

RELIGIOUS EXERCISE IN PRISON – A GUIDE FOR PRISON OFFICIALS

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The Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits any prison receiving federal funds from substantially burdening the religious exercise of its prisoners unless the burden survives strict scrutiny. This paper will discuss specific accommodations that a prisoner might request and propose solutions that will preserve the inmate's right to free exercise of religion while still maintaining prison security. Specific accommodations discussed will be: dress and grooming accommodations, dietary accommodations, and ceremonial accommodations. This paper can serve as a guide to prison officials when they are faced with an accommodation request.

INTRODUCTION

Approximately 91% of individuals incarcerated in prison profess a religious affiliation.¹ This is a higher percentage than the U.S. population as a whole, where approximately 83% of people claim a religious affiliation.² Many of these people choose to continue practicing their religion while incarcerated, and to do so, they may need to request permission to deviate from the standard dress, diet, or schedule to which inmates are subject. Some people, as a part of their religious practice, maintain specific dress or grooming standards that conflict with prison uniformity. This could include, for example, growing a beard, wearing a head covering, wearing religious jewelry, or refraining from cutting hair. Dietary practices could include adhering to a vegetarian diet, abstaining from certain ingredients such as pork or shellfish, refraining from the mixing of dairy and meat products, or adhering to certain restrictions on how food is handled or prepared. Ceremonial practices could include attendance at worship services, prayer or meditation, observance of holy days, or study of religious reading material.

There can be tension between a prisoner's request for accommodation of a religious practice and a prison's interest in safety or cost. For example, prison officials have claimed that some religious attire presents a safety

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¹ Enforcing Religious Freedom in Prison, U.S. Commission on Civil Rights, 2008 at 13.

² U.S. Religious Landscape Survey, Pew Forum 2008, at 8.

hazard. Likewise, they have claimed that some religiously mandated diets are prohibitively expensive. Either of these situations will likely cause prison officials to deny the request for accommodation. If a prisoner's request for accommodation is denied, he or she may file an administrative grievance. Unsuccessful grievances may result in lawsuits. Religious minorities tend to file suit more frequently than those who practice more widely adhered to faiths,³ though the success rate in litigation is comparable across religions.⁴

The purpose of this paper is to provide a framework for understanding the law and procedure for addressing a religious accommodation request. This paper deals solely with the religious practices of individual prisoners and does not address the Establishment Clause or Free Exercise Clause issues that are present in religiously based prison programming. Part I will discuss the requirements of the Religious Land Use and Institutionalized Persons Act,⁵ which is the primary statute governing the religious freedom of state prison inmates.⁶ It will also cover the procedural issues surrounding prisoner litigation, including the Prison Litigation Reform Act.⁷ Part II will explain that, in addition to avoiding liability, religious accommodation of prisoners is beneficial to prison officials because it decreases gang affiliation, makes use of the skills of chaplains, increases prisoner morale, and promotes rehabilitation.

I. THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

The Religious Land Use and Institutionalized Persons Act (RLUIPA) is the primary law governing the religious exercise of prisoners. RLUIPA provides greater protection than the First Amendment.⁸ Section A will provide a brief overview of religious accommodation law. Section B will discuss the substantive requirements of RLUIPA. Section C will discuss the procedural requirements of RLUIPA, including its interaction

³ Jews make up 1.9% of the prison population and file approximately 16% of RLUIPA suits. Muslims make up 9.3% of the prison population and file 29.6% of RLUIPA suits. By contrast, Christians make up 66.2% of the prison population and file only 10.8% of RLUIPA suits. *Enforcing Religious Freedom in Prison*, *supra* note 1 at 82.

⁴ *Id.* The fact that all religions enjoy roughly equal success rate is important in insulating RLUIPA from as-applied Establishment Clause challenges. *See Cutter v. Wilkinson*, 544 U.S. 709 (2005), *infra* note 23.

⁵ 42 U.S.C. § 2000cc *et seq.*

⁶ The statute applies to anyone "residing in or confined to an institution". For the sake of simplicity, this paper will refer to these individuals as "prisoners" or "prison inmates", even though jail inmates and those residing in mental health facilities are also covered under the statute.

⁷ 42 U.S.C. § 1997(e).

⁸ Section IA, *infra*, discusses the requirements of the First Amendment. Section IB, *infra*, discusses the requirements of RLUIPA.

with the Prison Litigation Reform Act, ways that prisons can avoid liability under RLUIPA, and remedies inmates can receive for violations of RLUIPA.

A. Brief Overview of Religious Accommodation Law

“Prison walls do not form a barrier separating prison inmates from the protections of the Constitution.”⁹ One of the protections of the Constitution is the right to free exercise of religion.¹⁰ Outside of a prison context, laws that on their face burden the free exercise of religion are subject to strict scrutiny.¹¹ In order for a law to pass strict scrutiny, the state’s interest must be compelling and there must be no alternative way for the state to achieve that compelling interest.¹²

In 1990, the U.S. Supreme Court had an opportunity to consider a challenge to Oregon’s statute prohibiting the use of peyote, a hallucinogen.¹³ The statute prohibited all use of the substance. Two individuals who used peyote as a part of their religious worship sued, claiming that the law violated their First Amendment rights. The Court held that the law did not violate the First Amendment.¹⁴ The rule announced was that laws that apply to conduct without regard to whether that conduct is religiously motivated and do not burden religious exercise on their face are subject to the more deferential rational basis standard, which means that a law need only be rationally related to a legitimate government goal, not the considerably more exacting standard of strict scrutiny.¹⁵

In response, Congress passed the Religious Freedom Restoration Act (RFRA) in 1993, which required laws burdening religious exercise, even if they result from a generally applicable rule, to be subject to the strict scrutiny test.¹⁶ In 1997, the Supreme Court struck down RFRA as applied to the states because it exceeds the authority granted to Congress under the 14th Amendment.¹⁷ RFRA still applies to the federal government.¹⁸

⁹ *Turner v. Safley*, 482 U.S. 78, 84 (1987).

¹⁰ U.S. Const. Amend. I “Congress shall make no law...prohibiting the free exercise [of religion].”

¹¹ *See Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

¹² *Id.* at 407.

¹³ *Employment Div., Dep’t. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* 42 U.S.C. § 2000bb *et seq.*

¹⁷ *City of Boerne v Flores*, 521 U.S. 507 (1997).

¹⁸ *See, e.g. O’Byrne v. Bureau of Prisons*, 349 F.3d 399, 400-401 (7th Cir. 2003); *Guam v. Guerrero*, 290 F.3d 1210, 1220-1222 (9th Cir. 2002); *Kikumura v. Hurley*, 242 F.3d 950, 958-960 (10th Cir. 2001); *In re Young*, 141 F.3d 854, 858-863 (8th Cir. 1998).

Congress responded by passing the Religious Land Use and Institutionalized Persons Act (RLUIPA) in 2000.¹⁹ RLUIPA restores the strict scrutiny test for burdens on religious exercise resulting from rules of general applicability.²⁰ RLUIPA is narrower than the Religious Freedom Restoration Act, in that it only applies to exercises of religion in land use or of persons residing in or confined to certain types of institutions.²¹ Prisons that receive federal funding are institutions covered under RLUIPA, as are any prison programs or activities that have an effect on interstate commerce.²² All state prison systems receive federal funding.²³

The U.S. Supreme Court unanimously upheld the constitutionality of RLUIPA against an Establishment Clause²⁴ challenge because it treats all religions equally and because it “alleviates exceptional government-created burdens on private religious exercise.”²⁵ Prisoners have their liberty curtailed to a great degree, so they are at the mercy of the government in their ability to practice their religion.²⁶ Removing the burden on practicing religion is not establishing a religion; it is simply restoring the inmates’ religious liberty.

The Court noted, however, that “Properly applying RLUIPA, courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.”²⁷ Lower courts have applied the requirement to take into account the burdens to nonbeneficiaries as part of the strict scrutiny analysis, construing it as a cost consideration.²⁸

B. What RLUIPA Requires of Prisons

RLUIPA states, in relevant part:

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution...even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person-- (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive

¹⁹ 42 U.S.C. § 2000cc et seq.

²⁰ *Id.*

²¹ *Id.*

²² 42 U.S.C. § 2000cc-1(b)(1).

²³ *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

²⁴ U.S. Const. Amend. I “Congress shall make no law respecting an establishment of religion...”

²⁵ *Cutter*, 544 U.S. at 720.

²⁶ *Id.* at 721.

²⁷ *Id.* at 720

²⁸ See *infra* Part IB3.

means of furthering that compelling governmental interest.²⁹

Most RLUIPA cases are resolved at the District Court level.³⁰ As a result, there is not a definitive body of law clearly laying out the precise contours of the statute. Instead, principles must be derived from a collection of assorted decisions across lower federal courts, with the occasional Court of Appeals case to resolve larger issues. This section will discuss how the statute and courts have defined and applied the terms “government”, “religious exercise”, “substantial burden”, “compelling interest”, and “least restrictive means”.

1. Government

RLUIPA defines government as: (i) a State, county, municipality, or other governmental entity created under the authority of a State; (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and (iii) any other person acting under color of State law.”³¹ Since state prisons are agencies of a state, they are considered as government for the purposes of RLUIPA. Individual prison guards are acting under the color of state law, so they are considered government as well. Contract chaplains are not considered to be state actors under RLUIPA.³²

2. Religious exercise

A religious exercise is “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”³³ Small or uncommon religions receive the same protection as large or common ones. Courts do not look to the orthodoxy of the plaintiff’s beliefs, only the sincerity. A prisoner is still protected under RLUIPA for practices not shared by his or her denomination.

An inmate who was a member of the Ordo Templi Orientis (OTO), a group associated with the Thelema religion, requested a vegetarian diet. Thelema was founded in 1904 by Aleister Crowley, and the central mandate

²⁹ 42 U.S.C. § 2000cc-1(a)

³⁰ Of the 881 RLUIPA cases found in Westlaw as of February 2010 using the terms “RLUIPA”, “prison”, and “substantial burden”, 769 of them were district court cases. Only one, *Cutter v. Wilkinson*, *supra* note 23, was a U.S. Supreme Court case. See Taylor G. Stout, *The Costs of Religious Accommodation in Prisons*, 96 Va. L.Rev 1201, n.3 (2010).

³¹ 42 U.S.C. §2000cc-5(4)(A). The land use portions of RLUIPA also apply to the federal government. Federal prisoners are not protected under RLUIPA and instead must bring suit under RFRA.

³² *Florer v. Congregation Pidyon Shevuyim*, ___ F.3d ___, 2011 WL 1441879 (9th Cir. 2011).

³³ 42 U.S.C. § 2000cc-5(7)(A).

of the religion is to find one's true purpose in life.³⁴ The prison outreach coordinator for the OTO testified that "Thelema imposes no general dietary restrictions; though each individual Thelemite may, from time to time, include dietary restrictions as part of his or her personal regimen of spiritual discipline."³⁵ The court held that under RLUIPA, the plaintiff's request for a vegetarian diet as a part of his spiritual practices constituted a religious exercise.³⁶

Sincerity is a factual inquiry. Some factors that courts consider include how long the plaintiff has claimed to practice the religious exercise,³⁷ or the convenience or inconvenience of the exercise.³⁸ Prisoners are permitted to change their religious affiliation and still claim RLUIPA protection for their new practices.³⁹ However, if a prisoner constantly changes his or her religion, the practices are less likely to be viewed as sincere. An inmate does not need to use the term "religion" to describe religious exercise in order for that exercise to be protected. For example, the Nation of Gods and Earths, a group that broke off from the Nation of Islam in the 1960's, describes itself as a "way of life" instead of a religion.⁴⁰ Members of the Nation of Gods and Earths observe feast days and dietary restrictions.⁴¹ They reject the term "religion" to describe their beliefs, since they attribute that term to false belief systems.⁴² An inmate who was a member of the Nation of Gods and Earths brought suit under RLUIPA because he was denied reading materials and formal gatherings with those who shared his beliefs.⁴³ The state opposed, claiming that since the prisoner did not call his beliefs a religion, he could not claim protection for religious exercise.⁴⁴ The court noted that just as calling something a religion does not make it a religion under RLUIPA, refusing to call something a religion does not disqualify it from protection as a religion under RLUIPA.⁴⁵ The court held that the practices of members of the Nation of Gods and Earths qualified as religious exercises under RLUIPA because they are similar in nature to other recognized religions and filled the same place in a believer's life.⁴⁶

³⁴ Koger v Brayn, 523 F.3d 789, 794 (7th Cir. 2008).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Marria v. Broaddus, unreported, 2003 WL 21782633 (S.D.N.Y. 2003)

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

While a belief system need not be called a religion to qualify, it must have some religious purpose. An atheist inmate attempted to form a group of atheists, humanists, freethinkers, and people with no religious affiliation.⁴⁷ When his request was denied, he brought suit under RLUIPA. The court held that this proposed meeting group was not a religious practice because the spectrum of religious affiliations and non-affiliations made it more like a secular debate society.⁴⁸ The denial of the request was, therefore, not a violation of RLUIPA.⁴⁹

3. Substantial burden

The determination of whether an inmate's religious exercise has been substantially burdened is fact-specific. Courts have considered, among other things, whether the exercise is prohibited entirely, what alternatives are available, and whether the inmate would have to forgo any privileges in order to exercise his or her religion. An inmate who was a member of the Yahweh Evangelical Assembly wished to observe the Sabbath and other holy days.⁵⁰ The prison had a regulation that religious services must be conducted by an outside volunteer.⁵¹ There was a volunteer who came approximately once per month but who was unable to come more frequently due to his other ministerial duties.⁵² The inmate sued, claiming that because he was only able to attend worship services monthly instead of weekly, his religious exercise was substantially burdened.⁵³ The Fifth Circuit noted that the plaintiff was permitted to attend services whenever a volunteer was present, and that the prison was not prohibiting him from attending those services.⁵⁴ Although the services were less frequent than he would have liked, that was not the fault of the prison, so the prison was not imposing a substantial burden on his religious exercise.⁵⁵

In Arkansas, an inmate who was a member of the Church of Jesus Christ of Latter-day Saints was on lockdown.⁵⁶ The prison had a policy that inmates on lockdown were permitted only one religious book.⁵⁷ The inmate indicated that he required both a Bible and a Book of Mormon in order to

⁴⁷ See Kaufmann v. Schneider, 474 F.Supp. 2d 1014, 1027 (W.D.Wis. 2007).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004).

⁵¹ *Id.* at 571. The court accepted the requirement for outside volunteers at face value and did not question it. For a reason not specified by the court, Muslims were exempt from this requirement.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Blount v. Echols, 2009 WL 1110815 (W.D. Ark. 2009).

⁵⁷ *Id.*

properly practice his religion.⁵⁸ The guard informed him that he had to choose one or the other.⁵⁹ When he indicated that he could not choose, the guard confiscated his Bible.⁶⁰ He sued, and he lost because his cellmate had a Bible that he could use, and the cellmate testified that he had offered the use of his Bible to the plaintiff.⁶¹ The plaintiff's religious practice was, therefore, not substantially burdened.⁶²

For an example of a substantial burden, a Jewish inmate in Nevada wished to receive kosher meals. He made the request to prison officials, and he was informed that his receipt of kosher meals was conditioned on transferring to a higher level of security.⁶³ The district court held that the inmate was substantially burdened in his religious practice because he would have to give up some of the freedom he enjoyed at a lower security facility.⁶⁴

4. Compelling government interest and least restrictive means

Prison safety and security is a compelling government interest.⁶⁵ Cost may also be a compelling interest.⁶⁶ Cost is considered as part of the analysis of burdens on nonbeneficiaries required in *Cutter*.⁶⁷ Even if there is a compelling interest, a substantial burden may only be imposed if it is the least restrictive means of furthering that interest.⁶⁸ A burden is only the least restrictive means if there is not a less burdensome way of achieving the compelling interest.⁶⁹

If cost is an issue, the least restrictive means will probably not be an outright denial of the accommodation request. Requiring a plaintiff to obtain donated materials is less restrictive than a denial. For example, a Muslim inmate in California requested halal meals. He was given the option of obtaining donated meals that would satisfy his dietary requirements.⁷⁰ Requiring the inmate to pay for the requested accommodation is likewise less restrictive than a denial.

When security is an issue, a bit of creativity can solve the problem. In

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See* *Shilling v. Crawford*, 536 F. Supp. 2d 1227, 1233 (D. Nev. 2008).

⁶⁴ *Id.*

⁶⁵ *See* *Cutter v. Wilkinson*, 544 U.S. 709, 722-723 (2005).

⁶⁶ *Id.*

⁶⁷ *Id.* at 720.

⁶⁸ 42 U.S.C. §2000cc-1(a)

⁶⁹ *Cf.* *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

⁷⁰ *Watkins v. Shabazz*, 180 F.Appx. 773 (9th Cir. 2006).

Massachusetts, a group of inmates in administrative segregation wished to attend worship services, and their request was denied.⁷¹ When the case went to trial, the court held that the security interests of the prison were compelling, but that an outright denial of access to worship services was not the least restrictive means of achieving the compelling interest.⁷² The prison was ordered to allow the inmates to participate in services by closed circuit television.⁷³

An illustrative example of where security would trump religious exercise would be in the case of a Sikh inmate who wishes to wear a ceremonial dagger called a *kirpan*. There have been no RLUIPA cases regarding a *kirpan*, but there have been RFRA cases in non-prison contexts that address similar issues. In California, three children were prohibited from wearing their *kirpan* at school, pursuant to a school-wide ban on weapons.⁷⁴ They brought suit under RFRA claiming that their religious practice was being substantially burdened. The Ninth Circuit held that a wholesale ban on the wearing of the *kirpan* was unduly burdensome. A compromise was devised whereby the children would wear a *kirpan* with a dulled blade, the *kirpan* would be sewn into a cloth sheath so that it could not be drawn, and that it would be secured beneath the clothing so that it would not be visible.⁷⁵

In a prison context, even a concealed, sheathed *kirpan* may still present a security risk. However, a wholesale ban still may not be the least restrictive means of maintaining security. Another possibility is permitting a symbolic representation of a *kirpan*, such as on a pendant.⁷⁶ If the plaintiff finds this option insufficient, the prison will likely win the RLUIPA suit because there are no less restrictive means to accommodate the practice.

C. Procedural Issues

RLUIPA is to be construed broadly to provide the maximum protection permitted by the Constitution.⁷⁷ This means that prison officials should be looking for ways to accommodate religious practices, not excuses to prohibit them. There are, however, some procedural issues involved in a prisoner's request for accommodation of religious exercise.

⁷¹ Crawford v. Clarke, 578 F.3d 39 (1st Cir. 2009).

⁷² *Id.* at 42.

⁷³ *Id.*

⁷⁴ Cheema v. Thompson, 67 F.3d 883 (9th Cir. 1995).

⁷⁵ *Id.* at 886.

⁷⁶ This alternative was suggested in a religious accommodation case in Canada with facts similar to the *Cheema* case *supra* note 74. Although Canadian law has no bearing on U.S. law, the issues faced are similar enough to provide an instructive analogy.

⁷⁷ 42 U.S.C. §2000cc-3(g).

1. Prison Litigation Reform Act

RLUIPA suits by prisoners are subject to the Prison Litigation Reform Act (PLRA).⁷⁸ PLRA states that

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.⁷⁹

The requirement for administrative exhaustion applies even if the administrative proceedings cannot grant the desired relief,⁸⁰ but if the administrative remedies are not clearly articulated, they may be deemed to be not available.⁸¹ PLRA does not apply to suits by those who have been released from prison.⁸² The statute of limitations for a suit under RLUIPA is four years from the imposition of the substantial burden on the plaintiff's exercise of religion.⁸³

The administrative grievance procedure can be a way to reduce successful prisoner lawsuits. If prisoners' religious practices are accommodated before the administrative remedies are exhausted, there will be no need for prisoners to sue.

While a practice does not need to be compelled by or central to an inmate's religion, merely sincerely motivated by it,⁸⁴ chaplains can assist in the resolution of disputes between prisoners and prison officials. Chaplains should have a working knowledge of the religious beliefs and practices represented in the prison population. As neutral parties, representing neither the prisoner nor the prison officials, they are well situated to help come up with solutions that will satisfy everyone.

A perfect example of where a chaplain would have been able to intervene to prevent litigation is in the case where the inmate wanted both a Bible and a Book of Mormon.⁸⁵ The prison guard indicated that she was ignorant of the tenets of the inmate's religion.⁸⁶ This is understandable. Prison guards cannot be expected to know the details of countless disparate

⁷⁸ 42 U.S.C. §2000cc-2(e).

⁷⁹ 42 U.S.C. §1997e(a).

⁸⁰ See *Porter v. Nussle*, 534 U.S. 516 (2002).

⁸¹ See, e.g. *In re Bayside Prison Litigation*, 190 F.Supp. 2d 755 (D.N.J. 2002).

⁸² See 42 U.S.C. §1997e(a).

⁸³ See 28 U.S.C. § 1658(a). "Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues." §1658 was enacted in 1990, and RLUIPA was enacted in 2000.

⁸⁴ See *supra* note 31 and accompanying text.

⁸⁵ See *supra* note 56 and accompanying text.

⁸⁶ *Blount v. Echols*, 2009 WL 1110815 (W.D. Ark. 2009).

religions.

If the plaintiff's cellmate had not had a Bible or had been unwilling to lend it to the plaintiff, then there would have been a substantial burden on the plaintiff's religious exercise. A chaplain should have detailed knowledge of the religious beliefs and practices of the prison inmates and should have been able to propose a solution that would have satisfied all parties. There are editions where the Bible and Book of Mormon are published together in one volume.⁸⁷ Obtaining one of those editions, either at the inmate's cost or at the cost of the prison library, would have been less restrictive than forcing the inmate to choose which book to keep.

2. Avoiding liability

Once a prisoner has demonstrated a substantial burden on his or her religious exercise, the burden shifts to the government to demonstrate that the burden was the least restrictive means of furthering a compelling government goal.⁸⁸ If the prison can demonstrate this, then there is no violation of RLUIPA.

If a prison is substantially burdening a religious exercise without meeting the strict scrutiny test, liability under RLUIPA can be avoided in one of three ways. First, the prison may change the policy that results in the substantial burden.⁸⁹ An example of this would be to change or rescind a generally applicable prison policy that has a substantial burden on some inmates' religious exercise. Second, the prison may keep the policy but make an exemption for the substantially burdened religious exercise.⁹⁰ This is the most typical solution. Allowing a prisoner to deviate from standard dress or grooming policies would be this type of exemption. Third, the prison may eliminate the substantial burden in another way.⁹¹ An example of this would be finding a creative solution that allows the inmate to practice his or her religion within the boundaries of the prison rules. In the case of the inmate who required both a Bible and a Book of Mormon, but where the prison regulations only permitted one book, obtaining a combined edition of the book would be an example of this third method of eliminating a substantial burden. Transferring the prisoner to another facility will moot a claim for declaratory or injunctive relief, but it will not moot a claim for damages.⁹²

⁸⁷ See e.g. http://store.lds.org/webapp/wcs/stores/servlet/Product3_10705_10551_21230_-1__197038. (Last visited April 23, 2011).

⁸⁸ 42 U.S.C. §2000cc-2(b)

⁸⁹ 42 U.S.C. §2000cc-3(e)

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1311-1312 (10th Cir. 2010).

3. Remedies

The prisoner can file a suit on his or her own behalf, and the United States can also file suit on behalf of a prisoner or intervene in a prisoner's suit to seek enforcement of RLUIPA.⁹³ When a lawsuit is filed, the United States may seek injunctive or declaratory relief against the state,⁹⁴ and an individual may seek "appropriate relief" against the state.⁹⁵ Appropriate relief can take the form of injunctive or declaratory relief, but not monetary relief.⁹⁶ Monetary relief against the state is unavailable under RLUIPA because of sovereign immunity. The U.S. Supreme Court held that the phrase "appropriate relief" was not clear and unequivocal enough to put a state on notice that it would be waiving immunity by accepting federal funding for prisons.⁹⁷

II. BENEFITS OF RELIGIOUS ACCOMMODATION OF PRISONERS

In addition to being legally required, religious accommodation of prisoners is beneficial. There are two types of benefits that religious accommodation of prisoners can provide. There are objective benefits to society as a whole, and there are subjective benefits to the prisoners individually.

A. *Objective Benefits of Religious Accommodation*

Some objective benefits that come from accommodating the religious practices of inmates are: reduced litigation costs, increased prison safety, and decreased conflict due to the counseling and dispute resolution services of chaplains.

1. Reduced cost

Prison officials often resist religious accommodation requests, citing cost as a reason.⁹⁸ However, accommodating religious exercise can also save money. Between 2001 and 2005, there were 250 RLUIPA cases filed in federal courts.⁹⁹ It still costs money to defend against a suit, even when the state is successful. If prisoners' practices are accommodated, even when, strictly speaking under the law they do not need to be, there will likely be fewer suits because there will be fewer disgruntled prisoners. One

⁹³ 42 U.S.C. §2000cc-3(f)

⁹⁴ *Id.*

⁹⁵ 42 U.S.C. §2000cc-2(a)

⁹⁶ *See* *Sossamon v. Texas*, 536 U.S. ____ (2011).

⁹⁷ *Id.*

⁹⁸ *Enforcing Religious Freedom in Prison*, *supra* note 1 at 93. Seventeen percent of RLUIPA cases included in the study period were based on a denial of accommodation where the state claimed that the accommodation was too costly.

⁹⁹ *Id.*

example of a lawsuit that the prison ended up winning that would have been cheaper to accommodate than to litigate is in the case where the inmate wanted both a Bible and a Book of Mormon and the prison only allowed one book. A volume that contains both costs a mere thirty-five dollars.¹⁰⁰ The state undoubtedly spent more money than that in defending against the suit.

2. Increased prison safety

Prisoners, who are removed from society, form societies of their own within the prison walls.¹⁰¹ This prison society can often be destructive in nature.¹⁰² Violence is a concern, and gangs are ubiquitous. In some instances, gang membership is virtually mandated by prison culture.¹⁰³ Individuals who practice religion are to some degree insulated from these destructive influences.¹⁰⁴ For example, inmates tend not to expect practicing Christians to join gangs.¹⁰⁵ When interviewed, one anonymous inmate reported

I don't know what it is but they [other inmates] don't bother church going people. So I think mainly it's a way of escaping a lot of assaults and confrontations. People probably leave them alone depending on how they believe and they see them doing something that they should be doing themselves. That's how they were brought up themselves, to respect faith and the churchgoing folks.¹⁰⁶

Religiously observant inmates can have a certain credibility among the prison population which allows them to mediate disputes between inmates and to avoid violent confrontations.¹⁰⁷ The prison chapel is seen as a safe place where even the most reviled criminals can find physical, in addition to spiritual, solace.¹⁰⁸ If religious practices are accommodated, the respect that inmates give to religion and practitioners of religion can be leveraged to

¹⁰⁰ See *supra* note 87.

¹⁰¹ Jim Thomas & Barbara Zaitzow, *Conning or Conversion? The Role of Religion in Prison Coping*, 86 THE PRISON JOURNAL 242, 244 (2006).

¹⁰² *Id.*

¹⁰³ See generally Brian Colwell, *Deference or Respect? Status Management Practices Among Prison Inmates*, 70 SOCIAL PSYCH. QUARTERLY 442 (2007).

¹⁰⁴ See Kent R. Kerley, Todd L. Matthews & Troy C. Blanchard, *Religiosity, Religious Participation, and Negative Prison Behaviors*, 44 JOURNAL FOR THE SCIENTIFIC STUDY OF RELIGION 443 (2005). The study found that among religious inmates, antisocial behavior, especially fighting with other inmates, was lower.

¹⁰⁵ Colwell, *supra* note 103.

¹⁰⁶ *Id.* at 451.

¹⁰⁷ Todd R. Clear, Patricia L. Hardyman, *et al.*, *The Value of Religion in Prison : An Inmate Perspective*, 16 JOURNAL OF CONTEMP. CRIM. JUSTICE 53, 65 (2000).

¹⁰⁸ *Id.*

reduce conflict in the prison population.

3. The role of chaplains

By making use of chaplains to facilitate the religious exercise of prisoners, additional benefits can be gained. In addition to providing religious services, chaplains also provide grief counseling, marriage counseling, and dispute resolution.¹⁰⁹ They also can act as liaisons between correctional institutions and the general public, raising awareness of correctional issues.¹¹⁰ These secular activities of chaplains are positive side effects of their religious activities. Having a neutral party who can facilitate resolution of conflict between prisoners or between prisoners and staff can stop problems in the early stages before they escalate. Having access to a listening ear who is bound by confidentiality can improve the morale of inmates.

B. Subjective Benefits of Religious Accommodation

Although much religious worship takes place in a community of like-minded believers, religion is, at its core, a subjective experience. How one person experiences the divine is different from how another person does, sometimes even within the same faith tradition. This experience is not scientifically measurable or testable, so reports of personal religious experience must be taken at face value.

With this in mind, a team of sociologists conducted anthropological studies and interviews with prisoners in several prisons and asked them about the role religion played in their prison experience.¹¹¹ To protect the privacy of the inmates, their stories have been anonymized in the published study. The researchers found that the practice of religion increased morale and helped the prisoners to cope with the stresses of incarceration.¹¹² Religion also helped the inmates to become rehabilitated.¹¹³ The study was restricted to Christians and Muslims because those were the only two religions with a large enough inmate population to observe. However, since religion, in whatever form it takes, is important to adherents, the benefits of religious exercise in prison likely would extend to inmates of other faiths as well.

¹⁰⁹ See, e.g., New Jersey Institutional Chaplain's Association, *The Role of the Professional Correctional Chaplain*, (available at <http://njica.org/chaplains.html>, last visited December 13, 2010).

¹¹⁰ *Id.*

¹¹¹ Clear, et. al., *supra* note 107.

¹¹² *Id.*

¹¹³ *Id.*

1. Increased morale

One inmate stated that prison “takes your self-esteem, your dignity, and everything about you. Religion has helped me to regain this.”¹¹⁴ Another inmate reported, “Suddenly, I found myself alone and with no one. That is when religion and belief in God became stronger. It kept me sane.”¹¹⁵ Prison is not conducive to good mental health,¹¹⁶ so facilitating the practice of religion can help to reduce problems.¹¹⁷

For religious individuals, faith and its obligations can be a source of comfort and coping. Many religious traditions are more concerned with the spiritual realm as opposed to the physical realm,¹¹⁸ which can be immensely helpful in prison, where the physical realm is marked by confinement and lack of freedom.¹¹⁹

2. Rehabilitation

Rehabilitation is one goal of the criminal justice system, and allowing religious exercise in prison is a way to meet this goal. Guilt is a large part of the prison experience. Incarceration is a message sent by society that the prisoner is unfit to live among the population. This message is often not well-received. One inmate said “If you talk to everyone here, they’ll tell you they’re in prison because of a mistake. Most of them, it was a bad attorney, a judge, a stupid mistake in the way they did the crime. The religious inmate ... realizes the mistake was doing the crime in the first place.”¹²⁰

By recognizing that he or she has made a mistake, a prisoner has taken a step toward reform. If religion helps spur that realization, then it is a positive force. Many religions teach a message of forgiveness, reformation, or redemption. By allowing inmates to practice their religion, they can gain added assistance in dealing with that guilt and turning their lives around. Generally, an individual with religious beliefs will feel motivated to act upon those beliefs. The adherent feels that God requires something of him or her. Accommodating the divinely mandated practice assists in rehabilitation because if the prisoner feels obligated to do or refrain from doing something, the failure to live up to that obligation can create another source of guilt.

¹¹⁴ *Id.* at 62

¹¹⁵ *Id.*

¹¹⁶ *See e.g.* Prison Mental Health Crisis Continues to Grow, Rich Daly, *Psychiatric News* October 20, 2006 Volume 41, Number 20, Page 1.

¹¹⁷ While religion is not a cure-all for mental illness, healthy coping strategies, of which religion can play a part, can help the emotional health of individuals who may otherwise develop problems in the absence of a coping mechanism.

¹¹⁸ Clear, *et. al. supra* note 107 at 62.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 60.

In addition to relieving feelings of guilt, religious practice can provide an alternative to the prior destructive life patterns that caused the inmate to become incarcerated.¹²¹ One of the interviewed inmates described his religion as “a guide not to get out of hand.”¹²² Another inmate reported that the religious conversion he experienced in prison caused him to consider the consequences of his actions and made him more conscious of everything he does.¹²³

CONCLUSION

The prison population contains a diverse group of religious adherents. Some religious practices such as dress or dietary observances conflict with general prison rules. The Religious Land Use and Institutionalized Persons Act requires accommodation of those practices unless there is a compelling government interest in restricting the practice, and the burden on that practice is the least restrictive means of achieving that interest. Prison security can trump religious exercise, but only to the minimal extent necessary to achieve the security interest. Cost is also a compelling interest, but it is much easier to overcome by means less restrictive than banning a religious exercise. By following the requirements of RLUIPA, prison officials can reduce the number of lawsuits filed and can successfully defend themselves against prisoner lawsuits.

In addition to protecting the states against successful lawsuits, accommodation of religious practices increases prison safety, increases the morale of prisoners, and facilitates the rehabilitation of prisoners. Accordingly, prison officials should work with inmates, chaplains, and others to ensure the maximum possible accommodation of religious practices for those who are incarcerated.

¹²¹ *Id.* at 61.

¹²² *Id.* at 60.

¹²³ *Id.* at 61.