

initial decisions to disapprove publications sent to prisoners at that facility. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.

4. Defendant Major L. Flemming is the Chief of Security at Red Onion State Prison. At times relevant to this Complaint, he has been delegated the authority to make initial decisions to disapprove publications sent to prisoners at that facility. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
5. Defendant T. Pease is the mailroom supervisor at Red Onion State Prison. At times relevant to this Complaint, he was responsible for reviewing incoming publications and arranging for delivery to those incarcerated at Red Onion or referring them to Major L. Fleming. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
6. Defendant John M. Jabe is the Deputy Director, Division of Operations, of the Virginia Department of Corrections and has been so at all times relevant to this Complaint. Mr. Jabe is responsible for appointing members of the Publication Review Committee (“PRC”) and hearing appeals from the decisions of the PRC disapproving publications. He is also responsible for promulgating standards and regulations concerning incoming publications. At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.
7. Defendant Benjamin Wright has been, at times relevant to this Complaint, Chairman of the Publication Review Committee, which is responsible for making final decisions to

disapprove publications sent to prisoners within the Virginia Department of Corrections.

At all times relevant to this Complaint, he was acting under color of state law. He is sued in his individual and official capacities.

8. Defendant Larry Collins has been, at times relevant to this Complaint, a member of the Publication Review Committee, and, since November, 2009, its chair. The PRC is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, defendant Collins was acting under color of state law. He is sued in his individual and official capacities.
9. Defendant Barbara Gentry has been, at times relevant to this Complaint, the staff secretary to the Publication Review Committee, which, as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.
10. Defendant Linda Leatherwood has been, at times relevant to this Complaint, a member of the Publication Review Committee, which as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.
11. Defendant Rita Bibbins is and has been, since November 1, 2009, a member of the Publication Review Committee, which as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of

Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.

12. Defendant Lois Fegan is and has been, since November 1, 2009, a member of the Publication Review Committee, which as noted above, is responsible for making final decisions to disapprove publications sent to prisoners within the Virginia Department of Corrections. At all times relevant to this Complaint, she was acting under color of state law. She is sued in her individual and official capacities.

FACTS

13. Plaintiff subscribes to the weekly newspaper of the Nation of Islam known as “The Final Call.” The Final Call is an essential religious text to members of the Nation of Islam.
14. Plaintiff has subscribed to The Final Call for approximately seventeen years and received the same while incarcerated at various penological institutions under the jurisdiction of the Virginia Department of Corrections (“VDOC”).
15. Red Onion State Prison is a high security prison and plaintiff is required to remain in his cell 23 hours a day with limited contact with any other prisoners.
16. There are no religious services or programs devoted to the Nation of Islam available to prisoners incarcerated at Red Onion State Prison, even though there are programs and chaplaincy services available to prisoners of the Christian faith who are incarcerated at that institution.
17. In or about December, 2008, defendant Fleming informed plaintiff that he was disapproving receipt of The Final Call pending review by the Publication Review Committee.

18. Between January, 2009 and May, 2009, plaintiff received notice from the PRC that it had reviewed and disapproved the following issues of The Final Call: Vol. 28, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #25, #26, #27, #28 and #29.
19. Each of the above issues were disapproved by the PRC based on a determination by the committee that they violated either Virginia Department of Corrections Operating Procedure (“OP”) 803.2(V)(L)(7) and/or OP 803.2(V)(L)(12).
20. OP 803.2(V)(L)(7) provides that publications should be disapproved for receipt and possession by offenders, “if the publication can be reasonably documented to contain . . . [m]aterial that promotes or advocates violence, disorder, insurrection or terrorist activities against individuals, groups, organizations, the governments, or any of its institutions.”
21. OP 803.2(V)(L)(12) provides that publications should be disapproved for receipt and possession by offenders, “if the publication can be reasonably documented to contain . . . [m]aterial whose content could be detrimental to the security, good order, discipline of the facility, or offender rehabilitative efforts or the safety or health of offenders, staff, or others.”
22. Since May, 2009, virtually every issue of The Final Call has been disapproved by the PRC.
23. There is no legitimate penological reason to prohibit receipt of The Final Call by prisoners who are members of the Nation of Islam.
24. OP 803.2 (J)(1) provides that a prisoner may appeal the decision of the Publication Review Committee through the Offender Grievance Procedure. However, no information

is provided to the prisoner of the content of the disapproved material or the reason for disapproval other than to cite, by number, to one of the 15 criteria set forth in OP 803.2(V)(L).

25. Without any information about how the content found objectionable violates one of the criterion set forth in OP 803.2 (V)(L), plaintiff and other prisoners are unable to meaningfully appeal the decisions of the PRC.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(First Amendment - Denial of The Final Call)

26. Plaintiff repeats and realleges paragraphs 1 through 25.
27. The conduct of defendants in prohibiting plaintiff from receiving his paid subscription to The Final Call without legitimate penological justification violates plaintiff's free speech and free exercise of religion rights protected by the First Amendment.
28. As a proximate result of the conduct of defendants alleged herein, plaintiff has suffered injury including a loss of liberty.

SECOND CAUSE OF ACTION

(Religious Land Use and Institutionalized Persons Act - Denial of The Final Call)

29. Plaintiff repeats and realleges paragraphs 1 through 25.
30. The conduct of defendants as set forth herein substantially burdens plaintiff's right to the free exercise of his religion.
31. The conduct of defendants in prohibiting plaintiff from receiving his paid subscription to The Final Call does not further a compelling state interest.
32. Even if there were a compelling state interest in prohibiting one or more issues of The

Final Call, the conduct of defendants in disapproving an entire issue of The Final Call when only a part thereof may be objectionable is not the least restrictive means of furthering its interest.

33. The conduct of defendants as set forth herein violates plaintiff's rights protected by the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc et seq.
34. As a proximate result of the conduct of defendants alleged herein, plaintiff has suffered injury including a loss of rights protected by RLUIPA.

THIRD CAUSE OF ACTION

(First Amendment, Due Process - Lack of Adequate Notice)

35. Plaintiff repeats and realleges paragraphs 1 through 25.
36. The failure to provide adequate notice to plaintiff and other prisoners of the reasons why a publication is disapproved deprives them of their right to be heard in violation of the First and Fourteenth Amendments to the United States Constitution.
37. As a proximate result of the conduct of defendants alleged herein, plaintiff has suffered injury including a loss of liberty.

FOURTH CAUSE OF ACTION

(First Amendment - Free Exercise of Religion)

38. Plaintiff repeats and realleges paragraphs 1 through 25.
39. The failure to provide plaintiff with programs and chaplaincy services devoted to the Nation of Islam, even though there are programs and chaplaincy services available to prisoners of the Christian faith discriminates against plaintiff's religion and violates plaintiff's right to free exercise of religion protected by the First Amendment to the

United States Constitution.

40. As a proximate result of the conduct of defendants alleged herein, plaintiff has suffered injury including a loss of liberty.

FIFTH CAUSE OF ACTION

((Religious Land Use and Institutionalized Persons Act - Free Exercise of Religion))

41. Plaintiff repeats and realleges paragraphs 1 through 25.
42. The failure to provide plaintiff with programs and chaplaincy services devoted to the Nation of Islam, even though there are programs and chaplaincy services available to prisoners of the Christian faith, substantially burdens plaintiff's right to the free exercise of his religion.
43. The conduct of defendants in failing to provide plaintiff with programs and chaplaincy services devoted to members of the Nation of Islam does not further a compelling state interest.
44. Even if there were a compelling state interest in not providing certain programs or chaplaincy services for members of the Nation of Islam, the conduct of defendants is not the least restrictive means of furthering its interest.
45. The conduct of defendants as set forth herein violates plaintiff's rights protected by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc et seq.
46. As a proximate result of the conduct of defendants alleged herein, plaintiff has suffered injury including a loss of rights protected by RLUIPA.

WHEREFORE, plaintiff requests judgment as follows:

- a. A declaratory judgment that prohibiting plaintiff from receiving the issues of The Final Call set forth herein violates plaintiff's rights protected by the First Amendment to the United States Constitution;
- b. A declaratory judgment that prohibiting plaintiff from receiving the issues of The Final Call set forth herein violates plaintiff's rights protected by the Religious Land Use and Institutionalized Persons Act;
- c. A declaratory judgment that the failure to provide notice to plaintiff of the reasons why each issue of The Final Call was disapproved deprived plaintiff of his right to due process;
- d. A declaratory judgment that the failure to provide plaintiff with programs and chaplaincy services devoted to the Nation of Islam, even though there are programs and chaplaincy services available to prisoners of the Christian faith discriminates against plaintiff's religion and violates plaintiff's right to free exercise of religion protected by the First Amendment to the United States Constitution.
- e. A declaratory judgment that the failure to provide plaintiff with programs and chaplaincy services devoted to the Nation of Islam, even though there are programs and chaplaincy services available to prisoners of the Christian faith discriminates against plaintiff's religion and violates plaintiff's right to free exercise of religion protected by the Religious Land Use and Institutionalized Persons Act;
- f. An injunction requiring defendants to provide plaintiff with copies of wrongfully withheld issues of The Final Call and to allow plaintiff to exceed the number of

periodicals he is allowed to possess by the number of wrongfully withheld issues for a period of six months;

- g. An injunction requiring defendants to provide notice to plaintiff of the reasons why a publication is withheld from him, including how any objectionable material violates any of the criteria of OP 803.2(V)(L) or any successor regulation;
- h. An injunction requiring defendants to provide plaintiff with programs and chaplaincy services devoted to the Nation of Islam;
- i. Compensatory damages;
- j. Reasonable costs and attorney's fees;
- k. Such other and further relief as the Court may deem just and equitable.

Respectfully submitted,
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By Counsel

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