with the grant of such parole, Mr. Stanley submitted "home plans." Initially, Mr. Stanley proposed that he be released to his brother's home in Jackson County, West Virginia. This proposed "home plan" was rejected by the Defendants (save the Defendant McGraw) because of its geographic proximity to the individuals victimized by the crime for which he was convicted - five counts of forgery - uttering. Mr. Stanley, however, submitted a second "home plan" for the Defendants' consideration.

9. The second proposed "home plan," submitted in connection with Mr. Stanley's parole grant, called for his release to his fiancée's home in Moundsville, Marshall County, West Virginia. This "home plan" was also rejected by the Defendants. The Defendants rejected this "home plan" as violative of West Virginia's Anti-Cohabitation statute, West Virginia Code §61-8-4.

10. At the time the Defendants rejected Mr. Stanley's "home plan" it was clearly established that any such restriction upon the private intimate conduct of an individual was violative of both the United States Constitution and the West Virginia Constitution. Moreover, at the time the Defendants rejected Mr. Stanley's "home plan," pursuant to the West Virginia Anti-Cohabitation statute, a reasonable person would have and should have known that such rejection was done in violation of both the United States Constitution and West Virginia Constitution. Furthermore, the Defendants' rejection of Mr. Stanley's "home plan," pursuant to the West Virginia Anti-Cohabitation statute, was done with reckless or callous indifference to Mr. Stanley's constitutionally protected rights under both the United States Constitution and West Virginia Constitution.

11. On information and belief, the Defendants' "policy" requiring that Mr. Stanley's "home plan" be in compliance with W.Va. Code §61-8-4 was not equally applied to all such plans involving parolee cohabitation placements out-of-wedlock.

12. As a parolee under the authority of the Defendants, Mr. Stanley's "home plan" could still be rejected by the Defendants at any time, pursuant to the prohibitions of W.Va. Code §61-8-4, West Virginia's Anti-Cohabitation statute.

13. As Mr. Stanley's two proposed "home plans" were rejected, the Defendants developed a substitute plan. The Defendants' "home plan" called for Mr. Stanley to be housed at the West Virginia Rescue Ministries Mission, a/k/a the Union Mission, in Fairmont, Marion County, West Virginia. The Defendants did not house Mr. Stanley in the Union Mission until on or about October 25, 2005. Thus, although Mr. Stanley was eligible for parole on June 7, 2005, he was forced to remain in prison for more than three additional months because the Defendants

rejected his proposed “home plan” as violative of West Virginia’s Anti-Cohabitation statute, W.Va. Code §61-8-4.

14. As a condition of being housed at the Union Mission, Mr. Stanley was required to attend scheduled Bible classes and complete quizzes in Bible related subjects for his spiritual growth.

15. As a further condition of being housed at the Union Mission, Mr. Stanley was required to own a Bible and attend church at one of four churches attended by the Union Mission staff and/or attend church at one of the Union Mission’s approved churches pastored by chapel speakers.

16. The Defendants housed Mr. Stanley at the Union Mission, on a continuous basis, from on or about October 25, 2005 until on or about January 24, 2006.

17. At the time the Defendants housed Mr. Stanley at the Union Mission it was clearly established that such state sponsored coerced participation in religion was violative of both the United States Constitution and West Virginia Constitution. Moreover, at the time the Defendants placed Mr. Stanley in the Union Mission, a reasonable person would have or should have known that Mr. Stanley’s placement in the Union Mission was violative of both the United States Constitution and West Virginia Constitution. Furthermore, the Defendants placement of Mr. Stanley in the Union Mission was done with reckless or callous indifference to Mr. Stanley’s Constitutionally protected rights under both the United States Constitution and West Virginia Constitution.

VI. Causes of Action

A. 42 U.S.C. §1983

18. Both in rejecting Mr. Stanley's "home plan" and in housing Mr. Stanley at the Union Mission, the Defendants Rubenstein, Harrison and McGraw personally, while acting pursuant to state government authority, subjected Mr. Stanley, and/or caused Mr. Stanley to be subjected to a deprivation of his rights, privileges and immunities secured by the United States Constitution. As both a result and proximate result of said deprivation, Mr. Stanley sustained personal injury.

B. Unconstitutional Invasion of Liberty Interest

19. In rejecting Mr. Stanley's parole "home plan" which called for his placement in his fiancée's home, as violative of West Virginia's Anti-Cohabitation statute, W.Va. Code §61-8-4, the Defendants impermissibly intruded upon Mr. Stanley's liberty interest to engage in private intimate conduct, in violation of protections guaranteed under both the United States Constitution and West Virginia Constitution including but not limited to those protections guaranteed by the Due Process Clause of the 14th Amendment to the United States Constitution and Article 3 Sections 1 and 10 of the West Virginia Constitution.

20. As both a result and proximate result of said constitutionally impermissible action of the Defendants, Mr. Stanley sustained personal injury.

C. Equal Protection Violation

21. In rejecting Mr. Stanley's parole "home plan" which called for his placement in his fiancée's home as violative of West Virginia's Anti-Cohabitation statute, W.Va. Code §61-8-4, while at the same time approving similar plans for other parolees, the Defendants violated the equal protection guarantees of both the United States Constitution and the West Virginia

Constitution including but not limited to such guarantees arising under the 14th Amendment to the United States Constitution and Article 3 Section 10 of the West Virginia Constitution.

22. As both a result and proximate result of said constitutionally impermissible action of the Defendants, Mr. Stanley sustained personal injury.

D. Unconstitutional Religious Coercion

23. In their decision to house Mr. Stanley in the Union Mission as a condition of his parole the Defendants impermissibly coerced Mr. Stanley to participate in religion in violation of both the United States Constitution and West Virginia Constitution including but not limited to the religious freedoms guaranteed Mr. Stanley by the 1st Amendment to the United States Constitution and Article III Section 15 of the West Virginia Constitution.

24. As both a result and proximate result of the constitutionally impermissible actions of the Defendants, Mr. Stanley sustained personal injury.

E. Punitive Damages

25. Both the rejection of Mr. Stanley's "home plan" and placement of Mr. Stanley in the Union Mission were done with reckless or callous indifference to Mr. Stanley's Constitutionally protected rights under both the United States Constitution and West Virginia Constitution.

26. The defendants' actions, which give rise to the claims of which Mr. Stanley makes complaint, were jointly and severally committed with gross, reckless or wanton negligence, for purposes of his state law claims.

VI. Ad Damnum

Wherefore, the plaintiff William A. Stanley asks this Honorable Court to declare West Virginia's Anti-Cohabitation Statute, W.Va. Code §61-8-4, unconstitutional, pursuant to both the

United States Constitution and the West Virginia Constitution. Mr. Stanley demands judgment against the Defendants Rubenstein, Harrison and McGraw, jointly and severally, in their personal capacity, pursuant to 42 U.S.C. §1983, for all damages he sustained as both a result and proximate result of the deprivation of his rights, privileges and immunities secured to him by the United States Constitution. Furthermore, Mr. Stanley demands judgment against the Defendants, jointly and severally, for their unconstitutional acts, under the West Virginia Constitution, and for all damages to which he, as a plaintiff is entitled, under the law *under and up to the limits of the state's liability insurance - in accordance with Pittsburgh Elevator Co. v. West Virginia Board of Regents, 310 S.E.2d 675 (W.Va. 1983) and its progeny*, including but not limited to the following:

- A. Annoyance and inconvenience;
- B. Emotional distress;
- C. Embarrassment;
- D. Reasonable attorney fees;
- E. Expenses;
- F. Costs;
- G. Punitive damages;
- H. Prejudgment interest;
- I. Post judgment interest;
- J. Such other and additional relief as this Honorable Court may deem just and proper in the interests of justice.

A BENCH TRIAL IS DEMANDED

Respectfully submitted,
Plaintiff by counsel

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