IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND GREENBELT DIVISION

EDREES BRIDGES	*	
	*	
Plaintiff	*	
	*	
v.	*	Case No: 8:21-cv-01319
	*	
PRINCE GEORGE'S COUNTY, MARYLAND,	*	
A MUNICIPALITY; AND,	*	
PRISON MINISTRY OF AMERICA	*	
	*	
Defendants.	*	

DEFENDANT PRINICE GEORGE'S COUNTY, MARYLAND AND PRISON MINISTRY OF AMERICA'S MEMORANDUM OF LAW IN OPPOSTION TO THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF THE DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT.

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The Defendants, Prince George's County, Maryland ("County"), and Prison Ministry of America ("PMA") (collectively, "Defendants"), respectfully submit this memorandum of law in opposition to Edrees Bridges' ("Plaintiff") motion for summary judgment and in support of the Defendants' cross-motion for summary judgment in Defendants' favor.

I. INTRODUCTION

On December 19, 2019, Prince George's County, Maryland issued an Invitation for Bid to prospective vendors to provide religious services to inmates in the Prince George's County Department of Corrections ("PGCDOC" or "jail"). The scope of work identified in the invitation for bid required the successful bidder to provide inmate religious services to all faiths. The successful bidder was Prison Ministry of America. PMA has a long history of hiring paid and volunteer chaplains of various religious backgrounds to conduct religious studies and worship services in inmate facilities across the country.

The total contract price to the vendor for the provision of religious services was $30,000.00. The contract period was from January 1, 2021, to December 31, 2022; however, because of the COVID-19 pandemic, the jail was closed to visitors and vendors until it gradually re-opened in 2021.

In late April of 2021, a principal of PMA, Mark Maciel, contacted the Plaintiff by telephone to gauge his interest in resuming work as a part-time volunteer providing religious services at the jail. The Plaintiff had been a volunteer for the previous religious services vendor, Good News Ministries, prior to the onset of the pandemic. Upon being contacted by Mr. Maciel, the Plaintiff learned that Mr. Maciel was also looking to hire a part-time chaplain to oversee and supervise the religious services at the jail. This was a paid position. The Plaintiff advised that he was interested in the position and Mr. Maciel sent the Plaintiff both a position description and a position application via email. However, instead of submitting an application for PMA's chaplaincy position, the Plaintiff filed this lawsuit. He apparently believed that he was precluded from applying because of a "Statement of Christian Faith" appended to the position application. The Plaintiff made no inquiry of Mr. Maciel about the need to sign the Statement of Christian Faith.

Since the Plaintiff did not apply for the position, PMA interviewed and hired an experienced jail religious services chaplain who did apply for the position, Keith Lynch, on May 11, 2021. The Plaintiff filed the instant action on May 27, 2021, asserting that the Statement of Christian Faith which was presented to him violated his rights under the Free Exercise and Establishment Clauses of the First Amendment.[1] In his complaint, he seeks a declaratory judgment that the use of the Statement of Christian Faith is illegal; an injunction to preclude the use of the Statement of Christian Faith for positions at the jail; and compensatory and punitive damages. On the same day he filed his lawsuit the Plaintiff was quoted by multiple news media outlets, in response to a question about whether he would apply for the position if his lawsuit were successful, as saying "I don't think so at all because I really don't have a lot of faith on whether or not I would be accepted." Despite advising the press that he would not apply for the position if this Court granted him relief, he nonetheless later filed a motion for preliminary injunction to enjoin the hiring of a chaplain at the jail. PMA subsequently removed the Statement of Christian Faith from its position applications. The Court denied the motion for preliminary injunction finding that PMA had removed the statement of Christian faith from its applications. ECF 49.

The Defendants then moved to dismiss the complaint, arguing, among other things, that the Plaintiff lacked standing to sue. ECF 45. This Court concluded that the Plaintiff, at the motion to dismiss stage, had adequately plead harm to satisfy the standing requirements of Article III. ECF 51. Specifically, the Court found that the Plaintiff's allegation in his complaint that he was "disturbed" and sought damages was sufficient at that stage of the proceedings to satisfy the requirement that he allege a particularized injury in order to confer standing. *Id.* PMA's contract with the County ended on December 31, 2022.

[1] Although presented as Free Exercise and Establishment Clause claims, this case is, in reality, an employment case as the Plaintiff expressed interest in potential employment with PMA. The Plaintiff does not allege intentional discrimination based on his religion in violation of Title VII or §1983, and conducts no analysis under the McDonnell-Douglass proof scheme. This is significant because it further demonstrates that the Plaintiff cannot prove any compensable harm as result of PMA's application and his failure to apply for the chaplaincy position with PMA.

The Plaintiff filed a motion for summary judgment. In his motion, the Plaintiff makes no effort to compare himself to the successful candidate hired by PMA or otherwise discuss how he has been harmed. The Defendants now respond in opposition to the Plaintiff's motion for summary judgment and assert a cross-motion for summary judgment in their favor, as there is no dispute as to the material facts and the Defendants are entitled to judgment in their favor as a matter of law. The Plaintiff can prove no compensable harm nor was he a willing and able candidate for the chaplaincy position to confer standing to sue. He cannot prove liability or compensable damages. Even if he could prove liability, he is entitled to no more than nominal damages as a matter of law.

II. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment:

> is to be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The Supreme Court has described this provision as "an integral part" of the Rules which is "designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 327(1986). As such, it "must be construed with due regard . . . for the rights of persons opposing . . . claims . . . to demonstrate in the manner provided by the Rule, prior to trial, that the claims . . . have no factual basis." *Id*.

Celotex places on the moving party the "initial responsibility of informing the district court of the basis for its motion" and then identifying those portions of the record "which it believes demonstrate the absence of a genuine issue of material fact." *Id*. at 323. The burden then shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "A mere scintilla of evidence is not enough to create a fact issue; there must be evidence on which a jury might rely." *Barrick v. Celotex*, 736 F.2d 946, 958-59 (4th Cir. 1984). In addition, the non-movant cannot create a disputed fact through mere speculation or compilation of inferences. *Deans v. CSX Transportation, Inc.*, 152 F.3d 326, 330-331 (4th Cir. 1998).

The non-movant cannot rest upon unsupported allegations, in his pleadings or elsewhere, but must show significant probative evidence to support those allegations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If the non-movant fails to do so, then the Court has "an affirmative obligation . . . to prevent 'factually unsupported claims . . .' from proceeding to trial." *Felty v. Graves-Humphrey Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987). The Defendants respectfully suggests that the Court is obliged to do so in this case.

III. UNDISPUTED FACTS

The following facts are undisputed and entitle the defendants to judgment in their favor as a matter of law:

1. Prison Ministry of America ("PMA") bid for and was awarded a contract to provide religious services to inmates at the Prince George's County Department of Corrections. (Exhibit 1 – Contract/Invitation for Bid; Exhibit 2 – Contract Award; Exhibit 3 – PMA Board Meeting Minutes January 4, 2021).
2. The term of the contract was from January 1, 2021 to December 31, 2022. (Exhibit 2 – Contract Award).
3. Per the contract, PMA was to hire a Chaplain Supervisor (i.e. Chaplain) representing, at a minimum, the major religions: Christianity, to include Protestant/Catholicism services, Islamic, and Judaism." (Exhibit 1 – Contract/Invitation for Bid).
4. PMA was responsible for the recruiting, interviewing, and training of individuals for the chaplaincy position. (Exhibit 1 – Contract/Invitation for Bid; Exhibit 4 –Welch Dep. 28:10-12, 36:5-9, 39:3-9, 40:5-22, 41:1; Exhibit 5 – Labbe Dep. 35:15-20, 35:21-22, 36:1-22, 37:1-19, 38:16-22, 39:1-7, 40:9-18; Exhibit 6 – Bridges Dep. 62:21-22, 63:1-11; Exhibit 7 – Maciel Dep. 71:16-22, 72:1-3, 73:1-4).

5. In April 2021, PMA president Mark Maciel sought applicants for a chaplaincy position. (Exhibit 7 – Maciel Dep. 78:13-22).
6. Mr. Maciel contacted previous volunteer chaplains to notify them of the chaplaincy position, and sent a PMA job application to those interested in a paid chaplaincy position with PMA (Exhibit 7 – Maciel Dep. 26:7-22, 27:1-19, 71:16-22, 72:1-3, 78:13-22, 93:17-22, 94:1-22.).
7. Mr. Maciel contacted Mr. Bridges to determine whether Mr. Bridges wished to resume volunteering at the jail (not for purposes of the Chaplain position) following the COVID-19 pandemic under the supervision of PMA. (Exhibit 7 – Maciel Dep. 95:21 to 97:17).
8. When contacted by Mr. Maciel, Mr. Bridges learned that PMA was hiring a part-time chaplain. Mr. Bridges expressed interest in the position and Mr. Maciel offered to send Mr. Bridges the job description and application (Exhibit 6 – Bridges Dep. 26:18 to 29:13).
9. Mr. Maciel sent Mr. Bridges the position description and application. (Exhibit 7 – Maciel Dep. 93:17-22, 94:1-3; Exhibit 6- Bridges Dep. 67:19-22; Exhibit 10 – Chaplain Position Description; Exhibit 12 – Chaplaincy Application).
10. When Mr. Bridges did not submit his application after several days, Mr. Maciel sent a follow-up email inquiring about his application. No application was sent by Mr. Bridges. (Exhibit 7 – Maciel Dep. 93:17 to 94:8; Exhibit 14 – Email Exchanges between Plaintiff and Maciel).
11. Mr. Maciel made a second inquiry about whether Mr. Bridges would submit his application. Again, Mr. Bridges did not respond. (Exhibit 7 – Maciel Dep. 93:17 to 94:22).
12. Mr. Bridges never applied for the position under his personal impression that he would be required to sign a Statement of Christian Faith. (Exhibit 6 – Bridges Dep. 76:3-9)

13. Mr. Bridges made no inquiry of Mr. Maciel, PMA, or anyone at the County jail about the application or the need to sign the Statement of Christian Faith. (Exhibit 6 – Bridges Dep. 79:22, 80:1-15).

14. PMA did not require Mr. Bridges to complete the Statement of Christian Faith. (Exhibit 6-Bridges Dep. 80:12-22, 81:1-4).

15. PMA made no requirement that an individual practice a particular faith. Rather, a qualified individual needed to have, among other managerial skills, a "[p]astoral or ordained minister license from a recognized affiliation" and "[a]t least two years membership in a recognized church." (Exhibit 10 – Chaplain Position Description).

16. No one from PMA or the County told Mr. Bridges that he would be excluded from the applicant pool for the chaplaincy position or that he could not apply for the chaplaincy position for a refusal to sign the Statement of Christian Faith. (Exhibit 6 – Bridges Dep. 80:12-22, 81:1-4, 81:16-19, 91:22, 92:1-8; Exhibit 13 – PMA Answers to Plaintiff's Interrogatories, No. 9).

17. PMA has removed the statement from its position applications. (Exhibit 7 – Maciel Dep. 60:4-7; Exhibit 8 – PMA Board Meeting Minutes October 4, 2021).

18. Following the filing of this action on May 27, 2021, Mr. Bridges advised the news media that he would not apply for the chaplaincy position (Exhibit 6 – Bridges Dep. 45:20 to 47:1; Exhibit 9 – News Article – Bridges Deposition Exhibit).

19. The position description for the Chaplain required a candidate to have experience supervising and managing the provision of religious services in a jail setting. (Exhibit 10 – Chaplain Position Description).

20. Mr. Bridges did not have the required supervisory and managerial experience for the chaplain position. (Exhibit 6 – Bridges Dep. 37: 6-13; 39:1-14; 71: 6-13).
21. The successful candidate, Keith Lynch, had extensive experience in all areas of the provision of religious services in a correctional setting. (Exhibit 7 – Maciel Dep. 98:1-99:1).
22. Mr. Bridges was not "disturbed" by the Statement of Christian Faith appended to the chaplaincy application provided by PMA, only "disappointed." (Exhibit 6 – Bridges Dep. 48:1-6).
23. Mr. Bridges seeks "justice" from this lawsuit but does not know what that would be. (Exhibit 6 – Bridges Dep. 48:9-22).
24. Mr. Bridges seeks (unspecified) damages for the violation of his rights and (unspecified) lost wages he allegedly would have earned had he been selected for the chaplain position. (Exhibit 11 – Bridges Answer to Interrogatory, Nos. 17-19).

IV. ARGUMENT

A. THIS COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE THE PLAINTIFF DOES NOT HAVE STANDING TO SUE.

As this Court noted in its opinion addressing the issue of standing raised in the Defendants' motion to dismiss (ECF 51), the plaintiff must meet all of the requirements for standing as articulated by the Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Additionally, the plaintiff must establish standing before the Court can reach the merits of the case. In order to establish standing, a plaintiff must demonstrate:

> [He has] suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. at 560-61 (internal citations omitted). Article III of the Constitution limits the jurisdiction of the federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. The limitation of federal court jurisdiction to actual cases or controversies is a bedrock principle fundamental to our judiciary's role in our system of government. *Raines v. Byrd*, 521 U.S. 811, 818 (1997). "One element of the case-or-controversy requirement is that [plaintiffs], based on their complaint, must establish that they have standing to sue." *Id.* To establish standing, a plaintiff must "show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citing *Lujan*, 504 U.S. at 560–61). In other words, to satisfy Article III, a plaintiff must have a sufficient "personal stake" in the alleged dispute and have an alleged injury that is particularized as to him. *Raines*, 521 U.S. at 818 (internal quotation marks and citation omitted). Under Article III: "[F]ederal courts do not adjudicate hypothetical or abstract disputes. Federal courts do not possess

a roving commission to publicly opine on every legal question." *Ramirez*, 141 S. Ct. at 2203. Courts may only resolve real controversies with real impact on real people. *Id.* Under the Constitution, a party's grievance without an injury in fact does not confer standing and "does not state an Article III case or controversy." *Lujan*, 504 U.S. at 574. As a result, federal courts have no power to address them.

While the Court was required to accept the Plaintiff's allegations as true at the motion to dismiss phase of this litigation, it no longer must accord him that deference. The undisputed facts now demonstrate that the Plaintiff did not suffer an injury in fact but rather had only a hypothetical interest in a protected religious right. And now, the Court cannot fashion a remedy for him to redress any perceived injury.

1. The Plaintiff Has No Standing Because He Did Not Apply For The Chaplaincy Position And Did Not Want To.

It is undisputed that the Plaintiff did not apply for the part-time Chaplaincy position. As he alleges, he did not do so because he assumed he was precluded from applying due to the Statement of Christian Faith to which he objected. Even after being sent the application and after Mr. Maciel followed up by email not once, but twice, to inquire about the status of the Plaintiff's application, the Plaintiff did not apply. Nor did he communicate any reason why he did not apply. It is further undisputed that that Plaintiff's assumption was wrong. After he filed suit, he unequivocally advised the media that he would not thereafter apply even if allowed to. PMA did not require that the Plaintiff complete the Statement of Christian Faith. The Plaintiff thus lacks standing at this time to pursue this action.

A recent Supreme Court decision illustrates why the Plaintiff lacks standing. In *Carney v. Adams*, 141 S. Ct. 493 (2020), a Delaware lawyer challenged a Delaware state constitutional provision that required judicial appointments to reflect a partisan balance under the First Amendment's freedom of association clause. *Id.* at 496. But the lawyer had not previously applied to become a judge. *Id.* at 500. The Supreme Court held that the lawyer did not have standing to challenge Delaware's party-membership requirement for the judiciary because he did not show

that he was likely to apply to become a judge if he was not barred from doing so because of the party-membership requirement. *Id.* Absent that, the Court concluded he was not "able and ready" to apply. *Id.* at 501. Instead, he suggested merely "an abstract, generalized grievance, not an actual desire to become a judge." *Id.*

Similarly, in *Menders v. Loudon County,* 65 F.4th 157 (4th Cir. 2023), the Loudoun County, Virginia Public Schools (the "LCPS") implemented a "Student Equity Ambassador Program" in which Student Equity Ambassadors—selected by the LCPS—participate in "Share, Speak-up, Speak-out" meetings where they discuss issues of race and equity. *Id.* at 159-60. The program also seeks to document incidents of perceived bias through a "Share, Speak Up, Speak Out: Bias Reporting Form." *Id.* at 160. Students are able to anonymously report incidents of perceived bias for discussion at the Share, Speak-up, Speak-out meetings using an electronic form. *Id.* Students can also request that school administrators investigate the reported bias incidents. *Id.* In response to the program, the parents of several children who attend the LCPS sued the school board on behalf of their minor children, asserting Equal Protection and First Amendment claims. *Id.* The parents argued that their children were not eligible for the program because of their race and viewpoint, and that the reporting system chilled their children's speech. *Id.* The district court granted the school board's motion to dismiss the parents' claims, concluding that the parents failed to allege plausible claims. and that the parents lacked standing to bring First Amendment claims. *Menders v. Loudoun Cnty. Sch. Bd.*, 580 F. Supp. 3d 316 (E.D. Va. 2022).

The Fourth Circuit Court of Appeals held that the parents lacked standing to challenge the Student Equity Ambassador Program.[2] *Menders*, 65 F.4th at 164. It noted that their children never applied to be ambassadors nor even expressed an interest in participating in the program. *Id.* at 160. Rather, they simply objected to the program on viewpoint grounds. The Court compared the parents to the lawyer in *Carney*:

[2] The Court also found, however, that the parents did have standing to challenge the bias reporting system. *Id.* at 164.

> Much, like the lawyer in *Carney*, the parents here have not alleged facts that show their children were "able and ready" to participate in the Student Equity Ambassador Program. Despite the parents' objections to the program, they do not allege their children applied for or even wanted to be a Student Equity Ambassador. They certainly do not allege that any of their children were prevented from participating in the program. What's more, the parents do not allege they sought or wanted a separate program more aligned with their alleged viewpoints. So, even accepting the parents' allegations that the program erects a racially- or viewpoint-discriminatory barrier as true, they have not alleged an injury-in fact.

65 F.4th at 163-64. Because the parents lacked standing, the Court held that it lacked jurisdiction to address the merits of the parents' constitutional claim concerning the Student Equity Ambassador Program. *Id.* at 164.

Here, the undisputed facts demonstrate only that the Plaintiff inquired about applying for a chaplaincy position with PMA. At the time, he was not actively seeking employment as a jail chaplain. By simple chance, PMA principle, Mark Maciel, contacted the Plaintiff and inquired of the Plaintiff whether he was interested in returning as a volunteer at the jail when it opened to volunteers following the pandemic. During the conversation, the Plaintiff learned of the paid chaplain position from Mr. Maciel and expressed interest in applying. When he reviewed the application sent to him by Mr. Maciel and the accompanying Statement of Christian Faith, to which he objected on purely viewpoint grounds, he decided not to apply. Even after Mr. Maciel contacted the Plaintiff twice afterwards to inquire about the whereabouts of the Plaintiffs' application, the Plaintiff made no effort to determine whether he could apply despite the Statement of Christian Faith. Had he made the slightest of inquiry from PMA he would have been advised that he did not need to complete the Statement of Christian Faith. Like the lawyer in *Carney* and the parents in *Menders*, the Plaintiff simply objected on philosophical grounds to Statement of Christian Faith, but did not demonstrate that he was genuinely interested in applying for the position. Had he been interested, he certainly would have made the slightest further inquiry about the Statement of Christian Faith. Indeed, even after filing suit only a month after his decision not to apply, the

Plaintiff advised media outlets that he was not interested in applying for the position. Thus, at this stage of the proceedings, the Plaintiff cannot establish standing.[3]

2. This Court Cannot Redress Any Complaint Of the Plaintiff Because PMA has Removed the Statement of Christian Faith and Because the Plaintiff Cannot Prove He Suffered Any Damages.

The second reason the Plaintiff cannot establish standing at this stage of the proceedings is because the Court cannot fashion any remedy for him. It cannot order PMA to remove the Statement of Christian Faith because the undisputed facts demonstrate that it already has done so. Because the Plaintiff cannot prove that he suffered any damages resulting from his failure to apply for the part-time chaplaincy position the Court cannot award him damages.

The affidavit of Mark Maciel filed in this action over a year ago establishes that PMA no longer uses a statement of Christian Faith in its position applications. Thus, there is no injunctive or declaratory relief available or necessary to issue. Mr. Bridges, in his answers to interrogatories, asserts that his damages are simply a) unspecified and unarticulated damages for the alleged constitutional violation(s) and b) lost wages he would have earned had he applied for and obtained the chaplain position. Each claimed damage will be discussed in turn.

The Plaintiff offers no proof of damages, indeed he has none, for the alleged violation of his Establishment Clause rights. He does not even discuss it in his motion for summary judgment. He has candidly acknowledged that he does not know what an appropriate remedy in this matter would be. *See* Exh. 6, 48:9-22. The Supreme Court held long ago that the violation of a constitutional right, standing alone, has no "abstract value." In *Memphis School District v. Stachura*, 477 U.S. 299 (1986) the Supreme Court addressed the issue of damages as it relates to the violation of constitutional rights. In *Stachura*, a suspended schoolteacher filed suit alleging violations of his constitutional rights. *Id.* at 301. Despite being unable to prove actual damages, the district court submitted jury instructions that allowed a jury to simply speculate as to an abstract

[3] The Court noted in its memorandum opinion (ECF 51) that the Plaintiff had also alleged that he was "disturbed" by the Statement of Christian Faith. The Plaintiff, however, has testified that he was not "upset" by the Statement, just "disappointed." Exh. 6, 48:1-6.

value of the violation of a constitutional right and award damages. *Id.* at 304-05. The Supreme Court found this to be in error and held that the law of torts, i.e., proof of damages applicable to all wrongs, was necessary, and that there is no subjective or "abstract" damage to be awarded from the violation of a constitutional right. *Id.* at 312. In so holding the Supreme Court noted

> Nor do we find such damages necessary to vindicate the constitutional rights that § 1983 protects. Section 1983 presupposes that damages that compensate for actual harm ordinarily suffice to deter constitutional violations. ("To the extent that Congress intended that awards under § 1983 should deter the deprivation of constitutional rights, there is no evidence that it meant to establish a deterrent more formidable than that inherent in the award of compensatory damages"). Moreover, damages based on the "value" of constitutional rights are an unwieldy tool for ensuring compliance with the Constitution. History and tradition do not afford any sound guidance concerning the precise value that juries should place on constitutional protections. Accordingly, were such damages available, juries would be free to award arbitrary amounts without any evidentiary basis, or to use their unbounded discretion to punish unpopular defendants. Such damages would be too uncertain to be of any great value to plaintiffs, and would inject caprice into determinations of damages in § 1983 cases. We therefore hold that damages based on the abstract "value" or "importance" of constitutional rights are not a permissible element of compensatory damages in such cases.

477 U.S. at 310 (internal citations omitted). Accordingly, it is not enough that the Plaintiff simply asserts a violation of his constitutional rights – in order to obtain standing to sue and confer subject matter jurisdiction on the Court he must offer proof of a concrete injury. He has not done so and the violation alone does not entitle him to a damage award from the Court.

Even the Court's prior concern that the Plaintiff alleged that he was personally "disturbed" that the Statement of Faith would exclude him from the applicant pool has been demonstrated by the undisputed facts to be untrue at this point. Bridges has testified that he was not disturbed ("upset"). Moreover, the undisputed facts demonstrate that neither PMA nor the County required the Plaintiff to sign the Statement of Christian Faith or excluded the Plaintiff from the applicant

pool. Further, simply being disturbed or upset, without proof of actual damage, is insufficient to justify an award of damages.

In *Norwood v. Bain*, 143 F.3d 843 (4th Cir. 1998) (vacated on *rehearing in banc,* 166 F.3d 243 (1999)), the local police department set up a security checkpoint at the entrance to a local fairground where a motorcycle rally was to occur. *Id.* at 847. A number of motorcyclists' saddle bags and unworn clothing were searched for weapons without their consent. *Id.* The motorcyclists filed a class action lawsuit asserting that the searches were unconstitutional. *Id.* at 845. The Fourth Circuit Court of Appeals agreed. *Id.* at 858. However, when the issue of damages as a result of the search was addressed, the Court held that the absence of proof, even in light of testimony that the cyclists were humiliated, annoyed, and frustrated, was insufficient to warrant more than nominal damages of $1.00. *Id.* at 859. The Court noted that

> Here, the district court concluded that no such actual harm resulting from conduct of the physical searches was proven. There was no evidence of any loss of or damage to property nor of any physical injury or even touching sustained in the course of the searches. The only evidence of emotional distress came in the form of testimony by Norwood and four other class members that they felt annoyance, humiliation, and indignity at being subjected to the searches. None testified that their emotional upset was caused by oppressive or threatening conduct by the checkpoint officers; instead, from all that appears, that conduct was civil and non-threatening throughout the process. Under the circumstances, we agree with the district court that this testimony failed to prove emotional distress other than any that may have been experienced as a sense of indignity from the very violation of constitutional right. And, that, as indicated, is not a compensable harm in § 1983 litigation.

Id. at 848. A panel of the Fourth Circuit Court of Appeals unanimously held that the class was entitled to $1.00 nominal damages. *See Norwood v. Bain*, 166 F.3d 243 (1999). Thus, even the Plaintiff's disappointment as a result of the Statement of Christian Faith is not enough to warrant an award of damages, beyond potentially a nominal award of $1.00, based upon a violation of his constitutional rights.

Nor can the Court award the Plaintiff his other identified damage: lost wages. Simply stated, the Plaintiff did not apply for the position so it is entirely speculative whether he would have been selected for the chaplaincy position had he applied. Indeed, the Plaintiff makes no effort to suggest that he would have been selected by comparing his qualifications to those of the successful candidate, Keith Lynch. No such argument was made because no such argument can be made in good faith. Based on the undisputed evidence Keith Lynch's experience far exceeds the non-existent experience of the Plaintiff.

The Supreme Court long ago established that where damages are speculative because the cause (not the measure or extent) of them cannot be shown, they are not recoverable. *Story Parchment Co. v. Paterson Parchment Paper Co.*, 51 S. Ct. 248 (1931). The Court in *Story Parchment* articulated the rule as follows:

> 'It is sometimes said that speculative damages cannot be recovered, because the amount is uncertain; but such remarks will generally be found applicable to such damages as it is uncertain whether sustained at all from the breach. Sometimes the claim is rejected as being too remote. This is another mode of saying that it is uncertain whether such damages resulted necessarily and immediately from the breach complained of.
>
> 'The general rule is, that all damages resulting necessarily and immediately and directly from the breach are recoverable, and not those that are contingent and uncertain. The latter description embraces, as I think, such only as are not the certain result of the breach, and does not embrace such as are the certain result, but uncertain in amount.'

Id. at 250. The Plaintiff cannot establish that, had he applied for the position, he would have been selected and thus entitled to lost wages. In other words, it is entirely uncertain whether he sustained any lost wages at all. From the record, it is clear that a) he did not meet all of the qualifications specified in the job description and b) the successful candidate, Keith Lynch, had far more experience and better qualifications. Accordingly, because the Court cannot award the Plaintiff lost wages, nor any amount of damages, he has no standing to pursue this action.

Finally, the Plaintiff also seeks declaratory relief yet the Court should not issue a declaratory judgment because it would not serve a useful purpose or clarify the rights of the parties. The Declaratory Judgment , 28 U.S.C §2201, provides that district courts "may declare" the rights of interested parties, and *permits* a "federal court to declare the rights of a party whether or not further relief is or could be sought." *Green v. Mansour,* 474 U.S. 64, 72, 106 S.Ct. 423 (1982); *see also United Capitol Ins. Co. v. Kapiloff,* 155 F.3d 488, 493 (4th Cir.1998). That decision is a discretionary one, and of paramount importance in the decision to exercise such discretionary authority is whether "the judgement will serve a useful purpose in clarifying and settling the legal relations in issue, and ... [whether] it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Id.* (internal citations and quotation marks omitted). Here, a declaratory judgment would serve no useful purposes because PMA has removed its Statement of Christian Faith from employment applications and there is no longer a controversy between the parties.

B. IF THIS COURT FINDS IT HAS SUBJECT MATTER JURISDICTION, DEFENDANTS ARE NOT SUBJECT TO SECTION 1983 LIABILITY BECAUSE DEFENDANT PRISON MINISTRY OF AMERICA IS A RELIGIOUS ORGANIZATION THAT IS PERMITTED TO HIRE ACCORDING TO ITS PREFERRED FAITH.

Even if this Court finds it has subject matter jurisdiction over this matter, the Plaintiff fails to meet his burden in showing that Defendants are subject to any liability. First, PMA is not subject to liability because it is a private, religious organization that can make employment decisions based upon religious grounds. Second, the County is not subject to liability because it has not conferred any government power to PMA.

1. Prison Ministry Of America Is A Private Actor Not Subject To Section 1983 Liability.

The Plaintiff argues that because PMA is a state actor, it is subject to First Amendment liability under Section 1983. Pl.'s Mot. Summ. J. at 12-13. However, the Plaintiff fails to establish

that PMA was performing a public function or was jointly engaged with government officials when providing chaplaincy services for the County to qualify PMA as a state actor. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019) ["Halleck"]; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982).

A private entity qualifies as a state actor "in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action; or (iii) when the government acts jointly with the private entity." *Halleck*, 139 S. Ct. at 1928 (internal citations omitted). The Plaintiff relies on a footnote in an unpublished case from the Southern District of Georgia to claim that *all* "prison contractors are considered state actors." *See* Pl.'s Mot. Summ. J. at 12; *Ortega v. Hall*, 2020 WL 4196009, at *2 n.3 (S.D. Ga. July 2, 2020), *report and recommendation adopted*, 2020 WL 4060555 (July 20, 2020). However, the legal landscape concerning state actors supports Defendants' position that that PMA is a private entity and not a state actor subject to liability.

a. PMA did not perform a traditional, exclusive public function.

One factor courts look at to determine whether a private entity is a state actor is whether the private entity was performing a "traditional, exclusive public function." *Halleck*, 139 S. Ct. at 1928. Courts determine whether a party is performing a traditional, exclusive public function if the private entity is exercising "powers traditionally reserved to the State." *Jackson*, 419 U.S. at 352. "It is not enough that the federal, state, or local government exercised the function in the past or still does. . . . And it is not enough that the function serves the public good." *Halleck*, 139 S. Ct. at 1928. In order to qualify as a traditional, exclusive public function, "the government must have traditionally *and* exclusively performed the function." *Id.* at 1929. In other words, a private entity "may, under certain circumstances, be deemed a state actor when the government has outsourced one of its *constitutional obligations* to a private entity." *Id.* at 1929 n.1 (emphasis added). The Plaintiff provides no case law that supports the proposition that the recruiting and hiring of chaplains for the county prison system is a function that has been traditionally and exclusively performed by the state or local government. Because there is no constitutional obligation to provide

chaplains for inmates, the Plaintiff cannot argue that the County has outsourced any constitutional obligation to PMA thereby subjecting PMA or the County to liability. *Halleck*, 139 S. Ct. at 1929.

Courts have also cautioned against considering a prison chaplain to be a state actor. A Virginia federal district court decision, which was later affirmed by the Fourth Circuit, noted that for the court to hold a prison chaplain as a state actor would be for the court to essentially say "that the state is obligated to provide religious services to its prisoners." *McGlothlin v. Murray*, 993 F. Supp. 389, 409 (W.D. Va. 1997), aff'd, 151 F.3d 1029 (4th Cir. 1998). The court noted that "[s]uch a ruling would be contrary to the Establishment Clause." *Id.* Other circuit courts have come to similar conclusions. For example, the Seventh Circuit held that "private organizations and their employees that have only an incidental and transitory relationship with the state's penal system usually cannot be said to have accepted, voluntarily, the responsibility of acting for the state and assuming the state's responsibility for incarcerated persons." *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 827 (7th Cir. 2009); *Johnson-Bey v. Lane*, 863 F.2d 1308, 1312 (7th Cir. 1988). The Eighth Circuit noted that a prison chaplain, specifically, cannot be considered a state actor because "[i]t is hard to imagine any greater affront to the First Amendment than a state's attempt to influence a prison chaplain's interpretation and application of religious dogma." *Montano v. Hedgepeth*, 120 F.3d 844, 850 (8th Cir. 1997). The *Montano* court went on to note that "[a]t least insofar as matters of religious theory are implicated . . . prison chaplains enjoy complete protection from the prospect of governmental intrusion, and there is no 'join effort' between prison officials and the clergy concerning spiritual questions." *Id.* at 851 n.11.

Likewise, it would be contrary to First Amendment principles to hold PMA and its chaplains out as state actors in this case. PMA—not the County—was responsible for the recruiting, hiring, training, and placing of paid and volunteer prison chaplains within the county prison system. Exh. 1 at 22-23; Exh. 4, 28:10-12, 36:5-9, 39:3-9, 40:5-22, 41:1; Exh. 5, 35:15-20, 35:21-22, 36:1-22, 37:1-19, 38:16-22, 39:1-7, 40:9-18; Exh. 6, 62:21-22, 63:1-11; Exh. 7, 71:16-22, 72:1-3. While PMA was under a contract with the County to provide religious services, such a contract did not transform PMA into a state actor. *See Halleck*, 139 S. Ct. at 1932 ("Put simply,

being regulated by the State does not make one a state actor."). PMA operated with little to no oversight from the County in its recruiting and hiring practices. PMA created the job application, recruited for the job position, and interviewed applicants for the job position. Exh. 1 at 22-23; Exh. 4, 28:10-12, 36:5-9, 39:3-9, 40:5-22, 41:1; Exh. 5, 35:15-20, 35:21-22, 36:1-22, 37:1-19, 38:16-22, 39:1-7, 40:9-18; Exh. 6, 62:21-22, 63:1-11; Exh. 7, 26:7-22, 27:1-19, 71:16-22, 72:1-3, 93:17-22, 94:1-22. Though PMA invited the County to participate in the hiring process (Exh. 7, 72:16-22, 73:1-4), PMA retained authority over the recruitment, interviews, hiring, and training of its chaplain employees. Exh. 7, 26:7-22, 27:1-19, 71:16-22, 72:1-3, 93:17-22, 94:1-22. PMA's relationship with the County was an "incidental and transitory relationship," and the Plaintiff cannot argue that this relationship resulted in PMA assuming the state's responsibility for inmates. *Rodriquez*, 577 F.3d at 827. The County had no obligation to provide chaplain services for its inmates; thus, PMA's effort in recruiting and hiring chaplains cannot be considered a traditional and exclusive public function.

b. The County did not act jointly with PMA.

Another factor courts look at to determine whether a private entity is a state actor is whether "the government acts jointly with the private entity." *Halleck*, 139 S. Ct. at 1928. "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law." *Lugar*, 457 U.S. at 941, 102 S. Ct. 2744 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152, (1970)). A private entity acts under color of state law when it exercises power "'possessed by virtue of state law and made possibly only because the wrongdoer is clothed with the authority of state law.'" *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 189– 90 (4th Cir. 2022) (quoting *West v. Atkins*, 487 U.S. 42, 48 (1988)). It is well established that prisons are not required to recruit or employ chaplains to assist inmates of all religious faiths under the First Amendment. *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972). Further, Defendants are not aware—and the Plaintiff does not identify—any statutory law that requires the County to provide chaplaincy services to its inmates. In *West v. Atkins*, the Supreme Court noted that the prison doctor was a state actor because

he was fulfilling the state's duty under the Eighth Amendment and state law to "provide essential medical care" to the incarcerated. 487 U.S. at 57. *Cf. Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981) (holding that a public defender does not act "under color of state law" because the job is marked by "functions and obligations in no way dependent on state authority"); *see also Montano v. Hedgepeth*, 120 F.3d 844, 850-51 (8th Cir. 1997) (holding that a "prison chaplain, even if a full-time state employee, is not a state actor when he engages in inherently ecclesiastical functions").

The Plaintiff relies on a Sixth Circuit case to allege that PMA is a state actor. *Phelps v. Dunn*, 965 F.2d 93 (6th Cir. 1992). In *Phelps*, the Sixth Circuit held that a prison chaplain was a state actor because the chaplain signed a contract *with* the prison, completed training provided *by* the prison, and underwent a process "similar to that used for selecting paid personnel." 965 F.2d at 101-02. The court noted that under the contract between the prison and the chaplain, the chaplain was required to ensure the constitutional right of inmates to practice their religion. *Id.* at 102. However, in violation of this duty, the prison chaplain denied an inmate access to religious services. *Id.* The court held that the prison chaplain was a state actor given that he was entrusted with a state obligation to ensure inmates are able to practice their religion. *Id*. The *Phelps* court and the Supreme Court in *West* held the prison chaplain and prison doctor out as state actors because they were fulfilling constitutional duties alongside the local government. *Id.*; *West*, 487 U.S. at 57.

Unlike in *Phelps* and *West*, PMA was not interfering with an inmate's right to practice their religion or failing to fulfill any other constitutional duty alongside the County. Rather, PMA was seeking to hire chaplains in order to provide a service that the County was not otherwise obligated to provide to inmates, i.e. chaplaincy services.[4] Exh. 7, 78:13-19. PMA was performing "functions and obligations in no way dependent on state authority." *Polk Cnty.*, 454 at 318.

[4] Throughout the COVID-19 pandemic, from 2020-2021, the County offered limited services to inmates. Exh. 5, 27:17-22, 28:1-9; Exh. 7, 78:13-19, 97:1-6. No volunteer or paid chaplain services were provided to inmates during this time period. *Id.*

Furthermore, unlike in *Phelps* and *West*, the chaplaincy position at issue in this case did not require the chaplain to sign a contract with the County or complete training with the County. PMA, not the County, hired and trained the chaplain. Exh. 1 at 22-23. ("The Contractor [PMA] shall oversee and manage the development and provide an annual training session for volunteers."). PMA, at all times, was responsible for the recruiting, hiring, and training of the paid and volunteer chaplains for the County. *Id.*; Exh. 4, 28:10-12, 36:5-9, 39:3-9, 40:5-22, 41:1; Exh. 5, 35:15-20, 35:21-22, 36:1-22, 37:1-19, 38:16-22, 39:1-7, 40:9-18; Exh. 6, 62:21-22, 63:1-11; Exh. 7, 26:7-22, 27:1-19, 71:16-22, 72:1-3, 93:17-22, 94:1-22. Each of these factors were within the sole discretion of PMA, and at no time did PMA act with any state authority in its recruiting and hiring for the chaplaincy positions. For these reasons, PMA is a private actor not subject to Section 1983 liability.

c. Under Title VII, PMA has the autonomy to direct the hiring of its employees.

While the Plaintiff did not bring an employment discrimination cause of action, PMA was within its rights to recruit, interview, and hire any applicants according to PMA's religious preference. Under Title VII, religious organizations are permitted to give employment preference to members of their own religion. 42 U.S.C. § 2000e–1(a); *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189, 192 (4th Cir. 2011). While Defendants maintain that the Statement of Christian Faith that the Plaintiff takes issue with was not required for employment with PMA, PMA was within its right to include a Statement of Christian Faith and within its right to favor the hiring of a person of a particular faith. Under the contract with the County, PMA was required to provide religious resources (i.e. staff) for the major religions, including Christian, Islamic, and Judaism services. Exh. 1 at 23 ("Contractor [PMA] shall ensure religious services are provided, at a minimum, to the major religions: Christianity, to include Protestant/Catholicism services . . . . Contractor shall provide two dedicated staff members for the Islamic and Judaism religions."). PMA was limited by only this contract term as it relates to considering the religious background of applicants. As a

religious organization, if PMA chose to hire a Protestant chaplain first, it could do so as it could give employment preference to members of its own faith group.

2. The County Is Not Subject To Liability Because It Did Not Delegate Any Government Power To PMA.

The Plaintiff alleges that the County is also liable under Section 1983 for PMA's hiring practices. Pl.'s Mot. Summ. J. at 13. However, in order to successfully maintain an action under Section 1983 it is necessary to establish that the conduct occurred in execution of a government's policy or custom promulgated by its law makers for those whose acts may fairly be said to represent official policy. *Monell v. New York City Department of Social Services*, 436 US. 658 (1978). For liability to attach, "(1) the municipality must have 'actual or constructive knowledge' of the custom and usage by its responsible policymakers, and (2) there must be a failure by those policymakers, 'as a matter of specific intent or deliberate indifference,' to correct or terminate the improper custom and usage." *Randall v. Prince George's Cnty., Md.*, 302 F.3d 188, 210 (4th Cir. 2002) (citing *Spell v. McDaniel*, 824 F.2d 1380, 1390 (4th Cir. 1987)). "Constructive knowledge of such a custom and usage 'may be inferred from the widespread extent of the practices, general knowledge of their existence, manifest opportunities and official duty of responsible policymakers to be informed, or combinations of these.'" *Id.*

The Plaintiff does not allege the circumstances to give rise to such liability. To begin, the County did not delegate any government policy or power to PMA. As discussed above, *supra* IV.B.1.b, PMA was to recruit, hire, and train chaplains to provide chaplaincy services to the county prison. MA—not the County—recruited and hired its own employees to serve as chaplains in the prison system. Applicants interested in the chaplaincy position completed a PMA application—not a county application. Exh. 14. Furthermore, the evidentiary record reflects that the County had no knowledge of PMA's recruiting and hiring practices and was not involved in any way in the creation of the job application for the chaplaincy position. Exh. 4, 28:10-12, 36:5-9, 39:3-9, 40:5-22, 41:1; Exh. 5, 35:15-20, 35:21-22, 36:1-22, 37:1-19, 38:16-22, 39:1-7, 40:9-18. In fact, the

County admitted that it had not drafted or even seen the Statement of Applicant's Christian Faith prior to this litigation. Exh. 4, 35:17-18, 36:5-9, 39:3-9; Exh. 5, 38:7-18, 39:16-20.

The Plaintiff makes broad assertions that the County was "well aware from its history of using Christian evangelical third parties that these Christian evangelical organizations often discriminate in favor of Christianity." Pl.'s Mot. Summ. J. at 14. Yet, the Plaintiff provides no evidence that PMA or the County favored Christianity. The mere fact that PMA used an application that included a Statement of Christian Faith is not sufficient to demonstrate that PMA or the County followed any government policy that favored a particular faith group. To the contrary, the record demonstrates that PMA was required to hire individuals of different faith practices and the Statement of Christian Faith in the application that the Plaintiff received was not a condition for employment. Exh. 1 at 23; Exh. 13, No. 9 ("The 'Statement of Applicant's Christian Faith' page in the application that Plaintiff Bridges received from Responding Party followed a section of the application that included the following statement: 'These questions are for the leadership of Christian Chaplain Service to get to know a little about you personally and are not required answers for employment. Please leave this section blank if you are uncomfortable with anything herein.'"); Exh. 5, 37:17-19; Exh. 4 36:19-21, 37:1-3. The only government policy—if any—that the County sought to enforce was equal representation of the major religious groups in its correctional facility. Exh. 1 at 23. The County invited bids from *any* organization to provide chaplaincy services at its prison. Exh. 5, 10:8-20. The fact that PMA is a Christian organization or that the County has accepted bids from other Christian organizations in the past to provide religious services does not create any government policy that would subject the County to liability under *Monell*.

Because the County did not delegate any government power to PMA and because the County had no actual or constructive knowledge of PMA's recruiting and hiring practices, the County cannot be subject to *Monell* liability.

C. EVEN IF THE DEFENDANTS ARE SUBJECT TO LIABILITY, THE PLAINTIFF FAILS TO STATE A CLAIM FOR WHICH LIABILITY ATTACHES.

Even if PMA is a state actor and the County is subject to liability under *Monell*, the Plaintiff has failed to show any constitutional violations under the First Amendment.

1. The Plaintiff's Free Exercise Claim Fails.

The Free Exercise Clause provides that "Congress shall make no law ... prohibiting the free exercise" of religion. U.S. Const. amend. I. A plaintiff carries the burden of proving a free exercise violation and may do so by "showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.' *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022). Under the Free Exercise Clause, a law that is neutral and of general applicability need only be supported by a rational basis "even if the law has the incidental effect of burdening a religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Strict scrutiny applies only where a law treats religious exercise less favorably than "comparable secular activit[ies]." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Government actions that substantially burden a religious practice must be justified by a compelling government interest. *Sherbert v. Verner*, 374 U.S. 398, 402-03 (1963).

a. The Plaintiff fails to demonstrate that the County or PMA burdened his religious practice.

As a threshold matter, the Plaintiff has not shown a substantial burden on his religious exercise. The Plaintiff argues that PMA's hiring practices and its use of the Statement of Christian Faith caused the Plaintiff harm because it forced him to choose between applying for a position with Defendants or sacrifice his religious beliefs. Pl.'s Mot. Summ. J. at 14-15. However, the Plaintiff makes no claim that the County or PMA denied him the ability to apply for the chaplaincy position or was in fact denied from the position because of his Muslim faith. The decision not to apply for the chaplaincy position was the Plaintiff's decision—not the County's or PMA's decision. While the Plaintiff contends he "took it upon himself to express interest [in the position]" (Pl.'s Mot. Summ. J. at 8), the record reflects that Mr. Maciel notified the Plaintiff of the chaplaincy opening, emailed the Plaintiff the chaplaincy application, and followed up with the Plaintiff

multiple times regarding the position and his application. Exh. 14; Exh. 7, 95:21-22, 96:1-22, 97:1-17. The Plaintiff makes unsupported assertions that PMA and the County favored Christians because the application he received included a Statement of Christian Faith. However, the Plaintiff provides no argument or evidence that PMA and the County prevented the Plaintiff from exercising his religious beliefs, thereby failing to establish a burden on his religious practice.

b. PMA's recruiting and hiring process was neutral and generally applicable.

As discussed above, *supra* IV.B.1.b, prisons are not required to employ full-time chaplains to assist inmates of all religious faiths under the First Amendment. *See, e.g., Cruz*, 405 U.S. at 322; *see also Johnson-Bey*, 863 F.2d at 1312 ("Prisons are entitled to employ chaplains and need not employ chaplains of each and every faith to which prisoners might happen to subscribe…."); *see also Cooper v. Rogers*, 788 F.Supp. 255, 257 n.7 (D. Md. 1991) (citing *Allen v. Toombs*, 827 F.2d 563, 569 (9th Cir. 1987).

PMA's recruiting and hiring process was neutral and generally applicable. Indeed, under the contract between the County and PMA, PMA was obligated to hire staff that represented the three major religious groups at the prison, including an individual who practiced Islam. Exh. 1 at 23. Furthermore, under the "Minimum Qualifications" section of the application and job description that the Plaintiff received, PMA made no requirement that an individual practice a particular faith. Rather, a qualified individual needed to have a "[p]astoral or ordained minister license from a recognized affiliation" and "[a]t least two years membership in a recognized church." Exh. 10. Additionally, when recruiting for the chaplaincy position, Mr. Maciel, asked for a list of all past chaplain volunteers. Exh. 7, 78:13-19. He informed several individuals of the paid position without inquiring into their religious background. *Id.* Mr. Maciel invited the Plaintiff to apply and followed up with him about the status of his application. Exh. 14; Exh. 7, 93:17-22, 94:1-19, 95:21-22, 96:1-22.

On a Free Exercise claim, a plaintiff must allege facts plausibly showing that the government denied him a reasonable opportunity of pursuing [his] faith comparable to the

opportunity afforded other applicants. *See Cruz v. Beto*, 405 U.S. 319, 322 (1972). Here, the Plaintiff fails to state a claim because he does not sufficiently allege that the County or PMA interfered with his practice of religion or showed preference to Christian religion by not hiring him as a chaplain because he is Muslim. There are no facts to support that had the Plaintiff submitted an application—without the Statement of Christian Faith—he would have been excluded from the applicant pool. The Plaintiff has failed to meet his burden to demonstrate that his religious exercise was burdened in anyway and that PMA's hiring practices were neither neutral nor generally applicable. As such, the Plaintiff's free exercise claim fails.

2. The Plaintiff's Establishment Clause Claim Fails.

It is well established that, at the minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which "establish a [state] religion or religious faith or tends to do so." *Lynch v. Donnelly*, 465 U.S. 668, 678 104 S.Ct. 1355, 1361 (1984). For a challenged state action to be valid under the Establishment Clause it (1) must have a secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) not foster an excessive government entanglement with religion. *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003). In the prison context, prison regulations are valid if reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78 (1987).

Plaintiff argues that Defendants' hiring practices and Defendants' use of the Statement of Christian Faith treat Muslims and others less favorably than Christians, creating a denominational preference against Islam. Pl.'s Mot. Summ. J. at 10-12. However, according to the contract between the County and PMA, PMA was obligated to hire staff from the three major religions represented at the prison (i.e. Christianity, Islam, and Judaism). Exh. 1 at 23. Nowhere in the contract is there a mandate that the chaplain supervisor position be a member of any particular religion. Specifically, the contract states "[PMA] shall ensure religious services are provided to the major religions: Christianity, to include Protestant/Catholicism services, Islamic and Judaism." *Id.* The

Statement of Applicant's Christian Faith was not a condition for employment. Exh. 13, No. 9. In fact, the application suggests that an applicant could leave the section blank if the applicant felt uncomfortable with anything herein. Exh. 12. Nowhere on the application did it indicate that applicants were required to sign the Statement of Christian Faith. Exh. 12. And no one from PMA or the County indicated that the Plaintiff, as a practicing Muslim, would be prohibited from applying for the chaplaincy position or excluded from the applicant pool for refusing to sign the Statement of Christian Faith. Exh. 6, 80:12-22, 81:1-4, 81:16-19, 91:22, 92:1-8. The Plaintiff asks this Court to find that PMA, and subsequently the County, sought to establish a state religion through its recruiting and hiring process for the chaplaincy position. Yet, he fails to demonstrate that PMA or the County favored any faith group. *See McGlothlin*, 993 F. Supp. at 409, aff'd, 151 F.3d 1029 (4th Cir. 1998) (holding that obligating the state "to provide religious services to its prisoners . . . would be contrary to the Establishment Clause"). However, the record is clear that PMA sought to employ chaplains from various faith groups, including Islam. Exh. 1 at 23.

The Plaintiff fails to state a claim under both the Free Exercise Clause and the Establishment Clause because he does not sufficiently allege that the County or PMA interfered with his practice of religion or showed preference to Christian religion by not hiring him as a chaplain because he is Muslim.

D. EVEN IF THE PLAINTIFF CAN ESTABLISH A VIOLATION OF HIS CONSTITUTIONAL RIGHTS, HE IS ENTITLED TO NO MORE THAN $1.00 NOMINAL DAMAGES.

Even if the Plaintiff can cross the threshold for standing and establish a violation of his constitutional rights, he is entitled to no more than $1.00 nominal damages for a technical violation. As discussed in Section IV.A.2 of this memorandum, the Plaintiff cannot prove actual damages. Based on the precedent cited, he would be entitled to an award of no more than $1.00 nominal damages.

V. CONCLUSION

In sum, the Plaintiff cannot carry his summary judgment burden on his constitutional claims. For the aforementioned reasons, the Court should deny the Plaintiff's Motion in its entirety and grant the Defendants' Motion in its entirety.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify under the penalty of perjury that above DEFENDANTS PRINCE GEORGE'SCOUNTY, MARYLAND AND PRISON MINISTRY OF AMERICA'S OPPOSITION TO THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT was served via ECF.

/s/ Andrew Murray, Esq