

No. 06-2741
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Americans United for Separation)	
of Church and State, <i>et al.</i> ,)	
)	
Plaintiffs-Appellees,)	
)	Appeal from the United States
)	District Court for the
v.)	Southern District of Iowa
)	Case No. 403-cv-90074-RP-TJS
Prison Fellowship Ministries, Inc.,)	
<i>et al.</i> ,)	
)	
Defendants-Appellants.)	

**AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW
AND JUSTICE, TRAVIS DAGEL, SANDRO NAVARRO, ROBERT
WAYNE ROBINSON, AND RICK THEELER, IN SUPPORT OF
APPELLANTS AND URGING REVERSAL**

Jay Alan Sekulow*
Walter M. Weber
American Center for Law and Justice
201 Maryland Avenue, NE
Washington, DC 20002
(202) 546-8890

Counsel for Amici

**Not admitted in this court*

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INTEREST OF AMICI

The American Center for Law and Justice (ACLJ) is a nonprofit public interest legal organization dedicated, *inter alia*, to the defense of religious liberty. (The ACLJ has no parent corporation, and no publicly held corporation holds 10% or more of its stock.) The ACLJ is deeply concerned with the chilling effect of the \$1.5 million restitution order in this case, which penalizes a private faith-based grantee for its religious activities. Few faith-based organizations would be willing to contract to perform services for government bodies if such services were forced to take place under the shadow of potentially crushing recoupment orders. Yet the decision below casts precisely such a chilling shadow.

The individual amici are graduates of the InnerChange Freedom Initiative (IFI) program challenged here. These men are living testimonies to the value, and the power, of faith-based prison programs like InnerChange. If the IFI program were to be dismantled and penalized (especially by the million-dollar-plus restitution order in this case) under the decision below, this would both punish a successful program and profoundly deter any similar program in the future, all to the detriment of people like the individual amici (as well as their families and, indeed, society at large).

Travis Dagele, 26, entered prison in 1999 for conviction on the following charges: first degree burglary, second degree theft, and possession of marijuana. He received a 40-year sentence. Travis had been a star athlete in high school, but he began using drugs during high school and his use escalated after high school. Finally, he and a friend robbed a drug dealer at knifepoint, leading to Travis's imprisonment. After completing the IFI program, Travis paroled to the state of Minnesota on April 1, 2005. He worked for a year in a construction business and then started his own construction business with a partner. They have had a very successful year and are planning on expansion. Travis moved back with his mother and stepfather in Minnesota upon release. Travis attends church regularly near his hometown. He coaches high school wrestlers during the summer months and takes them to tournaments around the Midwest. Travis states that the IFI program taught him discipline and gave him the tools he needed to live life after prison. IFI allowed him to stay on after he completed the imprisonment part of the IFI program to help new inmates entering the IFI program.

When asked what he would think if the IFI program were not allowed in the Iowa prison system Travis stated, "Would you rather have me come out a changed man or a worse criminal? It wouldn't be right if inmates didn't have a choice to enter a program such as IFI."

Sandro Navarro, 27, was in prison for conspiracy to deliver methamphetamine. At the time of his arrest, Sandro was only interested in dealing drugs; he didn't care about his family or his friends. He states that IFI "taught me who I really am, IFI changed my life by teaching me a different way to look at life." He is now living in Des Moines and is employed by a company that builds conveyors for mining equipment. Sandro wasn't close to his family before going to prison but has reestablished his relationships, traveling to Chicago when he is off to visit them. He is active in a local Des Moines church and helps men as they are released from prison. When asked his reaction if IFI wasn't allowed to continue, he stated, "It would be taking a really good thing, a positive thing, away from the prison system. You do not get many chances to be involved in something while in prison that has the ability to change your life. It would be a mistake and a very sad thing not to have IFI available. I would be definitely disappointed."

Robert Wayne Robinson, 26, finished his second time in prison after doing three years for possession of a controlled substance with intent to deliver. Robbie was selling drugs. He went to prison the first time for assault with a weapon. Robbie would say these charges typified his young life before IFI. Robbie described his past self as a criminal who was intent on doing wrong and didn't know any other lifestyle. This all changed with his participation in IFI and

completion of the program. Robbie describes himself now as a positive person and a productive citizen. He says IFI gave him a new view of reality and his place in the world. He is one of few convicted felons, if not the first, hired by a local manufacturer willing to look past his criminal record because of his strong character and IFI reentry support. At work, he has learned a skilled trade, is earning excellent reviews and has recently been promoted. Robbie's personal life is on track as well. He has been reconciled with his daughter and mother. He is happily married. Robbie also contributes to his community by mentoring IFI men when released and working with youth in his community. Robbie and his wife are actively involved in their church. Of the prospect of IFI closing, Robbie said he would be very sad for the men behind him still in prison.

Rick Theeler, 50, entered prison the last time for conviction on two habitual criminal charges along with being a felon in possession of a firearm. Rick has spent almost his entire adult life in prison. When he had been out a year, after graduating from the IFI program, a party was held in his honor, for he had never been out of prison for 365 continuous days in his adult life. Rick states, "Without IFI, I would never have been able to change, I would still be doing time. They introduced me to men that helped me to change my way of thinking and doing life." Rick now works at a waste management company in the Des Moines area.

He has volunteered his time with the Freedom House network in Des Moines helping ex-offenders transition to the community after release. Rick mentors others when they are released. Rick is involved in a Des Moines church and when asked what would be his reaction if IFI is not allowed to continue in Iowa stated, “That would be the worst mistake they could ever make. I am living proof that the IFI program helped me to become a different man.”

Rick has now been discharged from parole by the Iowa Parole Board. This is the first time in 33 years he has not been under some type of correctional supervision.

This brief is being filed with the consent of the parties.

SUMMARY OF ARGUMENT

The restitution order in this case must be vacated for plaintiffs' lack of Article III standing to seek such relief. An order requiring some defendants to reimburse other defendants, with **no** reimbursement to the plaintiff, does not satisfy the redressability requirement of Article III. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998).

ARGUMENT

This Court should reverse the judgment below for a host of reasons already articulated by the defendants. The present brief focuses upon one particularly egregious aspect of the decision below: the order that defendants Prison Fellowship Ministries (PFM) and InnerChange Freedom Initiative (IFI) reimburse the Iowa Department of Corrections (DOC) over \$1.5 million, representing money that PFM and IFI received -- and spent -- pursuant to contracts with the DOC. That restitution order is improper because plaintiffs lack standing to seek such relief.

Certainly a governmental payor -- here, the DOC -- would have standing to seek recoupment of funds allegedly obtained illegally. Here, however, DOC seeks no such recoupment. Likewise, private parties can in some circumstances seek recoupment, from other private parties, of fraudulently obtained government funds,

pursuant to the federal qui tam statute. *See* False Claims Act, 31 U.S.C. §§ 3729-33. In such qui tam cases the plaintiff has standing, not in his own right, but as assignee of the government’s claim. *See Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771-78 (2000). Here, however, plaintiffs do not sue under any qui tam statute, and the DOC has not assigned any such claim to plaintiffs. Thus, plaintiffs cannot piggyback their standing upon any hypothetical governmental claim. Rather, plaintiffs must themselves demonstrate standing.

To bring a claim in federal court, a plaintiff must satisfy the “irreducible constitutional minimum” of standing, namely, by demonstrating the following three things:

- (1) an “injury in fact” that is “concrete” and “actual or imminent”;
- (2) a “fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant”; and,
- (3) “redressability -- a substantial likelihood that the requested relief will remedy the alleged injury in fact.”

Vermont Agency, 529 U.S. at 771 (internal quotation marks, editing marks, and citations omitted).

A plaintiff bears the burden of establishing Article III standing. *DaimlerChrysler Corp. v. Cuno*, 126 S. Ct. 1854, 1861 (2006). Indeed, “we presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record,” *id.* (internal quotation marks and citation omitted). Moreover, “a plaintiff must demonstrate standing separately **for each form of relief sought.**” *Id.* at 1867 (emphasis added; internal quotation marks and citation omitted). Hence, even assuming *arguendo* that plaintiffs have standing to challenge and halt allegedly unconstitutional DOC expenditures, this does not mean that plaintiffs have standing to seek restitution of funds already disbursed. “[S]tanding is not dispensed in gross.” *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Here, as explained below, redressability is clearly lacking.

The remedy of restitution, paid from defendants PFM and IFI to the defendant DOC, obviously yields no money to plaintiffs. Such payments “might be viewed as a sort of compensation to [plaintiffs] if they were payable to [plaintiffs.] But they are not.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 106 (1998) (holding plaintiff lacked standing). As in *Steel Company*, each plaintiff in this case seeks “not remediation of its own injury -- reimbursement for the costs it incurred . . . -- but vindication of the rule of law -- the undifferentiated public interest in faithful execution of” Establishment Clause limitations. *Id.*

(internal quotation marks and citations omitted). “This does not suffice.” *Id.*¹

In short, the restitution order directs no money from PFM or IFI to the plaintiffs, and thus plaintiffs fail the redressability requirement for standing to seek such relief.

Importantly, those plaintiffs who claimed standing as contributors to the Inmate Telephone Fund set up pursuant to state law, *see* Iowa Code § 904.508A (the district court cited this statute inaccurately in footnote 7 of its Memorandum Opinion and Order Following Trial [hereinafter “Op.”]), do not fall outside the scope of the *Steel Company* holding. To be sure, the district court’s ruling compels PFM and IFI “to repay the Department of Correction” and then in turn orders the DOC “to refund in *pro rata* fashion . . . to the individual Telephone Fund accounts from which it is taken.” Op. at 138-39. Nevertheless, for at least two independent reasons, this two-step flow of money also does not yield a payment from PFM or

¹ The Supreme Court made clear in *Steel Company* that standing likewise cannot rest upon the fact that a plaintiff “will be gratified by seeing [a defendant] punished for its infraction and that the punishment will deter the risk of future harm.” *Id.* at 106-07. As the Court explained, to accept such reasoning “would make the redressability requirement vanish.” *Id.* at 107. After all, **every** adverse ruling will deter a defendant. A “generalized interest in deterrence . . . is insufficient for purposes of Article III.” *Id.* at 108-09.

The *Steel Company* Court also held that the mere prospect of an award of costs and attorney fees cannot generate standing. *Id.* at 107-08.

IFI to plaintiffs that might suffice for redressability under Article III.

First, the Telephone Fund created under Iowa Code § 904.508A is still the property of the state, not the plaintiffs. *See id.* And while the director of the DOC holds the money “for the benefit of inmates,” *id.*, the director enjoys substantial discretion over how to use the funds, Op. at 10-11. Hence, there is no direct payment to plaintiffs, even indirect benefits that might accrue to any of the plaintiffs from reimbursement of the Telephone Fund are at best speculative and thus insufficient for standing.

Second, the district court’s order compels PFM and IFI to pay restitution **to DOC, not to the Telephone Fund**. Plaintiffs lack standing to seek **that** relief. The separate relief directed against DOC should not be conflated with the restitution order directed against PFM and IFI. In other words, even if plaintiffs had standing to seek an order forcing the **DOC to pay** restitution to the Telephone Fund, this would not create standing to compel entirely different parties -- PFM and IFI -- to **pay to DOC** the money to cover the restitution.²

Thus, Supreme Court case law -- and especially *Steel Company* -- make it

² Even if this Court were to hold -- erroneously -- that some plaintiffs had standing to seek restitution from PFM and IFI to DOC of the Telephone Fund amounts, *see* Op. at 139, this Court would still need to vacate the remainder of the restitution order, *see id.* (estimating remainder amount as over \$680,000), for want of standing.

crystal clear that plaintiffs in this case have failed to meet their burden of showing Article III standing to seek restitution from one set of defendants to another. Hence, this Court should vacate the restitution order.³

CONCLUSION

Standing requirements provide an essential safeguard that “prevents courts of law from undertaking tasks assigned to the political branches.” *Lewis*, 518 U.S. at 349. In the present case, it is a task for the political branches -- and not for plaintiffs or the federal courts -- to decide whether DOC should seek recoupment, from PFM and IFI, of funds spent in alleged violation of the Establishment Clause. The district court erroneously arrogated that authority to itself.

³ While the majority did not address the standing issue, the result in *Laskowski v. Spellings*, 443 F.3d 930 (7th Cir.), *reh’g denied*, 456 F.3d 752 (7th Cir. 2006), is inconsistent with the law of standing set forth herein. For the reasons stated above, as well as those contained in the well-reasoned dissent of Judge Sykes in *Laskowski*, this Court should follow Supreme Court case law, not the aberrant *Laskowski* ruling.

This Court should reverse the judgment of the district court.

Respectfully submitted,

Jay Alan Sekulow*
Walter M. Weber
American Center for Law and Justice
201 Maryland Avenue, NE
Washington, DC 20002
(202) 546-8890

Counsel for Amici

**Not admitted in this court*

September 22, 2006

CERTIFICATE OF COMPLIANCE

Undersigned counsel for plaintiff-appellant hereby certifies, pursuant to Rule 32(a)(7)(C), Fed. R. App. P., and 8th Cir. R. 28A(c), that the foregoing Amicus Brief was printed using WordPerfect version 10, Times New Roman proportional typeface in 14-point type size, and that the brief complies with the type-volume limitations of Rule 32(a)(7), Fed. R. App. P. Exclusive of material not counted under Rule 32(a)(7)(B)(iii), the brief contains 3038 words.

Walter M. Weber

September 22, 2006

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Rule 25(d), Fed. R. App. P., that an original and nine copies of the foregoing Amicus Brief, plus a CD-ROM version, were sent this day to the clerk of this Court by first-class mail, postage-prepaid, and that two copies of the same Amicus Brief, plus a CD-ROM version, were served this day, by first-class mail, postage prepaid, upon counsel for all other parties to this case, as listed below. I hereby certify that the CD-ROMs have been scanned for viruses and are virus-free.

Service List

Michael E. Gans, Clerk
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St Louis, MO 63102
(ten copies)

Attorneys for Defendants-Appellants Iowa Department of Corrections *et al.*:

H. Loraine Wallace
Gordon Eugene Allen
Attorney General's Office
Hoover Building
Second Floor
Des Moines, IA 50319-0001
(two copies)

**Attorneys for Defendants-Appellants
Prison Fellowship Ministries, Inc. and
InnerChange Freedom Initiative, Inc.:**

Anthony F. Troy
Ashley L. Taylor, Jr.
Robert A. Angle
Megan C. Rahman
Michael E. Lacy
Troutman Sanders, LLP
1001 Haxall Point
Richmond, VA 23219
Phone: (804) 697-1200
(two copies)

Kevin J. Hasson
Anthony R. Picarello, Jr.
Derek L. Gaubatz
Eric C. Rassbach
Lori E. Halstead
The Becket Fund for Religious
Liberty
1350 Connecticut Avenue, N.W., Suite 605
Washington, DC 20036
Phone: (202) 955-0095
(two copies)

Attorneys for Plaintiffs-Appellees:

Dean Stowers
Rosenberg Law Firm
505 Fifth Avenue
1010 Insurance Exchange Building
Des Moines, IA 50309
(two copies)

Ayesha Khan
Richard B. Katskee
Alex J. Luchenitser
Heather L. Weaver
Americans United for Separation
of Church and State
518 C Street, N.E.
Washington, DC 20002
(two copies)

Walter M. Weber

September 22, 2006