IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JASON TUCKER, *et al.*,	)	
	)	
Plaintiffs,	)	No. 18 CV 3154
	)	
v.	)	Judge Lee
	)	Magistrate Judge Martin
JOHN BALDWIN,	)	
	)	
Defendant.	)	

ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT

Defendant John Baldwin, Director of the Illinois Department of Corrections ("IDOC" or the "Department"), by his attorney, Lisa Madigan, Attorney General of Illinois, and for his Answer to Plaintiff's Class Action Complaint states the following:

Nature of the Case

1. This is a civil rights class action brought pursuant to 42 U.S.C. §1983, filed on behalf of people who are under the supervision of the Illinois Department of Corrections ("the Department"), in which they challenge the constitutionality of the Department's policies restricting parolees' access to computers, the Internet, and any Internet-accessible devices.

ANSWER: Defendant admits that Plaintiff purports to bring this action pursuant to 42 U.S.C. § 1983 and alleges violations under the First and Fourteenth Amendments to the United States Constitution. Defendant denies all remaining allegations of Paragraph 1.

2. In particular, Plaintiffs challenge the Department's policy of restricting individuals who are required to register as sex offenders from having access to the Internet while they are on mandatory supervised release ("MSR") (formerly known as parole).

ANSWER: Defendant admits that Plaintiffs challenge the IDOC's policies regarding Internet access for sex offenders on MSR. Defendant denies all remaining allegations of Paragraph 2.

3. Plaintiffs, individually and on behalf of the class they seek to represent, allege that these policies violate their rights under the First and Fourteenth Amendments of the United States Constitution. Plaintiffs seek class-wide injunctive and declaratory relief.

ANSWER: Defendant admits that Plaintiffs purport to seek declaratory and injunctive relief, both individually and on behalf of a purported class. Defendant denies that Plaintiffs are entitled to any relief whatsoever, deny that a class should be certified in this matter, and deny all remaining allegations of Paragraph 3.

Jurisdiction and Venue

4. Jurisdiction is proper in this court pursuant to 28 U.S.C. §§1331 and 1343(a).

ANSWER: Defendant admits that the United States District Court for the Northern District of Illinois has jurisdiction over proper lawsuits brought under 42 U.S.C. §§ 1983. Defendant denies all remaining allegations of Paragraph 4.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events giving rise to Plaintiffs' claims occurred in this district as alleged below.

ANSWER: Defendant admits that venue is proper.

6. Declaratory relief is authorized under 28 U.S.C. §2201. A declaration of law is necessary and appropriate to determine the respective rights and duties of parties to this action.

ANSWER: Defendant admits that this Court has the authority to issue a declaratory judgment in appropriate cases, but denies that a declaratory judgment is appropriate in this case, and denies all remaining allegations of Paragraph 6.

The Parties

7. Defendant John Baldwin is sued in his official capacity as director of the Illinois Department of Corrections. In his capacity as the director of the Department and pursuant to state law, he has final authority to set the Department of Corrections' policies and practices concerning the restrictions placed on parolees on MSR.

ANSWER: Defendant admits that Director Baldwin is sued in his official capacity as Director of the Illinois Department of Corrections ("IDOC"). Defendant further admits that Director Baldwin has authority to set IDOC policies and practices with regard to the restrictions placed on parolees on MSR, but that authority is limited by various statutes and by the requirement that the IDOC comply with the MSR conditions set by the PRB.

8. Plaintiffs Jason Tucker and Daniel Barron are individuals on MSR who are required to register as sex offenders and are subject to the challenged policies and practices.

ANSWER: Defendant admits the allegations of Paragraph 8.

The Challenged Policy

9. Illinois law gives the Illinois Department of Corrections discretion to decide whether an individual being released on MSR for a sex offense may have access to the Internet.

ANSWER: Defendant admits that, if the Prison Review Board ("PRB") imposes the MSR condition found in 730 ILCS 5/3-3-7 (b)(7.6)(i), that a sex offender may "not access or use a computer or any other device with Internet capability without the prior written approval of the Department," then the Department has discretion to decide whether that individual may have access to the Internet.

10. In particular, 730 ILCS 5/3-3-7 (b)(7.6)(i) provides that people required to register as sex offenders, if convicted for an offense committed on or after June 1, 2009, must "not access or use a computer or any other device with Internet capability without the prior written approval of the Department" while on parole or mandatory supervised release.

ANSWER: Defendant admits that 730 ILCS 5/3-3-7 (b)(7.6)(i) details a condition that the PRB may impose on parolees, but denies that this condition automatically applies to all sex offenders.

11. In accordance with this state law, the Prisoner Review Board, which is an independent body responsible for setting parole conditions and determining parole eligibility, imposes the following MSR condition for people required to register as sex offenders: "You shall

not possess, access, or use computer or any other device with internet capability without prior written approval of an agent of the Department of Corrections."

ANSWER: Defendant admits that the PRB may impose such a condition, and generally does impose such a condition on sex offenders, but denies that the PRB is required to impose such a condition.

12. The Department of Corrections exercises the discretion it has been given in a manner that severely and unnecessarily burdens the First Amendment rights of individuals who are required to register as sex offenders and who are on parole or mandatory supervised release.

ANSWER: Defendant denies the allegations of Paragraph 12.

13. The Department has a blanket policy prohibiting parolees released on MSR for sex offenses from having access to the Internet, except under rare exceptions.

ANSWER: Defendant denies the allegations of Paragraph 13.

14. The Department also has the responsibility and authority to investigate and approve "host sites" for people released on MSR.

ANSWER: Defendant admits the allegations of Paragraph 14.

15. The Department absolutely prohibits anyone who is required to register as a sex offender from residing while on MSR at a host site where there is Internet access, computers and/or any other device with Internet capability. These policies are set forth in writing in several places:

(1) The Department's Parole School handout, which is distributed to all persons required to register as sex offenders who are preparing a parole plan in anticipation of release on MSR, titled, "Parole Requirements for Offenders with an Active Sex Offender Registry Requirement" provides in relevant part as follows:

> "[Sex offenders are] [p]rohibited from having internet access of any type through a computer, Web TV, cell phone, personal digital assistant (PDA), or any other device without prior approval by the parole agent. Approval for internet access may only be made for employment and school related activities. Parolee is prohibited from establishing a profile or utilizing someone else's profile on a social-networking website and from contacting or communicating with minors on these sites"; and

(2) The Department's "Sex Offender Supervision Unit Protocols," which is the manual that sets forth the responsibilities of parole agents, provides in relevant part as follows: (a) "Items prohibited in the prospective host site... Computers, routers, internet related devices " (p. 9); and "[Parolees] are prohibited from accessing any Internet server account without prior approval of your agent."

ANSWER: Defendant admits that the cited materials contain the quoted language, but denies that the Department currently prohibits sex offenders from residing while on MSR at a host site where there is Internet access, computers and/or any other device with Internet capability.

16. Both the relevant Illinois statute — 730 ILCS 5/3-3-7 (b)(7.6)(i) — and the PRB rules state that parolees may be granted the right to use to the Internet with "written approval of the Department," but in actual practice, the Department, per its written rules, rarely grants internet access to parolees, and, when it does, "internet access may only be made for employment and school related activities."

ANSWER: Defendant admits that the authorities cited give discretion to the Department to give sex offenders approval to use the Internet, but denies that the Department "rarely grants internet access to parolees, and, when it does, 'internet access may only be made for employment and school related activities.'"

17. The Department's broad restriction on parolee's access to the Internet constitutes a serious interference with their First Amendment rights. The prohibition affects Plaintiffs' ability to access news, entertainment, commercial and governmental sources of information. As the Supreme Court has recognized, the Internet "provides relatively unlimited low-cost capacity for communication of all kinds." *Reno v. Am. Civil Liberties Union,* 521 U.S. 844, 870 (1997).

ANSWER: Defendant denies the allegations of Paragraph 17.

18. In many respects, the Internet has replaced the town square as our modern-day public forum. Last year, the Supreme Court emphatically declared the Internet the primary location for First Amendment activity: "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace ...." *Packingham v. North Carolina,* 137 S.Ct. 1730, 1735, (2017).

ANSWER: Defendant admits that the *Packingham* decision includes the quoted language, but denies all remaining allegations of Paragraph 18.

19. As a result, the Department's Internet restrictions severely inhibit parolees' ability to gain access to information and communicate with others and thus interfere with almost all aspects of parolees' lives.

ANSWER: Defendant denies the allegations of Paragraph 19.

20. Moreover, the Department's process by which a parolee may request Internet access is inadequate for numerous reasons, including the following:

- The Department has no set criteria for considering or granting a parolee's request for Internet access, leaving all such decisions to the unconstrained discretion of individual parole agents;
- The Department provides no fair and uniform process for a parolee to follow to seek Internet access;
- The Department sets no time frame in which a parole agent must consider a parolee's request for Internet access.

ANSWER: Defendant denies the allegations of Paragraph 20.

21. The Department's Internet restriction is a one-size-fits-all policy that does not take into account the individual characteristics of the parolee, the nature of the offense, whether the offense involved the use of a computer or the Internet, and whether the parolee committed an offense against a minor or an adult.

ANSWER: Defendant denies the allegations of Paragraph 21.

22. The Department's Internet restriction has substantial collateral effects on parolees' family members' First Amendment rights. In particular, because people on parole for sex offenses are prohibited from living at a host site that has Internet access or computers, family members are often forced to give up their computers and other devices so that the parolee has somewhere to live.

ANSWER: Defendant denies the allegations of Paragraph 22.

23. The restriction does not help parolees reintegrate into their communities and live productive and law-abiding lives. To the contrary, the restriction inhibits rehabilitation by cutting off parolees from news, access to information, and the ability to communicate with others.

ANSWER: Defendant denies the allegations of Paragraph 23.

24. Completely prohibiting Internet use is not the only way for the Department to guard against parolees' improper use of the Internet. As set forth in the Department's Sex Offender Supervision Unit Protocols, the Department has software that monitors and tracks

Internet use and parolees can be required to consent to instillation of this software as a condition of their release.

ANSWER: Defendant denies that the IDOC currently prohibits sex offenders from using the Internet, and denies all remaining allegations of Paragraph 24.

Facts Pertinent to the Named Plaintiffs

Daniel Barron

25. Plaintiff Daniel Barron, 24, a registered sex offender, was convicted in May of 2014 of Criminal Sex Assault for an offense he committed in September 2012.

ANSWER: Defendant admits that Barron is 24, is a registered sex offender, was convicted of Criminal Sexual Assault, and was admitted into IDOC custody in July 2014. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 25.

26. Barron was sentenced to four years in prison at 85 percent and a received an MSR term of three years to life.

ANSWER: Defendant admits that Barron was sentenced to four years in prison, plus an MSR term of three years to life. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 26.

27. Barron's crime had nothing to do with the Internet or computers and did not involve a minor. Barron was 18 years old at the time of his offense, when, during his second month as a freshman at Illinois State University in Normal, Illinois, he over-imbibed and inappropriately touched an adult woman while she was sleeping.

ANSWER: Defendant admits that Barron was convicted of criminal sexual assault on adult woman who was unable to consent. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 27.

28. Barron was incarcerated at Jacksonville Correctional Center from August 2014 to May 2016 and then Taylorville Correctional Center from May 2016 to December 11, 2017,

whereupon he was released to his parents' home, located in Downers Grove, Illinois, to serve out his MSR sentence.

ANSWER: Defendant admits that Barron's parent institution (the last IDOC facility that he was incarcerated in) was Taylorville Correctional Center, that he was paroled on December 11, 2017, and that he currently lives in Downers Grove, Illinois. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 28.

29. Barron currently resides at his parents' home and is currently employed full time at a sandwich shop in Oak Brook, Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 29.

30. The Department's Internet restriction places a severe burden on Barron in several ways, including following:

(1) Barron's efforts to find new employment are severely hampered due to his inability to look at job listings online;

(2) Barron is, for all practical purposes, prohibited from visiting friends' and family members' homes, because he is prohibited from going to any residence that has internet access;

(3) Barron is prohibited him from taking on-line courses, which he seeks to do, and also from using a computer to even write a paper in Microsoft Word; and

(4) Barron is cut off from news, information and entertainment sources that he seeks to use.

ANSWER: Defendant denies that the IDOC currently prohibits sex offenders from using the Internet. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 30.

31. As a condition of Barron's release to his parents' home, his parents were also required to abide by the Department's Internet restriction in their home. This includes (depending on the whims of the parole officer) not having any personal computers in the home and/or other Internet-enabled devices like a Smart TV.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 31.

32. The restriction imposes a huge burden on Barron's parents and other family members who live in the home (including Barron's 26-year-old brother). Barron's mother, for instance, in anticipation of her son's arrival home from prison, had to take a day off of work to access and print out relevant information from the Illinois Department of Employment Security for her son concerning "Reentry Illinois," a state program that provides parolees with information to assist them in meeting their parole needs. Such information otherwise would have been unavailable to Barron, who is prohibited from accessing the Internet.

ANSWER: Defendant denies that the IDOC currently prohibits sex offenders from using the Internet. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 32.

33. Barron's mother is currently unemployed and looking for a job, and due to the fact that no personal computers are allowed in the home, she cannot search for a job from the home using a computer.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 33.

Jason Tucker

34. Plaintiff Jason Tucker, 40, was convicted of predatory criminal sexual assault of a minor in 2011 for an offense he committed in May of 2009.

ANSWER: Defendant admits the allegations of Paragraph 34.

35. Tucker was sentenced to seven years in prison at 85 percent, plus an MSR term of three years to life.

ANSWER: Defendant admits that Tucker was sentenced to seven years in prison, plus an MSR term of three years to life. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 35.

36. Tucker's crime had nothing to do with the internet or with computers.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 36.

37. On April 20, 2015, Tucker completed his prison sentence and became eligible for release on MSR. But for over two and a half years after that, he was unable to find housing that met the Department of Corrections' approval and thus remained in prison for 31 additional months.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 37.

38. Tucker was forced to remain in prison for two and a half years longer than he otherwise would have due to the Department's Internet restriction. In particular, Tucker had sought to live with his mother, but her house in Bunker Hill, Illinois, was denied because of its having Internet access. Tucker's mother was willing to make any accommodations to have her son come live with her, but she was unable to give up access to the Internet because that is the only way she communicates with her other son who lives in New Zealand. As a result, Tucker's mother's house was found to be non-compliant. Tucker's only other option for housing was a house owned by his friend's parents in Alton, Illinois, but this house was also denied due to its having Internet access (as well as having a dog).

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 38.

39. On November 28, 2017, Tucker was released to an approved host site in Alton, Illinois.

ANSWER: Defendant admits the allegations of Paragraph 39.

40. Presently, Tucker lives on his own in a single-family home located in Alton, Illinois. He pays rent of $455 per month.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 40.

41. Tucker is employed full-time as a laborer at a warehouse in Edwardsville, Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 41.

42. The Department's Internet restriction places a severe burden on Tucker in several ways, including the following:

(1) Tucker's ability to find a job is severely restricted because almost all jobs require an individual to fill out a job application on line. He has had to rely on his family and friends to fill out his job applications, which has resulted in inaccuracies on his resume and difficulties communicating with potential employers who, generally speaking, seek to correspond with applicants via e-mail;

(2) Tucker's ability to communicate with his family has been severely restricted. In particular, Tucker seeks to communicate via Facetime with his brother who lives in New Zealand and whom Tucker has seen only once in the past nine years. Facetime requires an Internet connection and a camera (which is also prohibited);

(3) Tucker's ability to apply for health insurance via healthcare.gov has been made more time consuming and costly. He was forced to take off a day of work to apply for his health insurance in person at the offices of a registered insurance agent;

(4) Tucker's access to news and entertainment has been greatly restricted. He is unable to afford cable TV and thus his media options are limited to watching movies on DVD and listening to music on an MP3 player. Tucker is unable to learn about news stories that are important to him on news organizations' websites;

(5) Tucker cannot communicate with his lawyers, friends, family, support groups, or government (*i.e.,* **IRS,** Illinois Department of Employment Security, and Department of Human Services) via email or the Internet;

(6) Tucker's ability to follow the legal developments of certain important litigation related to his status as a registered sex offender is severely limited by his being prevented from downloading court documents from the Internet; and

(7) Tucker cannot download tax forms or manage his finances on line.

ANSWER: Defendant denies that the IDOC currently prohibits sex offenders from using the Internet. Defendant lacks knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 42.

CLASS ALLEGATIONS

43. Pursuant to Fed. R. Civ. P. 23(b)(2), the named Plaintiffs seek certification of this complaint as a class action.

ANSWER: Defendant admits that Plaintiffs seek certification of a class action, but deny that the case is suitable for class action treatment.

44. Named Plaintiffs Barron and Tucker seek to represent a class defined as follows:

- All persons required to register as sex offenders who are denied access to the Internet and computers while on MSR without any individualized determination that public safety or rehabilitation requires such a prohibition.

ANSWER: Defendant denies that this case is suitable for class action treatment pursuant to Fed. R. Civ. P. 23(b)(2) because Plaintiffs' claims are moot.

45. The Plaintiffs bring this suit on their own behalf and on behalf of all parolees in the custody of the Department who currently are, or in the future will be, subjected to the Department's Internet restriction.

ANSWER: Defendant denies that this case is suitable for class action treatment pursuant to Fed. R. Civ. P. 23(b)(2) because Plaintiffs' claims are moot.

46. The proposed class is numerous. There are approximately 30,000 individuals currently on parole under the supervision of the Department. A significant percentage of these individuals are subject to sex offender restrictions. The class would easily consist of thousands of individuals.

ANSWER: Defendant denies that the allegations of Paragraph 46.

47. Joinder of all class members is impracticable. Not only is the class very numerous, but membership in the classes is constantly expanding as every day additional people who are required to register as sex offenders become eligible for release on MSR and are subject to the challenged restrictions.

ANSWER: Defendant denies the allegations of Paragraph 47.

48. There are questions of law and fact common to all class members, including but not limited to the following:

- The Department's rationales for the challenged policy;
- Whether there is any compelling interest served by the policy;
- Whether the Department offers any process for parolees subject to the challenged policies to seek internet access, and if so, how that process works, what standards or criteria are applied, and
- Whether the policy is unconstitutional on its face because it fails to provide any notice, hearing, or individualized determination before depriving parolees of their First Amendment rights.

ANSWER: Defendant denies the allegations of Paragraph 48.

49. All individuals falling within the class definition have been subject to the same policy. Given the commonality of the questions pertinent to all class members, a single declaratory judgment would provide relief to each member of the class.

ANSWER: Defendant denies the allegations of Paragraph 49.

50. Plaintiffs and the class they seek to represent have been directly injured by the policy challenged herein; and members of the class are currently at risk of future harm from the continuation of this policy.

ANSWER: Defendant denies the allegations of Paragraph 50.

51. Plaintiffs will fairly and adequately represent the interests of the class; and the named Plaintiffs' claims are typical of the claims of all members of the proposed class.

ANSWER: Defendant denies the allegations of Paragraph 51.

52. Plaintiffs' counsel are experienced in civil rights litigation, including *Monell* claims, (b)(2) class actions, and constitutional matters on behalf of parolees. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

ANSWER: Defendant admits that Plaintiffs' counsel would fairly and adequately represent the interests of the proposed, but deny that any class should be certified in this case.

COUNT I
42 U.S.C. § 1983: VIOLATION OF THE FIRST AMENDMENT

53. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation above.

ANSWER: Defendant incorporates by reference his answers to the paragraphs above.

54. The Department's policy of severely restricting parolees' access to computers and the internet is overly broad on its face in violation of the First Amendment.

ANSWER: Defendant denies the allegations of Paragraph 54.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

(b) appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

(c) enter a declaratory judgment that Defendant's policy severely restricting parolees' access to the Internet is unconstitutional both on its face and as applied to Plaintiffs;

(d) enter a preliminary and then permanent injunction prohibiting Defendant from continuing to enforce its unconstitutional policy;

(e) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

(f) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendant denies that Plaintiffs are entitled to any relief whatsoever.

COUNT II
42 U.S.C. § 1983: VIOLATION OF THE FOURTEENTH AMENDMENT GUARANTEE OF PROCEDURAL DUE PROCESS

55. Plaintiffs reallege and reincorporate, as though fully set forth herein, each and every allegation above.

ANSWER: Defendant incorporates by reference his answers to the paragraphs above.

56. The Department's policies, which automatically deprive people required to register as sex offenders from having access to the Internet while on MSR without any individualized determination and without any pre- or post-deprivation process violates the Fourteenth Amendment guarantee of procedural due process.

ANSWER: Defendant denies the allegations of Paragraph 56.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

(b) appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

(c) enter a declaratory judgment that Defendant's policy severely restricting parolees' access to the Internet is unconstitutional both on its face and as applied to Plaintiffs;

(d) enter a preliminary and then permanent injunction prohibiting Defendant from continuing to enforce its unconstitutional policy;

(e) enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

(f) grant Plaintiffs any other relief the Court deems appropriate.

ANSWER: Defendant denies that Plaintiffs are entitled to any relief whatsoever.

Plaintiffs demand trial by jury.

ANSWER: Defendant denies that a jury trial is appropriate in this case becuase the Complaint seeks only equitable relief.

GENERAL DENIAL

Defendant denies each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense: Plaintiffs' Claim is Moot

In this case, Plaintiffs challenge the IDOC's absolute ban on internet access for all sex offenders. But the IDOC issued its revised Sex Offender Internet Access Policy on July 10, 2018, and will begin implementing this policy on August 10, 2018. The revised policy provides that sex offenders may request access to the Internet; those requests will be reviewed on a case-by-case basis by the Sex Offender Supervision Unit Containment Team. *Id*. The revised policy allows sex offenders who are granted access to use the Internet, subject to certain reasonable restrictions. Only offenders convicted of an Internet-related sex offense are prohibited from using the internet.

Thus, Plaintiffs have been provided precisely the relief that they seek. "Once a plaintiff's entire demand is satisfied, 'there is no dispute over which to litigate, and a plaintiff who refuses to acknowledge this loses outright, under Fed. R. Civ. P. 12(b)(1), because he has no remaining stake.'" *St. John's*, 502 F.3d at 626, *quoting Rand v. Monsanto Co*., 926 F.2d 596, 598 (7th Cir. 1991). Because Plaintiffs' request for injunctive relief is moot, the suit should be dismissed as moot. *See Brown v. Bartholomew Consol*., 442 F.3d 588, 596 (7th Cir. 2006) ("In an action seeking only injunctive relief . . . once the threat of the act sought to be enjoined dissipates, the suit must be dismissed as moot.").

Second Affirmative Defense: Section 1983 Not Available

Plaintiffs' First Amendment claim (Count I) may not be brought under 42 U.S.C. § 1983, but instead may only be brought under 28 U.S.C. § 2254. Count I should be dismissed accordingly.

Respectfully submitted,

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