

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

Roanoke Division

KELVIN E. BROWN, #207902,

Plaintiff,

v.

Civil Action No. 7:09cv00180

TRACY S. RAY, *et al.*

Defendants.

ANSWER

COME NOW the Defendants, by counsel, and answer the Complaint as follows:

FIRST DEFENSE

The Defendants deny that the present action is cognizable under 42 U.S.C. § 1983 and 42 U.S.C. § 2000cc-2(A).

SECOND DEFENSE

The Defendants deny that the Plaintiff has been denied any rights protected by the United States Constitution or any portion of the United States Code.

THIRD DEFENSE

This Complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

The Defendants deny that the Plaintiff has suffered any cognizable injuries or damages as a result of any act or acts on the part of these Defendants and demand strict proof thereof.

FIFTH DEFENSE

The Defendants allege and aver that, to the extent that the Plaintiff has suffered any injuries or damages, such injuries or damages were due to an act or acts by the Plaintiff, or on the part of others not under the control of the Defendants, and for whose conduct they are in no way responsible.

SIXTH DEFENSE

The Defendants deny that the Plaintiff has suffered the injuries and damages alleged and call for strict proof thereof.

SEVENTH DEFENSE

The Defendants deny that they are indebted to or liable to the Plaintiff in any sum whatsoever.

EIGHTH DEFENSE

The Defendants are immune from suit on this claim based upon the 11th Amendment and the discharge of their official duties.

NINTH DEFENSE

The defendants are entitled to good faith or qualified immunity.

TENTH DEFENSE

To the extent that the plaintiff has failed to allege any direct involvement on the part of any of the defendants in any of the acts or omissions complained of, such claims must fail since respondeat superior is not available in an action under 42 U.S.C. § 1983.

ELEVENTH DEFENSE

To the extent that this claim alleges negligence on the part of the Defendants, the claim is barred in this Court by the Eleventh Amendment.

TWELFTH DEFENSE

Some or all of the allegations have not been exhausted through the administrative grievance process.

THIRTEENTH DEFENSE

As to the specific factual allegations set forth in the Complaint, the Defendants state as follows:

1. Plaintiff is an inmate with the Virginia Department of Corrections (“VDOC”).
2. Defendant Tracy S. Ray is the Warden of Red Onion State Prison (“Red Onion”); Defendant L. Fleming is a Major at Red Onion; and T. Pease is the Mail Room Supervisor at Red Onion.
3. All publications received at Red Onion are subject to review. Red Onion does not remove or censor the material but either approves or disapproves that particular publication. Defendant Fleming does an initial review of all publications and either approves or disapproves. If the publication is disapproved by Major Fleming, it is forwarded to the Publication Review Committee which then meets and reviews the publication. After review, the Committee then either approves or disapproves of the publication. Decisions are notified to the particular inmate and contain reasons for the disapproval. Inmates have the right to appeal.
4. Plaintiff’s publications are not being denied based on racial or religious reasons.
5. Plaintiff is not being discriminated against because of his race or religious beliefs.
6. The Chaplain at Red Onion has visited Plaintiff on a number of occasions to discuss his issues.
7. The remainder of the issues were not grieved through the institutional process and therefore Plaintiff has not exhausted his administrative remedies.

FOURTEENTH DEFENSE

The Defendants will rely on any and all other properly available defenses to the Complaint which may arise from the Plaintiff's prosecution of this action and reserve their right to amend their answer if at any time they should be so advised.

Respectfully submitted,

TRACY S. RAY, *et al.*

By _____ /s/ _____
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following: N/A

And I hereby certify that I will mail the document by U.S. mail to the following non-filing user:

Kelvin E. Brown, #207902
Red Onion State Prison
Post Office Box 1900
Pound, Virginia 24279

_____/s/_____
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