

at the East Jersey State Prison in Rahway, New Jersey (East Jersey).

3. Plaintiff began studying Wicca while incarcerated and began following the precepts of Wicca in 2002. His beliefs are sincerely held.
4. On of about July 26, 2002 plaintiff asked that his religious affiliation be changed to Wicca on his records. The classification department at East Jersey changed his religion to “other” because the prison did not recognize Wicca in its computer system.

B. Defendants

5. Terrence Moore (Administrator Moore) is employed by the New Jersey Department of Corrections (DOC) as the Administrator of East Jersey. He is responsible for the daily operations of East Jersey. He is sued in his official capacity for purposes of injunctive relief and in his individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983.
6. Robert Balicki is employed by DOC as an Assistant Commissioner within the Division of Operations. He is responsible for the overall operations of the prison facilities in the State of New Jersey. He is sued in his official capacity for purposes of injunctive relief.
7. Russell Henry is employed by DOC as an Assistant Administrator at East Jersey. He is responsible for assisting in the supervising of the prison and supervising religious affairs within the prison. He is sued in his official capacity for purposes of injunctive relief and in his individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983.
8. Imam Abdul Kareem Muhammed is employed by DOC as supervising chaplain. He supervises the religious activities of inmates at East Jersey. He is sued in his individual capacity.

9. Chief Balzer is employed by DOC as a Chief of Custody Personnel. He supervises all custody officers and is responsible for providing security and safety within the prison. He is sued in his official capacity for purposes of injunctive relief and in his individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983.
10. Sgt. Shabbick is employed by DOC at East Jersey. He supervises the staff employed in the institutional mail room. He is sued in his individual capacity.
11. S.C.O. T. Moore (T. Moore) is employed by DOC at East Jersey as a Senior Correctional Officer. He works in the institutional mail room. He is sued in his individual capacity.
12. S.C.O. Palmer is employed by DOC at East Jersey as a Senior Correctional Officer. He works in the institutional mail room. He is sued in his individual capacity.

FACTS

A. East Jersey Policies and Practices

13. Wicca is a religion. It has doctrines that manifest a belief in another world and concern for improving the quality of life for others. It has rituals and ceremonies that may be practiced individually and corporately. Members follow spiritual leaders and utilize writings and religious artifacts in ceremonies and rituals.
14. At the relevant times some prisons administered by DOC permitted inmates who are adherents to Wicca to practice their religion.
15. At the relevant times some prisons administered by DOC have permitted inmates who are adherents to Wicca to receive religious artifacts.
16. Prior to April 2, 2003, Administrator Moore maintained a policy in East Jersey of not

permitting adherents to Wicca to practice their religion.

17. In September 2002, Imam Muhammed recommended to Henry that Wicca is a non traditional religion and that plaintiff be allowed to practice his religion if it does not interfere with the orderly operation of the institution.
18. On October 29, 2002, Imam Muhammed recommended that plaintiff's request to have his religion honored be denied because he initially asserted a Jewish preference.
19. On or about April 10, 2003, Administrator Moore issued a memorandum that "**literature** **only** regarding the Wicca religion is now permitted for retention by inmates." (Bold and underlining in original).

B. Plaintiff's Attempts to Practice His Religion

20. On or about July 30, 2002 the following religious books ordered by plaintiff were received in the prison mailroom:
 - a. Book of Shadows by Lady Sheba
 - b. Encyclopedia of Wicca and Witchcraft by Grimassi and Raven
 - c. Grimoire of Lady Sheba by Lady Sheba
 - d. Catalog of items produced by Azure Green.
21. On August 8, 2002, plaintiff was notified that the books would not be permitted in the institution.

22. On several occasions between August, 2002 and February, 2003 plaintiff attempted to have religious books pertaining to Wicca delivered to him in the institution. On each occasion he was notified by Palmer or by T. Moore that the books would not be permitted in the institution.
23. On or about August 26, 2002 plaintiff requested permission to order the following items for religious use:
 - a. Pentacle necklace
 - b. Prayer cloth/altar cloth
 - c. Scented oils and herbs
 - d. Small bell and flute
 - e. Ritual powder
24. The items requested are similar in design and construction to items permitted to practitioners of other religions in East Jersey.
25. Plaintiff was advised by Imam Muhammed that he and Henry were reviewing his request.
26. On October 22, 2002, plaintiff received a letter from Sgt. Shabbick stating that he was in possession of plaintiff's necklace and Wicca book and that he had 60 days from August 22, 2002 to inform him on what to do with it, or it would be destroyed. The letter stated that "this book will not be permitted inside E.J.S.P.!"
27. Plaintiff then wrote to Balicki regarding the denial of religious practices. On October 29, 2002 Balicki responded that plaintiff had followed the correct procedure by submitting inmate remedy forms and consulting with the institutional chaplain. Balicki also stated that "[m]atters of this nature are not appropriate to submit to central office. This matter

must be resolved at the institutional level.”

28. On December 12, 2002, plaintiff submitted a request to Sgt. Shabbick complaining that Palmer had refused to permit him to have his religious books. Sgt. Shabbick responded that Wicca is not recognized as a religion in DOC. Henry approved this response.
29. On December 14, 2002, plaintiff again filed an inmate remedy form in that the continuous deprivations were infringing on his religious practice and his ability to worship. He received a response from Imam Muhammad who stated that his recommendation was submitted to Henry for disposition.
30. Soon thereafter, plaintiff received a contraband receipt from T. Moore stating, “not authorized 2 Books Witchcraft.”
31. On December 16, 2002, plaintiff submitted a complaint to Chief Balzer who denied his request stating that “this has been answered numerous times.”
32. On April 11, 2003, plaintiff received a response to an inmate remedy form from an Executive Assistant that he would now be permitted to receive literature that pertains to the Wicca religion.
33. Plaintiff is still not permitted to receive his religious artifacts.

**FIRST CLAIM
(FREE EXERCISE OF RELIGION - DENIAL OF RELIGIOUS LITERATURE)**

34. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.

35. The denial of religious literature to plaintiff from August, 2002 until April 11, 2003 was without penological justification and thereby denied him the right to the free exercise of his religion in violation of the First Amendment to the United States Constitution.

**SECOND CLAIM
(FREE EXERCISE OF RELIGION - DENIAL OF RELIGIOUS ARTIFACTS)**

36. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
37. The denial of religious artifacts to plaintiff is without penological justification and denies plaintiff the right to the free exercise of his religion in violation of the First Amendment to the United States Constitution.

**THIRD CLAIM
(STATE CONSTITUTIONAL FREE EXERCISE OF RELIGION CLAIM - DENIAL OF RELIGIOUS LITERATURE)**

38. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
39. The denial of religious literature to plaintiff from August, 2002 until April 11, 2003 was without penological justification and thereby denied him the right to the free exercise of his religion in violation of Article 1 Par. 3 of the Constitution of the State of New Jersey.

**FOURTH CLAIM
(STATE CONSTITUTIONAL FREE EXERCISE OF RELIGION CLAIM - DENIAL OF RELIGIOUS ARTIFACTS)**

40. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
41. The denial of religious artifacts to plaintiff is without penological justification and denies plaintiff the right to the free exercise of his religion in violation of Article 1 Par. 3 of the Constitution of the State of New Jersey.

**FIFTH CLAIM
(DENIAL OF EQUAL PROTECTION OF THE LAWS)**

42. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
43. The refusal of Administrator Moore to allow Wiccans to practice their religion at East Jersey while inmates in other institutions under the control of DOC are permitted to practice Wicca is without a rational basis and therefore denied plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

**SIXTH CLAIM
(STATE CONSTITUTION EQUAL PROTECTION CLAIM)**

44. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
45. The refusal of Administrator Moore to allow Wiccans to practice their religion at East Jersey while inmates in other institutions under the control of DOC are permitted to practice Wicca is without a rational basis and therefore denied plaintiff the equal protection of the laws in violation of Article 1 Pars. 1 and 5 of the Constitution of the State of New Jersey.

**SEVENTH CLAIM
(DENIAL OF EQUAL PROTECTION OF THE LAWS)**

46. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
47. Regulations at East Jersey provide that inmates are permitted the following religious artifacts:
- a. One set of prayer beads no longer than 20" in length, 1/2" in width and 1/2" in diameter
 - b. One religious medal not larger than 1" in length, 1" in diameter and 1/4" in thickness with a chain not larger than 18" in length, 1/8" in width and 1/8th " in

diameter

- c. One prayer rug no longer than 3' by 5'
- 48. The items denied to plaintiff conform to these standards.
- 49. The policy of Administrator Moore to deny plaintiff his religious artifacts while practitioners of other religions are permitted similar articles has no rational basis and is without penological justification. As such the policy denies plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

**EIGHTH CLAIM
(STATE CONSTITUTION DENIAL OF EQUAL PROTECTION OF THE LAWS)**

- 50. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33 and 47 through 48.
- 51. The policy of Administrator Moore to deny plaintiff his religious artifacts while practitioners of other religions are permitted similar artifacts has no rational basis and is without penological justification. As such the policy denies plaintiff the equal protection of the laws in violation of Article 1 pars. 1 and 5 of the Constitution of the State of New Jersey.

**NINTH CLAIM
(RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA))**

- 52. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.

53. On information and belief DOC and East Jersey are recipients of federal financial assistance.
54. The denial of religious literature to plaintiff from August 2002, until April 11, 2003 imposed a substantial burden on plaintiff in that he was unable to practice or study his religion without the prohibited books.
55. The practices complained of are not in furtherance of a compelling governmental interest.
56. The practices complained of are not the least restrictive means of furthering any governmental interest related to the functioning of the prison.
57. The acts complained of are, therefore, in violation of 42 U.S.C. § 2000cc-1.

**TENTH CLAIM
(RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA))**

58. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.
59. On information and belief DOC and East Jersey are recipients of federal financial assistance.
60. The denial of religious artifacts to plaintiff imposes a substantial burden on plaintiff's ability to exercise his religion in that he is unable to conduct religious rituals, ceremonies and other observances.
61. The practices complained of are not in furtherance of a compelling governmental interest.
62. The practices complained of are not the least restrictive means of furthering any governmental interest related to the functioning of the prison.
63. The acts complained of are, therefore, in violation of 42 U.S.C. § 2000cc-1.

Wherefore plaintiff prays that this court enter judgment:

- (a) Declaring that defendants, while acting under the color of state law, violated the State and Federal Constitutions in denying plaintiff his right to practice his religion, Wicca;
- (b) Enjoining defendants from prohibiting plaintiff to practice his religion;
- (c) Enjoining defendants to permit plaintiff to receive to receive Wicca books and religious artifacts inside the prison;
- (d) Awarding plaintiff compensatory and punitive damages against defendants Terrance Moore, Henry, Muhammed, Balzer, Shabbick, T. Moore, and Palmer;
and
- (e) Awarding plaintiff the costs of this action including a reasonable attorneys fee.

Dated:

Stephen M. Latimer, Esq., 7317
Loughlin & Latimer

On behalf of the American Civil Liberties
Union of New Jersey Foundation
Attorneys for plaintiff