UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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United States Courthouse
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FINAL JUDGMENT

April 16, 2024

Before
MICHAEL B. BRENNAN, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2464	DEREK J. DEGROOT, Plaintiff - Appellant v. WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI, Defendants - Appellees
Originating Case Information:	
District Court No: 3:21-cv-00123-wmc Western District of Wisconsin District Judge James D. Peterson	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

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NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 15, 2024*
Decided April 16, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2464

DEREK J. DeGROOT,
Plaintiff-Appellant,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 21-cv-123-wmc

James D. Peterson,
Chief Judge.

ORDER

Derek DeGroot, a Wisconsin prisoner, sued the state's Department of Corrections and the deputy warden of his prison, seeking to enjoin a COVID-19 mask mandate (no longer in effect) on the ground that the mandate burdened his religious need to inhale

* We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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air without obstruction. The district court dismissed his amended complaint for failure to state a claim and, because the Department had lifted the mandate, for mootness. The case is indeed moot; thus we affirm.

We take the following from DeGroot's amended complaint. *See Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). In July 2020, to prevent the spread of COVID-19, the Department mandated that prisoners wear masks outside their cells, except for eating, drinking, and outdoor recreation. DeGroot follows a religious creed that holds that unobstructed breathing creates proximity with God and that obstructed breathing antagonizes God. Shortly after the mandate went into effect, DeGroot refused to wear a mask and was sent to punitive segregation briefly. His internal grievances about the mandate and his punishment, and his requests for medical and religious exemptions, were unsuccessful. For the next two years, DeGroot wore a face mask against his religious wishes. The Department lifted the mandate in April 2022.

Before the mandate ended, DeGroot filed this suit. The district court screened his complaint, 28 U.S.C. §§ 1915(e)(2); 1915A, and dismissed it, but the court allowed him to amend it to allege a claim for an injunction under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1 (RLUIPA). Under this law, if a prison's policy substantially burdens a prisoner's sincere religious belief, he may be entitled to relief unless the policy is the least restrictive means of achieving a compelling state interest. *See Ramirez v. Collier*, 595 U.S. 411, 425 (2022). DeGroot then amended his complaint to allege that the mandate was not the least restrictive means of reducing COVID-19 transmission. He argued that the cloth masks that prisoners received were ineffective, that their absence at meals and outdoors jeopardized prisoners, and that a less restrictive alternative would require everyone but him to wear a mask.

The district court accepted that wearing a face mask substantially burdened DeGroot's sincere religious beliefs, but it dismissed the suit. It ruled that the public consensus held that masking reduced the spread of the infectious disease in prison, and it reasoned that DeGroot had not articulated any feasible less restrictive way of protecting prisoners from COVID-19. DeGroot moved for reconsideration, arguing that he had satisfied his pleading obligations under RLUIPA and that the law required the defendants to plead that the mandate was the least restrictive means of furthering a compelling interest. The district court denied the motion. It also observed that the mask mandate had just ended in April 2022, and because only injunctive relief was available under RLUIPA, DeGroot's claim was moot.

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We need only address the district court's conclusion, with which we agree, that DeGroot's claim for injunctive relief is moot. A court must dismiss a claim as moot if the plaintiff obtained "outside of litigation all the relief he might have won in it." *FBI v. Fikre*, 144 S.Ct. 771, 777 (2024). The rule does not apply when a defendant ceases the contested conduct and the events that precipitated the suit might "reasonably be expected to resume." *Id.* at 778. But that is not the case here. The evolving nature of the virus, *see United States v. Rucker*, 27 F.4th 560, 563 (7th Cir. 2022), and the changing potential defenses to it (such as improved masks and updated vaccines) have altered "the trajectory of the pandemic," rendering litigation to enjoin rescinded responses to the pandemic moot, *Brach v. Newsom*, 38 F.4th 6, 15 (9th Cir. 2022) (en banc) *cert. denied*, 143 S.Ct. 854 (2023); *see also Resurrection Sch. v. Hertel*, 35 F.4th 524, 529 (6th Cir. 2022) (en banc) *cert. denied*, 143 S.Ct. 372 (2022). This case, seeking to enjoin a now-rescinded mandate that responded to a version of the pandemic that is no longer around, is therefore moot.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEREK J. DEGROOT,

Plaintiff,

v.

ORDER

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,

21-cv-123-wmc[1]

Defendants.

Pro se plaintiff Derek J. DeGroot is incarcerated at Stanley Correctional Institution. He challenged a Wisconsin Department of Corrections (DOC) policy in place from July 2020 to April 2022 that required inmates to wear a face mask while outside of their cells to help stop the spread of COVID-19. The court dismissed DeGroot's initial complaint for its failure to state a claim and allowed him to amend. Dkt. 14. Because his amended complaint also failed to state a claim, the court dismissed this lawsuit. Dkt. 14. DeGroot seeks reconsideration of that decision, Dkt. 23, and I will deny the motion.

DeGroot mailed his motion to the court 28 days after entry of judgment, so I will evaluate it under Federal Rule of Civil Procedure 59(e). Rule 59 motions are not for rehashing previously rejected arguments; they should be used only "to correct manifest errors of law or fact or to present newly discovered evidence." *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987).

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[1] I am exercising jurisdiction over this case for the purpose of this order only.

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DeGroot brought claims under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Both the Constitution and RLUIPA protect an inmate's right to practice his religion without substantial burden, but subject to some limitations. The Free Exercise Clause allows prison officials to place restrictions on that right that are reasonably related to a legitimate penological interest, and RLUIPA requires that any restriction be the least restrictive means of furthering a compelling governmental interest. *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019); *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); 42 U.S.C. § 2000cc-1(a)(1)–(2). Because RLUIPA permits only declaratory and injunctive relief, *see* 42 U.S.C. § 2000cc-2(f), and DeGroot concedes in his amended complaint that the DOC lifted its mask mandate more than a year ago, Dkt. 17 at ¶ 43, he does not have a live claim under RLUIPA. Regardless, DeGroot does not present newly discovered evidence or establish any manifest error.

DeGroot alleges that the policy required indoor masking when outside of cells, that he should have been exempted based on his religious beliefs, and that he suffered physical and psychological injury because he was not. He contends on reconsideration that I screened his amended complaint too strictly by concluding, without putting defendants to their proofs, that (1) defendants' interest was compelling and (2) that as alleged and applied, the mandate was reasonably related to that interest and the least restrictive means of protecting the community in an institutional setting. He also suggests that because the policy allowed for exemptions, denying his requested exception could be justified only by a compelling interest. But the court's task at screening is to ensure that plaintiff's allegations state a claim, and it is beyond debate that trying to stop the spread of a highly communicative and potentially deadly disease in a prison, where officials have a constitutional duty to ensure the health and safety of all inmates

in their care, is a legitimate, compelling interest. *Cf. Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) ("Stemming the spread of COVID-19 is unquestionably a compelling interest.").

I assumed for purposes of screening that wearing a mask violated DeGroot's religious beliefs. But if reducing the transmission of COVID-19 is a compelling interest, then "requiring that people wear masks is a rational way to do that," as many courts have now recognized. *Mahwikizi v. Centers for Disease Control & Prevention*, 573 F. Supp. 3d 1245, 1254 (N.D. Ill. 2021); *see Joseph v. Becerra*, 2022 WL 17262231, at *4 (W.D. Nov. 29, 2022) (collecting cases). DeGroot questions the efficacy of masks and alleges that the DOC's masking policy was irrational because it was not always effective, such as when inmates were eating together, but the masking policy need not have been universally effective. And masking indoors while outside of cells was less restrictive than masking all the time or other measures a prison might impose like quarantines or lockdowns. DeGroot does not plausibly suggest what measure would be less restrictive, other than no masking at all, as the pandemic surged. This court has twice dismissed DeGroot's mask mandate claims and he has not presented any reason to reconsider those decisions.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration, Dkt. 23, is DENIED.

Entered June 27, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEREK J. DEGROOT,

Plaintiff,

Case No. 21-cv-123-wmc

v.

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,

Defendants.

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants Wisconsin Department of Corrections and Mario Canziani against plaintiff Derek J. DeGroot dismissing this case.

s/ J. Smith, Deputy Clerk
Joel Turner, Clerk of Court

10/21/2022
Date

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEREK J. DEGROOT,

Plaintiff,

v.

OPINION and ORDER

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,

21-cv-123-wmc[1]

Defendants.

Pro se plaintiff Derek J. DeGroot is incarcerated at Stanley Correctional Institution. He alleges that a Wisconsin Department of Corrections (DOC) policy requiring inmates to wear a face mask while outside of their cells to help stop the spread of the COVID-19 virus violates his religious rights. In a previous order, the court dismissed DeGroot's initial complaint and allowed him to amend his allegations. Dkt. 14.

DeGroot has submitted a proposed amended complaint and he seeks preliminary injunctive relief. Dkt. 17, 19, 20. In screening DeGroot's amended complaint, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). With that standard in mind, I conclude that this case must be dismissed.

[1] I am exercising jurisdiction over this case for the purpose of this screening order only.

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ALLEGATIONS OF FACT

DeGroot is a devout Christian who believes that wearing any face covering obstructs his breath and thus his relationship with God and "shows indirect favoritism towards Islam, a religion opposed to his." Dkt. 17 at 3. He also believes that his faith is enough to spare him any complications from COVID-19, and that the fatality rate of the virus has likely been inflated.

On July 21, 2020, the DOC began requiring all inmates to wear a face mask when indoors and outside of their cells in response to the COVID-19 pandemic. DeGroot refused to wear a mask based on his religious beliefs. He received a conduct report and was sent to segregation. Mario Canziani upheld the conduct report and affirmed the dismissal of DeGroot's inmate complaint asserting his faith-based objection to the masking requirement.

DeGroot wore a cloth mask as required after his release from segregation for as long as the mandate was in place. He became depressed because he was violating his religious beliefs. Wearing a mask also irritated DeGroot's pre-existing dermatitis and acne, causing sores and scarring despite treatment. DeGroot was denied a medical exemption from the masking requirement, and psychiatric services denied his requests for an appointment because he was not having thoughts of harming himself.

Most inmates at Stanley are vaccinated against the virus. While the masking requirement was in place, prison officials and inmates there would often remove their masks to speak to each other. Inmates were unable to wear their masks while eating together at the dayroom tables. Social distancing was also difficult. Due to staffing shortages, outside recreation was often closed. When inmates could go outside, Canziani enforced a "seating mandate" that prevented proper social distancing in the courtyard. Dkt. 17 at 8.

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ANALYSIS

DeGroot contends that defendants violated his rights under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by requiring him to wear a mask when indoors and outside his cell over his faith-based objection.

As for DeGroot's Free Exercise Clause claims, prisoners generally retain their right to practice their religion, but prison officials may place restrictions on that right that are reasonably related to a legitimate penological interest. *See, e.g.*, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019). This requires the court to consider four factors: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether the prisoner retains alternatives for exercising the right; (3) the impact that accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. *O'Lone*, 482 U.S. at 350–52. The court of appeals generally also requires the plaintiff to show that prison officials imposed a substantial burden on the prisoner's religious exercise.

RLUIPA gives inmates broader religious protection than the First Amendment. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). It prohibits prisons receiving federal funds from imposing a substantial burden on a prisoner's religious exercise unless the burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a)(1)–(2). In applying this statute, courts have placed the initial burden on the plaintiff to show that he has a sincere religious belief and that his religious exercise was substantially burdened. *Holt*, 574 U.S. at 361–62; *Koger v. Bryan*, 523 F.3d 789, 797–98 (7th Cir. 2008). If the plaintiff makes

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his required showing, the burden shifts to the defendant to demonstrate that its actions further a compelling governmental interest by the least restrictive means. *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005). Although RLUIPA places a demanding burden on prisons, applying the compelling-interest test must account for the institution's need to maintain order and safety. *West v. Radtke*, 48 F.4th 836, 848 (7th Cir. 2022).

DeGroot cannot proceed under either theory. I accept that wearing a face mask violates DeGroot's sincere religious beliefs. But prison officials have a duty to ensure the health and safety of all inmates in their care. *Farmer v. Brennan*, 511 U.S. 825, 834–35 (1994). And preventing the spread of COVID-19 as the pandemic continues is a legitimate, compelling government interest. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) ("Stemming the spread of COVID-19 is unquestionably a compelling interest"). Other courts have held that masking requirements instituted in response to the ongoing pandemic are reasonably related to that interest. *E.g.*, *Denis v. Ige*, 538 F. Supp. 3d 1063, 1078 (D. Haw. 2021) (masking is "a rational measure designed to accomplish" the goal of protecting people from COVID-19); *Firszt v. Bresnahan*, Case No. 21-cv-6798, 2022 WL 138141, at *2 (N.D. Ill. Jan. 14, 2022) (public-school mask mandate "has a rational basis due to the severity of the COVID-19 pandemic and the need to prevent the spread of the disease"); *Oakes v. Collier Cnty.*, Case No. 20-cv-568-FTM-38NPM, 2021 WL 268387, at *3 (M.D. Fla. Jan. 27, 2021) ("It would be difficult to contend with a straight face that a mask requirement does not bear a rational relation to protecting people's health and preventing the spread of Covid-19").

DeGroot does not plausibly allege otherwise. He disputes the efficacy of cloth masks relative to other types of masks. He also contends that cloth masks are irritating, that it is not possible to wear masks during meals, that not everyone always wears a mask correctly, and that

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there are additional means of preventing COVID-19. However, the Centers for Disease Control (CDC) advises that masking remains a critical public health tool for preventing spread of COVID-19, and "any mask is better than no mask."[2] DeGroot's allegations do not make it unreasonable for the DOC to adopt this potentially lifesaving, CDC-recommended measure to slow the spread of the virus in prison. *See Denis*, 538 F. Supp. 3d at 1078 ("a rule requiring individuals to wear face coverings while in public would be a sensible response" to any debate about the effectiveness of face masks); *Denis v. Ige*, 557 F. Supp. 3d 1083, 1094 (D. Haw. 2021) (it is reasonable to provide the public with "multiple layers of protection" in response to the pandemic); *cf. Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) ("The right to practice religion freely does not include liberty to expose the community . . . to communicable disease").

Nor do DeGroot's allegations plausibly suggest that there is a less-restrictive means of protecting the community in prison where social distancing is at times impossible. Again, the policy requires DeGroot to mask while indoors and outside his cell whenever practicable. DeGroot alleges that he does not need to wear a mask if those around him are masked because "1 mask between 2 people (1 person masked, 1 person unmasked)" is sufficient. Dkt. 17 at 9. But that would mean the only exception DeGroot's prison could ever make to the masking requirement would be for DeGroot. *See Cutter*, 544 U.S. at 721 (a prison is "free to resist the imposition" if inmate requests for religious accommodations under RLUIPA "impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of" the institution).

[2] Types of Masks and Respirators, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html.

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DeGroot has again failed to state a claim upon which relief can be granted under either a constitutional or statutory theory. So I will dismiss this lawsuit. *See Paul v. Marberry*, 658 F.3d 702, 705 (7th Cir. 2011) (where plaintiff fails to take the chance to amend the complaint to repair deficiencies, the lawsuit should be dismissed for failure to state a claim).

ORDER

IT IS ORDERED that:

1. Plaintiff Derek J. DeGroot is DENIED leave to proceed on any claims in this lawsuit, and this lawsuit is DISMISSED for failure to state a claim upon which relief can be granted.
2. Plaintiff's requests for preliminary injunctive relief, Dkt. 19, 20, are DENIED as moot.
3. The clerk of court is directed to record this dismissal as a "strike" against plaintiff under 28 U.S.C. § 1915(g) and to close this case.

Entered October 21, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 14, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2464

DEREK J. DeGROOT,
Plaintiff-Appellant,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 21-cv-123-wmc

James D. Peterson,
Chief Judge.

ORDER

On consideration of the petition for rehearing and for rehearing en banc filed by Plaintiff-Appellant on April 29, 2024, no judge in active service has requested a vote on the petition for rehearing en banc, and the judges on the original panel have voted to deny rehearing.

Accordingly, the petition for rehearing is DENIED.

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Additional material from this filing is available in the Clerk's Office.