

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID STEVENSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
MICHAEL DELOY, PERRY PHELPS)	
and FRANK PENNELL,)	
in their individual and official capacities,)	
)	
Defendants.)	

COMPLAINT

Background Allegations

1. Plaintiff David Stevenson (“Stevenson” or “Plaintiff”) is an inmate at the James T. Vaughn Correctional Center (“Vaughn”) who has been sentenced to death. He has sought pastoral counseling by a clergyman of his faith, and has been prevented by defendants from obtaining that counseling. He seeks an order of this court enabling him to receive counseling. He also seeks compensation from defendants for their wrongful actions denying him pastoral counseling.

2. Defendant Michael Deloy (“Deloy”) is Chief of the Delaware Department of Correction (“DOC”) Bureau of Prisons.

3. Defendant Perry Phelps (“Phelps”) is the Warden of Vaughn.

4. Defendant Frank Pennell (“Pennell”) is the Chaplain at Vaughn.

5. This action arises under the First and Fourteenth Amendments of the United States Constitution, Article I, § 1 of the Delaware Constitution, and 42 U.S.C. §§ 1983 and

§ 2000cc-1(a). This Court has jurisdiction of the action under 28 U.S.C. §§ 1331, 1343 and 1367. Venue lies in this district pursuant to 28 U.S.C. §1391.

6. Stevenson has been incarcerated at the Vaughn, which is operated by the DOC, since 1999.

7. Since approximately 1995, Stevenson has been a practicing Muslim with Sunni Salafi beliefs.

8. He is housed in the SHU facility of Vaughn, and his classification by DOC does not permit him to attend religious programs in the Vaughn chapel. His formal religious activity is limited to watching a weekly broadcast over prison television of a religious service conducted by other inmates at Vaughn.

9. He has been seeking pastoral counseling from a Sunni Salafi imam for several years.

10. On May 23, 2010 he wrote Pennell requesting pastoral counseling by a Muslim clergyman. That request was denied by Pennell, who also told Stevenson he should seek to have a clergy visit scheduled as a “regular visit.”

11. That is not a satisfactory substitute for many reasons. When clergy visits are scheduled as “regular” visits they count against the one visit a week Stevenson is allowed from family members and others. As a consequence, each visit that Stevenson receives from a clergyman of his own faith reduces the number of visits that Stevenson may receive from family members and others. By contrast, inmates of other faiths in the SHU at Vaughn who receive pastoral visits from clergy members who are employed by or approved as Volunteers (each a “Volunteer”) at Vaughn are not required to expend a regular visit for such pastoral counseling.

12. In addition, when they are treated as regular visits, clergy visits are limited to forty-five (45) minutes, although pastoral visits often need to be, and can be, longer. A clergyman who conducts a pastoral visit may bring necessary religious texts to the visit, and that is not permitted if the visit is a “regular” visit. Also, when the visit is a regular visit, the clergyman is separated from the inmate by a glass wall, and the visit is conducted in the general visiting area, unlike visits by clergy who are approved as Volunteers.

13. Stevenson submitted a grievance of that denial, contending, in part, that it resulted in him, as a Muslim, being treated less favorably than Protestant and Catholic inmates were treated because Protestant and Catholic inmates have been permitted to have pastoral counseling visits that were not conducted as “regular” visits. His grievance was denied and, according to DOC records, he was told that there was a valid reason for treating Christian inmates differently.

14. His appeal from the denial was also denied in September, 2010, and the denial form stated that the matter was “outside the purview of the 4.4 [the inmate grievance procedure].” As a result, he did not appeal further.

15. Imam Ismaa’eel Hackett (“Imam Hackett”), a Sunni Salafi Muslim imam, has offered to provide pastoral counseling to Stevenson, at no cost to Stevenson or DOC, and defendants are aware of this.

16. Imam Hackett is a qualified Sunni Salafi imam. Imam Hackett spent 13 years studying Islam in the Kingdom of Saudi Arabia. He attended the Islamic University of Medinah where he studied Arabic Language, Islamic Jurisprudence, Qur’aan, and Hadeeth.

17. In 1997, Imam Hackett and his wife founded North American Islamic Foundation, Inc (“NAIF”) to address the spiritual needs of the Islamic community. The Darul

Amaanah Qur'aan Memorization Academy and Masjid El Amaanah (the "Mosque") were founded under the auspices of NAIF. Imam Hackett was elected as the Imam to coordinate the affairs of the Mosque, which was the first Salafi Sunni mosque in the state of Delaware. The Mosque was established in Wilmington in 1997 and has approximately seventy-five congregants.

18. Imam Hackett has taught in correctional facilities throughout the State of Delaware. He currently teaches at Ferris School for Boys and New Castle County Detention Center.

19. Under DOC rules, Imam Hackett must be approved as a Volunteer before he will be permitted to see Stevenson other than by means of a regular visit. Imam Hackett has conducted regular visits with Stevenson, but those visits have all the limitations described above. As a result, they are inadequate

20. Stevenson has asked Imam Hackett to apply for approval as a Volunteer. Imam Hackett did so, and his application was denied. Phelps approved the denial.

21. In early 2011, Stevenson made a new request to Pennell for approval of pastoral counseling visits by Imam Hackett. Pennell denied that request.

22. On February 20, 2011 Stevenson submitted a grievance of that denial. The grievance was finally denied by May 8, 2011 letter from Deloy, indicating that the grievance process had been exhausted.

23. Thereafter, Stevenson's counsel advised counsel for DOC that Stevenson would seek judicial relief unless DOC could provide a valid factual basis for preventing Imam Hackett from providing Stevenson pastoral counseling as a Volunteer. DOC counsel ultimately responded by stating that Deloy was willing to consider an appeal by Imam Hackett from the

denial of his Volunteer application, even though the appeal time had expired, and that that appeal might resolve the dispute.

24. On July 8, 2011, Imam Hackett submitted an appeal of the denial of Volunteer status to Deloy.

25. Deloy denied Imam Hackett's appeal by letter dated August 22, 2011.

26. Before and after Deloy's denial of the appeal, Imam Hackett made efforts to find another qualified Sunni Salafi Muslim imam who would be willing to provide pastoral counseling to Stevenson. They were unavailing.

COUNT I

27. Stevenson incorporates herein by reference paragraphs 1 through 26 hereof as if set forth at length.

28. Defendants are required to comply with the First Amendment of the United States Constitution, which bars the government from prohibiting the free exercise of religion.

29. Defendants are required to comply with Article I, § 1 of the Delaware Constitution, which guarantees religious freedom throughout the state, including within Vaughn.

30. Defendants are required to comply with the Religious Land Use and Institutionalized Persons Act, known as RLUIPA, which provides in 42 U.S.C. § 2000cc-1(a) that:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person-(1) is in furtherance of a compelling interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

31. Under the law, Stevenson is entitled to a reasonable opportunity to worship and to have clergy of his own faith, Sunni Salafi Islam, visit and counsel him.

32. Since neither persons acting on behalf of Stevenson nor DOC have been

able to locate a Sunni Salafi Muslim imam other than Imam Hackett who is willing and able to provide Stevenson with clergy visits and pastoral counseling as a Volunteer, defendants' actions in excluding Hackett from access to Vaughn as a Volunteer have imposed a substantial burden on Stevenson's religious exercise.

33. Defendants' reasons for refusing to permit Imam Hackett access to Vaughn as a Volunteer are set forth in Deloy's August 22, 2011 letter denying Imam Hackett's appeal.

34. Consideration of defendants' reasons for denying that appeal and the facts to which Deloy alludes in the letter shows that barring Imam Hackett from providing clergy visits and pastoral counseling as a Volunteer does not further a compelling governmental interest by the least restrictive means available.

35. Defendants' refusal to permit Stevenson to permit Imam Hackett to provide clergy visits and pastoral counseling to Stevenson as a Volunteer violates Stevenson's right to religious exercise guaranteed by the First Amendment of the United States Constitution, Article I, § 1 of the Delaware Constitution and RLUIPA.

36. Defendants have caused, and will continue to cause, Stevenson to suffer undue and actual hardship and irreparable injury. Stevenson has no adequate remedy at law to correct the continuing deprivations of his right to free exercise of his religious beliefs.

37. As a direct and proximate result of Defendants' continuing violations of Stevenson's rights, Stevenson has in the past and will continue to suffer in the future direct and consequential damages, including, but not limited to, the loss of his ability to freely exercise his religious beliefs.

38. Stevenson is entitled to injunctive relief barring defendants from excluding Hackett from working in Vaughn as a Volunteer so that he can provide him with clergy visits and

pastoral counseling.

39. Stevenson is entitled to monetary damages from DOC to compensate him for defendants' deprivation of his constitutional right to religious exercise.

COUNT II

40. Stevenson incorporates herein by reference paragraphs 1 through 39 hereof as if set forth at length.

41. Stevenson's right to equal protection under the laws is protected by the Fourteenth Amendment to the United States Constitution.

42. Defendants' actions are unconstitutional abridgements of Stevenson's right to equal protection under the law, and specifically abridge Stevenson's right to free exercise of his religious beliefs.

43. Defendants' actions are unconstitutional because they treat Stevenson differently and less favorably than similarly situated inmates of other faiths.

44. Defendants' actions are not supported by a compelling governmental interest sufficient to justify their discriminatory treatment of Stevenson.

45. Defendants' actions are not the least restrictive means to accomplish any permissible government purpose sought to be served by their actions.

46. Defendants' actions do not serve a significant government interest.

47. Defendants' actions are irrational and unreasonable, and impose irrational and unjustifiable restrictions on Stevenson's right to free exercise of his religious beliefs.

48. Defendants have caused, and will continue to cause, Stevenson to suffer undue and actual hardship and irreparable injury. Stevenson has no adequate remedy at law to correct the continuing deprivations of his right to free exercise of his religious beliefs.

49. As a direct and proximate result of Defendants' continuing violations of Stevenson's rights, Stevenson has in the past and will continue to suffer in the future direct and consequential damages, including, but not limited to, the loss of his ability to freely exercise his religious beliefs.

50. Stevenson is entitled to injunctive relief barring defendants from excluding Hackett from working in Vaughn as a Volunteer so that he can provide him with clergy visits and pastoral counseling.

51. Stevenson is entitled to monetary damages from DOC to compensate him for defendants' deprivation of his constitutional right to religious exercise.

WHEREFORE, plaintiff prays that:

1. This Court preliminarily and permanently enjoin defendants and all those acting in concert with them from preventing Imam Hackett from providing clergy visits and pastoral counseling to Stevenson as a Volunteer at Vaughn.

2. This Court enter a permanent injunction directing defendants to approve Imam Hackett's application to work at Vaughn as a Volunteer.

3. Plaintiff be awarded compensatory damages together with interest;

4. Plaintiff be awarded his costs and attorneys' fees for this action; and

5. Plaintiff be awarded such other and further relief as the Court deems just.

[Signature page follows.]

Dated: January ____, 2012

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