APPENDIX A
IN THE SUPREME COURT,
STATE OF WYOMING

[filed July 9, 2019]

JONMICHAEL GUY, Appellant (Plaintiff), v. THE WYOMING DEPARTMENT OF CORRECTIONS, by and through ROBERT O. LAMPERT, individually and in his official capacity as Director of the Wyoming Department of Corrections; JULIE TENNANT-CAINE, individually and in her official capacity as a Deputy Administrator of the Wyoming Department of Corrections; and THE STATE OF WYOMING, Appellees (Defendants).	S-18-0231, S-18-0263
JONMICHAEL GUY, Appellant (Plaintiff), v. ROBERT O. LAMPERT, individually and in his official capacity as Director of the Wyoming Department of Corrections; JULIE TENNANT-CAINE, individually and in her official capacity as a Deputy Administrator of the Wyoming Department of Corrections; and	

WYOMING DEPARTMENT OF CORRECTIONS, by and through ROBERT O. LAMPERT, and THE STATE OF WYOMING,

Appellees
(Defendants).

Appeal from the District Court
of Laramie County
The Honorable Thomas T.C. Campbell, Judge

Representing Appellant:
Steve C.M. Aron and Alexander J. Mencer, Aron & Hennig, LLP, Laramie, Wyoming. Argument by Mr. Aron.

Representing Appellees:
Bridget L. Hill, Attorney General; Michael J. McGrady, Deputy Attorney General; Daniel E. White, Senior Assistant Attorney General. Argument by Mr. White.

Before DAVIS, C.J., and FOX, KAUTZ, BOOMGAARDEN, and GRAY, JJ.

FOX, Justice.

[¶1] JonMichael Guy, an inmate in the custody of the Wyoming Department of Corrections (WDOC), sued the WDOC under 42 U.S.C. § 1983, seeking to require that it recognize Humanism as a religion. He sought declaratory and injunctive relief, and also sought monetary damages from the WDOC's Director, Robert O. Lampert, and its Deputy Administrator, Julie Tennant-Caine, in their individual capacities. After he filed his complaint, the WDOC officially recognized Humanism as a religion. As a result, the district court dismissed Mr. Guy's com-

plaint. In addition, the district court denied Mr. Guy's motion for attorney fees under 42 U.S.C. § 1988 because Mr. Guy was not a "prevailing party." We affirm.

ISSUES

[¶2] We rephrase Mr. Guy's issues:

1. Does the voluntary cessation exception to the mootness doctrine apply in Wyoming?
2. Does the district court's conclusion that Mr. Guy failed to exhaust his administrative remedies require reversal?
3. Were Mr. Lampert and Ms. Tennant-Caine entitled to qualified immunity?
4. Did Mr. Guy preserve his argument that the Defendants' certificate of service, attached to their motion to dismiss, was invalid?
5. Was Mr. Guy a "prevailing party" under 42 U.S.C. § 1988?

FACTS

[¶3] Mr. Guy is a WDOC inmate housed at the Wyoming Medium Correctional Institution (WMCI) in Torrington. On December 8, 2017, Mr. Guy and the American Humanist Association (AHA) filed a complaint under 42 U.S.C. § 1983 against the Wyoming Department of Corrections.[1] He also sued

[1] After the WDOC recognized Humanism as a religion, AHA chose not to appeal. As Mr. Guy recognizes in his brief in S-18-0263, the "Director's Executive Order . . . granted the majority of the injunctive and declaratory relief sought by Guy

the Director of the WDOC, Robert O. Lampert, and his Deputy Administrator, Julie Tennant-Caine, in their official and individual capacities. Mr. Guy alleged that the WDOC refused to allow practicing Humanists to "form a Humanist study group to meet on the same terms that Defendants authorize inmates of theistic religious traditions, and other religions, to meet; and . . . to allow inmates to identify as Humanists for assignment purposes."[2] He claimed that the WDOC's refusal violated the First and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2, 6, 7, 18, and 19, of the Wyoming Constitution. He sought "injunctive and declaratory relief and [monetary] damages[.]"

[¶4] Mr. Guy raised two claims that are relevant to this appeal.[3] In the first claim, he sought monetary damages against Mr. Lampert and Ms. Tennant-Caine in their individual capacities. He sought $120,000 for violation of his civil rights, unspecified additional damages for "emotional distress, shame,

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only in Count II, and substantially all the relief sought by Plaintiff AHA." Thus, we refer only to Mr. Guy as the plaintiff and the appellant in this case.

[2] In his complaint, Mr. Guy alleges: "Humanism adheres to a broad world view that includes a non- theistic view on the question of deities; an affirmative naturalistic outlook; an acceptance of reason, rational analysis, logic, and empiricism as the primary means of attaining truth; an affirmative recognition of ethical duties; and a strong commitment to human rights."

[3] Mr. Guy also raised a third claim, in which he attempted to bring a "direct action" against the State of Wyoming and the WDOC "for violation of the Wyoming Constitution." However, he has abandoned that claim on appeal.

humiliation, loss of enjoyment of life and mental anguish," and "exemplary and punitive damages."

[¶5] In his second claim, Mr. Guy sought declaratory and injunctive relief. He requested an injunction to preclude the Defendants from:

- Depriving him of his freedom of religion;
- Preventing him from associating with other Humanist practicing inmates; and
- Favoring some religions over others.

In addition, he asked the district court to order that the Defendants recognize Humanism as a religion, permit a Humanist study group, and prohibit discrimination against all Humanist inmates. Finally, Mr. Guy sought a declaratory judgment affirming his right to practice Humanism, declaring that exclusion of Humanism violates the constitution, and declaring that the Defendants violated Mr. Guy's constitutional rights.

[¶6] On December 29, 2017, after Mr. Guy had filed his complaint, the WDOC executed a "Director's Executive Order" that formally recognized Humanism as a religion and added Humanism to the WDOC's "Handbook of Religious Beliefs and Practices." It also recognized three Humanist holidays. On January 23, 2018, the Defendants filed a motion to dismiss the complaint. They argued the executive order mooted Mr. Guy's claims seeking recognition of Humanism. They also argued his "allusions" to specific Humanist practices, such as fire ceremonies, a Humanist diet, and a Humanist study group, in addition to being improperly pleaded, were not ripe for review because Mr. Guy

did not request that the WDOC permit these practices before filing suit. Finally, Mr. Lampert and Ms. Tennant-Caine argued they were entitled to qualified immunity as to Mr. Guy's claim for monetary damages.

[¶7] The district court granted the Defendants' motion. The court relied on the WDOC's executive order that added Humanism to the list of recognized religions to find Mr. Guy's claims were moot. It concluded the mootness doctrine extinguished Mr. Guy's request for declaratory and injunctive relief and his demand for monetary damages against Mr. Lampert and Ms. Tennant-Caine. The court rejected Mr. Guy's argument that the voluntary cessation exception to the mootness doctrine applied because that exception had not been adopted in Wyoming. It did not address whether Defendants were entitled to qualified immunity on Mr. Guy's claim for monetary damages because of its conclusion that this claim was also moot.

[¶8] After the court dismissed his complaint, Mr. Guy sought to recover his attorney's fees under 42 U.S.C. § 1988(b). That statute permits the "prevailing party" in a case under § 1983 to recover "a reasonable attorney's fee." The district court denied the motion because Mr. Guy was not a "prevailing party." Mr. Guy appealed both of the court's orders. We consolidated his appeals for argument and decision.

DISCUSSION

[¶9] The majority of Mr. Guy's complaint has been remedied by the WDOC's executive order, which recognizes Humanism as a religion. The question,

however, is whether the district court correctly dismissed all of Mr. Guy's claims for relief.

STANDARD OF REVIEW

[¶10] We evaluate a district court's decision on a motion to dismiss de novo. *Wyo. Guardianship Corp. v. Wyo. State Hosp., et al.*, 2018 WY 114, ¶ 16, 428 P.3d 424, 432 (Wyo. 2018). We also apply de novo review to determine whether an issue is moot, *In Interest of DJS-Y*, 2017 WY 54, ¶ 6, 394 P.3d 467, 469 (Wyo. 2017), and to determine whether a state official is entitled to qualified immunity. *Abell v. Dewey*, 870 P.2d 363, 367 (Wyo. 1994).

I. The voluntary cessation exception to the mootness doctrine has not been adopted in Wyoming

[¶11] The crux of Mr. Guy's complaint was his request for an injunction that required the WDOC to recognize Humanism as a religion. Because the WDOC did just that when it issued its executive order, the district court concluded that Mr. Guy's complaint was moot. It then concluded that the voluntary cessation exception to the mootness doctrine, which may apply in federal court, did not apply because this Court has never adopted that exception.

[¶12] On appeal, Mr. Guy contends that the district court erred when it concluded that the voluntary cessation exception to mootness does not apply in Wyoming state courts. He does not, however, address the district court's conclusion that the exception has never been adopted in Wyoming. Instead, he simply asserts that the "State and Federal Standards for Mootness are Consistent." He then goes on to cite to numerous federal opinions that

have applied the voluntary cessation exception in federal court. "[T]he central question in a mootness case is 'whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.'" *Williams v. Matheny*, 2017 WY 85, ¶ 15, 398 P.3d 521, 527 (Wyo. 2017) (quoting *In re Guardianship of MEO*, 2006 WY 87, ¶ 27, 138 P.3d 1145, 1153-54 (Wyo. 2006)).[4] "However, there are three exceptions to the operation of that doctrine which relate to issues of great public importance, issues with respect to which it is necessary to provide guidance to state agencies and lower courts, and controversies capable of repetition while evading review." *City of Casper v. Simonson*, 2017 WY 86, ¶ 16 n.7, 400 P.3d 352, 355 n.7 (Wyo. 2017) (citations omitted).

[¶13] Mr. Guy did not rely on any of these exceptions in the district court. Instead, in his response to the Defendants' motion to dismiss, he made a passing reference to the voluntary cessation exception which applies in federal courts. (citing *Am. Humanist Ass'n v. United States, et al.*, 63 F. Supp. 3d 1274 (D. Or. 2014)). In federal court: "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289, 102 S.Ct. 1070, 1074, 71 L.Ed.2d 152

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[4] We have referred to the mootness doctrine as an aspect of standing. *See Williams*, 2017 WY 85, ¶ 15, 398 P.3d at 527 ("This doctrine represents the time element of standing by requiring that the interests of the parties which were originally sufficient to confer standing persist throughout the duration of the suit.") (citations omitted).

(1982). However, mootness doctrine in federal court arises from constitutional Article III limitations on jurisdiction. *See, e.g.*, *Powell v. McCormack*, 395 U.S. 486, 496 n.7, 89 S.Ct. 1944, 1950 n.7, 23 L.Ed.2d 491 (1969). Article III limitations on federal courts, and any applicable exceptions to those limitations, do not apply in state court: "We have recognized often that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a ***case or controversy or other federal rules of justiciability*** even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617, 109 S.Ct. 2037, 2045, 104 L.Ed.2d 696 (1989) (citations omitted) (emphasis added); *Allred v. Bebout*, 2018 WY 8, ¶ 35, 409 P.3d 260, 269 (Wyo. 2018) (recognizing state standing analysis "should not be governed by federal law").

[¶14] Turning to Wyoming mootness doctrine, we are unable to find any case where we have cited, let alone adopted, the voluntary cessation exception. Moreover, Mr. Guy presents no argument why we should adopt the exception now. *See Lemus v. Martinez*, 2019 WY 52, ¶ 43, 441 P.3d 831, 841 (Wyo. 2019) (refusing to consider appellate argument not supported by cogent argument) (citation omitted).[5]

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[5] The closest exception we have to voluntary cessation is when the issue is capable of repetition yet evades review. *See Operation Save America v. City of Jackson*, 2012 WY 51, ¶ 23, 275 P.3d 438, 449 (Wyo. 2012). Under this exception, "two requirements must be met: First, the duration of the challenged action must be too short for completion of litigation prior to its cessation or expiration. Second, there must be a reasona-

We affirm the district court's decision that Mr. Guy's claim for injunctive relief is moot.

II. The district court's conclusion that Mr. Guy failed to exhaust his administrative remedies does not require reversal

[¶15] We now turn to Mr. Guy's argument that the district court improperly dismissed his complaint "for failure to exhaust administrative remedies." It is true that, in its order, the district court faulted Mr. Guy for failing to exhaust his administrative remedies under the Prison Litigation Reform Act of 1995 (the PLRA). *See Chapman v. Wyo. Dept. of Corr.*, 2016 WY 5, ¶ 16, 366 P.3d 499, 508 (Wyo. 2016) ("The Prison Litigation Reform Act of 1995 requires inmates to exhaust administrative remedies available to them before they can file a civil rights action pursuant to 42 U.S.C. § 1983.") (internal footnote omitted). Mr. Guy spends considerable space in his brief arguing that a court cannot dismiss a § 1983 complaint under the PLRA for failure to exhaust because that is an affirmative defense and not a basis to dismiss at the pleading stage. (citing *Jones v. Bock*, 549 U.S. 199, 212, 127 S.Ct. 910, 919, 166 L.Ed.2d 798 (2007)). We read the district court's dismissal for failure to exhaust as an alternative basis to its mootness decision. ("Further, the Court finds [Mr. Guy] did not exhaust ad-

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ble expectation that the same complaining party will be subjected to the same action again." *Circuit Court of Eighth Judicial Dist. v. Lee Newspapers*, 2014 WY 101, ¶ 15, 332 P.3d 523, 528 (Wyo. 2014) (citations and quotation marks omitted). Mr. Guy did not argue below and has not argued on appeal that this exception applied. *See, e.g.*, *Meiners v. Meiners*, 2019 WY 39, ¶ 25 n.4, 438 P.3d 1260, 1270 n.4 (Wyo. 2019).

ministrative remedies, precluding [Mr. Guy's] civil rights action."). Even if the court improperly concluded that Mr. Guy failed to exhaust, that does not affect its mootness decision, and would, therefore, not require reversal. *See* W.R.A.P. 9.04 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded by the reviewing court.").

III. Mr. Lampert and Ms. Tennant-Caine were entitled to qualified immunity

[¶16] Mr. Guy sought $120,000 from Mr. Lampert and Ms. Tennant-Caine in their individual capacities; as well as unspecified damages for "emotional distress, shame, humiliation, loss of enjoyment of life, and mental anguish," and "exemplary and punitive damages." In their motion to dismiss, Mr. Lampert and Ms. Tennant-Caine argued that they were entitled to qualified immunity. The district court concluded that, because it was dismissing Mr. Guy's complaint as moot, it did not need to reach the question of qualified immunity.

[¶17] On appeal, the Defendants concede that the district court's mootness decision did not dispose of Mr. Guy's claim for monetary relief. Nevertheless, they argue that we can affirm the district court's decision to dismiss Mr. Guy's damages claim because this Court may "affirm a district court's action on appeal if it is sustainable on any legal ground appearing in the record even if the legal ground or theory articulated by the district court is incorrect."

[¶18] Before we can address the merits of the issue, we must first determine if it is appropriate in

this case for us to decide an issue that the district court did not directly address. Generally, we will not consider an argument for the first time on appeal. *See, e.g.*, *Meiners*, 2019 WY 39, ¶ 25 n.4, 438 P.3d at 1270 n.4. However, Mr. Lampert and Ms. Tennant-Caine raised the issue of qualified immunity, and Mr. Guy addressed qualified immunity in his response. This is not a case where there is no reviewable order in the record or where the district court deferred its decision on an issue. *See generally Mantle v. North Star Energy & Construction LLC*, 2019 WY 54, ¶¶ 20-24, 441 P.3d 841, 847-48 (Wyo. 2019). Rather, the district court recognized the Defendants' qualified immunity argument, but concluded, albeit erroneously, that its mootness decision disposed of the claim for monetary damages. We have repeatedly held that we may affirm a district court's ultimate decision on any basis appearing in the record, even if that basis was not relied upon by the district court in its decision. *See, e.g.*, *Peterson v. Johnson*, 28 P.2d 487, 490 (Wyo. 1934) ("Counsel argue further that the preliminary injunction should not have been issued. It is evident, however, in so far as that injunction is concerned, that we could not reverse the case, if error was committed in issuing it, ***if the ultimate decision rendered herein is correct, for the error would then be without prejudice***.") (citations omitted) (emphasis added); *Heilig v. Wyo. Game & Fish Comm'n*, 2003 WY 27, ¶ 8, 64 P.3d 734, 737 (Wyo. 2003). Given the procedural posture of this case, (i.e., the facts as alleged in Mr. Guy's complaint are presumed true), whether Defendants were entitled to qualified immunity is a purely legal question. *See Abell*, 870 P.2d at 367. Thus, we will address

the Defendants' argument that they are entitled to qualified immunity.

[¶19] "Qualified immunity protects government officials from civil liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Wyo. Guardianship Corp.*, 2018 WY 114, ¶ 19, 428 P.3d at 433 (citations and quotation marks omitted). "To survive a motion to dismiss based on qualified immunity, a plaintiff must allege sufficient facts showing: (1) that the defendant's actions violated a constitutional right; and (2) that the right was clearly established at the time of the alleged misconduct." *Id.* (citations omitted).

[¶20] A court has the discretion to decide the "clearly established" prong first. *See Pearson v. Callahan*, 555 U.S. 223, 236, 129 S.Ct. 808, 818, 172 L.Ed.2d 565 (2009). To overcome qualified immunity, the alleged right at issue must be "clearly established," such that it is "beyond debate." *See, e.g.*, *Dist. of Columbia v. Wesby*, — U.S. —, —, 138 S.Ct. 577, 589, 199 L.Ed.2d 453 (2018). "The dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Hernandez v. Mesa*, — U.S. —,—, 137 S.Ct. 2003, 2007, 198 L.Ed.2d 625 (2017) (citation and quotation marks omitted). "This demanding standard protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Wesby*, — U.S. at —, 138 S.Ct. at 589 (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986)). To that end, the United States Supreme Court has emphasized the level of

specificity a court must use to ascertain the alleged right at issue:

> Today, it is again necessary to reiterate the longstanding principle that "clearly established law" should not be defined "at a high level of generality." *Ashcroft v. al–Kidd*, 563 U.S. 731, 742, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011). As this Court explained decades ago, the clearly established law ***must be "particularized" to the facts of the case***. *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). Otherwise, "[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.*, at 639, 107 S.Ct. 3034.

White v. Pauly, — U.S. —, —, 137 S.Ct. 548, 552, 196 L.Ed.2d 463 (2017) (per curiam) (emphasis added).

[¶21] We must first define the "right" at issue to determine if that right was clearly established at the time of the alleged constitutional violation. We turn to the allegations in Mr. Guy's complaint. He attempted to overcome qualified immunity by defining the "right" at issue in general terms:

> 49. At all relevant times, the ***right of Guy to freedom of religion*** was a clearly established legal principle that was well known to Lampert and Tennant-Caine.
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> 50. At the time of the violations set forth herein, the ***prohibition against establishing or favoring one religion over another*** was a clearly established legal principle

> that was well known to Lampert and Tennant-Caine.
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> 51. At the time of the violations set forth herein, the prohibition by which Guy was denied the same and equal treatment accorded to members of the WDOC Recognized Religions, and to the ***equal protection of the law*** was a clearly established principle that was well known to Lampert and Tennant-Caine.

(Emphasis added.) This type of generalization has been expressly rejected by the United States Supreme Court. *See White*, — U.S. at —, 137 S.Ct. at 552. Mr. Guy's complaint focused on the Defendants' alleged refusal to allow him "to form a Humanist study group to meet on the same terms that Defendants authorize inmates of theistic religious traditions, and other religions, to meet; and Defendants' refusal to allow inmates to identify as Humanists for assignment purposes." Thus, we conclude that the "right" at issue is Humanism's status as a "religion" for purposes of the First Amendment. We will assume, without deciding, that Humanism is a "religion" for purposes of the First Amendment.

[¶22] Having defined the "right" at issue, we now turn to what authority a court may consider to ascertain whether that "right" was "clearly established" at the time of Defendants' conduct. We begin by determining whether there is United States Supreme Court precedent on point. *See Wesby*, — U.S. at — n.8, 138 S.Ct. at 591 n.8. The law is not settled on whether a court may look to a lower tribunal to answer the question. *Id.* ("We have not yet decided what precedents—other than our own—qualify as

controlling authority for purposes of qualified immunity.") (citing *Reichle v. Howards*, 566 U.S. 658, 665-66, 132 S.Ct. 2088, 2094, 182 L.Ed.2d 985 (2012)). Nevertheless, even if we may look to courts other than the United States Supreme Court for guidance, those decisions must put the question "beyond debate." *Wesby*, — U.S. at —, 138 S.Ct. at 589; *Brown v. Montoya*, 662 F.3d 1152, 1171 (10th Cir. 2011) ("[F]or the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the ***clearly established weight of authority*** from other courts must have found the law to be as the plaintiff maintains.") (citation omitted) (emphasis added).[6] To defeat qualified immunity, Mr. Guy must demonstrate that the question of whether Humanism is a religion, for First Amendment purposes, has been placed "beyond debate." We conclude that he failed to carry his burden.

[¶23] In response to Defendants' motion to dismiss, Mr. Guy argued that "[t]he essence of a qualified

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[6] We have previously said that "[a] clearly established right is one recognized by either the highest state court in the state where the case arose, a United States Court of Appeals, or the United States Supreme Court." *Park Cnty. v. Cooney*, 845 P.2d 346, 352 (Wyo. 1992) (citing *Robinson v. Bibb*, 840 F.2d 349, 351 (6th Cir. 1988)). However, in *Cooney*, we failed to recognize that the *Robinson* court was itself unsure what constituted "clearly established law." *Robinson*, 840 F.2d at 351 ("[W]e have had no specific Supreme Court guidance in deciding when an issue becomes clearly established."). We do not need to resolve this question for purposes of this case. Mr. Guy has not cited to any case from this Court or the Tenth Circuit that would place the "right" at issue "beyond debate." As discussed further below, we are satisfied that, no matter what authority we look to, Mr. Guy has failed to overcome qualified immunity on the "clearly established" prong.

immunity claim is factual" and that whether a right was "clearly established . . . is a factual determination." To the contrary, the United States Supreme Court has established the "point that the appealable issue is a ***purely legal one***: whether the facts alleged (by the plaintiff, or, in some cases, the defendant) support a claim of violation of clearly established law." *Mitchell v. Forsyth*, 472 U.S. 511, 528 n.9, 105 S.Ct. 2806, 2816 n.9, 86 L.Ed.2d 411 (1985) (emphasis added).

[¶24] Mr. Guy attempts to prove that the right at issue was "clearly established" by citing *Am. Humanist Ass'n*, 63 F. Supp. 3d 1274, a case from the United States District Court for the District of Oregon. There, the district court denied the defendants' qualified immunity defense where the defendants had refused the inmate's request to form a "Humanist study group or an Atheist study group, or to recognize Humanism as a religious assignment." *Id.* at 1278. It relied on a footnote from *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), in which "the Supreme Court . . . referred to 'Secular Humanism' as a religion." *Am. Humanist Ass'n*, 63 F. Supp. 3d at 1286 (citing *Torcaso*, 367 U.S. at 495 n.11, 81 S.Ct. at 1684 n.11). That single case does not represent the great weight of authority that has placed the question beyond debate, as demonstrated by the D.C. Circuit Court of Appeals' discussion:

> The Court's statement in *Torcaso* does not stand for the proposition that humanism, no matter in what form and no matter how practiced, amounts to a religion under the First Amendment. The Court offered no

> test for determining what system of beliefs qualified as a "religion" under the First Amendment. The most one may read into the *Torcaso* footnote is the idea that a particular non-theistic group calling itself the "Fellowship of Humanity" qualified as a religious organization under California law. *See Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1537 (9th Cir. 1985) (Canby, J., concurring) (quoting *Malnak* [*v. Yogi*], 592 F.2d [197], 206, 212 [(3d Cir. 1979)]). *See also Alvarado v. City of San Jose*, 94 F.3d 1223, 1228 & n.2 (9th Cir. 1996) (citing cases supporting the limited scope of the *Torcaso* footnote); *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994) ("[N]either the Supreme Court, nor this circuit, has ever held that evolutionism or secular humanism are 'religions' for Establishment Clause purposes.").

Kalka v. Hawk, 215 F.3d 90, 99 (D.C. Cir. 2000).

[¶25] We need not resolve whether Humanism is a recognized religion for First Amendment purposes. Rather, our only task is to determine whether "clearly established" law places the question "beyond debate." Because it does not, we conclude Mr. Lampert and Ms. Tennant-Caine were entitled to qualified immunity as to Mr. Guy's claim for monetary damages.

IV. Mr. Guy did not preserve his argument that the Defendants' certificate of service was invalid

[¶26] In a single sentence of his response to the motion to dismiss, Mr. Guy stated: "As a separate, procedural matter, Defendants' Motion and Memorandum have not been properly served on the Plaintiffs in accordance with the express provisions of the applicable Wyoming Uniform Rules of the District Courts." In a footnote, the district court declined to address Mr. Guy's assertion because he "fail[ed] to present a specific rule Defendants violated or any facts to support [his] allegation."

[¶27] On appeal, Mr. Guy attempts to augment his argument by citing to the certificate of service the Defendants attached to their motion to dismiss, which was signed by a paralegal rather than their attorney. Mr. Guy then appears to argue that this certificate of service violated W.R.C.P. 5(d)(1), which requires a party to attach a certificate of service to "[a]ny paper [filed] after the complaint," and Rule 302(a)(3) of the Uniform Rules for District Courts, which requires the attorney "for the party making service" to sign the certificate of service.

[¶28] Mr. Guy did not raise his argument that the service violated W.R.C.P. 5 below, and we therefore decline to address it here. *See Meiners*, 2019 WY 39, ¶ 25 n.4, 438 P.3d at 1270 n.4. With respect to the alleged violation of U.R.D.C. 302, Mr. Guy presents no argument other than a citation to the rule. He does not contend that the allegedly defective certificate caused him any prejudice, nor could he, as he received the WDOC's filings and responded to them without asserting that the service affected his abil-

ity to respond in a timely manner. *See* W.R.A.P. 9.04.[7]

V. Mr. Guy was not a "prevailing party" under 42 U.S.C. § 1988

[¶29] After the district court dismissed his complaint, Mr. Guy filed a motion to recover attorney's fees under 42 U.S.C. § 1988. Because it dismissed his complaint as moot, the district court concluded that Mr. Guy was not a "prevailing party."

[¶30] In a § 1983 case, a court may award reasonable attorney fees to the "prevailing party." 42 U.S.C. § 1988(b). Whether a litigant is a "prevailing party" is a question of law that we review de novo. *Kansas Judicial Watch v. Stout*, 653 F.3d 1230, 1235 (10th Cir. 2011); *Morris v. CMS Oil & Gas Co.*, 2010 WY 37, ¶ 36, 227 P.3d 325, 335 (Wyo. 2010). Mr. Guy argues that he is a prevailing party because he improved his position by the litigation in that the WDOC granted him the relief requested in his complaint via the executive order recognizing Humanism as a religion. The State asserts that Mr. Guy did not carry his burden of establishing prevailing party status because he did not show that his lawsuit was causally linked to the WDOC's executive order or that he "received any form of judicial relief on the merits of his claims."

[¶31] Mr. Guy relies on the "catalyst theory" which "posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's

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[7] We take no position on whether the certificate of service violated either W.R.C.P. 5 or U.R.D.C. 302.

conduct." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 601, 121 S.Ct. 1835, 1838, 149 L.Ed.2d 855 (2001). Prior to the United States Supreme Court's decision in *Buckhannon*, nearly all federal courts of appeals recognized that a showing that the plaintiff's suit served as the catalyst for the defendant's remedial action qualified the plaintiff as a prevailing party. *Id.*; *see also, e.g.*, *MacLaird v. Werger*, 723 F. Supp. 617, 618-19 (D. Wyo. 1989).

[¶32] In *Buckhannon*, the Court overturned "legions of federal-court decisions," *id.* at 628, 121 S.Ct. at 1853 (Ginsburg, J., dissenting), holding that "the 'catalyst theory' is not a permissible basis for the award of attorney's fees[.]" *Id.* at 610, 121 S.Ct. at 1843. There, the plaintiff sought declaratory and injunctive relief against West Virginia, two of its agencies, and 18 individuals under the Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). *Id.* at 601, 121 S.Ct. at 1838. Less than a month after the federal district court denied the state's summary judgment motion, the state legislature repealed the statute challenged in the litigation. *Id.* at 624, 121 S.Ct. at 1850. The defendants moved to dismiss the case as moot, and the plaintiffs sought attorney's fees as the "prevailing party" under the FHAA, 42 U.S.C. § 3613(c)(2), and the ADA, 42 U.S.C. § 12205.[8] *Id.* at 624, 121 S.Ct. at 1850-51. The Court

[8] Although the case was not decided under 42 U.S.C. § 1988(b), the Court applied precedent interpreting 42 U.S.C. § 1988(b) and observed that it approaches these "nearly identical" civil rights fee-shifting provisions consistently. *Id.* at 603 n.4, 121 S.Ct. at 1839 n.4.

affirmed the judgment denying the plaintiff's motion for attorney's fees, holding the term "prevailing party" does not include "a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Id.* at 600, 121 S.Ct. at 1838.

[¶33] Mr. Guy would have this Court ignore that holding and instead rely on state fee- shifting statutes. *See Schaub v. Wilson*, 969 P.2d 552, 561 (Wyo. 1998) (interpreting "prevailing party" in Wyo. Stat. Ann. § 1-14-124); *Morris*, 2010 WY 37, ¶¶ 35-46, 227 P.3d at 334-37 (interpreting "prevailing party" in Wyo. Stat. Ann. § 30-5-303(b)).

However, these cases do not control interpretation of "prevailing party" in 42 U.S.C. § 1988(b). Instead, this Court, "like the lower federal courts, [is] bound by the supremacy clause of the federal Constitution" to follow the United States Supreme Court's interpretation of section 1988. *See* Martin A. Schwartz & John E. Kirklin, *Sec. 1983 Litig. Stat. Att'y Fees* § 1.07 (4th ed. 2019-1 Supp.), Westlaw. It is the United States Supreme Court's "responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *James v. City of Boise, Idaho*, — U.S. —, —, 136 S.Ct. 685, 686, 193 L.Ed.2d 694 (2016) (per curiam) (reversing the Idaho Supreme Court's conclusion that it was not bound by the Supreme Court's interpretation of § 1988) (quoting *Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 20, 133 S.Ct. 500, 503, 184 L.Ed.2d 328

(2012) (per curiam)). Because the United States Supreme Court has decided the meaning of "prevailing party" in 42 U.S.C. § 1988, we are bound by that interpretation—*Buckhannon* governs.[9] Mr. Guy did not obtain a judgment on the merits, a court-ordered consent decree, or any other form of judicial relief. The WDOC's "voluntary change in conduct, although perhaps accomplishing what [Mr. Guy] sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur*" to make him a prevailing party under the statute. *Buckhannon*, 532 U.S. at 605, 121 S.Ct. at 1840.

[¶34] Other cases Mr. Guy cites are distinguishable. For example, *Balla v. Idaho*, 677 F.3d 910, 914 (9th Cir. 2012), held that reasonable attorney's fees could be awarded when the plaintiffs' contempt motion quickly brought the defendants into compliance with an existing injunction, even though the court denied the contempt motion. However, there, the plaintiffs "had long ago won their injunction . . . and they did not have to win further judicial relief to get paid for their lawyers' work." *Id.* at 919-20. The court reasoned that *Buckhannon* "speaks to the case where there never has been judicially ordered relief," but not to cases where there has been judicial relief that may require additional monitoring and enforcement. *Id.* at 918. Mr. Guy's case is distinguishable, and according to *Balla's* reasoning, is controlled by *Buckhannon* be-

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[9] That is not to say that our interpretation of "prevailing party" in Wyo. Stat. Ann. § 1-14-126(b) (LexisNexis 2019) and Wyo. Stat. Ann. § 30-5-303(b) (LexisNexis 2019) is no longer sound. State courts are the final arbiters of the meaning of state law.

cause "there never has been judicially ordered relief."

[¶35] Likewise, *Nat'l Rifle Ass'n of Am. v. City of Chicago, Ill.*, 646 F.3d 992 (7th Cir. 2011), does not support Mr. Guy's position. There, the court held the plaintiffs qualified as the prevailing party despite repeal of ordinances that rendered the plaintiffs' case moot. *Id.* at 993-94. However, the repeal was a direct result of a United States Supreme Court decision holding that the Second Amendment applies to states and municipalities and reversing dismissal of the plaintiffs' claims. *Id.* In contrast to *Buckhannon*, the plaintiffs "achieved a decision that alter[ed] 'the legal relationship of the parties'" because the central issue in the litigation had been conclusively established. *Id.* at 994.

The court concluded that "[b]y the time defendants bowed to the inevitable, plaintiffs had in hand a judgment of the Supreme Court that gave them everything they needed. If a favorable decision of the Supreme Court does not count as 'the necessary judicial *imprimatur*' on the plaintiffs' position . . . , what would?" *Id.* (citing *Buckhannon*, 532 U.S. at 605, 121 S.Ct. at 1840). Here, Mr. Guy has not obtained any favorable court decision.

[¶36] Other cases Mr. Guy cites precede *Buckhannon*, which overturned "legions of federal-court decisions" relying on the catalyst theory. *Leroy v. City of Houston*, 831 F.2d 576, 579 (5th Cir. 1987); *Love v. Mayor, City of Cheyenne*, 620 F.2d 235 (10th Cir. 1980); *MacLaird*, 723 F. Supp. 617; *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989). *See also Skinner v. Uphoff*, 324 F. Supp. 2d 1278 (D.

Wyo. 2004) (awarding § 1988 attorney's fees after the court granted summary judgment in the plaintiff's favor); *Silverman v. Villegas*, 894 N.E.2d 249, 256 (Ind. App. 2008) (holding plaintiffs were prevailing parties under section 1988 because the court entered summary judgment in their favor on their state law claim that arose out of the common nucleus of operative fact implicated by their constitutional claims).

[¶37] Because the district court dismissed Mr. Guy's complaint as moot, and we conclude that Mr. Lampert and Ms. Tennant-Caine were entitled to qualified immunity, Mr. Guy has not obtained the "judicial *imprimatur*" necessary to qualify as the "prevailing party." We affirm the district court's denial of his attorney's fees.

CONCLUSION

[¶38] For the reasons discussed above, we affirm both of the district court's orders. The voluntary cessation exception to the mootness doctrine has not been adopted in Wyoming, and Mr. Lampert and Ms. Tennant-Caine were entitled to qualified immunity. Finally, Mr. Guy was not a "prevailing party" under 42 U.S.C. § 1988. Affirmed.

APPENDIX B

STATE OF WYOMING	)	IN THE DISTRICT
	) SS.	COURT
COUNTY OF LARAMIE	)	FIRST JUDICIAL
	)	DISTRICT

[filed Aug. 23, 2018]

JONMICHAEL GUY and AMERICAN HUMANIST ASSOCIATION, Plaintiffs, vs. ROBERT O. LAMPERT, individually and in his official capacity, JULIE TENNANT-CAINE, individually and in her official capacity, THE STATE OF WYOMING, and the WYOMING DEPARTMENT OF CORRECTIONS, by and through Robert O. Lampert, in his official capacity as Director of the Department of Corrections, Defendants.	Docket No. 189-001

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on Defendants' Motion to Dismiss, filed on January 23, 2018. The Court has considered the motion, response, reply, and oral argument, and is fully informed in the premises. For the following reasons, Defendants' motion is GRANTED, and Plaintiffs' Complaint is DISMISSED.

BACKGROUND

Currently, Defendant Jonmichael Guy ("Guy") is incarcerated at the Wyoming Medium Correctional Institution in Torrington, Wyoming. The Wyoming Department of Corrections ("WDOC") has maintained custody of Guy since 2006. Before his current location, Guy was incarcerated at the Wyoming State Penitentiary in Rawlins, Wyoming and the Honor Conservation Camp in Newcastle, Wyoming. Throughout Guy's incarceration, he has sought judicial relief in various forms. Most recently, on May 2, 2017, Guy filed a lengthy 42 U.S.C. § 1983 action in the United States District Court for the District of Wyoming. *See* Defs.' Ex. F. United States District Judge Alan B. Johnson granted the defendants' motion to dismiss in December 2017, finding Guy failed to state a plausible 42 U.S.C. § 1983 claim. *See* Defs.' Ex. E.

While Guy's federal action was pending, he filed a Complaint with this Court in December 2017. The crux of Plaintiffs' allegations stem from Guy's desire for the WDOC to recognize Humanism as a faith-based group.[1] On February 7, 2017, Guy submitted a request for WDOC to recognize Humanism as a faith group. *See* Defs.' Ex. C. At that time, Humanism was

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[1] Plaintiffs state:

> Humanism adheres to a broad world view that includes a non-theistic view on the question of deities; an affirmative naturalistic outlook; an acceptance of reason, rational analysis, logic, and empiricism as the primary means of attaining truth; an affirmative recognition of ethical duties; and a strong commitment to human rights.

Pls.' Compl. at 3, ¶ 21. AHA promotes Humanism and is a membership organization with chapters and affiliates nationwide. *See id.* ¶ 16-17.

not formally recognized as a faith group. On December 29, 2017, Humanism was added as a recognized faith group to WDOC Handbook of Religious Beliefs and Practices. *See* Defs.' Ex. A.

On December 8, 2017, Guy and the American Humanist Association ("AHA") filed suit against Robert O. Lampert, individually and in his official capacity, Julie Tennant-Caine, individually and in her official capacity, the State of Wyoming, and the WDOC (collectively "Defendants").[2] Plaintiffs claim Defendants violated the Free Exercise Clause, Establishment Clause, Equal Protection Clause, WYO. CONST. art. I, §§ 2, 6, 7, 18, 19, and 42 U.S.C. § 1983. *See* Pls.' Compl. at 1-2. Specifically, in Count I, Plaintiffs seek monetary damages from Lampert and Tennant-Caine in their individual capacity for violating 42 U.S.C. § 1983.[3] *See id.* at 4-7, ¶¶ 32-54. In Count II, Plaintiffs seek declaratory and injunctive relief against the State of Wyoming, WDOC, and Lampert and Tennant-Caine in their official capacities pursuant to 42 U.S.C. § 1983.[4] *See id.* at 7-10, ¶¶ 55-73. In Count III, Plaintiffs seek direct action against the State of Wyoming and WDOC for violating the Wyoming Constitution. *See id.* at 10-11, ¶¶ 74-81.

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[2] In Guy's federal civil action, Robert O. Lampert was a defendant.

[3] Plaintiffs claim Defendants violated the First and Fourteenth Amendments. *See id.* at 6-7, VI 46-48.

[4] Plaintiffs state: "To redress these constitutional violations, Guy and AHA seek injunctive and declaratory relief under the provisions of 42 U.S.C. § 1983, against Defendants State of Wyoming, [WDOC], and Lampert and Tenant-Caine in their official capacities." *Id.* at 8, ¶ 64.

Instead of filing an Answer to Plaintiffs' Complaint, Defendants filed this motion on January 23, 2018. Defendants argue dismissal is appropriate because this Court lacks subject matter jurisdiction, Defendants are immune from suit, res judicata bars Plaintiffs' claims, and Plaintiffs fail to state a claim upon which relief may be granted. *See* Defs.' Mot. to Dismiss. Plaintiffs filed a response on February 21, 2018, Defendants replied on March 2, 2018, and the Court heard oral argument on June 4, 2018.

LEGAL STANDARD

Lack of Subject Matter Jurisdiction

Wyoming Rule of Civil Procedure 12(b)(1) allows a party to present a defense to a claim for relief based on the Court's lack of subject matter jurisdiction. *See* WYO. R. CIV. P. 12(b)(1). "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong." *Weller v. Weller*, 960 P.2d 493, 495 (Wyo. 1998) (citation omitted). Subject matter jurisdiction "either exists or it does not, and a Court should be satisfied that it possesses subject matter jurisdiction before it makes a decision in a case. *Id.* ('Subject matter jurisdiction is not a subject of judicial discretion."). If the Court lacks subject matter jurisdiction, then "action taken by that Court, other than dismissing the case, is considered to be null and void." *Id*. at 496. The Wyoming Supreme Court explains:

> It is fundamental, if not axiomatic, that, before a Court can render any decision or order having any effect in any case or matter, it must have subject matter jurisdiction. Jurisdiction is essential to the exercise of judicial power. Unless

> the Court has jurisdiction, it lacks any authority to proceed, and any decision, judgment, or other order is, as a matter of law, utterly void and of no effect for any purpose. Subject matter jurisdiction, like jurisdiction over the person, is not a subject of judicial discretion. There is a difference, however, because the lack of jurisdiction over the person can be waived, but lack of subject matter jurisdiction cannot be.

Id.

Implicit in subject matter jurisdiction is that the plaintiff has standing to sue. *See Halliburton Energy Servs. Inc. v. Gunter*, 2007 WY 151, ¶ 10, 167 P.3d 645, 649 (Wyo. 2007) (Standing "is an aspect of subject matter jurisdiction."). Standing "requires a 'legally protectable and tangible interest at stake in the litigation.'" *Id.* ¶ 11, 167 P.3d at 649 (citation omitted). To have standing, "[t]he person alleging standing must show a 'perceptible,' rather than a `speculative' harm from the action; a remote possibility of injury is not sufficient to confer standing." *Id.* (citation omitted).

Failure to State a Claim

When a party moves to dismiss a complaint under Rule 12(b)(6) for failure to state a claim upon which relief may be granted, this Court construes the facts alleged in the complaint to be true and views them in the light most favorable to the plaintiff. *The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 21, 395 P.3d 167, 173 (Wyo. 2017). To prevail, the movant must show that "from the face of the complaint [] the plaintiff cannot assert any facts which would entitle him to relief." *Hill v. Stubson*, 2018 WY 70, ¶ 11, 420 P.3d

732, 737 (Wyo. 2018) (citation omitted). However, because dismissal is a drastic remedy, it "should be granted sparingly." *Whitham v. Feller*, 2018 WY 43, ¶ 13, 415 P.3d 1264, 1267 (Wyo. 2018). "That said, the lens through which we look and our liberal construction of pleadings 'does not excuse an omission of that which is material and necessary in order to entitle one to relief.'" *The Tavern, LLC*, ¶ 21, 395 P.3d at 173 (citation omitted).

DISCUSSION

In their Complaint, Plaintiffs allege Defendants violated the Free Exercise and Establishment Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. Through these violations, Plaintiffs ask the Court for declaratory, injunctive, and monetary relief pursuant to 42 U.S.C. § 1983. Plaintiffs also ask the Court to hold the State of Wyoming liable for Lampert's and Tennant-Caine's alleged violations of the Wyoming Constitution. In response, Defendants argue Plaintiffs' Complaint should be dismissed in its entirety for a variety of reasons, including lack of subject matter jurisdiction, immunity, res judicata, and failure to state a claim. Plaintiffs' claims are addressed separately below.[5]

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[5] In Plaintiffs' response to Defendants' Motion to Dismiss, Plaintiffs briefly claim Defendants did not properly serve Plaintiffs with the Motion to Dismiss. *See* Pls.' Br. Opposing Mot. to Dismiss at 2. Plaintiffs broadly assert they were not served "in accordance with the express provisions of the applicable Wyoming Uniform Rules of the District Courts." *Id.* The Court will not address Plaintiffs' claim because Plaintiffs fail to present a specific rule Defendants violated or any facts to support their allegation.

A. Count I: Monetary Damages for Civil Rights Violations Against Lampert and Tennant-Caine In Their Individual Capacity

Plaintiffs' first claim is for monetary damages against Lampert and Tennant Caine, in their individual capacity, in the amount of $120,000.00.[6] *See* Pls.' Compl. at 4-5, ¶¶ 33, 52. Plaintiffs allege Lampert and Tennant-Caine violated 42 U.S.C. § 1983 by implementing various administrative policies concerning an inmate's religious rights. *See id.* at 5, ¶ 36. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial of-

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[6] To the extent Plaintiffs seek money damages from Lampert and Tennant-Caine in their official capacity pursuant to 42 U.S.C. § 1983, their request is denied. It is understood that [s]uits against state officials in their official capacity should be treated as suits against the State." *Chapman v. Wyo. Dep't of Corr.*, 2016 WY 5, ¶ 28, 366 P.3d 499, 512 (Wyo. 2016). In a 42 U.S.C. § 1983 action, "neither a State nor its officials acting in their official capacities are `persons' under § 1983" *Id.* (citation omitted). "As such, there is no cause of action for damages under 42 U.S.C. § 1983." *Id.*

> ficer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (emphasis added). To prevail, Plaintiffs must show: "(1) that the conduct complained of was engaged in under color of state law, and (2) that such conduct subjected the plaintiffs to a deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States." *Teton Plumbing & Heating, Inc. v. Bd of Tr., Laramie Cty. Sch. Dist. No. One*, 763 P.2d 843, 847 (Wyo. 1988) (citations omitted).

Before the Court addresses the merits of Plaintiffs' claim, the Court must decide whether this Court has subject matter jurisdiction. If the Court lacks jurisdiction then the analysis ends. It is well-settled that "[s]tate Courts have concurrent jurisdiction with the federal Courts over § 1983 actions." *Id. at* 847 n.2. Concurrent jurisdiction allows this Court to hear Plaintiffs' 42 U.S.C. § 1983 claims, but both Guy and AHA must have standing to sue.[7] The Wyoming Supreme Court views standing as "an aspect of subject matter jurisdiction." *Gunter*, 2007 WY 151, ¶ 10, 167 P.3d at 649; *see Gooden v. State*, 711 P.2d 405, 408 (Wyo. 1985) ("A basic premise of our system of jurisprudence is that one must have standing to raise any

[7] Associational standing is not addressed because Count I is decided on other grounds.

question in our Courts."). "The Supreme Court of the United States has said that a plaintiff must allege 'such a personal stake in the outcome of the controversy' as will justify the assumption of jurisdiction by the Court." *Gooden*, 711 P.2d at 408 (citation omitted). This requirement is "one pursuant to which a plaintiff must suffer 'some threatened or actual injury resulting from the putatively illegal action.'" *Id.* (citation omitted). Similarly, the Wyoming Supreme Court explains "a plaintiff must have a 'legally protectable and tangible interest at stake.'" *Id.* (citation omitted). Additionally, ancillary to standing is mootness. The Wyoming Supreme Court states:

> The doctrine of mootness encompasses those circumstances which destroy a previously justiciable controversy. This doctrine represents the time element of standing by requiring that the interests of the parties which were originally sufficient to confer standing persist throughout the duration of the suit. Thus, the central question in a mootness case is "whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties."

Merchant v. State Dep't of Corr., 2007 WY 159, ¶ 15, 168 P.3d 856, 863 (Wyo. 2007) (citations omitted).

On December 29, 2017, Defendants fully remedied Plaintiffs' complaints by issuing an Executive Order ("Order") directing Humanism to be added to the WDOC Handbook of Religious Beliefs and Practices. *See* Defs.' Ex. A. The Order states: "After receiving several inquiries to add this faith group and further investigation it has been determined that said faith group shall be a recognized faith group." *Id.* The same

month the Order was issued, Plaintiffs filed their Complaint. Plaintiffs' Complaint was filed on December 8, 2017, twenty-one (21) days before the Order. Throughout the Complaint, Plaintiffs' opposition to Defendants' Motion to Dismiss, and during oral argument, Plaintiffs continued to allege harms that were resolved.[8] Because Plaintiffs' claims center on an issue that Defendants resolved, the Court finds Plaintiffs' claims are moot. *See, e.g.*, *Merchant*, 2007 WY 159, ¶ 15, 168 P.3d at 862 ("A Court should not hear a case where there has been a change in circumstances occurring either before or after a case has been filed that eliminates the controversy.").

Plaintiffs attempted to evade the mootness doctrine by asserting the voluntary cessation exception, citing *Am. Humanist Ass'n v. U.S.*, 63 F. Supp. 1274 (D. Or. 2014). *See* Pls.' Br. Opposing Mot. to Dismiss at 21. In *Am. Humanist Ass 'n*, inmate Holden requested Humanism to be recognized as a religion and to engage in the practice of Humanism. *Am. Humanist Ass 'n v. U.S.*, 63 F. Supp. 1274, 1278-81 (D. Or. 2014). Before filing suit, Holden submitted several requests to defendants, exhausting his administrative remedies. *Id.* at 1280. After filing suit, defendants added Humanism to the program schedule. *See id.* Despite Humanism having been added to the program schedule, Holden alleged defendants continued to discriminate against Humanists by not allowing outside Humanist volunteers to visit or the ability to obtain certain materials. *Id.* at 1280-81. Relevant here, defendants filed a motion to dismiss because Holden's claims were moot. *See id.* at 1281. The United States District

[8] At the hearing, Plaintiffs acknowledged the Order diminishes their case.

Court for the District of Oregon denied the motion to dismiss, stating:

> [W]hile the defendants argue that they have accommodated Holden's requests after more than two years—his requests for Humanist study materials and a community volunteer were not addressed until after defendants filed their motion to dismiss— they have not stipulated or demonstrated that their behavior is unlikely to reoccur after this case is dismissed. Since defendants have not satisfied their burden, the Court finds that plaintiffs' claims are not moot.

Id. at 1282. The Court explained, "a defendant's 'voluntary cessation of a challenged practice does not deprive a federal Court of its power to determine the legality of the practice.'" *Id.* (citation omitted). Therefore, a claim is moot "only if 'subsequent events [make] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* (alteration in original) (citation omitted).

In response, Defendants argue the standard for voluntary cessation is different when applied to government actors. *See* Defs.' Reply at 4-5. Defendants state Plaintiffs "make no attempt to show that the Department of Corrections' recognition of Humanism was reluctant or a sham, much less the 'clear showing' usually required to exempt their claims from mootness." *Id.* Defendants rely on *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096 (10th Cir. 2010). In *Rio Grande Silvery Minnow*, the United States Court of Appeals for the Tenth Circuit remanded an environmental action regarding the reallocation of water from agricultural and municipal users to mainstream flows because the action was moot.

Rio Grande Silvery Minnow v. Bureau of Reclamation, 601 F.3d 1096, 1103 (10th Cir. 2010). The Tenth Circuit concluded the voluntary cessation exception to the mootness doctrine applied and that the action, in part, should be dismissed for lack of subject matter jurisdiction. *See id.* at 1120-21. The Tenth Circuit stated the voluntary cessation exception "exists to counteract the possibility of a defendant ceasing illegal action long enough to render a lawsuit moot and then resuming the illegal conduct." *Id.* at 1115. The Court further explained: "Voluntary actions may, nevertheless, moot litigation if two conditions are satisfied: "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Id.*

The Court notes voluntary cessation is born out of federal law. The Wyoming Supreme Court states: "Our mootness exceptions illustrate that Wyoming's mootness doctrine, like that of many other states, is prudential rather than constitutionally based." *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶ 23, 275 P.3d 438, 449 (Wyo. 2012). "Thus, while we may look to federal case law for guidance, and our law is similar to federal precedent in many respects, that federal case law is not binding on this Court." *Id.* ¶ 24, 275 P.3d at 449. In Wyoming, the following exceptions to mootness exist: (1) "Whe issue is one of great public importance; (2) "[i]t is necessary to answer the issue to provide guidance to state agencies and lower Courte; or (3) "Wile controversy is capable of repetition yet evading review." *In re CRA*, 2016 WY 24, ¶ 28, 368 P.3d 294, 300 (Wyo. 2016) (citation omitted);

see also Merchant, 2007 WY 159, ¶ 17, 168 P.3d at 863 (applying Wyoming mootness doctrine in 42 U.S.C. § 1983 action and stating one exception is if a case presents a controversy capable of repetition yet evading review).

Under Wyoming law, the Court finds no exception to the mootness doctrine applies because Plaintiffs do not present an issue of great public importance, necessary to provide guidance to state agencies and lower Courts, or an issue capable of repetition yet evading review. *See In re CRA*, 2016 WY 24, ¶ 28, 368 P.3d at 300. Plaintiffs do not claim Defendants refused to allow Humanists to gather in groups, obtain study materials, or engage in other activities allowed by the WDOC. The entirety of Plaintiffs' Complaint focuses on Defendants refusing to recognize Humanism as a faith group. Additionally, even if the Court applies the federal voluntary cessation exception, the Court finds both *Am. Humanist Ass'n* and *Rio Grande Silvery Minnow* are distinguishable because Plaintiffs request a remedy that no longer exists and Guy failed to exhaust his administrative remedies. At this time, the parties present nothing to suggest the WDOC would remove Humanism from its list of faith groups and then refuse to add Humanism to the list later on. *See Rio Grande Silvery Minnow*, 601 F.3d at 1115. Moreover, since December 2017, it appears Plaintiffs' claims were completely eradicated. *See id.*

Further, the Court finds Plaintiffs did not exhaust administrative remedies, precluding Plaintiffs' civil rights action. "The Prison Litigation Reform Act of 1995 requires inmates to exhaust administrative remedies available to them before they can file a civil rights action pursuant to 42 U.S.C. § 1983." *Chapman*

v. Wyo. Dep't of Corr., 2016 WY 5, ¶ 16, 366 P.3d 499, 508 (Wyo. 2016). Per WDOC policy, if an inmate wishes to establish or amend approval for a faith group, he must fill out WDOC Form #503. *See* Defs.' Ex. B. If the WDOC denies an inmate's request, the inmate is to appeal the decision using WDOC Form #503.1. *See id.*

Guy understood the WDOC policy and procedure for establishing or amending a faith group because he submitted WDOC Form #503 requesting Humanism as a recognized faith. *See* Defs.' Ex. C. However, Guy never appealed the WDOC decision by using Form #503.1. Because Guy did not exhaust his administrative remedies, his civil rights claims are not ripe. "The ripeness doctrine is a category of justiciability 'developed to identify appropriate occasions for judicial action.'" *Jacobs v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2004 WY 136, ¶ 8, 100 P. 3d 848, 850-51 (Wyo. 2004) (citation omitted). As the Wyoming Supreme Court explains:

> The basic rationale of the ripeness requirement, like that of the justiciability requirement,
>
> ". . . is to prevent the Courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the

> hardship to the parties of withholding Court consideration."

Id. ¶ 8, 100 P.3d at 851 (citation omitted). Because Guy failed to exhaust his administrative remedies, his claims are not ripe for decision. Guy's claims will not be ripe for review until he utilizes the administrative remedies available to him and is denied.

For the reasons stated above, the Court finds Plaintiffs' claims against Lampert and Tennant-Caine in their individual capacities pursuant to 42 U.S.C. § 1983 are moot.[9] As such, Count I is DISMISSED WITHOUT PREJUDICE.

B. Count II: Declaratory and Injunctive Relief Against the State of Wyoming, WDOC, and Lampert and Tennant-Caine In Their Official Capacity

Plaintiffs' next claim is for declaratory judgment and injunctive relief against the State of Wyoming, WDOC, and Lampert and Tennant-Caine in their official capacity. Defendants argue Count II should be dismissed because Plaintiffs fail to present a justiciable claim and fail to state a claim upon which relief may be granted. *See* Defs.' Mot. to Dismiss at 21-24. Because justiciability is a jurisdictional inquiry, the

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[9] Because the Court finds Plaintiffs' 42 U.S.C. § 1983 action against Lampert and Tennant-Caine in their individual capacity is moot, the Court will not address the subsequent issues of qualified immunity, res judicata, and whether Plaintiffs fail to state a claim pursuant to WYO. R. CIV. P. 12(b)(6). In addition, the Court recognizes its ability to dispose of the case at this stage, however, because of the many issues presented in the briefs, a discussion is warranted as to each Count.

Court must first determine if Plainiiffs have a justiciable claim.[10] See *Allred v. Bebout*, 2018 WY 8, ¶ 29, 409 P.3d 260, 268 (Wyo. 2018) (stating "jurisdictional issues regarding the justiciability of a declaratory judgment action are questions of law").

Declaratory Judgment

To proceed in a declaratory judgment action, Plaintiffs must have standing. In 1974, the Wyoming Supreme Court "recognized that declaratory judgment actions are to be liberally construed, but that nevertheless the Court must make a threshold determination whether there is 'such dispute which could serve as the basis of a justiciable issue[.]" *Id.* ¶ 37, 409 P.3d at 270; *see Brimmer v. Thomson*, 521 P.2d 574, 577 (Wyo. 1974). Although the Court must liberally construe the facts in the light most favorable to the nonmoving party, "liberal construction of pleadings does not 'excuse omission of that which is material and necessary in order to entitle one to relief.'" *Allred*, 2018 WY 8, ¶ 32, 409 P.3d at 268 (citations omitted). In

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[10] In *Allred v. Bebout*, the Wyoming Supreme Court stated:

> The keystone of justiciability in both federal and state jurisprudence is the separation of powers. As the United States Supreme Court has explained:
>
> The requirement that [a plaintiff] must show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents Courts of law from undertaking tasks assigned to the political branches. It is the role of Courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of Courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.

Allred v. Bebout, 2018 WY 8, ¶ 30, 409 P.3d 260, 268 (Wyo. 2018) (alteration in original) (citation omitted).

Brimmer v. Thomas, the Wyoming Supreme Court adopted the following four-part test for standing:

> First, a justiciable controversy requires parties having existing and genuine, as distinguished from theoretical, rights or interests. Second, the controversy must be one upon which the judgment of the Court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships of one or more of the real parties in interest, or, wanting these qualities be of such great and overriding public moment as to constitute the legal equivalent of all of them. Finally, the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues. Any controversy lacking these elements becomes an exercise in academics and is not properly before the Courts for solution.

Id. (emphasis added) (citations omitted). In a recent case, the Wyoming Supreme Court recognized the "*Brimmer* test is imperfect, its elements often overlap, and our application has not been uniform. But it is the mechanism we have for honoring the separation of powers and ascertaining justiciability." *Id.* ¶ 43, 409 P.3d at 272-73. The Court will continue to apply the *Brimmer* elements to ascertain justiciability of Plaintiffs' declaratory judgment action.

Plaintiffs' request for declaratory judgment hinges on the first and second *Brimmer* elements. The first element requires an existing and genuine right or interest. *See id.* ¶ 37, 409 P.3d at 270. In their Complaint, Plaintiffs allege Defendants refused to allow Guy and other inmates to practice Humanism. *See* Pls.' Compl. at 1-2, ¶ 3 ("This action arises out of their refusal to allow Guy as a Wyoming inmate with sincerely held Humanist convictions to form a Humanist study group to meet on the same terms that Defendants authorize inmates of theistic religious traditions, and other religions, to meet; and Defendants' refusal to allow inmates to identify as Humanists for assignment purposes."); *see also* Pls.' Br. Opposing Mot. to Dismiss at 7, ¶ 24 ("Guy wishes to identify as a Humanist in the records of WDOC, and be accorded his civil rights in the same manner such rights are accorded adherents of other religions that the WDOC identifies as Recognized Religions."). Plaintiffs claim Defendants' refusal to allow Guy and other inmates to practice Humanism caused Guy and others to suffer unfair treatment. *See* Pls.' Br. Opposing Mot. to Dismiss at 8, ¶ 28. Specifically, Plaintiffs state:

> In the absence of Humanism being accorded recognition and equal treatment as a Recognized Religion, Guy and other Humanist inmates suffer unfair freatment . . . in the following particulars, among others:
>
> a. The effect of implementation of WDOC policy by Lampert and Tennant-Caine is to decree that Humanism is not a religion.
>
> b. Humanist inmates in Wyoming prisons have no venue for conducting their meetings.

c. Humanist inmates cannot meet in groups in the same way inmates who are members of Recognized Religions can meet.

d. WDOC does not recognize Humanist as an assignment option.

e. No Humanist meeting group is permitted at any WDOC facility.

Id.

Viewing Plaintiffs' claims in the light most favorable to them, the Court is unable to conclude Plaintiffs have an existing and genuine right or interest. It is undisputed that in December 2017, the WDOC added Humanism as a recognized faith group. Although Plaintiffs Complaint was filed prior to the WDOC recognizing Humanism as a religious practice, Plaintiffs fail to allege how they continue to suffer an existing and genuine harm. For example, Guy does not allege that he attempted to practice Humanism, per WDOC policy, and was denied. Rather, Guy continues to adhere to his claim that Defendants refuse to recognize Humanism as a faith-based practice. The Court finds Plaintiffs' conclusory statements do not establish a tangible interest was harmed. *See Allred*, 2018 WY 8, ¶ 44, 409 P.3d at 273 (finding appellants "argued passionately about the importance of separation of powers, but [said] little about a tangible interest that has been harmed," and concluded appellants failed to satisfy the first *Brimmer* element).

Finding Plaintiffs do not satisfy the first *Brimmer* element, the Court consequently also finds Plaintiffs do not satisfy the second *Brimmer* element—a controversy upon which the judgment of the Court may effectively operate. According to the Wyoming Supreme

Court, "[t]he first two elements of the *Brimmer* test are inextricably linked: if a plaintiff fails to allege an interest has been harmed, a judicial decision cannot remedy a nonexistent harm." *Id.* ¶ 50, 409 P.3d at 275 (citation omitted). Here, the harm alleged is the inability to practice Humanism. A judicial decision cannot remedy this harm because it is nonexistent. Because Guy and AHA fail to satisfy the first and second *Brimmer* elements, the Court finds the remaining elements do not warrant a discussion. *See id.* ¶¶ 50-54, 409 P.3d at 274-76. As such, the Court finds Plaintiffs' declaratory judgment action fails because Plaintiffs do not have a justiciable claim.[11]

Injunctive Relief

Similarly, Plaintiffs must have standing to obtain an injunction. For this Court to award an injunction, Plaintiffs must show actual injury. *See id.* ¶ 30, 409 P.3d at 268. "The requirement that [a plaintiff] must show actual injury derives ultimately from the doctrine of standing, a constitutional principle that prevents Courts of law from undertaking tasks assigned to the political branches." *Id.* (alteration in original) (citation omitted). "A Court will issue an injunction when the threatened harm is irreparable and there is no adequate remedy at law." *The Tavern, LLC*, 2017 WY 56, ¶ 36, 395 P.3d at 177.

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[11] Because the Court finds Plaintiffs do not have a justiciable declaratory judgment action, the Court will not address the merits of Plaintiffs' declaratory judgment action or go into additional discussion regarding Guy's and AHA's individual standing to bring a claim. Standing is discussed more thoroughly under the Court's analysis of Plaintiffs' Count I, as is the topic of voluntary cessation.

The Wyoming Supreme Court recognizes that "an action for injunction is a form of equitable relief which is not granted as a matter of right, but the issuance of which is addressed to the Court's equitable discretion." *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc.*, 714 P.2d 328, 323 (Wyo. 1986). The Wyoming Supreme Court notes "the extraordinary character of the remedy of injunction, and has stated that a Court must proceed with caution and deliberation before exercising the remedy." *Id.* A Court granting an injunction should proceed with caution because an injunction is "the 'strong arm of equity,' [and] should never be granted expect in a clear case of irreparable injury, and with a full conviction on the part of the Court of its urgent necessity." *Lee v. Brown*, 357 P.2d 1106, 1110 (Wyo. 1960) (citation omitted). Meaning, "the relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury. The Court should therefore be guided by the fact that the burden of proof rests upon the complainant to establish the material allegations entitling him to relief." *Id.* at 1110-11 (citation omitted).

Here, Plaintiffs seek a temporary restraining order and permanent injunction against Defendants

> to prevent their continuing practice by which they (a) deprive Guy of his freedom of religion, (b) prevent Guy from association with other inmates in the practice of Humanism, (c) further the establishment of selected religions, and (d) provide unequal treatment favoring the adherents of WDOC Recognized Religions over the adherents of Humanism.

Pls.' Compl. at 9, ¶ 69. As with Plaintiffs' request for declaratory judgment, Plaintiffs' request for injunctive relief centers on Defendants recognizing Humanism as a faith-based practice. The Court adheres to its prior finding that Plaintiffs fail to present an actual injury in which equitable relief is warranted. In December 2017, Defendants added Humanism to the list of recognized religious practices and Plaintiffs have not alleged a denial of their rights since that date. The Court finds this matter is not appropriate for injunctive relief because Plaintiffs do not demonstrate "great and irreparable injury." Rather, Plaintiffs complain of speculative future actions that may or may not occur and claim the injury Guy will suffer if an injunction is not granted stems from Defendants not recognizing Humanism as a faith-based group. *See* Pls.' Br. Opposing Mot. to Dismiss at 11, ¶ 45 ("Failure to enjoin the alleged violations by the State of Wyoming and WDOC would have severe and irreparable negative effects by causing Guy to continue to suffer emotional distress, shame, humiliation, loss of enjoyment of life, and mental anguish."); *see also Healy v. Smith*, 83 P. 583, 589 (Wyo. 1906) ("Courts will not, however, enjoin against a mere speculative or possible injury. Instead, a reasonable probability of the injury resulting must be shown."). Because the Court finds Plaintiffs do not present a justiciable declaratory judgment action and fail to state a claim for injunctive relief, Count II is DISMISSED WITHOUT PREJUDICE.

C. Count III: Direct Action Against the State of Wyoming and the Department of Corrections for Violation of the Wyoming Constitution

Plaintiffs' final claim is against Lampert and Tennant-Caine in their official capacity for violating various provisions of the Wyoming Constitution. *See* Pls.' Compl. at 10, ¶¶ 74-81. Plaintiffs claim Lampert and Tennant-Caine violated Article I, §§ 7, 18, and 19 of the Wyoming Constitution, causing a loss of $120,000.00. *See id.* In response, Defendants ask the Court to dismiss Plaintiffs' state constitutional claims because the legislature has not authorized suit. *See* Defs.' Mot. to Dismiss at 7-8. At the hearing, Plaintiffs conceded Wyoming does not recognize a direct action under the Wyoming Constitution.

According to the Wyoming Supreme Court:

> There are few, if any, precedents or rules that have been recognized longer or followed with greater fidelity than the rule that was set out in the case of *Hjorth Royalty Company v. Trustees of University*, 30 Wyo. 309, 222 P. 9 (1924), which held that Art. 1 § 8, Wyoming Constitution, is not self-executing; that no suit can be maintained against the State until the legislature makes provision for such filing; and, that absent such consent, no suit or claim could be made against the State . . . . In addition to the fact that this rule is most clearly established by numerous Wyoming authorities, in states having a similar provision to the one in our constitution, it has been almost universally held that such provision, which empowers the legislature to authorize the bringing of suits against the

> State and providing the procedure therefor, is not self-executing and requires positive, definite legislative action. No suit can be maintained absent such consent set out clearly by statute.

May v. Se. Wyo. Mental Health Ctr., 866 P.2d 732, 737 (Wyo. 1993) (citation omitted) (finding civil rights claims based on the Wyoming Constitution fail because there is no legislation); *see also* WYO. CONST. art. I, § 8 ("Suits may be brought against the state in such manner and in such Courts as the legislature may by law direct."). It is undisputed that the Wyoming legislature has not authorized suit against the State for general constitutional violations. As such, the Court finds Plaintiffs' Count III fails as a matter of law and is DISMISSED WITH PREJUDICE.

D. Plaintiffs' Request to Amend Their Complaint

At the hearing, Plaintiffs asked the Court to amend their Complaint if the Court finds in Defendants' favor. Pursuant to WYO. R. CIV. P. 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the Court's leave. The Court should freely give leave when justice so requires." WYO. R. CIV. P. 15(a)(2). The Wyoming Supreme Court states: "The decision to allow a plaintiff to amend his complaint 'is vested within the sound discretion of the district Court and subject to reversal on appeal only for an abuse of that discretion." *Allred*, 2018 WY 8, ¶ 59, 409 P.3d at 277 (citation omitted). The decision to deny a plaintiff s request to amend his complaint will be reversed "when [the Court] acts in a manner which exceeds the bounds of reason under the circumstances." *Id.* (citation omitted). If the Court finds an

amendment would be futile, the Court may refuse to allow the amendment. *See id.* "A proposed amendment is futile if the complaint, as amended, would be subject to dismissal." *Id.* (citation omitted).

Here, Plaintiffs' Complaint fails for numerous reasons, including lack of standing and failing to present a justiciable claim. As written, Plaintiffs' Complaint focuses on Defendants' refusal to acknowledge Humanism as a faith-based practice. Plaintiffs concede, however, that since filing their Complaint Defendants have remedied the situation when, on December 29, 2017, the WDOC added Humanism to the list of recognized faith groups. The Court finds an amendment is futile because Plaintiffs' claims are moot. In addition, until Defendants refuse to allow Guy to engage in activities related to the practice of Humanism, the Court finds Plaintiffs fail to state a claim. As such, any proposed amendment is subject to dismissal because Plaintiffs' future claims, if any, are not ripe. Plaintiffs must show a violation and the exhaustion of administrative remedies before Plaintiffs may bring a cause of action. Therefore, Plaintiffs' request to amend their Complaint is DENIED.

CONCLUSION

For the reasons stated above, the Court finds Counts I and II fail because Plaintiffs lack standing to sue, their claims are moot, and fail to state a claim upon which relief may be granted. Regarding Count III, the Court finds Wyoming has not recognized a direct action under the Wyoming Constitution and, as such, Count III fails as a matter of law. Finally, at the hearing, Plaintiffs asked the Court to amend their Complaint if the Court finds in Defendants' favor. The Court finds an amended complaint is futile because

Plaintiffs lack standing, Plaintiffs' request for Defendants to recognize Humanism was remedied, and Plaintiffs failed to exhaust administrative remedies.

IT IS THEREFORE ORDERED THAT Count I is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED Count II is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED Count III is DISMISSED WITH PREJUDICE.

IT IS FINALLY ORDERED Plaintiffs request to amend the Complaint is DENIED.

Dated this 22 day of August 2018.

/s/ Thomas Campbell
Hon. Thomas Campbell
First Judicial District Court Judge

IN THE DISTRICT COURT,
FIRST JUDICIAL DISTRICT IN AND FOR
LARAMIE COUNTY, STATE OF WYOMING
Docket No. 189-1
[filed Dec. 8, 2017]

JONMICHAEL GUY and AMERICAN HUMANIST ASSOCIATION,

Plaintiffs,

vs.

ROBERT O. LAMPERT, individually and in his official capacity, JULIE TENNANT-CAINE, individually and in her official capacity, and THE STATE OF WYOMING and the WYOMING DEPARTMENT OF CORRECTIONS, by and through Robert O. Lampert, in his official Capacity as Director of the Department of Corrections,

Defendants.

COMPLAINT

COME NOW Plaintiffs JonMichael Guy and the American Humanist Association, by and through their attorneys, Aron & Hennig, LLP, and for their Complaint state and allege as follows against the above-named Defendants: (a) Julie Tennant-Caine, individually and in her official capacity; (b) Robert O. Lampert, individually and in his official capacity; (c) the State of Wyoming, and (d) the Wyoming Department of Corrections, an agency of the State of Wyo-

ming, by and through Robert O. Lampert, Director of the Wyoming Department of Corrections, [Robert O. Lampert and the said Department are jointly referred to herein as "WDOC"]:

Substance of the Complaint

1. Plaintiffs JonMichael Guy ["Guy"] and American Humanist Association ["AHA"] seek to protect and vindicate their civil liberties and constitutional rights, including separation of church and state and the entitlement to the equal protection and due process of law, guaranteed by the Constitutions of the United States and the State of Wyoming, and they further seeks injunctive relief to grant Guy, and others similarly situated, the right to practice his and their Humanist religion.

2. As an adherent of Humanism and supporter of the AHA, Guy further seeks to vindicate the right of the American Humanist Association to promote and support the civil liberties of Guy and all other citizens, and enforce the constitutional right to separation of church and state and the right to practice the religion of Humanism.

3. This action arises out of their refusal to allow Guy as a Wyoming inmate with sincerely held Humanist convictions to form a Humanist study group to meet on the same terms that Defendants authorize inmates of theistic religious traditions, and other religions, to meet; and Defendants' refusal to allow inmates to identify as Humanists for assignment purposes.

4. The violations alleged herein are the practice of individual Defendants Julie Tennant-Caine

["Tennant-Caine"] and Robert O. Lampert ["Lampert"], and the relevant policy of the WDOC, that discriminated against Guy and other Humanist inmates because of their sincerely held convictions, thereby violating the Establishment Clause of the 1st Amendment and the Equal Protection Clause of the 14th Amendment of the United States Constitution.

5. The discriminatory practice of Tennant-Caine and Lampert, and the policy of WDOC, are in violation of Article I of the Constitution of the State of Wyoming, set forth at §7 "No absolute, arbitrary power;" §18 "Religious liberty;" and §19 "Appropriations for sectarian or religious societies or institutions prohibited."

6. The discriminatory practice of Tennant-Caine and Lampert and the policy of the WDOC are also in violation of the Constitution of the State of Wyoming set forth at §2 "Equality of all;" §6 "Due process of law;" and §7 "No absolute, arbitrary power."

7. Guy seeks injunctive and declaratory relief and damages against the Defendants under the provisions of 42 U.S.C. §1983.

Jurisdictional Facts and Facts Common to All Counts

8. Jurisdiction and venue are proper in that the acts and omissions of the individual Defendants and the WDOC which form the basis of Plaintiff's causes of action occurred within Laramie County, Wyoming, and all Defendants' principal place of business and governance is in Laramie County.

9. Plaintiff Guy, inmate #23934, is in the custody of WDOC, presently incarcerated at the Wyoming Medium Correctional Institution in Torrington, Wyoming ["WMCI"]; at other relevant times, Guy was incarcerated at the Wyoming State Penitentiary in Rawlins, Wyoming, and the Honor Conservation Camp in Newcastle, Wyoming.

10. Guy was admitted to custody of the WDOC in January 2006.

11. Defendant Wyoming Department of Corrections was created in 1991 to manage and administer the Wyoming institutions for incarceration of adult offenders.

12. The principal offices of the WDOC are located in Cheyenne, Laramie County, Wyoming.

13. Defendant Julie Tennant-Caine ["Tennant-Caine"] at all times relevant to this Complaint was Deputy Administrator of the WDOC, with the authority to administer the WDOC policies with regard to "Establishing and Amending Faith Group Practices;" her office is located at the DOC Central Office located in Cheyenne, Wyoming.

14. Defendant Robert O. Lampert ["Lampert"] at all times relevant to this Complaint was Director of the WDOC, with authority to supervise, manage and administer the WDOC policies with regard to "Establishing and Amending Faith Group Practices;" his office is located at the DOC Central Office located in Cheyenne, Wyoming.

15. Plaintiff American Humanist Association ["AHA"], is a national nonprofit 501(c)(3) organi-

zation incorporated in Illinois with its principal place of business in Washington, D.C.

16. AHA is a membership organization with over 185 chapters and affiliates nationwide, including in Wyoming, and more than 400,000 members and supporters, including members residing in Wyoming.

17. AHA promotes Humanism and is dedicated to advancing and preserving separation of church and state and the constitutional rights of Humanists, atheists and other freethinkers, including Humanist inmates in Wyoming institutions and others.

18. Humanism comforts, guides, and provides meaning to Guy in the way that religions traditionally provide such comfort, guidance, and meaning to others.

19. 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 "Humanism and Its Aspirations," signed by 21 Nobel laureates and thousands of others, and the International Humanist and Ethical Union (which provides a statement of Humanist principles known as "The Amsterdam Declaration").

20. Humanists celebrate holidays including National Day of Reason (May 2), Darwin Day (February 12), Human Light (in December) and other solstice-related holidays.

21. Humanism adheres to a broad world view that includes a non-theistic view on the question of

deities; an affirmative naturalistic outlook; an acceptance of reason, rational analysis, logic, and empiricism as the primary means of attaining truth; an affirmative recognition of ethical duties; and a strong commitment to human rights.

22. Humanism has a structure akin to many religions, with clergy/celebrants who perform weddings, funerals, ceremonies, counseling, and other functions of clergy.

23. Humanism has association with entities dedicated to religious Humanism, such as the American Ethical Union based on the Ethical Culture movement founded in 1876, and the Society for Humanistic Judaism founded in 1969, among others.

24. AHA's adjunct organization, the Humanist Society, is a religious, educational, charitable, nonprofit 501(c)(3) organization started in 1939 by a group of Quakers as a non-theistic society based on similar goals and beliefs, with tenets that promise a union between science and ethics. The society was authorized to issue charters anywhere in the world and to train and certify people, who are accorded the rights and privileges granted by law to priests, ministers, and rabbis of traditional religions.

25. Modern Humanism, also called Naturalistic Humanism, Scientific Humanism, Ethical Humanism, and Democratic Humanism, was defined by one of its proponents as "a naturalistic philosophy that rejects all supernaturalism and relies primarily upon reason and science, democracy and human compassion."

26. Religious Humanism largely emerged out of Ethical Culture, Unitarianism, and Universalism. Many Unitarian Universalist congregations and all Ethical Culture societies describe themselves as Humanist. Religious Humanism offers a basis for moral values, an inspiring set of ideals, methods for dealing with life's harsher realities, a rationale for living life joyously, and an overall sense of purpose.

27. Secular Humanism is an outgrowth of eighteenth century enlightenment rationalism and nineteenth century free thought. Many secular groups, such as the Council for Secular Humanism and the American Rationalist Federation, and many otherwise unaffiliated academic philosophers and scientists, advocate this philosophy.

28. Secular and Religious Humanists share a world view and principles; both Secular and Religious Humanists were signers of the Humanist Manifesto in 1933, and its revisions in 1973 and 2003.

29. Humanists are united under the Humanist Manifesto III, also known as "Humanism and Its Aspirations" [attached hereto as Appendix A], that is a consensus of Humanist convictions. The ultimate concern for Humanists is to lead ethical lives of personal fulfillment that aspire to the greater good of humanity, to minimize inequities of circumstance and ability, and to promote a just distribution of nature's resources and the fruits of human effort so that as many as possible can enjoy a good life.

30. The United States Supreme Court, and the courts of many states have recognized "Secular Humanism" as a religion for 1st Amendment purposes.

31. Guy wishes to meet with other Humanists who share his sincerely held Humanist convictions, to include the principles set forth in the "Affirmations of Humanism" that are promulgated within Humanism and to which Guy subscribes.

COUNT I: Monetary Damages for Civil Rights Violations [Defendants Lampert and Tennant-Caine, individually]

32. By this reference Plaintiffs incorporate herein paragraphs 1-31, inclusive, of this Complaint as though set forth in their entirety.

33. The actions alleged herein against Defendants Lampert and Tennant-Caine, individually, were deprivation of Guy's civil rights in violation of 42 U.S.C. §1983.

34. At all relevant times, Lampert was an individual acting under color of state law by virtue of his employment with WDOC and his position as its Director.

35. At all relevant times, Tennant-Caine was an individual acting under color of state law by virtue of her employment with WDOC and her position as its Deputy Administrator.

36. Lampert and Tennant-Caine have discriminated against Guy and other Humanist inmates, violating the United States Constitution, by implementing administrative policies concerning inmate religious rights, as follows:

a. When an inmate is admitted to a Wyoming prison, the inmate may designate a religious preference assignment.

b. The religious preference information is entered in WDOC records, that are shared among all WDOC supervisors and staff.

c. In coordination with the WDOC, Lampert and Tennant-Caine are responsible for approving inmate religious requests and assignments.

d. By their acts alleged herein, Lampert and Tennant-Caine have precluded Guy's Humanist religious preference from entry in WDOC records, and have denied Guy's religious requests and assignments.

37. Lampert and Tennant-Caine implement WDOC policy that recognizes and accepts the following religious assignments, referred to as "Recognized Religions."

a. Asatru/Odinism
b. Baha'i
c. Buddhism
d. The Church of Christ, Scientist (Christian Science)
e. Eckankar
f. Hindu
g. ISKCON (International Society for Krishna Consciousness)
h. Islam
i. Jehovah's Witnesses
j. Judaism

k. Church of Jesus Christ of Latter-Day Saints (Mormon)
l. Native America
m. Protestant
n. Rastafarian
o. Roman Catholic
p. Satanism
q. Seventh-Day Adventist
r. Sikh
s. Sufi
t. Taoism
u. Thelema (Gnostic)
v. Unity
w. Unitarian Universalist
x. Wicca

38. Defendants Lampert and Tennant-Caine refuse to allow Guy, an inmate with sincerely held Humanist convictions, to form a Humanist study group to meet on the terms they authorize inmates of theistic religious traditions and other religions to meet.

39. This action also arises out of the refusal by Defendants Lampert and Tennant-Caine to allow Guy and other inmates to identify as Humanists for assignment purposes.

40. In discriminating against Guy, Lampert and Tennant-Caine violate the Free Exercise and Establishment Clauses of the 1st Amendment, and the Equal Protection Clause of the 14th Amendment, of the United States Constitution.

41. Guy wishes to identify as a Humanist in the records of WDOC, and be accorded his civil rights in the same manner such rights are accorded adherents of other religions that the WDOC identifies as Recognized Religions.

42. In discriminating against Guy and other Humanist inmates, Defendants Lampert and Tennant-Caine have implemented WDOC policy by providing favorable treatment to the WDOC Recognized Religions in formally recognizing or accommodating their religious practices and ceremonial activities, such as: Outdoor Religious Fire Ceremonies Guidelines; List of Current Approved and Recognized Diets; WDOC Religious Calendar by Faith Group; and WDOC Religious Calendar by Date.

43. Lampert and Tennant-Caine have implemented WDOC policy by favorable treatment to inmate members of Recognized Religions in providing them privileges denied to Guy and other Humanist inmates, including: (a) meeting with community-funded or volunteer chaplains; (b) keeping religious items and jewelry; (c) having eligibility for enrollment in religious correspondence courses; (d) having community chaplains perform religious rites or rituals; (e) meeting with their respective community groups to develop their ethical foundations with some sense of consistency in their teaching; and (f) conducting annual religious ceremonial feasts.

44. Guy has been denied religious association with no less than twelve other Humanist inmates at the WDOC facilities where he has been incarcerated.

45. In the absence of Humanism being accorded recognition and equal treatment as a Recognized Religion, Guy and other Humanist inmates suffer unfair treatment as stated above and in the following particulars, among others:

    a. The effect of implementation of WDOC policy by Lampert and Tennant-Caine is to decree that Humanism is not a religion.

    b. Humanist inmates in Wyoming prisons have no venue for conducting their meetings.

    c. Humanist inmates cannot meet in groups in the same way inmates who are members of Recognized Religions can meet.

    d. WDOC does not recognize Humanist as an assignment option.

    e. No Humanist meeting group is permitted at any WDOC facility.

46. In discriminating against Guy because of his sincerely held convictions, Lampert and Tennant-Caine have knowingly violated Guy's right to freedom of religion guaranteed by the Free Exercise Clause contained in the 1st Amendment to the United States Constitution.

47. In discriminating against Guy and other Humanist inmates because of their sincerely held convictions, Lampert and Tennant-Caine have favored the WDOC Recognized Religions over Humanism, and thereby have knowingly violated the Establishment Clause of the 1st Amendment to the United States Constitution.

48. In discriminating against Guy and other Humanist inmates because of their sincerely held convictions, Lampert and Tennant-Caine have intentionally refused to accord them the same and equal treatment that is accorded to members of the WDOC Recognized Religions, and thereby have knowingly denied to Guy and other Humanist inmates the right to equal protection of the law guaranteed by the 14th Amendment of the United States Constitution.

49. At all relevant times, the right of Guy to freedom of religion was a clearly established legal principle that was well known to Lampert and Tennant-Caine.

50. At the time of the violations set forth herein, the prohibition against establishing or favoring one religion over another was a clearly established legal principle that was well known to Lampert and Tennant-Caine.

51. At the time of the violations set forth herein, the prohibition by which Guy was denied the same and equal treatment accorded to members of the WDOC Recognized Religions, and to the equal protection of the law was a clearly established principle that was well known to Lampert and Tennant-Caine.

52. As a direct and proximate result of the acts and omissions by Lampert and Tennant- Caine as alleged herein, Guy has suffered the loss of essential and fundamental civil rights in the monetary value of One Hundred Twenty Thousand Dollars [$120,000.00] or such greater or other amount as will be proved at trial herein.

53. As a direct and proximate result of the acts and omissions by Lampert and Tennant- Caine as alleged herein, Guy has suffered emotional distress, shame, humiliation, loss of enjoyment of life and mental anguish.

54. The acts, omissions and discriminations by Lampert and Tennant-Caine as alleged herein were committed with such willful and wanton disregard of the consequences, and of Guy's well-known constitutional rights, that Lampert and Tennant-Caine should be ordered to pay exemplary and punitive damages in such amount as will deter them and others similarly situated from such misconduct in the future.

COUNT II: Declaratory and Injunctive Relief against The State of Wyoming, WDOC, and Lampert and Tennant-Caine, in their official capacities

55. By this reference Plaintiffs incorporate herein paragraphs 1-54, inclusive, of this Complaint as though set forth in their entirety.

56. The Establishment Clause of the 1st Amendment prohibits a state government from passing any law that aids any religion or prefers one religion over another.

57. The laws of the State of Wyoming as implemented in WDOC policies by Lampert and Tennant-Caine with respect to Guy and other Humanist inmates violates each of those prohibitions.

58. The Free Exercise Clause of the 1st Amendment to the United States Constitution prohibits a state government from passing any law that

prohibits or interferes with the right to freedom of religion, the right to accept any religious belief and the right to engage in religious rituals.

59. The laws of the State of Wyoming as implemented in WDOC policies by Lampert and Tennant-Caine with respect to Guy and other Humanist inmates interferes with and violates their freedom of religion and their right to accept any religious belief and engage in religious rituals.

60. The Equal Protection Clause of the 14th Amendment to the United States Constitution prohibits the State of Wyoming from denying to Guy the same and equal treatment accorded to members of the WDOC Recognized Religions.

61. The laws of the State of Wyoming as implemented in WDOC policies by Lampert and Tennant-Caine with respect to Guy and other Humanist inmates denies to Guy the same and equal treatment accorded to members of the WDOC Recognized Religions.

62. At all times relevant hereto, Lampert and Tennant-Caine in their official capacities were the officers and agents of the Wyoming Department of Corrections and of the State of Wyoming.

63. The State of Wyoming, WDOC, Lampert and Tennant-Caine have no compelling government interest–no valid government interest at all–to justify their violations of the Establishment and Free Exercise Clauses of the 1st Amendment, or the Equal Protection Clause of the 14th Amendment, to the United States Constitution.

64. To redress these constitutional violations, Guy and AHA seek injunctive and declaratory relief under the provisions of 42 U.S.C. §1983, against Defendants State of Wyoming, Wyoming Department of Corrections, and Lampert and Tennant-Caine in their official capacities.

65. Guy (a) is an individual whose rights, status and legal relations are affected by the Establishment and Free Exercise Clauses of the 1st Amendment, and the equal protection clause of the 14th Amendment, to the United States Constitution, and by the laws of the State of Wyoming as implemented in WDOC policies by Lampert and Tennant-Caine; and (b) is an individual who desires to obtain a declaration of his legal rights and legal status with respect to those laws and the Defendants herein.

66. A justiciable controversy exists between Plaintiffs and Defendants, and entry of a declaratory judgment providing injunctive relief as sought herein will serve to remove uncertainty and terminate the controversy between the parties.

67. The conduct of the State of Wyoming and WDOC in preventing Guy's freedom of religion and practice of Humanism, and in aiding and preferring the Recognized Religions over Humanism, and in denying equal treatment to adherents of Humanism is a continuing violation of the Constitution of the United States.

68. WDOC's continuing prevention of Guy's practice of religion, and the continuing refusal to list Humanism as a Recognized Religion, causes irreparable harm by depriving Guy of his freedom

of religion, by preventing Guy from his association with other inmates in the practice of Humanism, and bestows the imprimatur of the courts on the unconstitutional practices of the State of Wyoming and WDOC of establishing selected religions and providing unequal treatment by favoring the adherents of all other WDOC Recognized Religions over the adherents of Humanism.

69. Guy and AHA seek a temporary restraining order and permanent injunction against the State of Wyoming, WDOC, and Lampert and Tennant-Caine in their official capacities, to prevent their continuing practice by which they (a) deprive Guy of his freedom of religion, (b) prevent Guy from association with other inmates in the practice of Humanism, (c) further the establishment of selected religions, and (d) provide unequal treatment favoring the adherents of WDOC Recognized Religions over the adherents of Humanism.

70. Guy and AHA further seek a temporary restraining order and permanent injunction enjoining and ordering all Defendants to: (i) Accord Humanism the status of a "Recognized Religion" and permit Humanism as an assignment option; (ii) Authorize Humanist study groups on the same terms as other faith traditions at all Department facilities; and (iii) Prohibiting discrimination against all Humanist inmates.

71. Failure to enjoin the ongoing constitutional violations by the State of Wyoming and WDOC would have severe and irreparable negative consequences by causing Guy to continue to suffer

emotional distress, shame, humiliation, loss of enjoyment of life, and mental anguish.

72. Guy further seeks entry of a declaratory judgment affirming his right to practice his chosen religion of Humanism; declaring that exclusion of Humanism as a WDOC Recognized Religion is a violation of the constitutional prohibition against establishment of religion; and, declaring that exclusion of Humanism as a WDOC Recognized Religion is a violation of the constitutional guarantee of equal protection of the law; and further declaring that Defendants' actions set forth herein: (a) violate the Establishment Clause of the 1st Amendment to the United States Constitution; (b) violate the Free Exercise Clause of the 1st Amendment to the United States Constitution; (c) discriminate against Guy on account of his religious convictions; (d) violate the Equal Protection Clause of the 14th Amendment to the United States Constitution; (e) lack a secular purpose, have the effect of preferring some religions over others, particularly theistic traditions over non-theistic traditions, resulting in excessive government entanglement with religion; and (f) lack a compelling, important or legitimate governmental interest.

73. Guy and AHA seeks equitable relief because the limited monetary damages that can be awarded do not provide an adequate remedy at law for the ongoing deprivation of the constitutional rights of Guy and other Humanist inmates.

COUNT III: Direct Action Against the State of Wyoming and the Department of Corrections for violation of the Wyoming Constitution

74. By this reference Plaintiffs incorporate herein paragraphs 1-45, inclusive, of this Complaint as though set forth in their entirety.

75. In discriminating against Guy and other Humanist inmates because of their sincerely held convictions, Lampert and Tennant-Caine in their official capacities have willfully, knowingly and intentionally abused their power, in violation of Article I, §7 of the Constitution of the State of Wyoming.

76. In discriminating against Guy and other Humanist inmates because of their sincerely held convictions, Lampert and Tennant-Caine in their official capacities have knowingly violated Article I, §18 of the Constitution of the State of Wyoming, which provides that "the free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state."

77. In discriminating against Guy and other Humanist inmates because of their sincerely held convictions, and by using public funding to favor and provide support for the WDOC Recognized Religions, Lampert and Tennant-Caine in their official capacities have knowingly violated Article I, §19, of the Constitution of the State of Wyoming, which provides that "no money of the state shall ever be given or appropriated to any sectarian or religious society or institution."

78. At all relevant times, Lampert and Tennant-Caine in their official capacities were officers and agents of the Wyoming Department of Corrections and of the State of Wyoming.

79. Because the conduct of Lampert and Tennant-Caine has violated the clearly established prohibitions of the Wyoming Constitution, the State of Wyoming should be held liable for such misconduct by the doctrine of *respondeat superior*.

80. Any statutory provision that purports to extend sovereign immunity to the State of Wyoming for the violation of Article I, §§7, 18 & 19 of the Wyoming Constitution would itself be unconstitutional as applied to the deprivation of the rights of Guy and other Humanist inmates because of their sincerely held convictions.

81. As a direct and proximate result of the acts, omissions and discriminations by Lampert and Tennant-Caine as alleged herein, Guy has suffered the loss of essential civil rights in the sum of One Hundred Twenty Thousand Dollars [$120,000.00] or such greater or other monetary amount as will be proved at trial herein.

WHEREFORE, Plaintiffs JonMichael Guy and American Humanist Association pray that the Court enter an appropriate interlocutory temporary restraining order, and upon the trial of the matters alleged herein that the Court enter its permanent injunction, and enter its judgment in favor of Plaintiffs and against the Defendants, as follows:

A. On Count I herein, for entry of judgment in favor of Guy against Defendants Robert O. Lampert, individually, and Julie Tennant-Caine, individu-

ally, jointly and severally, in the sum of One Hundred Twenty Thousand Dollars [$120,000.00] or such greater or other amount as will be proved at trial herein; together with entry of judgment in favor of AHA for monetary damages in the nominal sum of One Dollar [$1.00] to vindicate the rights and claims of AHA set forth herein.

B. On Count II herein, for entry of a temporary restraining order, preliminary injunction and permanent injunction against Defendant State of Wyoming, against Defendant Wyoming Department of Corrections, and against Defendant Robert O. Lampert, in his official capacity, and Defendant Julie Tennant-Caine, in her official capacity, and against all of their successors, enjoining and prohibiting the practices by which they deprive Guy and other Humanist inmates of freedom of religion, prevent Guy from association with other inmates in the practice of Humanism, further the establishment of selected religions, and provide unequal treatment favoring the adherents of all other WDOC Recognized Religions over the adherents of Humanism;

And further ordering the said Defendants to:

(i) Accord Humanism the status of a "Recognized Religion" equivalent to that of already accepted religions in all WDOC facilities, and to permit Humanism as an assignment option in WDOC administrative records;

(ii) Authorize Humanist study groups in all Department of Correction facilities and al-

low such Humanist groups to meet on the same terms the Defendants authorize groups for adherents of other faith traditions;

(iii) Authorize Guy to meet in a Humanist study group on the same terms Defendants authorize for inmates of recognized faith traditions;

(iv) Authorize a Humanist study group upon the request of any inmate at any Department facility in which religious groups are permitted, and approve of said Humanist group without requiring inmates to seek any administrative remedy that is not required of adherents of any Recognized Religion.

(v) Provide any such Humanist group with the same rights, privileges, and benefits, including outside volunteers, as are accorded other Recognized Religions; and,

(vi) Prohibit Defendants, their agents, successors and anyone in active concert with them, from otherwise discriminating against Humanist inmates.

C. On Count II herein, for entry of a declaratory judgment that finds and decrees the following, or such other and similar declaration as the Court deems proper:

(i) That Defendants' actions set forth herein violate the Establishment Clause of the 1st Amendment to the United States Constitution;

(ii) That Defendants' actions set forth herein violate the Free Exercise Clause of the 1st Amendment to the United States Constitution.

(iii) That Defendants' actions set forth herein have discriminated against Guy on account of his religious convictions.

(iv) That Defendants' actions set forth herein violate the Equal Protection Clause of the 14th Amendment to the United States Constitution.

(v) That Defendants' actions set forth herein lack a secular purpose, have the effect of preferring some religions over others, particularly theistic traditions over non-theistic traditions, resulting in excessive government entanglement with religion.

(vi) Defendants' actions set forth herein lack a compelling, important or legitimate governmental interest.

D. On Count III herein, for entry of judgment in the sum of One Hundred Twenty Thousand Dollars [$120,000.00] or such other amount as will be proved at trial herein, against The State of Wyoming for knowing violation of the Wyoming Constitution.

E. On Count I herein, for award of exemplary and punitive damages against Defendants Lampert and Tennant-Caine in such amount as will deter them and others similarly situated from similar misconduct in the future.

F. For award of Plaintiffs' reasonable attorneys fees as provided by law.

G. For award of Plaintiffs' costs of suit herein, and for such other and further relief as the Court deems the Plaintiffs entitled, the premises considered.

Dated this 6th day of December 2017.

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