FIRST AMEND. APPLICATION TO PRISONS AND INMATES RELATED TO SPECIAL DIETS

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I. Two Factors at Play

A. Inmates retain protections afforded by the First Amendment, "including its directive that no law shall prohibit the free exercise of religion." (*O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).)

1. Only beliefs *rooted in religion* are protected by the Free Exercise Clause, however. This is because – by its terms – it gives special protection to the exercise of religion. (*Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 713 (1981).) "Purely secular views do not suffice." (*Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 833 (1989).)

a. But: "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." (*Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680, 699 (1989).) It is inappropriate, for example, for a prison official to argue with a prisoner regarding the objective truth of his or her religious belief. (*Nelson v. Miller*, 570 F.3d 868, 881 (7th Cir. 2009).)

2. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." (*Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972).)

B. Limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives – including deterrence of crime, rehabilitation of prisoners, and institutional security. (*O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).)

II. The *Turner* Standard

"To ensure that courts afford appropriate deference to prison officials," the U.S. Supreme Court "determined that prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights." (*O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987).) If a prison regulation impinges on inmates' constitutional rights, the regulation is valid when it is reasonably related to legitimate

penological interests. (*Turner v. Safley*, 482 U.S. 78, 89 (1987).) Several factors are relevant to this 'reasonableness' determination:

A. Whether a rational connection exists between the regulation and a neutral, legitimate government interest;

B. Whether alternative means exist for inmates to exercise the constitutional right at issue (i.e., to observe *other* religious obligations, *see O'Lone* at 352);

C. What impact the accommodation of the right would have on inmates, prison personnel, and allocation of prison resources; and

D. Whether obvious, easy alternatives to the regulation exist.

(*Turner v. Safley*, 482 U.S. 78, 89-90 (1987); *see also Pell v. Procunier*, 417 U.S. 817, 822-23 (1974) (stating that as to "considerations . . . peculiarly within the province and professional expertise of corrections officials," "in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters").)

III. Religious Dietary Needs

Under the First Amendment, prisoners are entitled to "reasonable accommodation of their religious dietary needs." (*Sisney v. Reisch*, 674 F.3d 839, 846 (8th Cir. 2012) (quoting *Love v. Reed*, 216 F.3d 682, 689 (8th Cir. 2000)); *Bass v. Coughlin*, 976 F.2d 98, 99 (2d Cir. 1992); *LaFevers v. Saffle*, 936 F.2d 1117, 1119 (10th Cir. 1991); *Martinelli v. Dugger*, 817 F.2d 1499, 1504-05 (11th Cir. 1987), *cert. denied*, 484 U.S. 1012 (1988).)

A prisoner's religious dietary practice is substantially burdened when the prison forces him or her to choose between religious practice and adequate nutrition. (*Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 760-61 (7th Cir. 2003); *Love v. Reed*, 216 F.3d 682, 689-90 (8th Cir. 2000); *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987).)

IV. A First Amendment Violation Means a RLUIPA Violation Also Exists

Under RLUIPA, no government may impose a "substantial burden" on the religious exercise of an inmate unless the burden furthers "a compelling governmental interest" and does so by "the least restrictive means." (42 U.S.C. § 2000cc-1(a)(1)-(2).) RLUIPA defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." (42 U.S.C. § 2000cc-5(7)(A).) The U.S. Supreme Court held in 2005 that the portion of RLUIPA applicable to prisoners

does not violate the Establishment Clause. (*Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005).)

RLUIPA applies to any inmate religious exercise case in which "the substantial burden [on the religious exercise] is imposed in a program or activity that receives Federal financial assistance," or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." (42 U.S.C. § 2000cc-1(b)(1)-(2).)

As the First Amendment standard is less demanding on prisons than RLUIPA, a First Amendment violation in this context means a RLUIPA violation also exists. (*Willis v. Commissioner, Indiana Dept. of Correction*, 753 F.Supp.2d 768, 782 (S.D. Indiana 2010).)