



## **I. Nature of the Case and Statement of Facts<sup>1</sup>**

Plaintiffs, the American Humanist Association (“AHA”) and Kwame Teague, challenge the North Carolina Department of Public Safety’s (“NCDPS”) disparate treatment of Humanists, and specifically, its refusal to allow Humanists to meet in groups to study and discuss their shared convictions while authorizing such group meetings for other faith groups of equal or smaller size, as violative of the Establishment and Equal Protection Clauses. NCDPS maintains a list of approved faith groups (“Faith Groups”) and provides them with time, space, and other resources. (A.64-70, 77-81, 1268). Only recognized Faith Groups are authorized to meet in groups for study and worship. (A.69, 1268). NCDPS tracks religious preferences in OPUS but only for approved Faith Groups. (A.3-35, 1292). NCDPS has approved several new Faith Groups since 2010, including one with only three inmates. (A.4, 183, 903, 1260). NCDPS concedes that approving Humanism would impose no threat to the security, control, operation and safety of a correctional institution. (A.925). Indeed, the federal government treats Humanism as a religious group.<sup>2</sup> The Bureau of Prisons (“BOP”) approved Humanism as a faith group and allots the group two time-slots each week for “worship” and for “study.” (A.825-29, 833-39, 1075-76, 1081). Summary judgment must be granted when, as here, “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

## **II. NCDPS’s disparate treatment of Humanists violates the Establishment Clause.**

NCDPS’s refusal to allow Humanist group meetings while authorizing group meetings for many other faiths violates the Establishment Clause. *E.g.*, *Kaufman v. Pugh*, 733 F.3d 692 (7th Cir. 2013) (“*Kaufman II*”) (refusal to authorize study group for Atheist and Humanists violates Establishment Clause); *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005) (“*Kaufman I*”) (same); *Am. Humanist Ass’n v. United States*, 63 F. Supp. 3d 1274, 1284 (D. Or. 2014) (*AHA*) (refusal to approve Humanist group violates Establishment and Equal Protection Clauses). The touchstone of the Establishment Clause is that the “government [possess] neutrality between religion and religion, and between religion and non-religion.” *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005) (citations omitted). Unlike the Free Exercise Clause, the Establishment Clause is violated “without a substantial burden on religious practice if the

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<sup>1</sup> Pursuant to local rule 56.1 (c), Plaintiffs incorporate by reference their entire Statement of Material Undisputed Facts (PSUF), as if fully stated herein, along with Plaintiffs’ Appendix (“A.”).

<sup>2</sup> Humanism is specifically recognized by the Department of Justice, Department of Defense, the IRS, and the Department of Veterans Affairs. (A.825-29, 833-39, 843, 847, 851-860, 1075, 1081).

government favors one religion over another.” *Kaufman II*, 733 F.3d at 696.

NCDPS’s unrelenting refusal to accord Humanists equal treatment flouts decades of precedent holding that Humanism must be treated as religion for First Amendment purposes. In *Torcaso v. Watkins*, the Supreme Court ruled that the government must not “aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” 367 U.S. 488, 495 (1961). Among these latter religions, the Court included “Secular Humanism.” *Id.* at 495 n. 11.<sup>3</sup> Notably, this Court already recognized that “the Supreme Court has held that Secular Humanism is a religion.” (DE-59, at n.1).<sup>4</sup> Indeed, the “Supreme Court has recognized atheism as equivalent to a ‘religion’ for purposes of the First Amendment on numerous occasions.” *Kaufman I*, 419 F.3d at 682. In *Allegheny v. ACLU*, the Court explained that the Establishment Clause guarantees “religious liberty and equality to ‘the infidel, the atheist, or the adherent of a non-Christian faith.’” 492 U.S. 573, 589-90 (1989) (citation omitted).<sup>5</sup>

Humanism is of course far more akin to a religion than Atheism, as it has a formal structure much like many religions, with clergy (usually known as “celebrants”), chaplains, and formal entities dedicated to the practice of Humanism, such as the American Ethical Union (based on the Ethical Culture movement founded by Felix Adler in 1876) and the Society for Humanistic Judaism (founded by Rabbi Sherwin Wine in 1969), among others. (A.718, 781-809). Humanist principles are promoted and defended by formal organizations such as the AHA (which provides a statement of Humanist principles in a document known as the “Humanist Manifesto” or “Humanism and Its Aspirations,” signed by 22 Nobel laureates and thousands of others), as well as the International Humanist and Ethical Union (which provides a statement of Humanist principles known as “The Amsterdam Declaration”). (A.703-11).

Thus, when “making accommodations in prisons, states must treat atheism as favorably as theistic religion. What is true of atheism is equally true of humanism, and as true in daily life as in prison.” *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869, 873 (7th Cir. 2014) (“*CFP*”). The “rights

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<sup>3</sup> See *Myers v. Loudoun Cty. Pub. Sch.*, 418 F.3d 395, 411 (4th Cir. 2005) (“The Supreme Court has long recognized that some religions practiced in this country ‘do not teach what would generally be considered a belief in the existence of God.’”) (quoting *Torcaso*).

<sup>4</sup> See also *CFI*, 758 F.3d at 873; *Kaufman I*, 419 F.3d at 682; *Chess v. Widmar*, 635 F.2d 1310, 1318 n.10 (8th Cir. 1980) (“Secular Humanism” is a “religion”); *Cavanaugh v. Bartelt*, 178 F. Supp. 3d 819, 829-30 (D. Neb. 2016) (“humanism” must be treated as “religious”); *AHA*, 63 F. Supp. 3d at 1283; *Crockett v. Sorenson*, 568 F. Supp. 1422, 1425 (W.D. Va. 1983) (“secular humanism is a religion”). Cf. *Kalka v. Hawk*, 215 F.3d 90 (D.C. Cir. 2000) (assuming, without deciding, Humanism is a religion).

<sup>5</sup> See also *Gillette v. U.S.*, 401 U.S. 437, 439, 461-62 (1971) (entertaining claim “based on a humanist approach to religion”); *U.S. v. Seeger*, 380 U.S. 163, 176 (1965).

of inmates belonging to minority or non-traditional religions must be respected to the same degree as the rights of those belonging to larger and more traditional denominations.” *Koger v. Bryan*, 523 F.3d 789, 799 (7th Cir. 2008) (citation omitted). While the Constitution does not require prisons to provide a special place “for every faith regardless of size; nor must a chaplain, priest, or minister be provided without regard to the extent of the demand,” *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972), any restriction must be applied evenly to inmates of all faiths including Atheists and Humanists. *Kaufman II*, 733 F.3d at 696.

Neither size nor demand played any role in NCDPS’s refusal to recognize Humanism, nor could it, as there is no minimum requirement for Faith Group approval. (A.1260, 1560). *See also* (A.4). Instructively, in March 2012, at the *same time* Teague was seeking approval of Humanism, NCDPS recognized the Aquarian Christine Church Universal (CCU) despite receiving a request from only one inmate. (A.1260, 903). *See also* (A.183, 1561).<sup>6</sup> Currently, there are only *three* Aquarians, six Quakers, and six Eastern Orthodox inmates statewide. (A.4). Furthermore, many Faith Groups often have only one or two inmates participating in the study group or worship meeting. (PSUF Tables 2-4). (A.280-700).

Courts have specifically held that a prison violates the Establishment Clause when it allows group meetings for some faiths but not others without a legitimate secular justification.<sup>7</sup> The Seventh Circuit has twice held that the refusal to authorize an Atheist or Humanist study group violates the Establishment Clause when such meetings are allowed for other faiths, *Kaufman I* and *II*. There was no evidence in either case that the inmate “would be unable to practice atheism effectively without the benefit of a weekly study group.” *Kaufman I*, 419 F.3d at 683. But unlike the Free Exercise Clause, the Establishment Clause is violated if the prison has failed to provide “a legitimate secular justification for discriminating between the proposed atheist study group and the seven recognized umbrella groups,” even if the denial

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<sup>6</sup> The March 2012 Committee minutes provide: “This faith has been approved. There is was only one person interested in this faith; however there’s another inmate that has shown an interest.” (A.1260).

<sup>7</sup> *E.g.*, *Sherman-Bey v. Marshall*, 2011 U.S. Dist. LEXIS 73801, \*27-28 (C.D. Cal. 2011) (denying officials qualified immunity because MST “group was denied services that were granted to others of equal or smaller size due to Defendants’ religious disagreements with MST tenets, not just due to logistical concerns”); *Saif’Ullah v. Assoc. Warden*, 2017 U.S. Dist. LEXIS 102438, at \*15 (N.D. Cal. June 30, 2017); *Brown v. Livingston*, 17 F. Supp. 3d 616, 631 (S.D. Tex. 2014) (“that Jewish inmates are assigned to four particular units within the prison system specifically to bring them closer to Jewish religious volunteers...while TDCJ makes no effort to house Muslim inmates in units close to the population centers where Muslim volunteers might be recruited, constitutes a clear violation of the Establishment Clause.”); *Buchanan v. Burbury*, 2006 U.S. Dist. LEXIS 48244, \*23-24 (N.D. Ohio 2006) (prison must “provide the Sacred Name Sabbatarians with the opportunity to engage in group worship”).

of such a group would not “impose a substantial burden on his practice of atheism.” *Kaufman II*, 733 F.3d at 697. The present case is also a mirror image of *AHA*, where AHA and a Humanist inmate alleged that BOP’s refusal to authorize a Humanist study group violated the Establishment and Equal Protection Clauses. 63 F. Supp. 3d at 1283-84. The court agreed, denying the officials qualified immunity because the law “was clearly established” in 2014 that Humanists must be accorded equal treatment. *Id.* at 1286-87. *See also Kaufman v. Pugh*, 2014 U.S. Dist. LEXIS 84532, \*5 (W.D. Wis. 2014) (“There is a colorable argument that defendants were violating clearly established law by refusing to allow prisoners to designate atheism as a religious preference.”).

**A. NCDPS’s disparate treatment of Humanism fails *Larson* strict scrutiny.**

Where, as here, the government discriminates “among religions,” the Court must apply strict scrutiny. *Larson v. Valente*, 456 U.S. 228, 244, 246-47, 252 & n. 23 (1982).<sup>8</sup> Such action can survive only if the government shows (1) a compelling government interest, and (2) that the disparate treatment is “closely fitted” to further that interest. *Id.* at 246-47. Because NCDPS authorizes meetings for some denominations but not Humanism, strict scrutiny applies.<sup>9</sup>

**1. NCDPS has no “compelling interest” for its disparate treatment of Humanists.**

NCDPS must demonstrate that its refusal to authorize Humanist meetings while authorizing meetings for Buddhists, Wiccans, Rastafarians, and others, furthers “a compelling government interest.” *Id.* at 246-47. This is “the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). “For an interest to be sufficiently compelling to justify a law that discriminates among religions, the interest must address an identified problem that the discrimination seeks to remedy.” *Awad v. Ziriax*, 670 F.3d 1111, 1129-31 (10th Cir. 2012) (citation omitted). NCDPS “must identify an

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<sup>8</sup> *See Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 339 (1987) (“*Larson* indicates that laws discriminating among religions are subject to strict scrutiny.”); *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 102 (4th Cir. 2013) (same). Otherwise, the tripartite *Lemon* test applies. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

<sup>9</sup> *E.g.*, *Natarajan Venkataram v. Bureau of Prisons*, 2017 U.S. Dist. LEXIS 5418, at \*23-24 (S.D. Fla. Jan. 12, 2017) (*Larson* applied where prison was “providing meal accommodations to Jewish and Muslim inmates, but denying similar accommodations to Hindu inmates.”); *AHA*, 63 F. Supp. 3d at 1282-83; *Brown*, 17 F. Supp. 3d at 632 (applying *Larson* and holding that “operation of the volunteer policy on Muslim inmates’ access to religious activities, when compared with that enjoyed by Catholic and Protestant inmates, is unconstitutional”); *Warrior v. Gonzalez*, 2013 U.S. Dist. LEXIS 165387, \*23-24 (E.D. Cal. 2013); *Glenn v. N.H. State Prison Family Connections Ctr.*, 2012 U.S. Dist. LEXIS 78689, \*12-13 (D.N.H. 2012); *Rouser v. White*, 630 F. Supp. 2d 1165, 1194-95-96 (E.D. Cal. 2009).

actual concrete problem.” *Id.* NCDPS has not identified “any *actual problem*” that would result from authorizing a Humanist group let alone any “concrete problem.” *Id.* To the contrary, NCDPS conceded that approving Humanist group would pose no problem whatsoever. The NCDPS Religious Practices Committee (“Committee”) Meeting Minutes made clear: “there is no reason to conclude that Humanism would impose a threat to the security, control, operation and safety of a correctional institution.” (A.925). Thus, NCDPS has “failed to satisfy strict scrutiny.” *Id.* at 1130.

**2. Absent any compelling interest, the “narrowly tailored” element is inapplicable.**

“Without a compelling interest based on an actual problem, the second step of the strict scrutiny analysis—whether there is a close fit with a compelling state interest—is unnecessary and not feasible.” *Id.* (citing *Larson*, 456 U.S. at 246-47). There is simply no “compelling interest to try to fit.” *Id.* Nonetheless, Plaintiffs make the following observation: NCDPS’s complete ban on Humanists meetings “is hardly an exercise of narrow tailoring.” *Id.* See *Hummel v. Donahue*, 2008 U.S. Dist. LEXIS 47534, \*2 (S.D. Ind. 2008) (“although maintaining safety and security in prisons is a compelling governmental interest, the defendants have not met their burden of showing that a blanket ban on group worship for Odinists is the least restrictive means”).<sup>10</sup> NCDPS offers a wide array of meetings for Faith Groups irrespective of size, demand, and whether they are even mandated by the faith. For instance, although Buddhism, like Humanism, is nontheistic, non-hierarchical, and non-dogmatic (A.108-14,1204), NCDPS offers an assortment of Buddhist gatherings including “Buddhism Study,” “Discovering Buddhist,” “Buddhist Service,” and “Buddhist Meditation.” (A.110-14, 1202). Such meetings often have only 2-3 inmates participating. (PSUF Tables 2-4) (A.280-700). NCDPS’s Religious Practices Reference Manual (“Manual”) section on Wicca acknowledges: “There are no requirements for corporate worship.” (A.167-72). Yet NCDPS offers group “Wicca Study” and “Wicca Service.” (A.167-72, 1314). There is also “no mandatory requirement” for Rastafarian group worship yet NCDPS offers group “Rastafarian Study” and “Rasta Service.”<sup>11</sup> NCDPS offers an abundance of Christian study groups for specific Christian sects and even specific churches as well as choir practices and movie nights.<sup>12</sup> Yokefellow, for example, is just a

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<sup>10</sup> See also *Pineda-Morales v. De Rosa*, 2005 U.S. Dist. LEXIS 37179, \*38-39 (D.N.J. 2005) (“Defendants present no evidence that refusing to recognize the Apostolic Faith Church, or provide it additional physical accommodations, was the least restrictive means”); *Rouser*, 630 F. Supp. 2d at 1197.

<sup>11</sup> (A.161-65, 292-96, 335-37, 340-75, 400-07, 456-58, 510-16, 531, 663-88).

<sup>12</sup> (A.115-21, 329-32, 339, 435-38, 486-87, 1275, 1315, 1469, 1528-29).

Christian “peer group” that’s “open for discussion.”<sup>13</sup>

**B. NCDPS’s disparate treatment of Humanists also fails the *Lemon* test.**

While NCDPS’s disparate treatment of Humanists is properly analyzed under *Larson, supra*, NCDPS cannot satisfy the *Lemon* test either. To prevail, the government must show that the challenged action (1) has secular purpose; (2) its effect is neither to endorse nor inhibit religion; and (3) that it does not foster an excessive government entanglement with religion. *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 593 (4th Cir. 2017) (citing *Lemon*). “The Government must satisfy all three prongs.” *Id.*

**1. NCDPS’s preference for some faiths over Humanism lacks a secular purpose.**

The government must “show by a preponderance of the evidence that [the] action challenged” has a primary secular purpose. *Church of Scientology Flag Serv. v. City of Clearwater*, 2 F.3d 1514, 1530 (11th Cir. 1993). It “cannot meet this requirement by identifying *any* secular purpose.” *Trump*, 857 F.3d at 593. Rather, it must be the “pre-eminent” and “primary” force and “has to be genuine, not a sham.” *McCreary*, 545 U.S. at 864. *See id.* at 865, 871 (rejecting “new statements of purpose ... presented only as a litigating position”). Courts must “not rubber stamp or mechanically accept the judgments of prison administrators.” *Couch v. Jabe*, 679 F.3d 197, 201 (4th Cir. 2012) (citation omitted).

NCDPS offered no “legitimate secular reason” whatsoever for treating Humanists differently. *Kaufman II*, 733 F.3d at 697. In *Kaufman I*, the Seventh Circuit held that a prison failed the purpose test because it “advanced no secular reason why the security concerns they cited as a reason to deny his request for an atheist group do not apply equally to gatherings of Christian, Muslim, Buddhist, or Wiccan inmates.” 419 F.3d at 683-84. The same is true here, except that NCDPS has not even articulated, “much less support[ed] with evidence,” a single secular justification for banning Humanist meetings.<sup>14</sup>

Not only does the record fail to establish any legitimate secular purpose, but it also reveals “direct, specific evidence” of anti-Humanist sentiment, making NCDPS’s improper purpose all the more conspicuous. *Trump*, 857 F.3d at 594-95. This is evidenced by NCDPS’s statements and actions such as:

- “they do not believe in a deity” (A.909) (NCDPS justification in response to First DC-572).
- “There is no . . . hierarchy of religious leaders” (A.924-26) (response to First DC-572).

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<sup>13</sup> (A.1472). *See also* (A.525-26, 534, 573-77).

<sup>14</sup> *See also Brown*, 17 F. Supp. 3d at 631 (“TDCJ has intentionally made it easier for Jewish inmates over Muslim inmates to have volunteer-led religious activities. That circumstance alone, in and of itself, constitutes a violation of the Establishment Clause”).

- “I do have concerns for the Humanism’s materials” (A.935) (response to Third DC-572).
- “I believe from reading the Secular Humanism materials the content of the information would need some special attention as to the group intention of offering Spiritual Guidance to Inmates” (A.935).
- Citing, without any factual basis, “terrorist/gang activities” in refusing to allow AHA member (Harwood) to receive the *Humanist Manifesto* and *Humanist Magazine* (A.1003-05, 1023, 1561).
- A superintendent calling a Humanist inmate a “Sovereign Citizen” and threatening Security Threat Group (STG) citation for receiving AHA materials and forming a Humanist group (A.1000-02).
- Defendants Brown (Director of Chaplaincy Services) and Solomon receiving an email with the subject, “I know some chaplains will have real difficulty with this one,” in reference to an attached AP article, “*Federal prisons agree to recognize humanism as religion*” in July 2015 (A.993-94).

“These statements, taken together,” reveal religious animus. *Id.* To be sure, the purpose prong can be violated even when the state has a *benevolent* purpose.<sup>15</sup> This evidence simply compounds NCDPS’s unconstitutional purpose. The secular purpose requirement “serves an important function,” because “[b]y, showing a purpose to favor religion, the government sends the ... message to ... nonadherents that they are outsiders, not full members of the political community.” *McCreary*, 545 U.S. at 589-60 (citations omitted). “This message of exclusion from the political community is *all the more conspicuous* when the government acts with a specific purpose to *disfavor a particular religion*.” *Aziz v. Trump*, 2017 U.S. Dist. LEXIS 20889, at \*18-19 (E.D. Va. Feb. 13, 2017) (emphasis added).

NCDPS’s anti-Humanist prejudice is underscored by several additional external factors.<sup>16</sup> First, that NCDPS rejected Humanism based on religious disagreement rather than logistical concerns is evidenced by the fact that “similar- or smaller-sized inmate religious groups” have been approved. *Sherman-Bey*, 2011 U.S. Dist. LEXIS 73801, at \*30. There are far more known Humanist inmates than there are Aquarian CCU (3), Quakers (6), and Easter Orthodox (6), and greater demand for Humanist groups.<sup>17</sup> At least nine NCDPS inmates are verified AHA members and were in NCDPS’s custody at the time of Teague’s requests, six of whom filed declarations affirming that they are interested in Humanist meetings.<sup>18</sup> Four further testified that they are aware of many other Humanist inmates interested in

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<sup>15</sup> See *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 222-23 (1963) (Bible reading in schools lacked secular purpose even if it furthered “the promotion of moral values”); *Hall v. Bradshaw*, 630 F.2d 1018, 1021 (4th Cir. 1980) (“motorist’s prayer” on state maps failed purpose test, even though purpose was to promote motorist safety, which court did not dispute).

<sup>16</sup> See *McCreary*, 545 U.S. at 593 (in evaluating purpose, courts look to “traditional external signs” including text, history, and “the specific sequence of events”) (citations omitted).

<sup>17</sup> (A.1020-23, 1026-28, 1037-39, 1041-42, 1044-46, 1089, 1095-96, 1130-31).

<sup>18</sup> (A.1023, 1029, 1038, 1039, 1042, 1047).

Humanist meetings.<sup>19</sup> Additionally, in late 2012/early 2013, Zachary Harwood and approximately fifteen other Humanists at Foothills CI attempted to form a Humanist group, “Secular Humanism In Prison” (SHIP). (A.1022). Harwood and four other inmates signed an application for SHIP be recognized as an AHA affiliate. (A.999, 1022, 1088, 1563). According to Harwood, “at least nine other inmates were involved in attempting to form the group. ... NCDPS never approved the group.” (A.999, 1022). NCDPS officials were aware of this demand for Humanist group services in August 2013.<sup>20</sup>

In April 2013, Roland Snoke, at Scotland CI, wrote to AHA’s local chapter: “I am working diligently to change my religion to ‘Humanist’ in the Department of Corrections computer system, but they do not recognize ‘Humanism’ as a religion!” (A.1017-18). *See also* (A.1088, 1110). AHA member Marco Stamey testified that in May or June 2016, he made a “handwritten request that my RPI designation be changed to Humanist.” (A.1042). His case manager told him “Humanist was not acknowledged by the State and therefore not an option.” (A.1042). Furthermore, 3,893 inmates are “none” in OPUS, the third largest population. (A.4). NCDPS concedes Humanists are likely included in “none.” *See Kaufman II*, 733 F.3d at 698 (“A recent PEW survey” suggests “there might be at least as many prisoners interested in an atheist group as one sees in the Pagan, Eastern Religions, or Jewish groups.”).

Second, since 2010, NCDPS has approved at least three new Faith Groups, Hebrew Israelites, Messianic Judaism, and Aquarian CCU, but refused to recognize Humanism during this time.<sup>21</sup>

Third, while NCDPS allows Christian organizations to donate Bibles to NCDPS in bulk (A.1462), it refused to allow AHA to donate Humanist publications to NCDPS facilities and even to AHA’s own members. (A.1000-02, 1023). *See Halloum v. Ryan*, 2011 U.S. Dist. LEXIS 114713, at \*7 (D. Ariz. Oct. 4, 2011) (Constitution violated where prison refused “to provide copies of the Quran to Plaintiff and other Muslim inmates,” but “readily provided other holy books to inmates of other faiths”).<sup>22</sup>

Fourth, despite the complete lack of evidence of any association between Humanism and violence

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<sup>19</sup> Allman named seven Humanist inmates at Piedmont CI, (A.1028-29), Stamey is “aware of maybe half a dozen inmates at Pamlico CI,” (A.1043), and Christopher averred, “I have encountered other Humanists and Atheists in many North Carolina prisons over the years.” (A.1047). *See also* (A.1038).

<sup>20</sup> On August 15, 2013, Superintendent Reed at Rutherford CC sent an email to numerous NCDPS officials, including Defendant Mitchell, stating in part: “1-Have you ever had an inmate receive any Humanist material by courier? 2-are they allowed to have it? 3-are they allowed to pass it out? Today we had an Inmate received this material and inside it, he calls his group S.H.I.P.” (A.1008-12).

<sup>21</sup> (A.924-26, 1260, 1263-65, 1272, 1345, 1498-99, 1561).

<sup>22</sup> *See also Glenn*, 2012 U.S. Dist. LEXIS 78689, \*12-13 (“by offering ... Christian Bibles at no cost, and not providing...Qur’ans to inmates, the prison is demonstrating a preference for Christianity over Islam”).

or gang activity (A.924-30, 1568), NCDPS has twice refused to allow Humanist inmates (Teague and Harwood) to receive Humanist publications and even threatened to label Humanists a Security Threat Group (STG) for no reason at all. (A.1000-05, 1023-24, 1087, 1561). In July 2013, the AHA sent Harwood Humanist publications, including *The Humanist Magazine* and *The Humanist Manifesto*. (A.1000-02, 1023). Harwood received a notice from NCDPS: “The source of the publication/ material has been disapproved,” citing “Violence, disorder, insurrection or terrorist/gang activities.” (A.1003-05, 1023, 1561).<sup>23</sup> He appealed to the Publication Review Committee, which affirmed the disapproval. (A.1003-05, 1023). Harwood promptly contacted the AHA, writing: “The superintendent here became very upset with me for having this stuff sent in and I was accused of being a ‘Sovereign Citizen’ (whatever that means) and threatened with being labeled STG, (Security Threat Group) if I attempted to ‘recruit’ other humanists.” (A.1000-02). Understandably, Harwood was thereafter nervous he “would get myself and/or others in trouble by discussing Humanism with other inmates.” (A.1000-02, 1024, 1087). In response, AHA’s Grassroots and Celebrant Coordinator, Rachael Berman, sent a letter to NCDPS stating that AHA’s materials “are in no way affiliated with or promote violence, disorderly conduct and terrorist/gang activities. (A.1006, 1014). On October 10, Berman spoke to Reed and took notes, as follows:

Mr. Reed stated that the board doesn’t know much about humanism [.] I then asked Mr. Reed if I could send Mr. Harwood monthly materials from AHA (being that he is a member) and the materials would just be for him [.] He said so long so that the materials are not religious, do not contain nudity [.] I also asked Mr. Reed if Mr. Harwood got a group approved → if I could then send bulk materials **Mr. Reed proceed to say “Those types of materials will never be accepted at Rutherford”**

(A.1007). Reed then emailed NCDPS officials with the subject, “American Humanist Association,” attaching Berman’s letter and stating, “I spoke to this Lady yesterday who would like to send this inmate some more material. Last time I sent it through the Publication Review Committee who like myself don’t know that much about it and I made the decision to let the inmate send it home (on his on funds).” (A.1013-16). He added: “she has ask if he can hold group meeting, which I told her-No.” (A.1013-16). NCDPS also rejected publications sent by a Humanist Chaplain to Teague (A.1116).

Fifth, NCDPS’s anti-Humanist animus is apparent through the slew of conflicting, baseless, post-hoc rationalizations proffered to deny Teague’s requests. Between January 2012 and October 2014,

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<sup>23</sup> NCDPS had determined in February 14, 2013, nearly six months *prior*, that there was no evidence “that Humanism teaches people violence or hatred of other people.” (A.925).

Teague submitted at least five requests to establish Humanism, each of which was denied as follows.<sup>24</sup>

**1) Inmate Request Form (WCI-A68) (January 18, 2012)**

On January 18, 2012, Teague filed an Inmate Request Form stating: “I am a Humanist although I’m listed as a Muslim, this is because Humanism does not have any allotted time nor is it recognized as a religion in N.C. The Federal government however, does recognize it as such. I want to know what must be done to recognize Humanism here at Warren.” (A.872). NCDPS told Teague: #1 “Because it is not a recognized faith group nothing will be done to recognize Humanism.” (A.872) (emphasis in original). This was virtually the same response NCDPS gave to other Humanist inmates such as Snoke and Stamey, *supra*. When asked whether this is the “standard response” when an “inmate asks to get a new religion recognized,” NCDPS’s 30(b)(6) deponent Carlton Joyner conceded: “No. The response should be, I will provide you with a DC572, and you fill out the form and we’ll send it through the process.” (A.1519). *See also* (A.1306). Joyner conceded “Teague was not offered the DC527 form.” (A.1519).

**2) Grievance No. 4290-1-12-0081 (DC-410) (February 29, 2012)**

A month later, Teague filed a Grievance stating in part: “I have tried for several weeks to find out from Mr. Boisvert the proper steps to take in getting my religion, Humanism, recognized at this camp. ... Humanism is a religion recognized by the U.S. Supreme Court (Torcaso v. Watkins 367 US 488 1961)).” (A.874). On May 7, 2012, the Grievance Examiner issued a Findings and Disposition Order refusing to recognize Humanism. (A.878). The basis was stated in the April 2012 Unit Response: #2 “the Department of Public Safety does not recognize Humanism. You desire that a special time be allowed for you to form a group. You are listed in Opus as Islamic.” (A.875). But Teague repeatedly told NCDPS that he was no longer Islamic and wanted to change his OPUS status to Humanist. (A.880, 894-99). NCDPS further averred: #3 “There is no violation of the First Amendment Right,” and #4 “No further action is necessary.” (A.875-76). This legal statement was made by a case manager, not counsel, and Teague was not advised of the DC-572 process. (A.1520-21). Joyner conceded that “the policy is -- in these situations is when an inmate requests a new religion be recognized that they be provided with the DC572.” (A.1520-21).

**3) September 18, 2012 DC-572**

After eventually learning about DC-572, on September 18, 2012, Teague submitted a DC-572 form to have Humanism be recognized as a Faith Group so Humanists could meet in groups . (A.895-899).

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<sup>24</sup> Each proffered basis for denial is underlined and marked by a number (#) in chronological order.

**a. January 2, 2013 Subcommittee Report on Humanism**

NCDPS's refusal to recognize Humanism in response to Teague's first DC-572 was first articulated in its January 2, 2013 Subcommittee Report on Humanism, as follows:

#5 "Humanism fails to meet the standards for approval as a Faith Group." (A.907-08). This rings hollow because there simply are no such "standards." When asked, "What are the standards for approval as a faith group that are referenced there?" both Brown and Joyner responded: "I don't know." (A.1384, 1547). Brown conceded this was "just something that the subcommittee ... made up as it was reviewing Mr. Teague's request about Humanism." (A.1384). The only applicable policies were H.0105(c) and H.0108(b). H.0105(c) states: "The inmate must provide an authoritative source of information for the requested religion . . . in order to verify the existence of the religion." (A.68). *See also* (A.1354). Teague listed AHA and provided detailed contact information. (A.897-99). Joyner conceded that "Mr. Teague providing the contact information for the American Humanist Association satisfies that requirement." (A.1543).<sup>25</sup> H.0108(b) then provides that

Factors generally considered by the committee in an evaluation include, but are not limited to, the following: (1) whether the inmate has a sincerely held belief in the religion; (2) whether the requested practice or paraphernalia has a recognized role in the particular faith; (3) whether the inmate sincerely desires the practice or paraphernalia for religious reasons; (4) conformity or conflict with valid penological considerations such as order, security, operation, safety, effect on inmate relationships, etc.; (5) custody status of an inmate or group of inmates; (6) availability of staff, departmental and community resources; and (7) duplication of existing services.

(A.47-48). None of these factors were cited by NCDPS in refusing to recognize Humanism.<sup>26</sup>

If such factors were properly considered, Humanism would have had to be recognized: Factors (1) and (3): There is no dispute regarding the sincerity of Teague's Humanist convictions and his desire for Humanist meetings.<sup>27</sup> NCDPS officials admitted: "Inmate Teague seemed sincere about his desire to practice Humanism's teaching. I believe that this is a proper use of the DC-572 Form." (A.935, 962). Factor (2): Humanists find fulfillment in congregating with other Humanists on a weekly basis or other regular basis for social and intellectual engagement, discussions, book talks, lectures, and similar activities. (A.722, 743, 782, 834, 863, 1075-78). Indeed, AHA forms and sustains local Humanist groups that regularly congregate. (A.733-35). Besides, NCDPS offers Faith Groups study meetings even if they

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<sup>25</sup> AHA is the nation's oldest and largest Humanist organization. (A.713, 734-35). *See also* (A.1542).

<sup>26</sup> (A.924-30, 1022-25, 1028-31, 1038-40, 1042-43, 1046-70, 1210-11, 1267-68, 1345, 1379, 1498-1500).

<sup>27</sup> (A.872, 1102-03, 1106-07, 1641, 1643, 1645, 1654).

have no role in the particular faith, *supra*, and *infra* #11. Factor (4): NCDPS conceded: “there is no reason to conclude that Humanism would impose a threat to the security, control, operation and safety of a correctional institution.” (A.925). Factor (5): Not applicable. Factor (6): Availability of resources was never an issue. (A.924-30). Factor (7): There are no Humanist meetings of any kind. (A.1512).<sup>28</sup> On the contrary, Humanist groups are outright prohibited.<sup>29</sup>

#6 “[W]hile able to find evidence of the practice of Humanism in various methods, were not able to establish a common form of worship.” (A.907-08). First, this justification is based on “religious disagreement, not logistical reasons” and thus cannot satisfy *Larson* or *Lemon*. *Sherman-Bey*, 2011 U.S. Dist. LEXIS 73801, \*30; *Howard v. U.S.*, 864 F. Supp. 1019, 1029-30 (D. Colo. 1994) (denying Satanist space to practice rituals “appears to have been based on the content of plaintiff’s beliefs -- an unacceptable criteria according to the Supreme Court.”). Second, NCDPS recognizes many Faith Groups that do not have a “common form of worship.” NCDPS approves **Wicca** despite its own recognition that there “is no known central leadership, authority nor organizational structure. This makes it difficult to determine comprehensive, uniform beliefs and/or set practices.” (A.170, 1348-49). NCDPS recognizes **Hinduism** even though it has “no uniform dogma,” and “[e]ach person chooses the avenue which is best suited for him or her” (A.125, 1348-49), **Buddhism**, even though there “are many different Buddhist traditions” (A.110, 1389), **Rastafarianism**, even though “[n]o formal organization unites all elements of the [Rastafarian] movement,” *U.S. v. Jefferson*, 175 F. Supp. 2d 1123, 1127 (N.D. Ind. 2001), and **American Indian**, even though there “is no one American Indian Religion.” (A.88). *See also* (A.1386, 1388).

#7 “There exist no single outside authority to verify a governing body.” First, as noted in #6 and 12, NCDPS has approved many Faith Groups that lack also a “single outside authority.” Second, it is undisputed that the AHA is an authoritative governing body on Humanism.( A.703-13, 1355-56, 1385).

#8 “Humanism, the subcommittee found, draws from no one source and thus seeks to be more in tune with a progressive philosophy of life based on an individual belief that leads a person to lead an ethical life of personal fulfillment that aspires to the greater good of humanity.” (A.907-08).

First, this is based on religious criteria rather than secular concerns, *see* #6. (A.1394). Second, NCDPS has approved other Faith Groups that are likewise in tune with a “philosophy of life” including:

- **Hinduism**: NCDPS’s Manual states “Philosophy is the essence of the religion.” (A.125). It adds that

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<sup>28</sup> On the other hand, NCDPS has approved the Assemblies of Yahweh as well as the House of Yahweh as two separate Faith Groups despite their shared teachings. (A.35, 1256).

<sup>29</sup> (A.46, 57-58, 69-70, 1156-57, 1267-68, 1275, 1279, 1286, 1512, 1514, 1542).

while some worship deities, many others only engage in “philosophical speculation.” *Id.*<sup>30</sup>

- **Buddhism:** “These Sila demonstrate that the ethics of Buddhism are much like that of Christianity. Buddhism asserts, however, that human deliverance lies firmly in one’s own hands, the Buddha and the Dharma (teaching) which he proclaimed can only point the way” (A.111).<sup>31</sup>
- **Asatru:** the Manual recognizes: “Asatru is characterized by a conviction that the goal of living is to lead a worthwhile and useful life. Values are based on individual liberty . . .” (A.99).
- **Rastafarianism:** the Manual describes it as a “movement” and notes they are “eclectic in their beliefs as revelations are personal.” (A.163). *See also Reed v. Faulkner*, 653 F. Supp. 965, 971 (N.D. Ind. 1987) (describing Rastafarianism as a “philosophy.”)
- **Native American:** the Manual recognizes they “do not have a written set of guidelines. Instead the tenants [sic] of the faith are basic to humanity . . .” (A.84)

NCDPS has not offered a single secular justification for recognizing these groups, and Buddhism especially, but not Humanism. Buddhism is also non-theistic. *Torcaso*, 367 U.S. at 495 n.11. And “secular humanism is a religion, as much so as Buddhism.” *Crockett*, 568 F. Supp. at 1425.

The Supreme Court has “forbidden distinctions between religious and secular beliefs that hold the same place in adherents’ lives.” *CFI*, 758 F.3d at 873.<sup>32</sup> In *Kaufman I*, a prison refused to authorize an Atheist study group on the ground that Atheism is not religious. 419 F.3d at 681. The Seventh Circuit noted that “[t]he Supreme Court has recognized atheism as equivalent to a ‘religion.’” *Id.* at 682-83 (citations omitted). It added that the Supreme Court “specifically included ‘Secular Humanism’ as an example of a religion.” *Id.* The court thus held that “Atheism is Kaufman’s religion, and the group that he wanted to start was religious in nature even though it expressly rejects a belief in a supreme being.” *Id.* at 684. In *Kaufman II*, a different prison refused to authorize an umbrella Atheist study group, which would include “Humanist” and “Freethinker” subgroups, while recognizing seven other “Umbrella Religions Groups.” 733 F.3d at 695-96. The request was denied on the grounds that it was “not viewed as a religious request” and was “more educational and philosophical in nature.” *Id.* Referring back to *Kaufman I*, the Seventh Circuit held that a prison could not refuse an Atheist group on such grounds. *Id.*

Similarly, in *AHA*, the BOP refused to authorize a Humanist group on the grounds that it viewed “Humanism as a philosophy,” and that “chapel programming was limited to religious programs.” 63 F. Supp. 3d at 1279. The court concluded that because “Secular Humanism is a religion for Establishment Clause purposes,” BOP could not reject a Humanist group on such grounds. *Id.* at 1283.

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<sup>30</sup> *See also United States v. Seeger*, 380 U.S. 163, 174-75 (1965) (recognizing “Hindu” as a “philosophy”); *Malnak v. Yogi*, 440 F. Supp. 1284, 1322 (D.N.J. 1977) (“These [Hindu] concepts do not shed that religiosity merely because they are presented as a philosophy”).

<sup>31</sup> *See Tafraian v. Commissioner*, T.C. Memo 1991-33 (T.C. 1991) (“the philosophy of...Buddhism”).

<sup>32</sup> *See, e.g., Welsh v. United States*, 398 U.S. 333 (1970); *Seeger*, 380 U.S. at 166.

#9 “Teague may be permitted, as long as they are within the publication policy guidelines, to order published literature of his preference at his own expense.” (A.924-26). “This glib remark made by the Government in response to a serious first amendment claim is disturbing,” particularly in light of its “obvious willingness to accommodate many other religions.” *Howard*, 864 F. Supp. at 1028 (BOP required to provide space for Satanist to practice rituals despite BOP’s assertion it was accommodating him by allowing him to “practice with one of the so-called ‘alternative’ religions.”). Teague was already permitted to purchase literature at his own expense. (A.997). In *Kaufman I*, the inmate wished to meet with other atheists and Humanists “to study and discuss their beliefs.” 419 F.3d at 862. The prison refused this request but allowed “him to study atheist literature on his own, consult informally with other atheist inmates, and correspond with members of the atheist groups he identified,” and the inmate “offered nothing to suggest that these alternatives are inadequate.” *Id.* at 683. Even with these accommodations, the prison could not reject an Atheist group while recognizing groups for other faiths. *Id.*

Furthermore, these statements merely “reflect an effort to help it survive judicial scrutiny, rather than to avoid targeting [Humanists] for exclusion.” *Trump*, 857 F.3d at 595. NCDPS’s statement about “accommodating” Teague was obviously “presented only as a litigating position,” *McCreary*, 545 U.S. at 871, as they were made after NCDPS offered a litany of non-secular justifications and treated other Humanist inmates as second-class citizens, *supra*. Tellingly, Brown advised staff at the October 2, 2014 Meeting: “This word accommodation is very pleasing to the prosecutors and the judges’ ears. They like to hear that a good faith effort is being done when lawsuits are presented in the courts.” (A.970-71). Likewise, at the February 4, 2016 meeting: “Chaplain Brown iterates to ‘Cover Yourself’ in documenting of how the chaplains are accommodating the inmates.” (A.996).<sup>33</sup>

Even more troubling is the fact that even *after* claiming it is “accommodating” Teague by allowing him to receive Humanist literature and personal pastoral care from an outside Humanist Chaplain, Randy Best, former leader of the Ethical Humanist Society of the Triangle (EHST), NCDPS actually *refused* to allow Teague to receive mail from Best relating to Humanism and EHST. (A.1116).<sup>34</sup>

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<sup>33</sup> *Cf. G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 719 (4th Cir. 2016) (agency deference will not apply “it appears that the interpretation is no more than a convenient litigating position.”)

<sup>34</sup> On July 7, 2015, Best attempted to send Teague publications including the American Ethical Union Newsletter “Dialogue” and an article penned by AHA’s legal director. The returned envelope to Best had “contents not allowed” checked off for no apparent reason. (A.1116).

Worse, NCDPS's refusal to allow Harwood to receive AHA publications and Humanist materials, including the *Humanist Manifesto*, was also *after* January 2013 when this statement was made, *supra*.

**b. January 10, 2013 Religious Practices Committee Meeting**

At the January 10 2013 Meeting, the Committee determined that Humanism would not be recognized based on the subcommittee report, *supra*, and added several new rationalizations, all of which are clearly post hoc since the ultimate conclusion to reject Humanism was already made:

#10 "In researching this faith you could not find a contact person for this faith." (A.909). This is disingenuous and decidedly false. Teague directly referenced AHA on his DC-572 and provided AHA's contact information, and even a specific person, AHA's legal director, William Burgess. (A.899, 1355, 1542). This justification is even more ludicrous considering that NCDPS had already *corresponded* with AHA's lawyer six months earlier. (A.889-91). On July 9, 2012, AHA's lawyer sent a letter to NCDPS, on AHA letterhead, with detailed information about the AHA, Humanism and its practices, and applicable case law. (A.883-84). *See also* (A.1200). The letter concluded: "please do not hesitate to contact me at [bburgess@americanhumanist.org](mailto:bburgess@americanhumanist.org) or (202) 238-9088 x102." (A.884). Immediately after receiving this, on July 13, Brown's assistant emailed Teague's unit chaplain who responded: "We are not familiar with Secular Humanism or even if it would qualify as a religion." (A.888). On July 16, Brown responded directly to Burgess at AHA: "We appreciate your desire to have 'Humanism' recognized in the Department of Public Safety Prison Section; but please understand that in a system where the right to practice religion is counterbalanced by custody and security concerns, the process will not be done haphazardly or hastily." (A.889-91).

#11 "The practices seem to be more of an individual setting than of a group setting." (A.909). First, as with all the other justifications, this belated assertion is a post-hoc rationalization.<sup>35</sup> Second, NCDPS recognizes many Faith Groups that are individualistic and do not require a group setting:

- **Wicca:** the Manual recognizes that there "are no requirements for corporate worship" (A.167-72)
- **Rastafarianism:** there is no "mandatory requirement" for corporate "worship." (A.161-65). *See also Daley v. Lappin*, 555 F. App'x 161, 165 (3d Cir. 2014) ("Rastafarianism is individualistic.").
- **Asatru:** many "practice the religion alone." (A.99). *See also Krieger v. Brown*, 2010 U.S. Dist. LEXIS 108822, \*21 (E.D. N.C. 2010) ("Asatru religion is decentralized, individualistic"). Yet NCDPS also offers "Asatru Study" and "Asatru Service." (Ex.12).

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<sup>35</sup> *See Trump*, 857 F.3d at 603 ("the Government's asserted national security interest in enforcing Section 2(c) appears to be a post hoc, secondary justification for an executive action rooted in religious animus").

- **Buddhism:** See *Tafralian*, T.C. Memo 1991-33 (“The focus of Buddhism is to develop individual lives” “through self-development”).
- **Aquarian CCU:** “Everyone is a priest or Priestess in their own temple of their body, soul and spirit. Therefore there is no laity, everyone is clergy...” (A.94)

Third, Humanists do congregate in groups analogous to other faiths.<sup>36</sup> See *Kaufman I*, 419 F.3d at 682 (Atheists have an equal right to “meet with other atheist inmates to study and discuss their beliefs” even if Atheism is “individualized.”); *AHA*, 63 F. Supp. 3d at 1279-80, 1283 (Humanists entitled to group meeting regardless of BOP’s claim that “Humanism is an ‘individualized religion’”); *Wright*, 2012 U.S. Dist. LEXIS 84804, \*36-37 (“A weekly meeting is in accordance with the [non-theistic religious] traditions and no less justified than mainstream religions currently accommodated at the prison.”). Fourth, Teague sincerely believes Humanism involves meeting and congregating with other Humanists. (A.1121, 1675). See *Thomas v. Ind. Review Bd.*, 450 U.S. 707, 714 (1981) (“[R]eligious beliefs need not be acceptable logical, consistent, or comprehensible to others to be entitled to protection under the First Amendment.”); *Grayson v. Schuler*, 666 F.3d 450, 455 (7th Cir. 2012) (citation omitted) (“Prison chaplains may not determine which religious observances are permissible because orthodox.”).<sup>37</sup>

#12 “You could not find a centralized head for this group.” (A.909). Once again, not only is this post hoc but it is demonstrably untrue since Teague referred to AHA on the DC-572 and AHA is a centralized head for Humanism. (A.703-13, 897-99, 1355-56, 1385). Second, Brown conceded that there is no requirement that a religion have a centralized head. (A.1346). Joyner agreed it should not be a “deal breaker.” (A.1538). And any such requirement would be unconstitutional on its face under *Larson*.<sup>38</sup> Third, NCDPS has approved many Faith Groups that lack a centralized head.<sup>39</sup>

#13 “The practice appears to be a philosophy of life, a free way of thinking.” See # 8 above.

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<sup>36</sup> (A.834,722,743,863,1075-78); (A.782)(“The “principles of humanism include...meeting in community with others of like mind.”); (A.834)(“Humanists find fulfillment in congregating...”)

<sup>37</sup> See also *Koger*, 523 F.3d at 797, 800 (although Thelema religion had no general dietary requirements, individual Thelemite’s request for special diet was “based on his religious beliefs” and thus protected); *Varsanyi v. Piazza*, 2015 U.S. Dist. LEXIS 46473, at \*5 (M.D. Pa. Apr. 9, 2015) (“a religious practice is protected even if it is not deemed to be mandatory or practiced by every member of the religion.”).

<sup>38</sup> *Larson*, 456 U.S. at 247, n.23 (law unconstitutionally distinguished between “well-established churches” and “churches which are new and lacking in a constituency”); *CFI*, 758 F.3d at 874 (statute “discriminates among religions, preferring those with a particular structure (having clergy)”).

<sup>39</sup> E.g., **Wicca** (A.170) (A.1348-49) (“There is no known central leadership, authority nor organizational structure”); **Hindu** (A.125)(A.1348-49) (“It has no founder, no uniform dogma, no hierarchical priesthood”), **Asatru** (A.99-104, 1351); **Native American** (A.84-91, 1351); **Buddhism**, (A.110, 1350), and **Aquarian CCU** (A.92-97).

#14 “The websites found on this faith showed the practice to be more involvement in advocacy for infrastructure or community groups.” (A.909). First, Brown conceded it is irrelevant that a “religion has an advocacy group related to it.” (A.1364). Second, many Faith Groups have national organizations dedicated to advocacy. (PSUF ¶¶ 285-290). Nor is it clear what “websites” were visited. The Humanist Society, for instance, is a religious 501(c)(3) and not focused on advocacy. (A.709, 718, 744, 781-96). Instead, it endorses and trains Humanist Celebrants, Chaplains, Lay Leaders, and Invocators to lead ceremonial observances. (A.781-96). Likewise, The Humanist Institute (a separate website) is a Center for Humanist Education that offers a graduate-level Humanist Studies Program and oversees the Kochhar Online Humanist Education. (A.709, 717-18, 812-13).

#15 “The committee did some research on the attorney and his legal center, but the information was not detailed that was found.” See #14. This reeks of pretext, as there was no reason for NCDPS to focus myopically on AHA’s lawyer and not AHA itself. AHA’s legal director, in his July 2012 letter, made clear that he was writing on behalf of AHA and Teague, not himself or even the legal center; the letter stated: “*The American Humanist Association (‘AHA’)* is a national nonprofit organization representing humanists, founded in 1941...” (A.883). Brown even responded to him at the “American Humanist Association.” (A.889-891). Teague was not attempting to establish the Humanist Legal Center as his faith, but rather Secular Humanism. (A.872, 874-78, 895-900, 912, 935-43, 959-61). Second, this directly contradicts #10. Third, AHA’s website contains detailed information on Humanism. (A.703-41).

#16 “There are other humanism groups in the NC but none seems to be associated with each other and there is no religious tone of the organization.” (A.909). See #8. Additionally, this contradicts #11, which avers that Humanism does not involve a “group setting.” Second, requiring a religion to have associated local groups for approval fails *Larson* on its face, *supra*. Third, this is not even true. There are at least twelve North Carolina Humanist groups that are *all* associated with one another by virtue of being official chapters and affiliates of AHA. (A.737-39).

#17 “It was found on one website that they do not believe in a deity but drew from a Christian way of thinking on how to treat their fellow man.” See #8 & 13. NCDPS recognizes Buddhism and like Humanism, the “ethics of Buddhism are much like that of Christianity” except they too do not believe in a deity. (A.111). Again, it is firmly established that “religious beliefs protected by the . . . Establishment Clauses need not involve worship of a supreme being.” *Kaufman II*, 733 F.3d at 696. See, e.g., *Kaufman I*,

419 F.3d at 681 (“The problem here was that the prison officials did not treat atheism as a ‘religion’”).

#18 “The inmate is still listed in system as practicing Islamic, but he is now requesting Scientology materials.” (A.909). First, NCDPS was fully aware of the fact Teague was no longer Muslim and was using DC-572 precisely to change his status from Islam to Humanism. (A.880, 894-99). Second, Brown testified that there is no requirement that an inmate have no religious affiliation at the time they submit a DC-572. (A.1310, 1370). Third, there is no evidence of Teague requesting Scientology materials. (A.1368-69). Nor would it mean he is a Scientologist or any less of a Humanist.

#19 “He also attends many of the various worship services offered at his facility.” (A.909). First, even if true, the sincerity of Teague’s Humanist convictions and his desire for Humanist meetings is not in question.<sup>40</sup> Second, NCDPS allows inmates to attend religious meetings of Faith Groups that they do not belong to. (A.1370, 1471-73). Brown admitted that attendance at services for a recognized Faith Group does not bar an inmate from having a new religion recognized. (A.1370).

**c. February 13, 2013, Updated “joint response for Humanism”**

Likely aware of the deficiencies in the January report, according to the minutes: “The committee was asked to add more details to their recommendation and give more specific why the faith is not being recommended. (*Ex: Include research completed, sources of credibility, how you came to your conclusion, etc.*) After their completion it can be submitted to Chaplain Brown.” (A.909, 1345, 1359). On February 14, Brown was sent an updated “joint response” which again concluded “that Humanism fails to meet the standards.” (A.924-26).<sup>41</sup> Although the Committee offered no new sources to support its previous findings, it did proffer several new justifications, which of course, are merely post-hoc rationalizations. “[P]urpose needs to be taken seriously under the Establishment Clause and needs to be understood in light of context; an implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense.” *McCreary*, 545 U.S. at 874.<sup>42</sup>

#20 “there are many disciplines of Humanism...as Literary Humanism, Renaissance Humanism...Secular Humanism and Religious Humanism. Based on the discovery of multifarious humanistic disciplines the sub-committee could not conclude that there exists a preferred outside authority or group of leaders to establish dialogue.”

Besides being a post-hoc rationalization, there is a preferred outside authority: AHA, *see* #10 &

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<sup>40</sup> (A.872, 1102-03, 1106-07, 1121, 1498, 1641-45, 1648, 1650, 1654, 1657, 1659, 1679, 1682, 1692).

<sup>41</sup> NCDPS had no files containing any research conducted on Humanism. (A.1343-45, 1370).

<sup>42</sup> *See also Trump, supra, Kaufman II*, 733 F.3d at 697 (rejecting belated justifications as pretext).

12; (A.1385). Second, NCDPS approved numerous Faith Groups that also have “many disciplines” and no single preferred “outside authority,” such as: **Wicca** (A.170) (“There is no known central leadership, authority nor organizational structure...In addition, secrecy and the clandestine nature of Wicca impede both the identification of religious officials and attempts at authoritative consultation.”); **Buddhism** (A.110) (“There are many different Buddhist traditions existing today and given the developments in the religion, it is very difficult to make a statement that would hold true for all traditions.”); **Christianity** (A.3-4, 35, 115, 120); **Judaism** (A.147), **Aquarian CCU** (A.94); **Native American** (A.88, 1386, 1388); and **Hinduism** (A.125). Third, Teague made it clear he was only seeking recognition of Secular Humanism, not any other variety.<sup>43</sup> Brown agreed that it was “clear from Mr. Teague’s DC-572 form that he was seeking to establish Secular Humanism.” (A.1385).

#21 “There is no ... religious structure that includes a hierarchy of religious leaders.” See #10, 12, & 20. First, there is no NCDPS policy requiring a Faith Group have a “hierarchy of religious leaders” and if it did, it would fail *Larson* on its face. 456 U.S. at 247 n.23. In *Koger*, the Seventh Circuit held that requiring clergy verification prior to an inmate receiving religious services was unconstitutional because it “renders impracticable religious exercise by” religions “without traditional clergy or universal requirements.” 523 F.3d at 799-801.<sup>44</sup> See also *CFI*, 758 F.3d at 874 (same). Second, NCDPS recognizes many Faith Groups that lack a hierarchy. See #11 & 12.<sup>45</sup> Third, Humanists in fact have Celebrants, Chaplains, Lay Leaders, and Invocators. (A.781-96). The Humanist Society’s endorsements are recognized by the Association of Professional Chaplains and the College of Pastoral Supervision & Psychotherapy. (A.786, 791). Humanist Celebrants are generally accorded the same rights and privileges granted by law to traditional theistic religions. (A.781-89, 797-806). Humanist Chaplaincies have been established at a number of educational institutions including Harvard University, Yale University, Stanford University, Columbia University, New York University, Rutgers, and American University. (A.807-08). Even “Chaplain Brown shared that she found out that they are a church and they can obtain ordination on line.” (A.927-30, 1373).

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<sup>43</sup> (A.873, 880, 888, 895-900, 935-45, 949-50, 955, 958-61, 965, 1385).

<sup>44</sup> The inmate was a member of Ordo Templi Orientis, which had as its central tenet only “Do what thou wilt.” *Id.* at 789. The prison required a “letter from a ‘Rabbi-Imam, etc.’” *Id.* at 793-94.

<sup>45</sup> **Aquarian CCU** lacks a “hierarchy of religious leaders,” (A.94), **Hindu** has “no hierarchical priesthood,” (A.125), **Wicca** has no “central leadership, authority nor organizational structure.” (A.170).

#22 “There could be found no mention of any celebrated holy days, dietary needs, corporate worship items, personal religious items, or holy book/scriptures.” (A.909). First, NCDPS officials testified that a faith group need not have any of these elements for approval. (A.1392-93). *See also* (A.65-70).<sup>46</sup> Many Faith Groups have no dietary requirements (i.e., American Indian, Aquarian CCU, Asatru, Christianity, and Wicca). (A.86, 92, 99, 116, 167). Likewise, Wiccans have “no requirements for corporate worship.” (A.167-72). The Native American Faith Group has no “set of guidelines” or scripture (A.84). Hinduism has no dogma or described moral code either (A.125). Second, while Humanists do not call them “holy days,” Humanists do celebrate various observances including: (1) Darwin Day; (2) National Day of Reason; (3) Summer Solstice/World Humanist Day; and (4) Winter Solstice /Human Light. (A.759-80). *See also* (A.1548).<sup>47</sup> These are akin to the observances of recognized Faith Groups such as Rastafarianism.<sup>48</sup> Additionally Humanists are guided by the “Humanist Manifesto,” akin to the five Sila in Buddhism. (A.111, 752-57). NCDPS knew about the Manifesto in July 2014, yet the Committee did not mention it. (A.924-30, 1395-96).

#23 “The shared tenet of Humanism ... draws from no one source, but thus seeks to be more in tune with a progressive philosophy of life based on an individual belief that leads a person to lead a life of personal fulfillment that aspires to the greater good of humanity.” *See* #8, 13, and 17.

#24 “due to its diverse nature and lack of tangible elements to establish a plausible policy for its oversight, the subcommittee does agree that Humanism is not an appropriate fit for the structure of Religious Services with North Carolina’s correctional institutions.”

*See* #20 and 22. Diversity cannot justify NCDPS’s refusal to recognize Secular Humanism when it recognizes other Faith Groups that are far more “diverse,” *viz.*, Christianity. (A.3-4, 35, 115, 120). Likewise, NCDPS recognizes Faith Groups that lack “tangible elements.” For instance, NCDPS approved Wicca even though it recognizes that it is “difficult to determine comprehensive, uniform beliefs and/or set practices. In addition, secrecy and the clandestine nature of Wicca impede both the identification of religious officials and attempts at authoritative consultation.” (A.170). NCDPS’s Manual section on Buddhism states: “There are *many different Buddhist traditions* existing today and given the developments in the religion, *it is very difficult to make a statement that would hold true for all traditions.*” (A.110, 1389) (emphasis added). Regardless, a “prison’s level of familiarity with a specific religion is not

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<sup>46</sup> *See Campos*, 854 F. Supp. at 208 (prison policy cannot favor traditional over non-traditional religions).

<sup>47</sup> Teague mentioned these in his DC-572, as did AHA in July 2012. (A.883-84, 897-99, 1548).

<sup>48</sup> NCDPS’s Manual includes the following Rastafarian holy days: “African Liberation Day,” “His Imperial Majesty’s Birthday,” “Marcus Garvey’s Birthday,” and “Coronation of H.I.M.” (A.164).

a permissible criterion through which to determine the rights of the members of that religion.” *Hummel*, 2008 U.S. Dist. LEXIS 47534, at \*18. “While fear of the strange or unknown is not uncommon, it does not justify treating members of a lesser known religion less favorably.” *Id.* at \*20.<sup>49</sup> Second, the BOP and several state prisons offer Humanist groups without issue. (A.825-29, 833-39, 862-866, 1075, 1081). Never once did NCDPS attempt to reach out to these facilities. (A.1395, 1397-98).<sup>50</sup>

#### **d. March 5, 2013 Religious Practices Committee Meeting**

At the March meeting, the Committee confirmed its decision to reject Humanism, setting forth the reasons in the February report and adding one new rationalization: #25 “(Teague) is currently listed in OPUS as a Buddhist.” (A.927-30, 1373). On February 11, Teague changed his status from Islamic to Buddhist because Humanist was not an option and Buddhist was the closest alternative, as the only nontheistic option next to “none.”<sup>51</sup> Other Humanists have independently felt obliged to select the Buddhist option. (A.1029-30, 1038, 1042). Regardless, Teague was not listed as a Buddhist until after the Committee already decided to reject Humanism. (A.909, 924-26, 1375, 1377). Such “new statements of purpose” do not erase the past. *McCreary*, 545 U.S. at 873; *see also Kaufman*, 733 F.3d at 697 (“the idea that the prison’s action was justified because not enough people were interested in an atheist group came late to the game.”). On March 15, Brown informed Teague that his request for Humanist recognition was denied solely because he changed his OPUS status from Islam to Buddhist. (A.931). *See also* (A.1402, 1410). NCDPS’s policy requires an inmate be “notified of the committee’s recommendation.” (A.48, 68, 180). But Teague was not notified of the Committee’s recommendation to reject Humanism. (A.931).

Significantly, Joyner testified that an inmate’s change in OPUS should not “stop the process” of evaluating the DC-572. (A.1540).<sup>52</sup> Plaintiffs’ counsel clarified, “I’m confused, though, because isn’t that what happened?” Joyner conceded: “It did.” (A.1540). Brown further admitted that no one from NCDPS actually asked Teague if he was still interested in Humanism. (A.1378, 1402). Nor did Teague ever

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<sup>49</sup> *E.g., Equal Opportunity Emp’t Comm’n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377, 396-98 (E.D.N.Y. 2016) (“the court concludes that Onionhead qualifies as a religion”).

<sup>50</sup> Brown was asked, “Do you have any reason to believe that if the federal government is able to establish a plausible policy for overseeing Humanism North Carolina would be unable to do so as well?” She could not think of any such reason. (A.1397).

<sup>51</sup> (A.3-4, 874-878, 931, 944-45, 1101, 1104, 1377-79, 1419, 1640).

<sup>52</sup> He explained, “We, as an agency, allow offenders to change their religion at any time. So if I’ve been a Christian, and this process is going on, we wouldn’t, per se, say, Well, we need to stop reviewing this case because we just noticed that Carlton Joyner just changed his religion again.” (A.1540).

inform anyone that he was withdrawing his DC-572. (A.1378, 1374). Brown testified: “On the contrary he -- clarified that he wasn't [Buddhist].” (A.1378-79). She admitted that “in fact, Mr. Teague ha[d] repeatedly told DPS that he wanted to be identified as a Humanism.”<sup>53</sup> Moreover, since Teague is now listed as “none” (A.869), this rationalization cannot justify NCDPS’s *continued* refusal to recognize Humanism, nor can it justify NCDPS’s refusal to recognize Humanism for the other confirmed Humanist inmates such as the AHA declarants in this case.

#### **4) April 26, 2013 DC-572 (Second Attempt)**

Under the impression his Buddhist status was the only reason for the denial of his first DC-572, on April 26, 2013, Teague submitted a second DC-572 to establish Humanism, making clear he was still a Humanist and had no intention to abandon his initial request. (A.935-43, 1404). This time, he provided the contact for a local AHA group, EHST, and Randy Best, a Humanist Chaplain. (A.935-43).

Once again, NCDPS refused to recognize Humanism. After Teague submitted the DC-572, the Clinical Chaplain for his unit, John Gullett, sent Teague a series of additional questions beyond what was required of the DC-572, asking that he respond to each in “detail.” (A.935-43). Brown conceded that these questions were not part of the DC-572 process and that “John came up with those.” (A.1405, 1480). Joyner also conceded that he did not know “why Mr. Gullett provided these additional 12 questions.” (A.1553-54). He testified that it is not “standard practice to require this level of information.” *Id.*

Despite already providing sufficient information about Humanism in his first and second DC-572 forms — lack of information was never a cited concern with the first DC-572, *supra* — Teague responded to Gullett’s questionnaire with the “founder of secular humanism,” when it was founded, a history of Secular Humanism, holy days (listing Winter Solstice and Darwin Day), corporate requirements,<sup>54</sup> what Humanism teaches,<sup>55</sup> what Secular Humanism is (“It is the celebration of human excellence. The belief in human potential, the worship of the human being”), and how a meeting would be conducted. (A.939-43). On May 8, Gullett sent Brown the DC-572 and questionnaire along with a memorandum recommendation that Humanism not be recognized for the following reasons:

#26 “I believe from reading the Secular Humanism materials the content of the information would need some special attention as to the group intention of offering Spiritual Guidance to Inmates in the NC Department of Public Safety/ Prisons Section.” (A.935).

<sup>53</sup> (A.1379). *See also* (A.873, 880, 888, 895-900, 935-45, 949-50, 955, 958-61, 965, 1385).

<sup>54</sup> “a quite clean place to come together and read, discuss and listen to CDs and DVDs...on humanism”

<sup>55</sup> “... Humanist embrace atheistic and non theistic approaches to ethics, morality and religion.”

This reflects pure religious animus. *See* #6, 8, 13, 17, and 23. *See Howard*, 864 F. Supp. at 1029-30.

#27 “Teague is listed in the Opus system as a Buddhist inmate.” *See* #25.

#28 “I do have concerns for the Humanism’s materials.” *See* #6, 8, 13, 17, 23, and 26.

On May 11, 2013, Teague responded to Brown’s March 2013 letter:

Let me make one thing indelibly clear: my belief in Humanism has not wavered one iota. I was not advised that the validity of my faith in Humanism was contingent upon a denial of my right to seek a subsidiary spiritual affiliation while the matter of the penal systems’ approval of Humanism was in the process of consideration. ... Buddhism is categorically most proximate to this spiritual construct, and is the only approved faith that I am relatively content in embracing in the absence of the ability to practice my faith of choice.

(A.944-45). *See also* (A.1417, 1419). Brown responded to Teague on May 15, in part, as follows:

I am in receipt of a second DC-572 requesting “Humanism” again. ... I called the number listed on the website for “Ethical Humanism Society,” ... [#29] he could not confirm you being a member... To this date we have not been able to authenticate your information.

(A.946-47). At no point did Brown clarify that the Committee rejected Humanism *before* Teague changed his status, nor did she reinstate his first DC-572 upon receiving clarification that he had no intent to abandon it. *See also* (A.1420-21). Moreover, NCDPS was imposing a special condition on Teague by requiring authentication of membership in a Humanist group. (A.1426-31). The DC-572 requires a contact only so NCDPS can verify the existence of the religion. (A.68, 1354). Teague already did that in his first DC-572 by listing the AHA, which NCDPS concedes was sufficient. (A.897-99, 1543). Joyner testified that the only other information that could possibly require any sort of authenticating in the DC-572 are items “II. Basic Beliefs,” and “III. Essential Practices and Materials/Items” (A.896, 1554-55). Teague indisputably provided sufficient responses to these items. (A.897-99, 1385, 1554-55).

In *LeMay v. Dubois*, a prison was similarly “imposing a special requirement upon those who wish to possess items for the practice of the Native American religion -- proof of ancestry.” 1996 U.S. Dist. LEXIS 11645, at \*17-18 (D. Mass. July 29, 1996). The court found this unconstitutional because the prison’s asserted purpose, the need to regulate gang insignia, did not “explain why no verification at all is necessary for certain Christian articles.” *Id.* at \*19. Moreover, any requirement an inmate to prove membership with a local religious group in order for the faith to be approved would itself be unconstitutional (#21, *supra*). *See Frazee v. Illinois Dept. of Empl. Security*, 489 U.S. 829, 834 (1989) (“religion” includes “sincerely held religious belief” apart from “membership in an organized religious

denomination”); *Koger*, 523 F.3d at 799 (clergy verification requirement held unconstitutional).<sup>56</sup>

As to the imposition of the superfluous questionnaire, expecting an inmate who has no access to the Internet and no meaningful ability to research Humanism in the prison library — in part because NCDPS refuses to allow AHA to donate publications — to know intricate details about Humanism in order for NCDPS to approve the faith is preposterous. “How many Christians would struggle to recite the Ten Commandments in order? Or to follow them every day? How many Jews might not know the symbolism behind each component of the Seder? Do these foibles make individuals any less sincere in their beliefs?” *Singh v. Holder*, 720 F.3d 635, 644 (7th Cir. 2013). Together with the failure to inform Teague and other Humanist inmates of the DC-572 process (“nothing would be done”), the questionnaire, and the clergy verification requirement, NCDPS is plainly singling out Humanists for unequal treatment.

Brown’s letter to Teague concluded: #30 “Committee did not recommend ‘Ethical Humanism Society’ as an established faith.” (A.946-47). *See also* (A.1420-21). This appears to be a lie, as there are no meeting minutes reflecting the Committee making any decision on “Ethical Humanism Society.”<sup>57</sup> Nor are there any minutes showing that the Committees even considered Teague’s second DC-572 as it was required to do. *Id.* Additionally, Teague’s DC-572 made clear he was seeking to have Secular Humanism recognized, not “Ethical Humanism Society,” which is merely the specific name of a local AHA group. On May 22, 2013, Teague responded to Brown’s May 15 letter, in part:

First, you stated that you couldn’t “authenticate” my information, despite the fact that you acknowledged accessing the Ethical Humanism Society website and that you “spoke to someone” there. ... Second, you are predicating your denial of my request upon the uncertainty relative to my membership in a particular chapter. This is blatant, unmitigated discrimination in view of the fact that I have been a Muslim “in the computer” (Chaplaincy files) since 1996 and never did I have to prove I was a member of a particular Mosque. When I had to resort to Buddhism as an ersatz spiritual affiliation, pending approve of my request for affiliation with Humanism, I did not have to prove I was a member of a particular Temple. Why are the standards different and more restrictive for Humanism? ... If the pivotal question is whether you can speak to a representative of the Ethical Humanism Society, please advise me and I can facilitate accomplishment of this contact. However, if the pivotal question is whether or not I am a member, please document for me that this is a requirement and why it was not an issue with other religious affiliations.

(A.949-50). Brown never responded to Teague nor attempted to answer his questions. (A.1431).

In September, Brown eventually spoke with Best who confirmed Teague was in fact a member of

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<sup>56</sup> *See also Campos*, 854 F. Supp. at 199, 208 (enjoining policy under which “traditionally accepted religious medals” could be received “without certification” but Santeria beads require certification).

<sup>57</sup> (A.181, 183, 903-06, 909, 927-30, 970-71, 989, 996, 1260, 1444).

EHST. (A.1072-74, 1432). On October 1, 2013, Teague sent Brown another letter stating in part: “For over a year I have been trying to get my religion Humanism recognized by your office. You turned me down because you couldn’t prove I was a Humanist. Now, you have spoken with my religious leader yet I still can not practice my religion like every established religion in prison.” (A.958, 1435).

The Committee never evaluated the second DC-572 as required by policy. (A.1421, 1425-26, 1433, 1442). Brown conceded that the factor cited for denying Teague’s first DC-572 — his OPUS status — was not present for the second DC-572. (A.1427-28). Brown testified that the basis for the second denial was that she could not confirm Teague’s membership. (A.1428-29). But she admitted that an inmate need not be a confirmed member for faith group recognition. (A.1426, 1431). This assertion also fails to explain why, even after verifying his membership, NCDPS still refused to recognize Humanism.

### **5) October 15, 2013 DC-572 (Third Attempt)**

Having received no response to his second DC-572, Teague submitted a third DC-572 seeking recognition of Secular Humanism. (A.959-61, 1436-37, 1606). On October 31, 2013, Gullett sent the completed DC-572 to Brown with a memo containing the same content-based avowals in his May memo:

#31 “from observing the content of the information researched concerning the Humanist Theology ... it would need some special attention as to the Humanist group intention”

#32 “I do not believe that the request would have the NCDPS/Prison Section Religious standards outlined responsibly in their materials.” (A.962) See #6, 8, 13, 17, 23, 26, & 28.<sup>58</sup>

On November 2, Brown responded: #33 “we are accommodating him by his pastoral visits. No further action is needed on your behalf.” (A.963). See #9. Again, Teague was never seeking “pastoral visits.” (1530). *E.g.* (A.895-900, 936-41, 959-61, 1023). Brown failed to send Teague’s third DC-572 to the Committee, and offered no explanation for eschewing NCDPS policy. (A.1448). On November 23, Teague submitted an Information Request inquiring “about the status of the DC-572 I recently submitted.” (A.964). He also wrote a letter to Brown seeking “the status of my current DC-572,” and stating:

you denied my request for official recognition of Humanism because you couldn’t say for sure that I was a member, nor could you get in touch with my spiritual leader. Since then, you have been in touch with my spiritual leader and have approved him to be on my visitation list as such.

(A.965). On December 4, 2013, Brown notified Teague: “Your correspondence has been forwarded to ... Chaplain Gullett and Mr. Saunders.” (A.966). On November 26, 2014, AHA sent a letter to NCDPS, warning it that it would be filing a federal lawsuit unless NCDPS approved Humanism and authorized a

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<sup>58</sup> Joyner testified that that NCDPS has no such “standards.” (A.1558-59).

Humanist study group. (A.973-74). Among numerous authorities, the letter apprised NCDPS of *Kaufman I* and *II* and the BOP Humanist case. (A.975-86). On December 4, 2014, the Committee met and still refused to approve Humanism. Instead, it insisted it was accommodating Teague by allowing him to purchase publications and speak with Best. (A.989). Brown acknowledged that Teague's third DC-572, just like the prior two, was not about pastoral care. (A.1451-52). Joyner agreed: "he wants the ability to meet as a group of humanists." (A.1530). Brown admitted that the "committee didn't actually consider that request to have Humanism recognized as a faith group at this meeting." (A.1452).

In sum, not only has NCDPS failed to offer any legitimate reason for its disparate treatment of Humanists, but its multitude of unsubstantiated post-hoc rationalizations reveal egregious anti-Humanist bias. This lack of secular purpose "is dispositive." *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985).

## **2. NCDPS's disparate treatment of Humanists fails *Lemon's* effect prong.**

NCDPS's disparate treatment of Humanists also separately fails *Lemon's* effect prong. The "effect prong asks whether, irrespective of government's actual purpose," *id.* at 56 n.42, the "symbolic union of church and state ... is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices." *School Dist. v. Ball*, 473 U.S. 373, 390 (1985). In *Kaufman I*, the Seventh Circuit agreed that by refusing to recognize an Atheist group while allowing gatherings of Christian, Muslim, Buddhist, and Wiccan inmates, the prison was "promoting the favored ones" over Atheism. 419 F.3d at 684. Similarly, in *Rouser*, prison staff made announcements "to the general population about Protestant, Catholic and Muslim services, but rarely announce[d] Wiccan services." 630 F. Supp. 2d at 1196. The court held that the policy thus had "the primary effect of advancing or inhibiting religion." *Id.* at 1199.

That there are more Humanists than inmates in some recognized Faith Groups makes NCDPS's unconstitutional preference even more pronounced. In *Hartmann v. Cal. Dep't of Corr. & Rehab.*, Wiccan inmates challenged prison officials' failure to hire a Wiccan chaplain when it hired chaplains for five other religions. 707 F.3d 1114, 1125-26 (9th Cir. 2013). The Ninth Circuit reversed the denial of their Establishment Clause claim because they demonstrated "there are more inmates practicing the Wiccan religion at CCWF than there are practicing Jewish, Muslim, and Catholic inmates." *Id.*

## **III. NCDPS's disparate treatment of Humanists violates the Equal Protection Clause.**

The "Equal Protection Clause likewise prohibits the Government from impermissibly

discriminating among persons based on religion.” *Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017) (citation omitted). See *Cooper v. Pate*, 378 U.S. 546 (1964) (inmate stated claim when “alleging that solely because of his religious beliefs he was denied . . . privileges enjoyed by other prisoners”); *Reed v. Faulkner*, 842 F.2d 960, 964 (7th Cir. 1988) (“defendants are treating the Rastafarians differently from American Indians (and doing so deliberately) for no reason at all; and if so this is a denial of equal protection of the laws in an elementary sense.”). Unlike a Free Exercise or RLUIPA claim, an inmate need not show that the practice is “central to his own religious observance” or that a denial “somehow infringed upon his religious practices.” *Abdulhaseeb v. Saffle*, 65 F. App'x 667, 673-74 (10th Cir. 2003). All he must show “is that he was personally denied equal treatment on the basis of his religion.” *Id.*

NCDPS’s refusal to grant Humanist meetings while granting group meetings to many other faiths is religious discrimination. The “denial of [a] privilege to adherents of one faith while granting it to others is discrimination on the basis of religion.” *Native American Council of Tribes v. Solem*, 691 F.2d 382, 384-85 (8th Cir. 1982) (emphasis added).<sup>59</sup> An inmate “must first demonstrate that [1] he has been treated differently from others with whom he is similarly situated and [2] that the unequal treatment was the result of intentional or purposeful discrimination. If he makes this showing, the court proceeds to [3] determine whether the disparity in treatment can be justified under the requisite level of scrutiny.” *Veney v. Wyche*, 293 F.3d 726, 730-31 (4th Cir. 2002) (quotation omitted).<sup>60</sup>

#### **A. Humanists are similarly situated to recognized Faith Groups.**

In *AHA*, as in *Kaufman I* and *II*, the court found that Humanists are similarly situated to other faiths including Christians and Buddhists for the purpose of group meetings. 63 F. Supp. 3d at 1284. Similarly, in *CFI*, the Seventh Circuit held that Humanists were similarly situated to other faiths including Wiccans, Christians, and Muslims, for purposes of Indiana’s marriage-solemnization statute. 758 F.3d at 874. The statute included a list of religious officials but omitted “equivalent officials of secular groups such as humanist societies.” *Id.* at 871. The court held that the statute violated both the Establishment and

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<sup>59</sup> See *Cruz*, 405 U.S. at 322; *Cooper*, 382 F.2d at 522; *Brown v. Johnson*, 743 F.2d 408, 413 (6th Cir. 1984) (“by allowing prisoners of other faiths and their respective churches to hold group worship services, while denying plaintiffs the same privilege” undoubtedly “is a distinction among religious faiths.”); *Fulwood*, 206 F. Supp. at 374; *Dingle v. Zon*, 189 Fed. Appx. 8, 10-11 (2d Cir. 2006); *Taylor v. Johnson*, 257 F.3d 470, 472-74 (5th Cir. 2001); *DeHart v. Horn*, 227 F.3d 47, 61 (3d Cir. 2000); *Almonte v. Rivas*, 2013 U.S. Dist. LEXIS 170057, \*11 (S.D. Ill. 2013); *Halloum v. Ryan*, 2011 U.S. Dist. LEXIS 114713, \*6-7 (D. Ariz. 2011); *Hatzfeld v. Goord*, 2007 U.S. Dist. LEXIS 98782, \*13-14 (N.D.N.Y. 2007).

<sup>60</sup> But see *Pyke v. Cuomo*, 258 F.3d 107, 110 (2d Cir. 2001).

Equal Protection Clauses by preferring some religions over Humanism. *Id.* at 874-75.

**B. NCDPS intentionally discriminated against Teague on the basis of his beliefs.**

“Intentional discrimination means that a defendant acted at least in part because of a plaintiff’s protected status.” *Maynard v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994). The intentional element is satisfied upon an inmate showing that his religious group is treated differently from another group. *See Cruz*, 405 U.S. at 321 (“If [a Buddhist prisoner] 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”); *Hatzfeld*, 2007 U.S. Dist. LEXIS 98782, \*13-14 (where Hepatitis C treatment could only be obtained through participation in theistic program, prison discriminated against inmate “because he was an atheist.”).<sup>61</sup> In *AHA*, the court found the intentional element met because

Holden’s religious beliefs were the reason why defendants refused to grant his requests. Defendants’ actions need not be malicious, only motivated by the fact that plaintiffs’ hold a different set of religious beliefs. Allowing followers of other faiths to join religious group meetings while denying Holden the same privilege is discrimination on the basis of religion.

63 F. Supp. 3d at 1284. Plaintiffs here not only showed that Humanists are being treated differently from other faith groups but also pointed to specific evidence of overt anti-Humanist prejudice, *supra*.<sup>62</sup>

**C. NCDPS’s disparate treatment of Humanists fails strict scrutiny and the *Turner* test.**

Strict scrutiny is warranted because religion is a suspect classification.<sup>63</sup> Although some courts previously applied the *Turner* test to prisoners’ claims regardless of suspect classification, the Supreme Court in *Johnson v. California* made clear that heightened scrutiny must apply to prisoner claims that implicate a suspect classification. 543 U.S. 499, 510-11 (2005). *See Wilkins v. Gaddy*, 734 F.3d 344, 348-49 (4th Cir. 2013) (recognizing that *Johnson* requires heightened scrutiny to prisoner claims involving a

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<sup>61</sup> *See also Patel v. Wooten*, 15 Fed. Appx. 647, 651 (10th Cir. 2001) (providing meat substitute for Jews and Muslims but not Hindus permitted inference of intent); *Davilla v. Watts*, 2016 U.S. Dist. LEXIS 56721, \*19-20 (S.D. Ga. June 17, 2016) (prison “intentionally discriminated” where it allowed “other religions...to receive religious materials”); *Rouser*, 630 F. Supp. 2d at 1199-1200 (“differences in treatment of Wiccans and inmates of other faiths suffices to permit a jury to infer intentional animus”).

<sup>62</sup> *E.g., Debarr v. Clark*, 2017 WL 2218311 (D. Nev. 2017) (inmate was intentionally treated “differently because of his Pagan faith” where he was “essentially told that nothing could be done.”).

<sup>63</sup> *See U.S. v. Batchelder*, 442 U.S. 114, 125 n.9 (1979); *Hassan v. City of N.Y.*, 804 F.3d 277, 300 (3d Cir. 2015); *Ass’n of Christian Schs. Int’l v. Stearns*, 362 Fed. Appx. 640, 646 (9th Cir. 2010); *Abdulhaseeb*, 600 F.3d at 1322 n.10; *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 816 (8th Cir. 2008).

“protected characteristic”).<sup>64</sup> Discrimination against Humanists necessitates particularly exacting review. “Some classifications are more likely than others to reflect deep-seated prejudice.” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982). Surveys, such as a study published in *American Sociological Review* in 2006, ranked atheists as the most disliked and distrusted minority group in the country.<sup>65</sup> Accordingly, strict scrutiny applies and NCDPS fails this test by a landslide, *supra*.<sup>66</sup>

NCDPS’s disparate treatment of Humanists cannot even satisfy *Turner* because it is not “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987). Even before *Johnson* abrogated *Turner* as to suspect classifications, the Fourth Circuit recognized: “legitimate penological interests which will be served by [suspect]-based classifications will surely be few.” *Morrison*, 239 F.3d at 655-56. In *Turner*, the Court enunciated four factors: (1) whether a valid rational connection exists between the prison’s actions and a legitimate penological interest; (2) what alternative means of exercising the right inmates have; (3) whether accommodating the right impacts prison officials, other inmates, and prison resources generally; and (4) the absence of ready alternatives that fully accommodate the prisoner’s rights at de minimis cost to valid penological interests. 482 U.S. at 89-90. The first “is the sine qua non of the *Turner* inquiry.” *Walker v. Gomez*, 370 F.3d 969, 975 (9th Cir. 2004). NCDPS must prove the “distinctions made between religious groups” are “reasonably related to legitimate penological interests.” *Benjamin v. Coughlin*, 905 F.2d 571, 575 (2d Cir. 1990). Once again, NCDPS offered no legitimate penological interest for its disparate treatment of Humanists, *supra*. Although the Court need not consider the remaining factors, they too weigh strongly in Plaintiffs’ favor. In fact, the second and fourth factors are inapplicable to Equal Protection claims.<sup>67</sup> To be sure, Humanists have no alternative means of meeting; even attempting to meet could result in an STG/SRG citation. (A.1279, 1022-24, 1087). Lastly, approving Humanism will have no adverse impact on NCDPS. (A.925).

#### **IV. Plaintiffs are entitled to the relief they seek.**

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<sup>64</sup> See also *Pendleton v. W. Va. Div. of Corr.*, 2016 U.S. Dist. LEXIS 46511, at \*17 (S.D. W. Va. Feb. 24, 2016) (recognizing that *Johnson* overruled *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001), which held that *Turner* applies even as to suspect classifications); *Saunders v. Mitchell*, 2013 U.S. Dist. LEXIS 138307, at \*9 (D.S.C. July 22, 2013) (same).

<sup>65</sup> Penny Edgell, *Atheists As “Other”*: *Moral Boundaries and Cultural Membership in American Society*, *AM. SOC. REV.* Vol 71, 211 (2006).

<sup>66</sup> E.g., *Remmers*, 361 F. Supp. at 542 (no “compelling state concern” furthered “by denying to Church of the New Song members the same rights of assembly and worship enjoyed by Protestant and Catholic”).

<sup>67</sup> See *Kole v. Lappin*, 551 F. Supp. 2d 149, 158 n.6 (D. Conn. 2008) (“there is no alternative means by which Kole could exercise her right to Equal Protection.”).

Plaintiffs are entitled to permanent injunctive relief because the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). This includes “Establishment Clause violations.” *Trump*, 857 F.3d at 602. Second, “monetary damages are inadequate to compensate for the loss of First Amendment freedoms.” *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011). Third, the balance of hardships decidedly weighs in Plaintiffs’ favor, as NCDPS has not identified any harm that will result from recognizing Humanism. *See Trump*, 857 F.3d at 604 (not even the government’s asserted national security interest could outweigh “the competing harm to Plaintiffs of the likely Establishment Clause violation.”). The final element is met because “upholding the Constitution undeniably promotes the public interest.” *Id.* Additionally, the Supreme Court “obligates a court to award nominal damages when a plaintiff establishes the violation of [a constitutional right].” *Farrar v. Hobby*, 506 U.S. 103, 112 (1992). Finally, declaratory relief is proper under 28 U.S.C. § 2201.

#### **V. Conclusion**

When “the government chooses sides on religious issues, the ‘inevitable result’ is ‘hatred, disrespect and even contempt’ towards those who fall on the wrong side of the line.” *Trump*, 857 F.3d at 604 (citation omitted). Government involvement with religion “tends to destroy government and to degrade religion,” and “encourage persecution of religious minorities and nonbelievers.” *Id.* The undisputed facts lead to the inescapable conclusion that NCDPS’s disparate treatment of Humanists violates the Establishment and Equal Protection Clauses. Plaintiffs thus respectfully request that the Court grant their Motion for Summary Judgment.

Respectfully submitted, this 28th day of July 2017.

*/s/ Monica L. Miller*

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed the attached **Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment** with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participant(s):

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This 28th day of July 2017.

*/s/ J. Christopher Jackson*

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