The Religious Land Use and Institutionalized Persons Act of 2000[1]

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Additional resources

www.rluipa.org (a website with news on litigation under RLUIPA, maintained by the Becket Fund for Religious Liberty)

Columbia Human Rights Law Review, A Jailhouse Lawyer's Manual (available online at http://www.columbia.edu/cu/hrlr/.).

Prison Legal News – a monthly journal of legal developments regarding prisoners' rights. www.prisonlegalnews.org.

Boston and Manville, Prisoners' Self-Help Litigation Manual (4th ed. 2010, Oxford University Press). www.oup.com.

History

In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court held that the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, exceeded Congress' powers under the Enforcement Clause of the Fourteenth Amendment, and thus could not constitutionally be applied to the states.

> Note that RFRA still applies to the claims of federal and District of Columbia prisoners. *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003) (federal prisoners); *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001) (same); *Jama v. U.S.I.N.S.*, 343 F. Supp. 2d 338, 370 (D.N.J. 2004) (immigration detainees); *Gartrell v. Ashcroft*, 191 F. Supp. 2d 23, 36-37 (D.D.C. 2002) (RFRA scrutiny applies to BOP's decision to house District of Columbia prisoners in Virginia state prison with substantially burdensome grooming policies).
>
> > One court has held that prisoners cannot recover damages from the federal Bureau of Prisons under RFRA. *Webman v. Federal Bureau of Prisons*, 441 F.3d 1022 (D.C. Cir. 2006).

In response to *City of Boerne*, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc *et seq*. The statute re-establishes the compelling state interest/least restrictive means test that existed under RFRA for the religious claims of prisoners:

> **SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.**
>
> **(a) General rule**
> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, 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 means of furthering that compelling governmental interest.
>
> **(b) Scope of application**
> This section applies in any case in which—
>
> **(1)** the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
>
> **(2)** 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.

Constitutionality

RLUIPA's constitutionality has been hotly contested. The Supreme Court has held that the statute does not violate the Establishment Clause, but other constitutional challenges are being raised in the lower courts. At this point, its constitutionality at least under the Spending Clause appears well-established. *See Sossamon v. Texas*, 560 F.3d 316, 328 n. 34 (5th Cir. 2009) ("Every circuit to consider whether RLUIPA is Spending Clause legislation has concluded that it is constitutional under at least that power"), *aff'd*, 131 S. Ct. 1651 (2011).

Findings of Constitutionality

a) *Cutter v. Wilkinson*, 544 U.S. 709, 125 S. Ct. 2113 (2005) (rejecting Establishment Clause challenge), *rev'g* 349 F.3d 257 (6th Cir. 2003).
b) *Van Wyhe v. Reisch*, 581 F.3d 639 (8th Cir. 2009) (rejecting various constitutional challenges, including Spending Clause challenge and Separation of Powers Doctrine challenge).

c) *Madison v. Virginia*, 474 F.3d 118 (4th Cir. 2006) (rejecting Spending Clause challenge).
d) *Cutter v. Wilkinson*, 423 F.3d 579 (6th Cir. 2005) (rejecting Spending Clause and Tenth Amendment challenges; declining to reach Commerce Clause challenge).
e) *Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004) (rejecting Establishment Clause, Spending Clause and Tenth Amendment challenges).
f) *Madison v. Riter*, 355 F.3d 310 (4th Cir. 2003) (rejecting Establishment Clause challenge), *cert. denied*, 125 S. Ct. 2536 (2005).
g) *Charles v. Verhagen*, 348 F.3d 601 (7th Cir. 2003) (rejecting Spending Clause, Establishment Clause, and Tenth Amendment challenges, but declining to reach Commerce Clause challenge).
h) *Mayweathers v. Newland*, 314 F.3d 1062 (9th Cir. 2002) (rejecting Spending Clause, Establishment Clause, Tenth Amendment, Eleventh Amendment, and Separation of Powers challenges), *cert. denied sub nom. Alameida* v. *Mayweathers*, 124 S. Ct. 66 (2003).
i) *Madison v. Riter*, 411 F. Supp. 2d 645 (W.D. Va. 2006) (rejecting Spending Clause, Tenth Amendment, and separation of powers challenges).
j) *Gooden v. Crain*, 389 F. Supp. 2d 722 (E.D. Tex. 2005) (rejecting Spending Clause and Tenth Amendment challenges).
k) *Ahmad v. Ehrmann*, 339 F. Supp. 2d 1134, 1140 (D. Colo. 2004) (rejecting constitutional challenges), *rev'd on other grounds*, 435 F.3d 1196 (10th Cir. 2006).
l) *Williams v. Bitner*, 285 F. Supp. 2d 593 (M.D. Pa. 2003) (rejecting Establishment Clause, Spending Clause, Tenth Amendment, and Eleventh Amendment challenges).
m) *Johnson v. Martin*, 223 F. Supp. 2d 820 (W.D. Mich. 2002) (rejecting Commerce, Spending, Establishment Clause, and Tenth Amendment challenges).
n) *Gerhardt v. Lazaroff*, 221 F. Supp. 2d 827 (S.D. Ohio 2002) (rejecting Spending Clause, Establishment Clause, and Tenth Amendment challenges), *reversed*, 349 F.3d 257 (6th Cir. 2003), *reversed and remanded*, 125 S. Ct. 2113 (2005).
o) *Sanabria v. Brown*, No. 99-4699 (D.N.J. June 5, 2003) (rejecting Spending Clause, Establishment Clause, Tenth Amendment, Eleventh Amendment, and Separation of Powers challenges, but declining to reach Commerce Clause challenge).
p) *Ickstadt v. Dretke*, No. H-02 1064 (S.D. Tex. Apr. 2, 2004) (rejecting constitutional challenges).
q) *Jones v. Toney*, No. 5:02CV00415 (E.D. Ark. Mar. 29, 2004) (same).
r) *Gordon v. Pepe*, No. Civ. A 00-10453-RWZ, 2003 WL 1571712 (D. Mass. Mar. 6, 2003) (same).
s) *Taylor v. Cockrell*, No. H-00-2809, 2002 WL 34423557 (S.D. Tex. Sept. 25, 2002), (same), *vacated on other grounds*, *Taylor* v. *Groom*, No. 02-21316 (5th Cir. Aug. 26, 2003).
t) *Love v. Evans*, No. 2:00-CV-91 (E.D. Ark. Aug. 8, 2001) (rejecting constitutional challenge based on *Mayweathers* district court decision).

Findings of Unconstitutionality

a) *Cutter v. Wilkinson*, 349 F.3d 257 (6th Cir. 2003) (finding RLUIPA Section 3 violates Establishment Clause), *rev'd and remanded*, 125 S. Ct. 2113 (2005).
b) *Al Ghashiyah v. Wis. Dep't of Corrections*, 250 F. Supp. 2d 1016 (E.D. Wis. 2003) (same), *overruled by Charles v. Verhagen, supra, vacated Jan. 15, 2004.*
c) *Madison v. Riter*, 240 F. Supp. 2d 566 (W.D. Va. 2003) (same), *rev'd*, 355 F.3d 310 (4th Cir. 2003).
d) *In re Rowland*, No. HC4172 (Super. Ct. Cal., Monterey Cy., July 31, 2002) (same) (appellate court affirmed trial court's denial of habeas petition without opinion).

Application

"This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

"The RLUIPA standard poses a far greater challenge than does *Turner* to prison regulations that impinge on inmates' free exercise of religion." *Freeman v. Texas Dep't of Criminal Justice*, 369 F.3d 854, 858 n.1 (5th Cir. 2004). *See also Khatib v. County of Orange*, 639 F.3d 898, 903-04 (9th Cir. 2011) (rejecting county's narrow interpretation of RLUIPA, "especially in light of the generous interpretative rule set forth by Congress").

"RLUIPA is to be construed broadly in favor of the inmate." *Putzer v. Donnelly*, 2010 WL 2545566 at *6 (D. Nev. 2010).

"[A]s opposed to the deferential rational basis standard of *Turner v. Safely*, RLUIPA requires the government to meet a much stricter burden…" Hall v. Hedgpeth, 2011 WL 1675026, at *5 (N.D. Cal. 2011).

RLUIPA does not apply to federal prisons. *Ish Yerushalayim v. U.S.*, 374 F.3d 89, 92 (2d Cir. 2004) (concluding that RLUIPA "clearly does not create a cause of action against the federal government or its correctional facilities").

At least one court has held that only prisoners can bring claims under RLUIPA. *McCollum v. California Dept. of Corrections and Rehabilitation*, ____ F.3d ____, 2011 WL 2138221 (9th Cir., June 1, 2011), at *9 (non-prisoner Wiccan clergyman's RLUIPA claim "necessarily fails because [he] is not a person residing in or confined to an institution").

"program or activity that receives Federal financial assistance"

Section 8 of RLUIPA incorporates the definition of "program or activity" in Title VI of the Civil Rights Act of 1964, which defines that term as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a

local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a.

> Thus, it is sufficient to show that the state department of corrections receives federal financial assistance. *Hoevenaar v. Lazaroff*, 276 F. Supp. 2d 811, 817-18 (S.D. Ohio 2003), *rev'd on other grounds*, 422 F.3d 366 (6th Cir. 2005); *Lindell v. McCallum*, 352 F.3d 1107, 1110 (7th Cir. 2003) (noting that "the Wisconsin prison system receives federal funding"); *but see Ephraim v. Angelone*, 313 F. Supp. 2d 569, 575 (E.D. Va. 2003) (declining to apply RLUIPA because "plaintiff has not alleged that the Lunenberg Correctional Center or its dietary programs receive federal financial assistance"), *aff'd*, 68 Fed. Appx. 460 (4th Cir. 2003), *cert. denied*, 124 S. Ct. 1084 (2004). The Supreme Court in *Cutter* noted that "[e]very State . . . accepts federal funding for its prisons." *Cutter*, 544 U.S. at 716 n.4.

At least one court has held that RLUIPA protects prisoners in facilities run by for-profit prison companies. *Dean v. Corrections Corp. of Am.*, 540 F. Supp. 2d 691 (N.D. Miss. 2008).

"religious exercise"

RLUIPA defines "religious exercise" as "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).

"Although RLUIPA bars inquiry into whether a particular belief or practice is 'central' to a prisoner's religion . . . the Act does not preclude inquiry into the sincerity of a prisoner's professed religiosity." *Cutter*, 544 U.S. at 725 n.13.

In assessing whether a practice is a religious exercise within meaning of RLUIPA, courts must not judge the significance of the particular belief or practice in question. *Abdulhaseeb v. Calbone,* 600 F.3d 1301, 1314 n.6 (10th Cir. 2010).

"We emphasize that no test for the presence of a 'substantial burden' in the RLUIPA context may require that the religious exercise that is claimed to be thus burdened be central to the adherent's religious belief system." *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004), *cert. denied*, 125 S. Ct. 2549 (2005); *id*. at 568 (finding that Sabbath and holy day gatherings "easily qualify as 'religious exercise' under the RLUIPA's generous definition").

"[A] religious exercise need not be mandatory for it to be protected" under RLUIPA. *Kikumura*, 242 F.3d at 960 (pastoral visits).

"RLUIPA broadly protects "any exercise of religion" and does not require that the practice be central to Plaintiff's system of beliefs." *Roman Catholic Bishop v. City of Springfield*, 760 F.Supp.2d 172, 186 (D. Mass. 2011) (land use case).

"While defendants argue that other Muslims interpret these creeds less strictly, permitting adherents to prepare pork while wearing gloves, they do not cast doubt on the sincerity of Williams' interpretation. And, for purposes of RLUIPA, it matters not whether the inmate's religious belief is shared by ten or tens of millions. All that matters is whether the inmate is sincere in his or her own views." *Williams v. Bitner*, 359 F. Supp. 2d 370, 375-76 (M.D. Pa. 2005), *aff'd*, 455 F.3d 186 (3d Cir. 2006).

See also Koger v. Bryan, 523 F.3d 789, 794 (7th Cir. 2008) (plaintiff's request for a vegetarian diet was a religious exercise, notwithstanding the fact that plaintiff's religion (Ordo Templi Orientis) has "no general dietary restrictions," because OTO practitioners "may, from time to time, include dietary restrictions as part of [their] personal regimen of spiritual discipline," and that is sufficient for RLUIPA); *Morrison v. Garraghty*, 239 F.3d 648, 659 (4th Cir. 2001) (holding that "[d]iffering beliefs and practices are not uncommon among followers of a particular creed, and it is not within the judicial function and judicial competence to inquire whether the petitioner or another practitioner more correctly perceives the commands of their common faith" (internal alterations, citations and quotations omitted)) (analyzing First Amendment claim).

Some courts have disregarded RLUIPA's explicit statement that a practice need not be "compelled by, or central to, a system of religious belief" in order to be protected. *See Riggins v. Clarke*, 403 Fed. Appx. 292, 295 (9th Cir. 2010) (state corrections officials' refusal to allow prisoner to purchase prayer oils did not violate his right to exercise his religion under RLUIPA, where "the record does not demonstrate that possessing prayer oils was a religious practice mandated by [prisoner's] faith"); *Murphy v. Missouri Dep't of Corrections*, 372 F.3d 979, 988 (8th Cir.), *cert. denied*, 125 S. Ct. 501 (2004) (religious exercise burdened must involve a "central tenet" of, or be "fundamental" to, the plaintiff's religion). *But see Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 n.7 (8th Cir. 2008) (noting that portions of the substantial burden test applied in *Murphy* may be inappropriate in light of RLUIPA's explicit definition of "religious exercise," but declining to reach the issue on the facts presented).

"substantial burden"

> [A] government action or regulation creates a "substantial burden" on a religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs. And, in line with the foregoing teachings of the Supreme Court, the effect of a government action or regulation is significant when it either (1) influences the adherent to act in a way that violates his religious beliefs, or (2) forces the adherent to choose between, on the one hand, enjoying some generally available, non-trivial benefit, and, on the other hand, following his religious beliefs. On the opposite end of the spectrum, however, a government action or regulation does not rise to the level of a substantial burden on religious

> exercise if it merely prevents the adherent from either enjoying some benefit that is not otherwise generally available or acting in a way that is not otherwise generally allowed.

Adkins v. Kaspar, 393 F.3d 559, 570 (5th Cir. 2004) (footnotes omitted).

"[A] burden is substantial under RLUIPA when the state 'denies an important benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Shakur v. Schriro*, 514 F.3d 878, 888 (9th Cir. 2008) (quoting *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005)).

"[A] substantial burden exists under RLUIPA where either (1) a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates; or (2) the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs." *Houseknecht v. Doe*, 653 F. Supp. 2d 547, 559 (E.D. Pa. 2009).

"[S]tate action substantially burdens the exercise of religion within the meaning of the RLUIPA when it prevents a religious adherent from engaging in conduct both important to the adherent and motivated by sincere religious belief." *Coronel v. Paul*, 316 F. Supp. 2d 868, 880 (D. Ariz. 2004); *id*. at 882 (denying Pagan prisoner permission to attend Yaqui Indian and Native Hawaiian religious services may constitute substantial burden).

substantial burden found:

Requirement that prisoner provide documentation that religion requires special diet imposed a substantial burden. *Nelson v. Miller*, 570 F.3d 868, 878-79 (7th Cir. 2009).

Policy requiring prisoner to have closely cropped hair substantially burdened prisoner's exercise of religion. *Smith v. Ozmint*, 578 F.3d 246, 251-52 (4th Cir. 2009)

Factfinder could reasonably conclude that prison's outside-volunteer policy, which required that religious services in the unit be conducted by either a chaplain or an approved religious volunteer, imposed a substantial burden on prisoner's right to practice Buddhism, where there was a total lack of approved Buddhist volunteers to conduct meetings and the policy had precluded members of the Buddhist faith on the unit from meeting. *Newby v. Quarterman*, 325 Fed. Appx. 345, 351 (5th Cir. 2009).

Requiring Ordo Templi Orientis practitioner to obtain verification of religion from clergy is a substantial burden where religion has no clergymen. *Koger*, 523 F.3d at 799-800. Clergy verification requirement might have been a substantial burden even if plaintiff belonged to a religion with traditional clergy, because the touchstone of the RLUIPA inquiry is the sincerity of a prisoner's religious belief, not the opinion of clergy. *Id*.

State inmate's claim that prison officials limited his access to religious literature that he was required to read as part of his practice alleged sufficiently substantial burden on his religious exercise to state claim under RLUIPA. Yates v. Painter, 306 Fed. Appx. 778, 780 (3d Cir. 2009).

Prohibition on maximum security prisoner attending group religious worship services is a substantial burden. *Greene v. Solano County Jail*, 513 F.3d 982, 988 (9th Cir. 2008).

Grooming policy prohibiting the growth of long hair may be a substantial burden for Native American prisoner. *Longoria v. Dretke*, 507 F.3d 898, 903 (5th Cir. 2007).

DOC policy limiting prisoners to ten books in a cell is a substantial burden for Children of the Sun Church practitioner who must read four different Afro-centric books each day to more effectively teach others his religion. *Washington v. Klem*, 497 F.3d 272, 281-83 (3d Cir. 2007).

Prohibition on prisoner's preaching to others is a substantial burden. *Spratt v. Wall*, 482 F.3d 33, 38 (1st Cir. 2007).

Removing a prisoner from "Ramadan observance pass list" is a substantial burden. *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006).

Each of the following is a substantial burden: (1) requiring Sunni Muslim prisoner to pray and fast for Ramadan jointly with Shiite Muslims; (2) denying Muslim prisoner access to religious services and religious meals while in "keeplock;" and (3) denying Muslim prisoner attendance at Ramadan meals and services on days when he used the law library. *Salahuddin v. Goord*, 467 F.3d 263, 275-79 (2d Cir. 2006).

Preventing a prisoner from observing the Muslim religious feast of Eid ul Fitr is a substantial burden. *Shakur v. Selsky*, 391 F.3d 106, 120 (2d Cir. 2004).

Denial of congregate religious worship may be a substantial burden. *Murphy v. Missouri Dep't of Corrections*, 372 F.3d 979, 988 (8th Cir.), *cert. denied*, 125 S. Ct. 501 (2004).

Prisoner's allegation that prison officials refused to recognize Wotanism (Odinism) as a religion states a claim under RLUIPA. *Lindell v. McCallum*, 352 F.3d 1107, 1109 (7th Cir. 2003).

Being prohibited from growing a beard may be a substantial burden for Muslim prisoner. *Gooden v. Crain*, 255 Fed. Appx. 858 (5th Cir. 2007), *rev'g* 405 F. Supp. 2d 714 (E.D. Tex. 2005).

Corrections officials significantly burdened prisoner's exercise of Wiccan religion under RLUIPA by inhibiting prisoner's timely receipt of religious articles, restricting Wiccans' use of chapel space, failing to announce Wiccan group worship to general population,

prohibiting use of certain items that are part of group worship, blocking access to religious items, and failing to retain paid chaplain to provide services to prisoner and other Wiccans. *Rouser v. White,* 630 F. Supp. 2d 1165, 1181-82 (E.D. Cal. 2009).

Prison authorities imposed a substantial burden on prisoner's religious beliefs within meaning of RLUIPA when they conditioned prisoner's receipt of a kosher meal on his relinquishment of the benefits of living in a lower-security facility. *Shilling v. Crawford,* 536 F. Supp. 2d 1227, 1233 (D. Nev. 2008).

State department of corrections' refusal to provide a daily Halal menu to Muslim inmates substantially burdened Muslim inmates' exercise of their religious beliefs in violation of RLUIPA, where refusal created pressure on inmates to consume meals that did not conform with their understanding of requirements of Islamic law. *Hudson v. Dennehy,* 538 F. Supp. 2d 400, 411 (D. Mass. 2008).

Refusal to let Sikh inmate wear a Khanda, a Sikh religious pendant worn around the neck, substantially burdened prisoner's religious exercise under RLUIPA. *Singh v. Goord,* 520 F. Supp. 2d 487, 501 (S.D.N.Y. 2007).

Each of the following is a substantial burden: (1) providing only joint Sunni-Shi'ite Jumah services to Muslim prisoners; and (2) refusing to provide Halal food diets on Shi-ite holy days of Eid-Ghadir, Muharram, and Ashura. *Rahman v. Goord,* 2007 WL 1299408, at *6-7 (W.D.N.Y. 2007).

Policy barring prisoners from receiving religious books from organizations other than those on an approved vendor list is a substantial burden. *Jesus Christ Prison Ministry v. California Dep't of Corrections,* 456 F. Supp. 2d 1188, 1204-05 (E.D. Cal. 2006), *withdrawn pursuant to settlement* (Apr. 16, 2007).

On motion for preliminary injunction, where the state completely prohibited a prisoner from attending group worship that uses the Sacred Names, from resting on the Sabbath, and from consuming religiously "clean" food, prisoner could likely show substantial burden. *Buchanan v. Burbury,* 2006 WL 2010773, at *6 (N.D. Ohio 2006).

Delay in providing prisoner with prayer oil may, depending upon length of delay, constitute substantial burden. *Perez v. Frank,* 433 F. Supp. 2d 955, 964 (W.D. Wis. 2006).

Complete denial of religious diet is a substantial burden. *Blount v. Johnson,* 2006 WL 3746682, at *10-11 (W.D. Va. 2006); *Wolff v. NH Dep't of Corrections,* 2007 WL 586687, at *4 (D.N.H. 2007).

Being required to cut one's hair in violation of one's religious beliefs is a substantial burden. *Hoevenaar,* 276 F. Supp. 2d at 818; *rev'd on other grounds,* 422 F.3d 366 (6th Cir. 2005).

Allegation that prison staff intentionally omitted prisoner from list of those allowed to attend Native American religious services stated substantial burden, even though prisoner only missed three services; "it is difficult to imagine a burden more substantial than banning an individual from engaging in a specific religious practice." *Meyer v. Teslik*, 411 F. Supp. 2d 983, 989 (W.D. Wis. 2006).

Jail's failure to arrange Jumah services for Muslim prisoners could constitute substantial burden. *Larry v. Goetz*, 2006 WL 1495784, at *6 (W.D. Wis. 2006).

Termination from prison employment based on one's religion is a substantial burden. *Rouse v. Caruso*, 2007 WL 209922, at *6 (Opinion and Order), *rev'd on other grounds*, 2007 WL 1455919 (E.D. Mich. 2007).

Requiring a Muslim prisoner to handle pork upon pain of discipline is a substantial burden. *Williams v. Bitner*, 359 F. Supp. 2d 370, 375-76 (M.D. Pa. 2005), *aff'd*, 455 F.3d 186 (3d Cir. 2006).

Denial of a sweat lodge is a substantial burden on Native American prisoner's religious exercise. *Farrow v. Stanley*, 2005 WL 2671541, at *8 (D.N.H. 2005).

Denying a prisoner Odinist literature is a substantial burden. "I understand plaintiff to allege that he is unable to attain his religious goal of achieving 'godhead' unless he is allowed to possess [specific Odinist texts]. An act that prevents an inmate from achieving his ultimate religious goal meets the 'substantial burden' test[.]" *Borzych v. Frank*, 340 F. Supp. 2d 955, 968 (W.D. Wis. 2004).

Refusing to allow prisoner to wear garments required by Jewish law while being transported to outside medical provider states a claim under RLUIPA. *Boles v. Neet*, 333 F. Supp. 2d 1005, 1010 (D. Colo. 2004).

Absolute ban on Five Percenter literature and assembly may constitute substantial burden. *Marria v. Broaddus*, 200 F. Supp. 2d 280, 298-99 (S.D.N.Y. 2002).

substantial burden not found:

Prison policy rejecting mailing of contraband was related to legitimate penological interests of order, discipline, and security and did not prevent state inmate from practicing his faith or force him to modify his religious activities. *Lockamy v. Dunbar*, 399 Fed. Appx. 953, 956 (5th Cir. 2010).

Prisoner's allegation that prison officials confiscated photographs of young women from his cell because of his Mormon beliefs, even though photographs did not violate any prison policy, failed to state claim under RLUIPA absent allegation that photographs had anything to do with his religious beliefs. *Barhite v. Caruso*, 377 Fed. Appx. 508 (6th Cir. 2010).

Prisoner failed to establish that wearing white cloth headband, which prison allowed, as opposed to colored headband, which prison prohibited, substantially burdened his religious exercise under RLUIPA; TDCJ's failure to select more competent vendors did not rise to level of RLUIPA violation, even though vendors allegedly mishandled prisoner's orders, thus preventing him from purchasing white headbands. *Thunderhorse v. Pierce*, 364 Fed. Appx. 141 (5th Cir. 2010), *cert. denied*, 131 S.Ct. 896 (2011).

Absent evidence that alternate foods that prison offered as part of its pork-free menu option also violated religious beliefs of particular sect of Muslim faith to which inmate belonged, inmate's "self-serving affidavit" that his religious beliefs prevented him from consuming anything but fresh fruits, vegetables, chicken, and fish was insufficient to support claim for violation of any rights protected under RLUIPA, especially given burden that it would impose on prison authorities of having to specially accommodate every one of the 140 religious sects in prison. *Jones v. Shabazz*, 352 Fed. Appx. 910, 916 (5th Cir. 2009).

State prisoner failed to show that his exclusion from religious study group represented substantial burden to prisoner, especially given prisoner's ability to study and read religious text independently. *Barnes v. Pierce*, 338 Fed. Appx. 373 (5th Cir. 2009).

Requiring prisoner to substitute vegetarian items from hot bar or salad bar, kosher vegetarian items, and/or purchase halal vegetarian items on days when Common Fare meals are not halal is not a substantial burden where plaintiff failed to plead indigence. *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813-15 (8th Cir. 2008).

Denying Odinist prisoner access to a small quartz crystal to communicate with netherworld did not substantially burden practice of religious exercise; at most it was an "'incidental' burden" insufficient for purposes of RLUIPA. *Smith v. Allen*, 502 F.3d 1255, 1278-79 (11th Cir. 2007).

Providing a non-rotating menu of cold food items to satisfy Kosher diet is not a substantial burden. *Kretchmar v. Beard*, 241 Fed. Appx. 863, 865 (3d Cir. 2007).

Requiring a prisoner to fill out a form to receive kosher meals is not a substantial burden. *Resnick v. Adams*, 348 F.3d 763, 768 n.6 (9th Cir. 2003).

Missing one's kosher meal seven times over a two-year period due to transport from jail to court is "simply an inconvenience;" "a substantial burden must be more than a mere inconvenience." *Subil v. Sheriff of Porter County*, 2005 WL 1174218, at *4 (N.D. Ind. 2005).

Denying a prisoner permission to change his name for religious reasons is not a substantial burden. *Scott v. California Supreme Court*, 2006 WL 2460737, at *10 (E.D. Cal. 2006) (report and recommendation).

See also Adkins v. Kaspar, 393 F.3d 559, 570 (5th Cir. 2004), *cert. denied*, 125 S. Ct. 2549 (2005) (no substantial burden where prison's requirement of qualified outside volunteers resulted in denial of congregate services when no such volunteer was available).

"compelling governmental interest"

Courts uniformly hold that maintaining institutional order and security is a compelling governmental interest. *See, e.g., Cutter*, 125 S. Ct. at 2124 n.13 ("prison security is a compelling state interest"); *Warsoldier v. Woodford*, 418 F.3d 989, 998 (9th Cir. 2005) ("Nevertheless, the question here is not whether prison security is a compelling governmental interest. It clearly is").

> But "to prevail on summary judgment, [prison officials] must do more than merely assert a security concern." *Spratt v. Wall*, 482 F.3d 33, 39 (1st Cir. 2007) (quoting *Murphy v. Missouri Dep't of Corrections*, 372 F.3d 979, 988 (8th Cir. 2004)). "We do not think that an affidavit that contains only conclusory statements about the need to protect inmate security is sufficient to meet [prison officials'] burden under RLUIPA." *Id*. at 40 n.10. *See also Koger*, 523 F.3d at 800 (the court "can only give deference to the positions of prison officials as required by *Cutter* when the officials have set forth those positions and entered them into the record) (internal citation omitted) (citing *Lovelace v. Lee*, 472 F.3d 174, 191 (4th Cir. 2006)).

Outside the prison context, there is authority that administrative convenience and cost savings are not compelling governmental interests. *See, e.g., Memorial Hospital v. Maricopa County*, 415 U.S. 250, 262-63 (1974). *See also* 42 U.S.C. § 2000cc-3(c) ("this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise"); *Rouser v. White*, 630 F. Supp. 2d 1165, 1185-86 (E.D. Cal. 2009) (neither limited resources nor lack of necessary accommodations to facilitate religious needs in prisons constitute compelling interest under RLUIPA, and thus California Department of Corrections could not avoid liability for interference with exercise of Wiccan religion; moreover, costs of hiring paid chaplain to minister to Wiccans, and resulting requests of *other* minority religious groups, was speculative). But some courts have nevertheless considered cost savings as compelling state interests under RLUIPA. *See Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007) (total refusal to provide kosher meals upheld as least restrictive means of satisfying compelling governmental interests of maintaining order "and controlling costs"; noting that "TDCJ's budget is not adequate to cover the increased expense of either providing a separate kosher kitchen or bringing in kosher food from the outside"); *Linehan v. Crosby*, 346 Fed. Appx. 471 (11th Cir. 2009) (keeping costs down and preventing security risks were compelling interests, justifying decision by Department of Corrections not to provide kosher meals to inmates and to require them to chose vegetarian or vegan meals instead; administrative and budgetary interests at stake could not be achieved by any different or lesser means); *Lovelace*, 472 F.3d at 189-90 (in evaluating the compelling

governmental interest, courts should take into consideration "costs and limited resources") (quoting *Cutter*, 544 U.S. at 723).

"While our approach does suggest that a court should not rubber stamp or mechanically accept the judgments of prison administrators, our approach underscores that those judgments must nevertheless be viewed through the lens of due deference." *Id.* at 190 (4th Cir. 2006) (citation omitted) (holding that an interest in "removing inmates from religious dietary programs where the inmate flouts prison rules" is not, without further elaboration, a compelling governmental interest).

See also Jova v. Smith, 582 F.3d 410, 416 (2d Cir. 2009) (prison's restrictions on prisoners' practice of Tulukeesh religion, which limited practice to privacy of prisoner's cell and kept holy book with prison chaplain from whom prisoners could seek permission to read it, served prison officials' compelling security and administrative interests).

"least restrictive means"

Under RLUIPA, prison officials have the burden of demonstrating that the challenged regulation is the least restrictive means of furthering a compelling governmental interest. *See* 42 U.S.C. §§ 2000cc-1; 2000cc-5(2) ("the term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion").

"A governmental body that imposes a 'substantial' burden on a religious practice must *demonstrate*, and not just assert, that the rule at issue is the least restrictive means of achieving a compelling governmental interest." *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003) (emphasis in original); *accord Spratt v. Wall*, 482 F.3d 33, 42 (1st Cir. 2007).

"We do not require evidence that racial violence has in fact occurred in the form of a riot, but we do require some evidence that MDOC's decision was the least restrictive means necessary to preserve its security interest." *Murphy v. Missouri Dep't of Corrections*, 372 F.3d 979, 989 (8th Cir. 2004).

"In order to demonstrate that the publication disapproval policy is the least restrictive means of furthering the interest of prison security and offender rehabilitation, the defendants must provide a 'substantive, relevant explanation' as to why disapproving a publication in its entirety is the least restrictive means of enforcing the compelling interest advanced by them." *Brown v. Ray*, 695 F. Supp. 2d 292, 303 (W.D. Va. 2010).

"CDC cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice." *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005) (restriction on hair length, with no religious exception, is not the least restrictive means of promoting compelling state interest in prison security).

> "[T]o meet the least restrictive means test, prison administrators generally ought to explore at least some alternatives, and their rejection should generally be accompanied by some measure of explanation. A blanket statement that all alternatives have been considered and rejected, such as the one here, will ordinarily be insufficient." *Spratt v. Wall*, 482 F.3d 33, 41 n.11 (1st Cir. 2007) (holding that prison officials failed to show, on motion for summary judgment, that complete ban on preaching by prisoners is least restrictive means of promoting prison security).

However, a decision by the Sixth Circuit appears to partially shift the burden to the plaintiff on this issue: "Hoevenaar did not rebut the state's expert testimony regarding the problems with his suggested alternatives by substantial evidence that the officials exaggerated their response to security considerations." *Hoevenaar v. Lazaroff*, 422 F.3d 366, 372 (6th Cir. 2005) (internal quotation marks omitted). *See also Fowler v. Crawford*, 534 F.3d 931, 940 (8th Cir. 2008) ("Unfortunately for Fowler, the burden of production shifted to him once JCCC officials had come forth with evidence that other means by which Fowler might practice his Native American faith were unacceptable to him. . . . That Fowler bore the burden of production at this point hardly constitutes an improper shifting of RLUIPA's burden of proof. 'It would be a herculean burden to require prison administrators to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA'") (internal citations omitted).

The fact that other prisons permit a given activity is evidence that banning the activity is not the least restrictive means of promoting prison security. *Warsoldier*, 418 F.3d at 999; *Spratt*, 482 F.3d at 42. *But see Fowler*, 534 F.3d at 942 (noting that requiring prison to provide a sweat lodge simply because another prison had done so would require every institution within jurisdiction to accommodate inmates of Native American faith and would discourage officials from accommodating other religious practices, knowing that all institutions would likely have to accommodate the same practices).

least restrictive means test satisfied:

Prison officials' ban on prisoner's request for a sweat lodge was the least restrictive means by which to further institution's compelling interest in safety and security, where prison officials suggested alternatives to and sought a compromise with prisoner, to no avail, offering him an outdoor area where he could smoke ceremonial pipe and practice other aspects of his faith in open view and prisoner rejected anything short of a sweat lodge. *Fowler*, 534 F.3d at 939-42.

Total refusal to provide kosher meals is the least restrictive means of advancing compelling interests of maintaining good order and controlling costs. *Baranowski v. Hart*, 486 F.3d 112, 125-26 (5th Cir. 2007).

Banning three specific Odinist texts that advocate violence is the least restrictive means of advancing compelling interest in prison security. *Borzych v. Frank*, 439 F.3d 388, 390-91 (7th Cir. 2006).

Prohibiting prisoner from affixing religious materials to cell walls, doors, and windows was least restrictive means of advancing compelling interest in prison order and security. *Mark v. Gustafson*, 482 F. Supp. 2d 1084, 1090 (W.D. Wis. 2006).

Ragland v. Angelone, 420 F. Supp. 2d 507, 519 (W.D. Va. 2006) (restrictions on hair length and ban on beards was least restrictive means of advancing compelling interest in prison security), *aff'd sub nom. Ragland v. Powell*, 193 Fed. Appx. 218 (4th Cir. 2006).

least restrictive means test not satisfied:

Genuine issue of material fact existed whether government's proffered reason for restricting Jum'ah prayers at county detention center—construction and renovations—furthered compelling interest and was least restrictive means, precluding summary judgment on claim. *Tyson v. Guisto*, 360 Fed. Appx. 900, 901 (9th Cir. 2009).

Factfinder could reasonably conclude that policy, which required that religious services in prison unit be conducted by either a chaplain or an approved religious volunteer, did not further compelling interests in security and the economical operation of prisons through the least restrictive means possible, where Buddhists were completely unable to engage in communal worship, and policy was applied disparately to different groups, and other less restrictive means seemed to exist. *Newby v. Quarterman*, 325 Fed. Appx. 345, 351-52 (5th Cir. 2009).

Requiring prisoner to show that religious diet was compelled by religion and to obtain clergy verification of religious belief is not the least restrictive means of achieving government ends. *Koger v. Bryan*, 523 F.3d 789, 801 (7th Cir. 2008).

Restricting prisoner to ten books in a cell is not the least restrictive means to further the presumed compelling interests of health, safety, and security. *Washington v. Klem*, 497 F.3d 272, 284-86 (3d Cir. 2007).

Even if corrections officials were able to demonstrate a compelling interest justifying denial of prisoner's Nation of Islam publications pursuant to prison policy prohibiting material that promoted or advocated violence, disorder, insurrection or terrorist activities, they failed to demonstrate that such a policy constituted the least restrictive means of furthering it. *Brown*, 695 F. Supp. 2d at 303-04.

State prison policy of disciplining inmates who violated rules governing religious diets by restricting access to religious diet required inmates to violate their religious beliefs for period of 30 to 90 days, and thus was not least restrictive means of furthering compelling governmental interest of maintaining discipline of prisoners. *Van Wyhe v. Reisch*, 536 F. Supp. 2d 1110, 1125 (D.S.D. 2008), *rev'd on other grounds* 581 F.3d 639 (8th Cir. 2009).

Denial of Ta'lim (Muslim educational classes) violates RLUIPA. *Daker v. Wetherington*, 469 F. Supp. 2d 1231, 1242 (N.D. Ga. 2007).

Policy barring prisoners from receiving religious books from organizations other than those on an approved vendor list violates RLUIPA. *Jesus Christ Prison Ministry v. California Dep't of Corrections*, 456 F. Supp. 2d 1188, 1204-05 (E.D. Cal. 2006), *withdrawn pursuant to settlement* (Apr. 16, 2007).

On motion for preliminary injunction, defendants were unlikely to be able to demonstrate that denying prisoner the opportunity for group worship, rest on the Sabbath and Holy Days, and a religious diet serves a compelling state interest, where prisoners of other religions were allowed these benefits; preliminary injunction granted. *Buchanan v. Burbury*, 2006 WL 2010773, at *6-7 (N.D. Ohio 2006).

Complete ban on Cherokee Sacred Fire ceremony and on use of medicinal herbs, and denial of religious exemption from beard length regulation, "violates RLUIPA;" ban on smoking tobacco and smudging in cell does not. *Smith v. Beauclair*, 2006 WL 2348073, at *7-8 (D. Idaho 2006).

A complete ban on Melanic literature is not the least restrictive means of advancing prison security. *Johnson v. Martin*, 2005 WL 3312566, at *7 (W.D. Mich. 2005).

Requiring a Muslim prisoner to handle pork while working in food services is not the least restrictive means of promoting institutional order and security. *Williams v. Bitner*, 359 F. Supp. 2d 370, 376 (M.D. Pa. 2005), *aff'd*, 455 F.3d 186 (3d Cir. 2006).

Neither punishing prisoners who refuse for religious reasons to shave their beards, nor punishing prisoners who miss work to attend Friday religious services, is the least restrictive means of advancing a compelling government interest. *Mayweathers v. Terhune*, 328 F. Supp. 2d 1086, 1095-97 (E.D. Cal. 2004).

Remedies

In *Sossamon v. Texas*, 131 S. Ct. 1651 (2011), the Supreme Court held that RLUIPA's provision for "appropriate relief" (42 U.S.C.A. § 2000cc-2(a)), does not clearly and unambiguously express that States accepting federal funds consent to waive their sovereign immunity from suits for money damages. Therefore, prisoners may obtain injunctions against prison policies that substantially burden religious conduct, but they cannot obtain damages from states or state officials sued in their official capacities.

It still may be possible to obtain damages against state officials sued in their individual capacities. *See Orafan v. Goord*, 2003 WL 21972735, at *9 (N.D.N.Y. 2003) ("clearly the Act contemplates individual liability"); *Madison v. Virginia*, 474 F.3d 118, 130 n.3, 131-32 (4th Cir. 2006) (holding that damages are not available against a state; leaving open whether they are available against state officials sued in their individual capacities). The *Sossamon* decision does not affect the availability of money damages against counties and municipalities (and their employees) which do not enjoy sovereign immunity.

Attorney fees are available under 42 U.S.C. § 1988(b) (and are therefore subject to the PLRA limitations on attorney fees, 42 U.S.C. § 1997e(d)).

Statute of limitations

Claims under RLUIPA are governed by the four-year statute of limitations set forth in 28 U.S.C. § 1658(a). *Williams v. Gerges*, 2005 WL 1773857, at *6 (E.D.N.Y. 2005); *Couch v. Jabe*, 479 F.Supp.2d 569, 577 (W.D. Va. 2006).

THE FIRST AMENDMENT

In cases in which RLUIPA and RFRA are not available, prisoners' religious claims are governed by the First Amendment. Restrictions on prisoners' First Amendment rights are governed by the test set forth in *Turner v. Safley*, 482 U.S. 78, 89 (1987): the restriction is valid "if it is reasonably related to legitimate penological interests."

> The *Turner* standard is deferential, but "not toothless." *Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989). Prison officials may not "pil[e] conjecture upon conjecture" to justify their policies. *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988); *see also Armstrong v. Davis*, 275 F.3d 849, 874 (9th Cir. 2001), *cert. denied*, 537 U.S. 812 (2002) (prison officials cannot avoid scrutiny under *Turner* "by reflexive, rote assertions"); *cf. Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) ("deference does not imply abandonment or abdication of judicial review").

Under the *Turner* standard, the following restrictions on religious exercise have been found to violate the First Amendment:

> **Restrictions on ability to attend religious services.** *Mayweathers v. Newland*, 258 F.3d 930, 938 (9th Cir. 2001) (upholding injunction against disciplining Muslim prisoners for missing work to attend Friday services); *Omar v. Casterline*, 288 F. Supp. 2d 775, 781 (W.D. La. 2003) (refusal to tell Muslim prisoner the date or time of day to allow him to pray and fast states First Amendment claim); *Youngbear v. Thalacker*, 174 F. Supp. 2d 902, 914-15 (N.D. Iowa 2001) (one year delay in providing sweat lodge for Native American religious activities violates First Amendment).
>
> **Denial of religious literature.** *Sutton v. Rasheed*, 323 F.3d 236, 258 (3d Cir. 2003) (denial of Nation of Islam texts); *Jesus Christ Prison Ministry v. California Dep't of Corrections*, 456 F. Supp. 2d 1188, 1201-02 (E.D. Cal. 2006) *withdrawn pursuant to settlement* (Apr. 16, 2007) (policy barring prisoners from receiving religious books from organizations other than those on an approved vendor list).
>
> **Requiring violation of the Sabbath or other religious duties.** *McEachin v. McGuinnis*, 357 F.3d 197, 204-05 (2d Cir. 2004) (intentionally giving Muslim prisoner an order while he was praying); *Williams v. Bitner*, 455 F.3d 186, 194 (3d Cir. 2006) (requiring Muslim prisoner to handle pork); *Hayes v. Long*, 72 F.3d 70 (8th Cir. 1995) (same); *Murphy v. Carroll*, 202 F. Supp. 2d 421 (D. Md. 2002) (prison officials' designation of Saturday as cell-cleaning day violated Free Exercise rights of Orthodox Jewish prisoner); *Smith v. Artus*, 2010 WL 3910086, at *12-19 (2010) (forbidding prisoners to pray in recreation yard when recreation time overlapped with prescribed daily prayer time).
>
> **Failure to accommodate religious dietary rules.** *Ford v. McGinnis*, 352 F.3d 582, 597 (2d Cir. 2003) ("We . . . have clearly established that a prisoner has a

right to a diet consistent with his or her religious scruples"); *Lomholt v. Holder*, 287 F.3d 683, 684 (8th Cir. 2002) (punishing plaintiff for religious fasting); *Beerheide v. Suthers*, 286 F.3d 1179, 1192 (10th Cir. 2002) (requiring co-pay from prisoners requesting Kosher meals); *Makin v. Colorado Dep't of Corrections*, 183 F.3d 1205 (10th Cir. 1999) (failure to accommodate Muslim prisoner's fasting requirements during Ramadan); *Ashelman v. Wawrzaszek*, 111 F.3d 674, 678 (9th Cir. 1997) (failure to provide Kosher meals); *see also Levitan v. Ashcroft*, 281 F.3d 1313 (D.C. Cir. 2002) (reversing summary judgment for defendants in Catholic prisoners' challenge to denial of communion wine).

Under the *Turner* standard, challenges to grooming requirements and bans on religious objects have generally been unsuccessful. But such rules may be vulnerable if they are not enforced equally against all religions. *See Amaker v. Goord*, 2010 WL 2595286, at *12 (W.D.N.Y. 2010) (holding unconstitutional a policy that barred individuals from wearing dreadlocks unless they are Rastafarian, noting that "the fatal flaw of DOCS' policy is that it is not neutral . . . Stated another way, there is no legitimate reason for DOCS to afford members of only one religious denomination the opportunity to adhere to a sincerely held religious belief precluding cutting of hair. Requiring inmates to affiliate with that religious denomination in order to exercise their sincere religious belief in the wearing of dreadlocks is not an adequate alternative means for members of other denominations to exercise their religious beliefs."); *see also Sasnett v. Litscher*, 197 F.3d 290, 292 (7th Cir. 1999) (First Amendment violated where prison banned the wearing of Protestant crosses but allowed Catholic rosaries) *abrogated in part by Bridges v. Gilbert*, 557 F.3d 541 (7th Cir. 2009); *Swift v. Lewis*, 901 F.2d 730, 731-32 (9th Cir. 1990) (where prison permitted long hair and beards for some religions but not others, it must present evidence justifying this unequal treatment); *Wilson v. Moore*, 270 F. Supp. 2d 1328, 1353 (N.D. Fla. 2003) (Native Americans allowed to wear religious headgear only during religious services, while prisoners of other religions were allowed to wear their headgear at all times).

One court has held that atheism is a religion, and that a prison's refusal to allow formation of an atheist study group, while allowing other religious groups, violates the Establishment Clause. *Kaufman v. McCaughtry*, 419 F.3d 678, 684 (7th Cir. 2005).

June 1, 2011

106th CONGRESS

2d Session

S. 2869

AN ACT

To protect religious liberty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS-

(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION- This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION-

(1) EQUAL TERMS- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
(2) NONDISCRIMINATION- No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.
(3) EXCLUSIONS AND LIMITS- No government shall impose or implement a land use regulation that--
(A) totally excludes religious assemblies from a jurisdiction; or
(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE- No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), 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 means of furthering that compelling governmental interest.
(b) SCOPE OF APPLICATION- This section applies in any case in which--
(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION- A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION- If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) FULL FAITH AND CREDIT- Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a

Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS' FEES- Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--

(1) by inserting `the Religious Land Use and Institutionalized Persons Act of 2000,' after `Religious Freedom Restoration Act of 1993,'; and
(2) by striking the comma that follows a comma.

(e) PRISONERS- Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT- The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) LIMITATION- If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

(a) RELIGIOUS BELIEF UNAFFECTED- Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) RELIGIOUS EXERCISE NOT REGULATED- Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED- Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED- Nothing in this Act shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or
(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE- A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW- With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) BROAD CONSTRUCTION- This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) NO PREEMPTION OR REPEAL- Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) SEVERABILITY- If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the `Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term `granting', used with respect to government funding,

benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS- Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended--

(1) in paragraph (1), by striking `a State, or a subdivision of a State' and inserting `or of a covered entity';

(2) in paragraph (2), by striking `term' and all that follows through `includes' and inserting `term `covered entity' means'; and

(3) in paragraph (4), by striking all after `means' and inserting `religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'.

(b) CONFORMING AMENDMENT- Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking `and State'.

SEC. 8. DEFINITIONS.

In this Act:

(1) CLAIMANT- The term `claimant' means a person raising a claim or defense under this Act.

(2) DEMONSTRATES- The term `demonstrates' means meets the burdens of going forward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE- The term `Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT- The term `government'--

(A) means--

(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; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION- The term `land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY- The term `program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).
(7) RELIGIOUS EXERCISE-

(A) IN GENERAL- The term `religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) RULE- The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.