

February 14, 2020

By U.S. Mail & Email

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Re: *Disparate treatment of Muslim inmates*

Dear Wardens and Directors of Corrections:

We have received a complaint regarding reports that your county jails charge inmates more for Muslim religious texts and paraphernalia than for Christian materials. See Joseph Darius Jaafari, *Christians pray at a discount: Muslim inmates charged more for religious texts*, Pennsylvania Real-Time News, Jan. 8, 2020, at <https://tinyurl.com/tg4b3a5>. This practice violates the Free Exercise and Establishment Clauses of the U.S. Constitution as well as the Religious Land Use and Institutionalized Persons Act. All religions should be treated equally by correctional authorities. Please end this disparity by seeking alternate vendors or taking any other reasonable steps to provide religious materials at as close to the same prices as possible.

Establishment Clause

The Establishment Clause “mandates governmental neutrality between religion and religion.” *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). “[T]he government may not favor one religion over another . . . religious choice being the prerogative of individuals under the Free Exercise Clause.” *McCreary*, 545 U.S. at 875-76.

Your prisons all provide special benefits to Christian inmates that Muslim inmates do not receive because Christian religious materials cost far less than Muslim religious materials. In some cases, Christian religious materials are provided for free, while Muslim materials cost upwards of twenty dollars. See Jaafari, *supra*. The effect of these discrepancies is to make it easier for Christian inmates to practice their faith than for others, like Muslims, to practice theirs, and sending the message that your prisons are willing to make it easier for Christians because the prisons prefer Christianity. These pricing disparities cannot be squared with the Establishment Clause.

Free Exercise Clause

Inmates retain their right to the free exercise of religion and cannot be denied a reasonable opportunity to practice their faith. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (“If Cruz was a Buddhist and if he was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, then there was palpable discrimination by the State against the Buddhist religion”). To the extent that your prisons have impeded Muslim inmates from obtaining the holy texts and paraphernalia that they need to practice their faith while providing such materials to Christian inmates for free or at reasonable prices, then you have violated the Free Exercise Clause and must take reasonable steps to change your practices.

Religious Land Use and Institutionalized Persons Act

RLUIPA prohibits governmental imposition of a “substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless the government demonstrates” that the burden is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a). The U.S. Court of Appeals for the Third Circuit, which has jurisdiction over Pennsylvania, has held that a prison’s practice of restricting the books available to a inmate violated RLUIPA because it placed a substantial burden on his religious practice. *Washington v. Klem*, 497 F.3d 272, 282-86 (3d Cir. 2007).

Your prisons' collective practices are significantly more restrictive than the practice struck down in *Washington*. The prison in *Washington* allowed the inmates to have books, but it restricted inmates to ten books in their cell. *Id.* at 275-76. The books that the inmate needed for his religious practice were not even religious in nature, but rather were "Afro-centric" books that he used to teach others about African history. *Id.* at 275. Here you are placing a significant monetary barrier on the primary religious text of Islam. If the cost that you are charging for the text prevents an inmate from practicing his faith and you have not thoroughly explored whether you can provide that text in some cheaper fashion, then you are in violation of RLUIPA. Blaming an outside vendor will not shield you from an RLUIPA claim, because there are almost certainly avenues by which you can obtain the items at issue more cheaply if the vendor will not negotiate a lower price.

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Please change your policies to ensure that inmates of all religions are treated equally and to remove the disparate pricing practices within prison commissaries. We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,



Richard B. Katskee, Legal Director
Alex Luchenitser, Associate Legal Director
Ian Smith, Staff Attorney