LEGAL BULLETIN
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Religious Rights in Prison

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Legislative Acts and Constitutional Provisions

The First Amendment of the U.S. Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The first of the two Religion Clauses, commonly called the Establishment Clause dictates a separation of church and state. The second, the Free Exercise Clause, requires the government to respect and refrain from interfering with people's religions.

The Civil Rights Act was passed in order to prevent discrimination based on race, religion, color, and national origin. Cases involving the deprivation of religious constitutional rights are often filed under the Civil Rights Act and are known as Section 1983 actions. In deciding these cases, courts rely on a reasonableness test; that is, regulations infringing on religious freedom can be upheld if the government can provide a legitimate interest served by the regulation.

In Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987), the Court proposed criteria to be used in determining the reasonableness of government regulations. Under this test, the Court considered four factors in determining the reasonableness of the regulation: 1) whether there is a valid, rational, non-arbitrary connection between the regulation and a legitimate and neutral governmental interest put forward to justify it; 2) whether there are alternative means of exercising the asserted constitutional right that remain open to inmates; 3) whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on inmates' liberty, and on the allocation of limited prison resources; and 4) whether the regulation represents an "exaggerated response" to prison concerns. O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400 (1987) further implemented this standard and type of analysis, stating that prison regulations affecting inmates' First Amendment rights could be upheld if they were reasonably related to legitimate penological objectives.

Congress sought to change this standard after Employment Division v. Smith, 494 U.S. 872 (1990), which analyzed the constitutionality of a law by determining whether it was a "neutral law of general applicability." If a law applied to everyone and was not intended to restrict religion, even if it did restrict some people's religious rights, the law was still

constitutional. In response to Employment Division v. Smith, Congress enacted the Religious Freedom Restoration Act of 1993, 42 U.S.C.S. 2000bb (RFRA). The RFRA changed the standard developed by these three cases into a standard of strict scrutiny. Under the act, the government could not substantially burden religious exercise without *compelling justification*. The act restored the "compelling interest" test used in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972). Thus, the government had to be able to show that if a law or regulation created a substantial burden on religious exercise, it satisfied a compelling governmental interest and was the least restrictive means of furthering that interest.

In 1997, however, the Supreme Court deemed the RFRA to be unconstitutional, at least as applied to state and county prisoners. In City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), the Court ruled Congress had overstepped its power in enacting the RFRA. However, while the act no longer applied to state and county prisoners, the act was held to still be constitutional in the federal realm. Guam v. Guerrero, 290 F. 3d 1210 (9 Cir. 2002).

After City of Boerne v. Flores, Congress passed the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc (RLUIPA) in 2000. RLUIPA, in effect, uses the same standard as RFRA in analyzing any prison regulation that may impinge on religious rights. Strict scrutiny (compelling interest and least restrictive means) must be applied, regardless of whether the regulation is neutral and generally applicable. Some prison regulations, even those that encroach on religious freedom, can be justified for security reasons, which courts usually find to be a satisfactorily compelling interest.

RLUIPA also extends legal protection to a broad spectrum of religious activity. Section 2000cc-5 defines religious exercise as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." Therefore, courts no longer have to determine whether or not a specific religious practice is mandated or central to a particular faith. Rather, RLUIPA provides protection for all religious practices if they are part of a sincerely held belief.

Under § 2000cc-2, prisoners bear the burden of proving their exercise of religion has been *substantially* impaired. It is then up to the state to demonstrate a compelling interest which justifies this impairment and that the means chosen to do so are the least restrictive possible.

RLUIPA was upheld as constitutional most recently by Cutter v. Wilkinson, 125 S. Ct. 2113; 161 L. Ed. 2d 1020 (2005).

Pennsylvania's Religious Freedom Protection Act\

Since the RFRA was ruled unconstitutional as applied to states, several states have enacted their own version of the law. In Pennsylvania, an act known as the Religious Freedom Protection Act was passed in 2002. Under this act, neither a state nor a local government can substantially burden the free exercise of religion without a compelling interest. Additionally, the government must use the least restrictive means possible to further that interest. This standard is basically the same as the standard applied in federal RFRA or RLUIPA cases.

Under the act, religious exercise is substantially burdened if a law or policy significantly constrains conduct mandated by a person's religion, significantly curtails a person's ability to adhere to a religion, denies a person a reasonable opportunity to engage in activities fundamental to the religion, or compels conduct that violates a person's religion. Therefore, the breadth of religious protection does not seem to be as broad as that given by RLUIPA.

As applied to inmates, the act allows, to the extent permitted by federal law, policies reasonably related to legitimate penological issues. It seems as if the statute applies a strict scrutiny standard to laws affecting non-prisoners while maintaining a reasonableness standard for regulations affecting prisoners. Because the act is so recent, there is very little case law regarding the court's interpretation of these standards, but in order to trigger strict scrutiny, prisoners may have to file under RLUIPA.

Defining a Religion

Courts use several methods to determine if an inmate's belief system should be considered a religion and if those beliefs are truly religious in nature. If the belief system fails to satisfy either of these requirements, an inmate does not have a religious rights claim under the First Amendment.

A religion does not have to be well-known and conventional in order to be classified as a religion. In Africa v. Pennsylvania, 662 F. 2d 1025 (3d Cir. 1981), the court cautioned against a predisposition toward traditional religions and branding unfamiliar faiths as secular. However, the court ruled that MOVE was a secular philosophy and not a religion since members did not share a comparable worldview or seek an ultimate truth or higher being and lacked almost all formal characteristics seen in most recognized religions.

Frazee v. Ill. Dep't of Employment Sec., 489 U.S. 829, 109 S. Ct. 1514, 103 L. Ed. 2d 914 (1989) stated that "sincerely held" religious beliefs can constitute a religion and adherence to an official, established religious sect was not necessary. This standard is more subjective than the approach seen in Africa v. Pennsylvania. The sincerity of a person's beliefs can be drawn from the structure of the inmate's daily lifestyle as well as other factors. Marria v. Broaddus, 2003 U.S. Dist. LEXIS 13329 (U.S.D.C. N.Y. 2003). Sincerity cannot be drawn merely from an inmate's race. Mitchell v. Angelone, 82 F. Supp. 2d 485 (U.S.D.C. Va. 1999) (an inmate was capable of holding sincere Native American religious beliefs although he was not Native American).

Additionally, a belief does not have to be shared by all members of a religious sect in order to receive First Amendment protection. Thomas v. Review Bd. of Indiana Empl. Sec. Div., 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981). A belief can also be both secular and religious in nature, as the Free Exercise Clause protects the area where they overlap. Wiggins v. Sargent, 753 F. 2d 663 (8th Cir. 1985).

Religious Issues in Prison

* Note: Most of the following cases were decided under the Turner/ Civil Rights Act reasonableness standard. If a claim is filed under the RFRA or RLUIPA, stricter scrutiny would apply and the outcome may be different.

Hair and Beards

More often than not, prison regulations that prohibit particular hairstyles and lengths required by certain religious beliefs are upheld as constitutional in § 1983 actions. Applying a reasonableness test, courts have decided requiring an inmate to cut his hair or shave his beard is reasonably related to legitimate penological interests such as security or hygiene, and is therefore not a violation of the inmate's First Amendment rights.

In Pollock v. Marshall, 845 F. 2d 656 (6th Cir. 1988), the court cited the need for quick identification of inmates, the prevention of hiding contraband, sanitation problems, and homosexuality issues as legitimate reasons for a prison regulation prohibiting long hair. Under the reasonableness standard, there was no further need to examine whether the policy would survive a least restrictive means test.

Green v. Polunsky, 229 F. 3d 486 (5th Cir. 2000) also upheld a prison grooming policy that required inmates to keep their hair short and their faces clean shaven, stating that the policy did not infringe on an inmate's free expression of religion since the policy did not deprive him of all means of expressing his faith.

However, sometimes the court finds security concerns, while legitimate, have been exaggerated, and therefore the infringement on First Amendment rights is not justified. For example, in Mayweathers v. Terhune, 328 F. Supp. 2d 1086 (U.S.D.C. Cal. 2004), decided under RLUIPA, the court found in favor of a group of Muslim inmates who wanted to wear half-inch beards in accordance with their faith. Although the prison cited identification concerns, the court ruled these concerns were exaggerated since a half-inch beard did not pose the same identification problems as a long beard. Additionally, the beards were subject to daily inspections, eliminating much of the security concerns. The court also suggested that there were ready alternatives that were less restrictive than a complete ban on beards, such as taking two identification photos, one with the beard and one without. The court considered all of these factors in its decision.

Religious Dress

Regulations concerning religious dress, especially headwear, can be upheld if the prison can demonstrate a legitimate penological interest for the regulation. In Young v. Lane, 922 F. 2d 370 (7th Cir. 1991) Jewish prisoners were only allowed to wear yarmulkes inside their cells and during religious ceremonies. The prison cited security reasons, such as preventing the concealment of contraband and gang affiliation, and the court upheld the regulation. Similarly, the court in Aqeel v. Seiter, 781 F. Supp. 517 (U.S.D.C. Ohio 1991) ruled that even if the Muslim faith required the wearing of a tarboosh, the mandatory removal of it in dining halls or in front of a disciplinary board was constitutional. The court found the removal was necessary for sanitation purposes and to show respect.

Even under the strict scrutiny of RLUIPA, the courts have upheld regulations regarding religious dress. In Charles v. Frank, 2004 U.S. Dist. LEXIS 3394 (U.S.D.C. Wis. 2004), a policy prohibiting the wearing of prayer beads was deemed constitutional. The government's compelling interest was a precaution against gang affiliation, and the court found the policy to be the least restrictive way to further that interest.

Special Diets

In most instances, prisons are required to provide meals satisfying the requirements of religious diets. Kahane v. Carlson, 527 F. 2d 492 (2d Cir. 1975). Additionally, prisons cannot provide special meals to member of certain religions and not others, at least under RLUIPA, if there is no compelling reason to do so. Agrawal v. Briley, 2003 U.S. Dist. LEXIS 21365 (U.S.D.C. Ill. 2003).

However, prisons may be justified in failing to provide special meals if their alternative menus satisfy the religion's dietary constraints. For example, in Allah v. Kelly, 1999 U.S. Dist. LEXIS 21776 (U.S.D.C. N.Y. 1999), an inmate's constitutional rights were not violated when the prison refused to provide food specifically for members of the Nation of Islam because the prison's alternative menu met both the religious dietary requirements and the nutritional needs of the inmate. Furthermore, DeHart v. Horn, 390 F. 3d 262 (3d Cir. 2004) denied an inmate's claim for a special diet based on his Buddhist religion since no other special religious diets at the prison required the individualized preparation or ordering of special ingredients that his diet did. The prison's policy was therefore reasonably related to efficient food provision since the inmate's diet was found to be costly and burdensome.

Possession of Religious Objects

Most prisons have regulations dictating specific religious items that are permitted. Items not specifically mentioned or explicitly prohibited can be denied to prisoners for a variety of reasons, often depending on the nature of the objects. In Dettmer v. Landon, 799 F. 2d 929 (4th Cir. 1986), the court found that religious items such as candles and incense used in the Wiccan religion presented a security risk and could therefore be prohibited. The court also stated that the prison allowed the inmates other reasonable means to practice their faith. The court upheld the prohibition of similar objects in Doty v. Lewis, 995 F. Supp. 1081 (U.S.D.C. Ariz. 1998) for the same reasons, and also declared that such a prohibition was not a substantial burden on the inmates' religion and possession of the objects was not essential to practicing the religion.

Under RLUIPA, however, even if the item is not officially required by the religion, if the item is important to the inmate for religious purposes, its denial can be considered a substantial burden. In Charles v. Verhagen, 220 F. Supp. 2d 937 (U.S.D.C. Wis. 2002), the court ruled a Muslim inmate must be allowed to have prayer oil in spite of the fact it was not required by his faith. The prison presented no compelling reason for prohibiting the oil, except the possibility of an overflow of requests for religious items.
The court found the policy was not the least restrictive means of preventing this possible problem.

Religious Literature

Bibles and other religious texts are usually permitted within the prison, although the number of texts and the specific types may be regulated. In a case filed under § 1983 and RLUIPA, the court ruled that an inmate had to be allowed texts tracing his religion's history, since a complete ban could not be justified as a least restrictive measure. Marria v. Broaddus, 2003 U.S. Dist. LEXIS 13329 (U.S.D.C. N.Y. 2003). Prisons also cannot discriminate between religions in providing religious materials. In Pitts v. Knowles, 339 F. Supp. 1183 (U.S.D.C. Wis. 1972), the court stated that the prison could not provide inmates with copies of the Quran on a more limited basis than the Bible or other religious texts.

The content of the religious texts may affect whether or not the prison allows an inmate to possess them. In Carpenter v. Wilkinson, 946 F. Supp. 522 (U.S.D.C. Ohio 1996), a prisoner was denied a copy of a Satanic bible. The court found there was a legitimate penological interest behind the policy in safety and security concerns based on the content of the text. However, the court in Graham v. Cochran, 2000 U.S. Dist. LEXIS 1477 (U.S.D.C. N.Y. 2000) ruled that the prison had violated an inmate's constitutional rights by confiscating religious literature even though the text was allegedly detrimental to prison safety. The court reasoned that other less restrictive measures existed. The difference in the rulings of these two cases seems to depend on the standard used by the court.

Name Changes

Inmates are usually permitted to change their names for religious reasons, although the use of the new name can be subject to restrictions. In Yasir v. Singletary, 766 So. 2d 1197, 2000 Fla. App. LEXIS 11781 (2000), the court ruled that prison officials had the rights to impose reasonable limitations on the institutional uses of changed names, whether or not the change was religiously motivated. Courts have also upheld policies requiring an inmate to use both his religious name and the name under which he was committed, as security was a compelling interest. Fawaad v. Jones, 81 F. 3d 1084 (11th Cir. 1996).

Religious Group Services

Religious services are essential to inmates' freedom to practice their religions and to express their faith. Williams v. Lane, 646 F. Supp. 1379 (U.S.D.C. Ill. 1986). Even though a congregation of inmates may constitute a security risk, the risk does not justify banning group services if that is the only way to conduct meaningful religious services. Whitney v. Brown, 882 F. 2d 1068 (6th Cir. 1989).

However, like other religious rights in prison, the specifics of religious services can be regulated by prison policy. In Akbar-El v. Muhammed, 105 Ohio App. 3d 81 (1995), the court found that separate services for different sects of the Islamic faith were not required; the general Islamic worship service was sufficient. The prison may also require an outside leader to conduct the services. In Samad v. Ridge, 1998 U.S. Dist. LEXIS 6348 (U.S.D.C. Pa. 1998), the court upheld a policy prohibiting inmates from leading religious services. It stated that the policy was

reasonably necessary for security purposes and to maintain an orderly administration. Also, prisons are not required to allow inmates in segregation to attend group religious services because such congregation presents safety and security issues. United States ex rel. Cleggett v. Pate, 229 F. Supp. 818 (U.S.D.C. Ill. 1964); Stroud v. Roth, 741 F. Supp. 559 (U.S.D.C. Pa. 1990); Clemmons v. Nelson, 1998 U.S. Dist. LEXIS 16166 (U.S.D.C. Kan. 1998).

Conclusion

When filing a religious freedom claim, it is crucial to keep in mind the various standards employed by courts when addressing cases filed under § 1983, the federal RFRA, RLUIPA, and Pennsylvania's Religious Freedom Protection Act. To help support your claim, you should include documentation from the national headquarters of your religion or from someone in a high position within the religion if possible. It is also important to specify exactly what your religious beliefs are and how they were violated.

This bulletin includes only a few of the many cases available that address religious rights in prison. The topic is very broad, and the cases cited should be used as a starting point for more specific research relating to your particular claim.