

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JOHN ANTHONY PIERCE,**

**Plaintiff,**

**vs.**

**9:21-CV-1301  
(TJM/DJS)**

**TIMOTHY MCCARTHY, et al.,**

**Defendants.**

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**Thomas J. McAvoy,  
Sr. U.S. District Judge**

**DECISION & ORDER**

The Court referred this Complaint, which Plaintiff brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Daniel J. Stewart for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff, a prisoner in the custody of the New York Department of Corrections and Community Supervision (“DOCCS”), argues that Defendants violated his rights under the First and Fourteenth Amendment by failing to provide him an opportunity to practice his religion, Biblical Christianity.

Judge Stewart’s Report-Recommendation, dkt. # 58, issued May 17, 2023, recommends that the Court grant the Defendants’ motion to dismiss in part and deny the motion in part. Judge Stewart recommends that the Court grant the motion and dismiss Plaintiff’s Fourteenth Amendment equal protection claim. Judge Stewart concludes that Plaintiff has not alleged that DOCCS treats Christian groups different from other religious

groups, and has thus failed to alleged a violation of his equal protection rights. Judge Stewart recommends, however, that the Court deny the motion with respect to Plaintiff's First Amendment claim. Judge Stewart finds that Plaintiff has plausibly alleged that Defendants have impermissibly burdened Plaintiff's practice of his religion, and that discovery is necessary to determine whether Defendants can offer an explanation for those burdens that passes constitutional muster. As Kathy Hochul has succeeded Andrew Cuomo as Governor of New York, Judge Stewart recommends that Hochul be substituted as defendant for Cuomo. Judge Stewart finds, however, that any claims against Hochul should be dismissed. Judge Stewart also recommends that the parties' letter requests regarding default by Defendant Cuomo be dismissed as moot.

No party objected to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly:

The Report-Recommendation of Judge Stewart, dkt. # 58, is hereby **ACCEPTED** and **ADOPTED**. Accordingly:

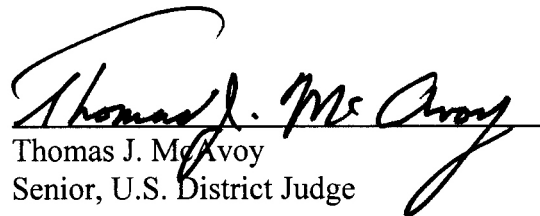
1. Defendants' motion to dismiss, dkt. # 43, is hereby **GRANTED** in part and **DENIED** in part. The motion is granted with respect to Plaintiff's Fourteenth Amendment due process claim and denied with respect to Plaintiff's First Amendment claim;
2. Governor Kathy Hochul is hereby **SUBSTITUTED** as Defendant for

Defendant Andrew Cuomo. The Clerk of Court is directed to alter the docket to reflect that change;

3. Any claims against Governor Hochul are hereby **DISMISSED**; and
4. The parties' letter requests, dkt. #s 55-57, are hereby **DENIED** as moot.

**IT IS SO ORDERED.**

**Dated:** July 12, 2023

  
Thomas J. McAvoy  
Senior, U.S. District Judge