

WILL: Department of Corrections ban on clergy visits ruled unconstitutional

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The News: Jefferson County Circuit Court Judge William Hue issued a [summary judgment decision](#) that holds the Wisconsin Department of Corrections (WIDOC) violated state law and the state constitution when the agency barred Catholic clergy from ministering in-person to the spiritual needs of inmates under a COVID-19 visitor policy. The Wisconsin Institute for Law & Liberty (WILL) [sued](#) the Wisconsin Department of Corrections in May 2021 on behalf of the Archdiocese of Milwaukee seeking invalidation of the visitor policy. That policy, in effect for over a year, contained no exceptions for vaccinated clergy or instances where religious services could not be conducted virtually, yet WIDOC simultaneously granted institutional access to lawyers, public officials, and members of the press, among many others.

Judge Hue wrote, in part, “Religious interests (guaranteed by the Wisconsin Constitution) and the privilege to clergy (granted by the Wisconsin Legislature through statute) were not given consideration by [WIDOC] in denying them access to state correctional institutions for over 450 days. [WIDOC’s] acts in that regard were not tailored narrowly to meet competing state interests and [the Archdiocese’s] rights. They were not tailored at all.”

The Quote: WILL Deputy Counsel, Anthony LoCoco, said, “This is a good day for religious liberty in Wisconsin. Department of Corrections bureaucrats may not simply disregard the statutory and constitutional rights of Wisconsin’s clergy or relegate those rights to second-class status. This decision will help ensure that officials across state government put the religious rights of Wisconsinites first in the future rather than last.”

Background: On March 13, 2020, WIDOC [announced](#) that, “out of an abundance of caution,” in order to “minimize the risk of bringing COVID-19 (Coronavirus) into [its]

facilities,” “[a]ll visits, including volunteer visits, are temporarily suspended at all Department of Corrections Institutions.” For 450 days, Catholic clergy were forbidden from fulfilling their religious duty to meet in-person with inmates at Wisconsin’s correctional institutions; they could not administer sacraments or even meet in-person to provide counseling. At the same time, however, WIDOC granted in-person access to a host of other individuals ranging from lawyers to law enforcement to teachers to dog trainers.

The lawsuit alleged the WIDOC policy violated both state statute and the state constitutional guarantee to the free exercise of religion. Wisconsin state law, [Wis. Stat. § 301.33](#) (“Freedom of worship; religious ministrations.”), provides in part: “Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions. Attendance at the services is voluntary.” The state constitution, in turn, bars government officials from burdening sincere religious beliefs unless it is the least restrictive way to serve a compelling governmental interest. WIDOC violated both these commands by issuing a blanket ban while affording access under health and safety protocols to other types of individuals.

WILL issued a [letter](#) on April 1, demanding WIDOC reassess its policy, then [sued](#) WIDOC in Jefferson County Circuit Court in May 2021 after the state agency made no adjustments to their policy. Jefferson County Circuit Court Judge William Hue ordered the Wisconsin Department of Corrections to provide clergy of the Archdiocese of Milwaukee with access to state correctional institutions for the purpose of conducting religious services for inmates in a temporary [writ of mandamus](#) issued on June 18, 2021.

Then, on July 14, 2022, the Court issued a final decision and order concluding that WIDOC violated the rights of the Archdiocese and its clergy. It also issued a permanent injunction forbidding WIDOC from re-instituting the policy in the future. Read More:

- [Memorandum Decision](#), July 14, 2022
- [Memorandum Decision Order](#), July 14, 2022
- [Provisional Writ of Mandamus](#), June 21, 2021
- [WILL’s Complaint](#), May 7, 2021
- [WILL’s Letter to Secretary Kevin Carr](#), April 1, 2021