RELIGIOUS RIGHTS IN JAILS: *DEFENDING CORRECTIONAL STAFF UNDER RLUIPA*

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Overview

Section 1983

Religious Freedom of Restoration Act (RFRA)

Religious Land Use and Institutionalized Persons Act (RLUIPA)

Overview

- Free Exercise Clause of First Amendment
- RLUIPA
- Illinois RFRA
- RLUPIA and IRFRA provide a much more stringent test on jail and prison regulations than the Free Exercise Clause.

Overview

- Historical Perspective:
  - First Amendment religious claims are reviewed under an intermediate scrutiny analysis. *Employment Division v. Smith*, 494 U.S. 872 (1990).
  - Federal RFRA passed in 1993 (42 USC §2000bb).
    - In response to *Employment Division v. Smith*, 494 U.S. 872 (1990).
    - Restored the strict scrutiny test to religious claims.

Overview

- Historical Perspective:
  - Federal RFRA held unconstitutional as applied to the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997).
  - Congress passed RLUIPA in 2000 in response to *Boerne*.
  - Federal RFRA was amended in 2003 to only apply to federal entities and has been upheld, most recently in the *Hobby Lobby* decision.

Overview

- RLUIPA:

  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 means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a).

Overview

- RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise."

42 U.S.C. § 2000cc-3(c).

Overview

- *Holt v. Hobbs*, 135 S. Ct. 853 (2015):
  - RLUIPA's strict scrutiny analysis is "exceptionally demanding."
  - RLUIPA's protections are "expansive."

Overview

- RLUIPA can be enforced by the US Justice Department, but rarely is.
  - 2010 - 2016, Department conducted:
    - 6 formal investigations;
    - 7 informal investigations;
    - 3 lawsuits; and
    - 17 statements of interest/*amicus* briefs.

Update on the Justice Department's Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010-2016, U.S. Department of Justice (July 2016).

Overview

- Illinois RFRA:

  Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person

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

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

775 ILCS 35/15 (West 2014).

Overview

- Illinois courts interpret Illinois RFRA by reference to the RLUIPA cases in the prison context.
  - *Diggs v. Snyder*, 333 Ill. App. 3d 189, 194 (2002).

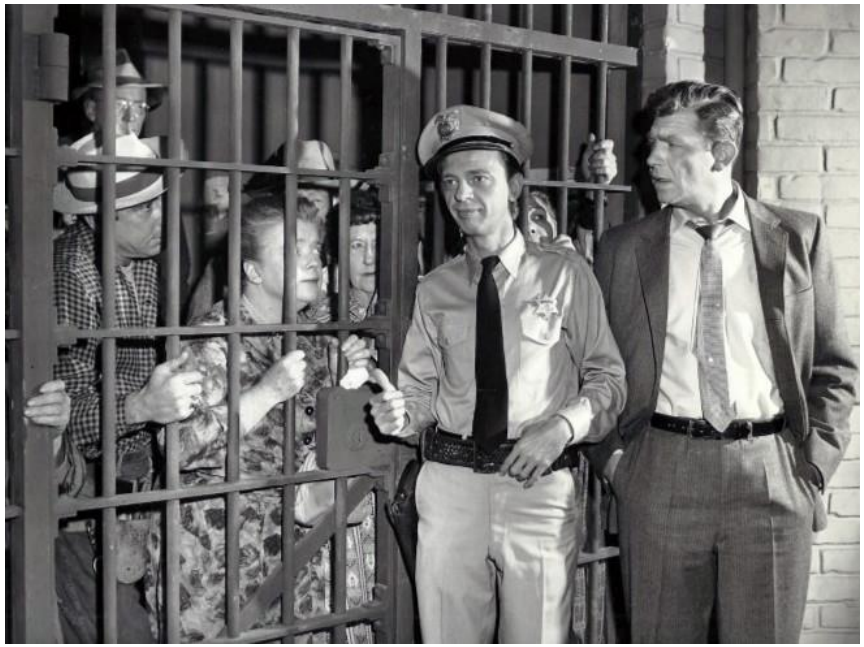
Litigating a RLUIPA Claim

PLRA

RLUIPA statutory standards

Litigating a RLUIPA Claim

- Prison Litigation Reform Act (PLRA)
  - *Pro se* inmates
  - Incarcerated (jail or prison) at time suit is filed
  - Exhaustion of Remedies
  - No compensatory damages without physical injury
  - Applies to § 1983 claims and RLUIPA claims



42 U.S.C. §1997e.

Litigating a RLUIPA Claim

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)*, you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

☐ Federal officials (a *Bivens* claim)

☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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- Complaint form provided by the federal courts
  - § 1983
  - No RLUIPA options
  - No state law options

Litigating a RLUIPA Claim

- To prevail on a RLUIPA claim, the inmate must first show:
  - (1) that he seeks to engage in an exercise of religion; and
  - (2) that the challenged practice substantially burdens that exercise of religion.

42 U.S.C. § 2000cc-1(a); *Koger v. Bryan*, 523 F.3d 789 (7th Cir. 2008).

Litigating a RLUIPA Claim

- Religious exercise:
  - "any exercise of religion, whether or not compelled by, or central to, a system of religious belief."

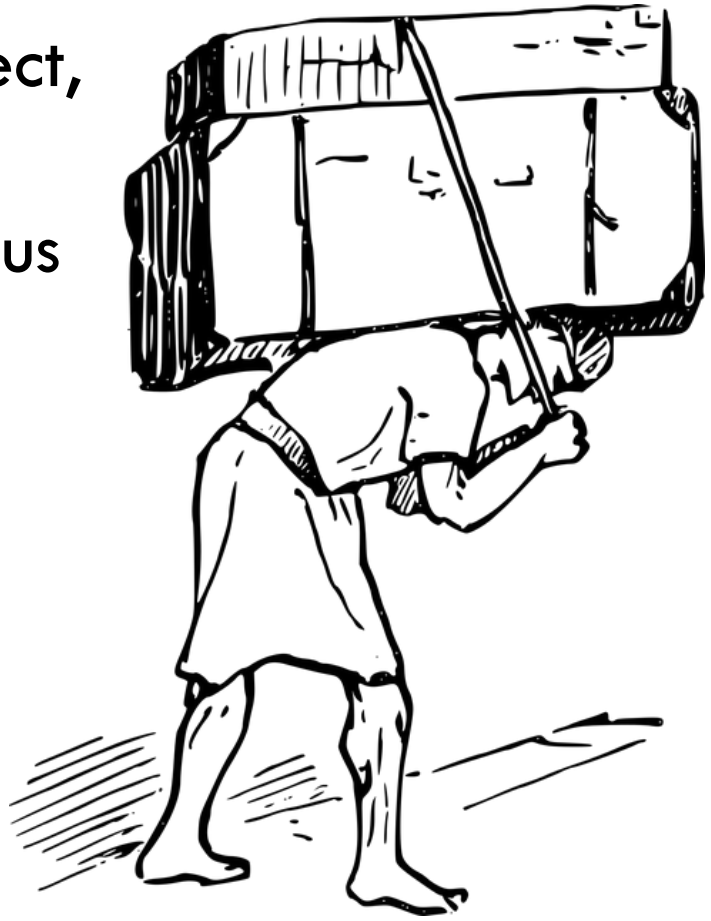
- Cannot inquire into the *centrality* of a inmate's religious belief or practice.
- Can inquire into the *sincerely* of a inmate's religious beliefs.

42 U.S.C. § 2000cc-5(7)(A); *Koger*, 523 F.3d at 797; *Powers v. Coleman*, 559 Fed. Appx. 581 (Mem) (7th Cir. 2014).

Litigating a RLUIPA Claim

- Substantial burden:

"One that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise ... effectively impracticable."



Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003).

Litigating a RLUIPA Claim

- RLUIPA's "substantial burden" requirement has been interpreted with reference to free exercise jurisprudence.

- Government conduct is substantially burdensome if it "put[s] substantial pressure on an adherent to modify his behavior and violate his beliefs."
  - *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003).

- Can be a substantial burden even if regulation is one of general applicability.

Litigating a RLUIPA Claim

- "RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise ... not whether the RLUIPA claimant is able to engage in other forms of religious exercise."
  - *Holt*, 135 S. Ct. at 862.

Litigating a RLUIPA Claim

- Substantial burden is determined by the *individual's practice and belief.*
  - Not the opinion of clergy members or other adherents.

  Nelson v. Miller, 570 F.3d 868, 878-79 (7th Cir. 2009).

- Plaintiffs are not required to show that their religion compels the practice in question or that practice can be verified by documentation or testimony.

Litigating a RLUIPA Claim

- Burden then shifts to the government to show:
  - a compelling governmental interest; and
  - the least restrictive means of furthering that compelling interest.
    - 42 U.S.C. § 2000cc-1(a); *Koger*, 523 F.3d at 796.

Litigating a RLUIPA Claim

- Compelling interest
  - The U.S. Supreme Court has stated that RLUIPA does not "elevate accommodation of religious observances over an institution's need to maintain order and safety."
    Cutter v. Wilkinson, 544 U.S. 709, 722-23 (2005).

- Although deference is given to prison and jail administrators in maintaining order, security, and discipline, the deference is not absolute.
  Koger, 523 F.3d at 800.

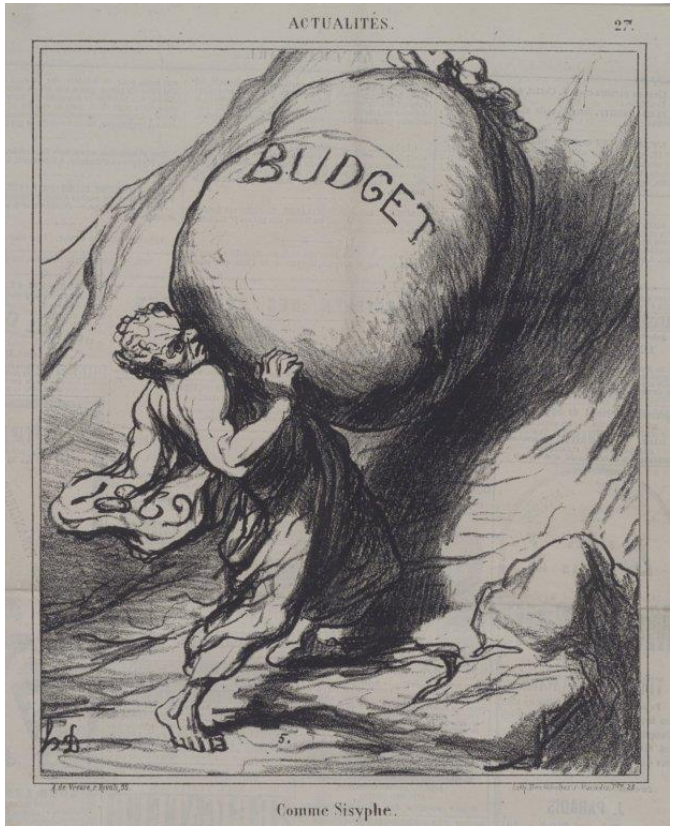
Litigating a RLUIPA Claim

- Legitimate penological interests do not rise to the level of a compelling interest.
  - *E.g.*, Prison had a *legitimate* penological interest in "orderly administration of a prison dietary system, and the accommodations made thereunder," but that this interest was not *compelling*.

    Koger, 523 F.3d at 800.

Litigating a RLUIPA Claim

- What is a compelling interest?



Litigating a RLUIPA Claim

- Security and safety
  - Grooming policies upheld. *Williams v. Snyder*, 367 Fed. App'x 679 (7th Cir. 2010) (policy banning dreadlocks); *Johnson v. McCann*, No. 08 C 4684, 2010 WL 2104640, (N.D. Ill. May 21, 2010) (prohibited dreadlocks).
    - *But see Holt v. Hobbs*, 135 S. Ct. 853 (2015).
  - Wood runes banned. *Borzych v. Frank*, No. 09-cv-21-bbc, 2010 WL 1026977, *4 (W.D. Wis. March 17, 2010) (symbols could not be easily reviewed by security staff and have a history of being used by white supremacy groups).

Litigating a RLUIPA Claim

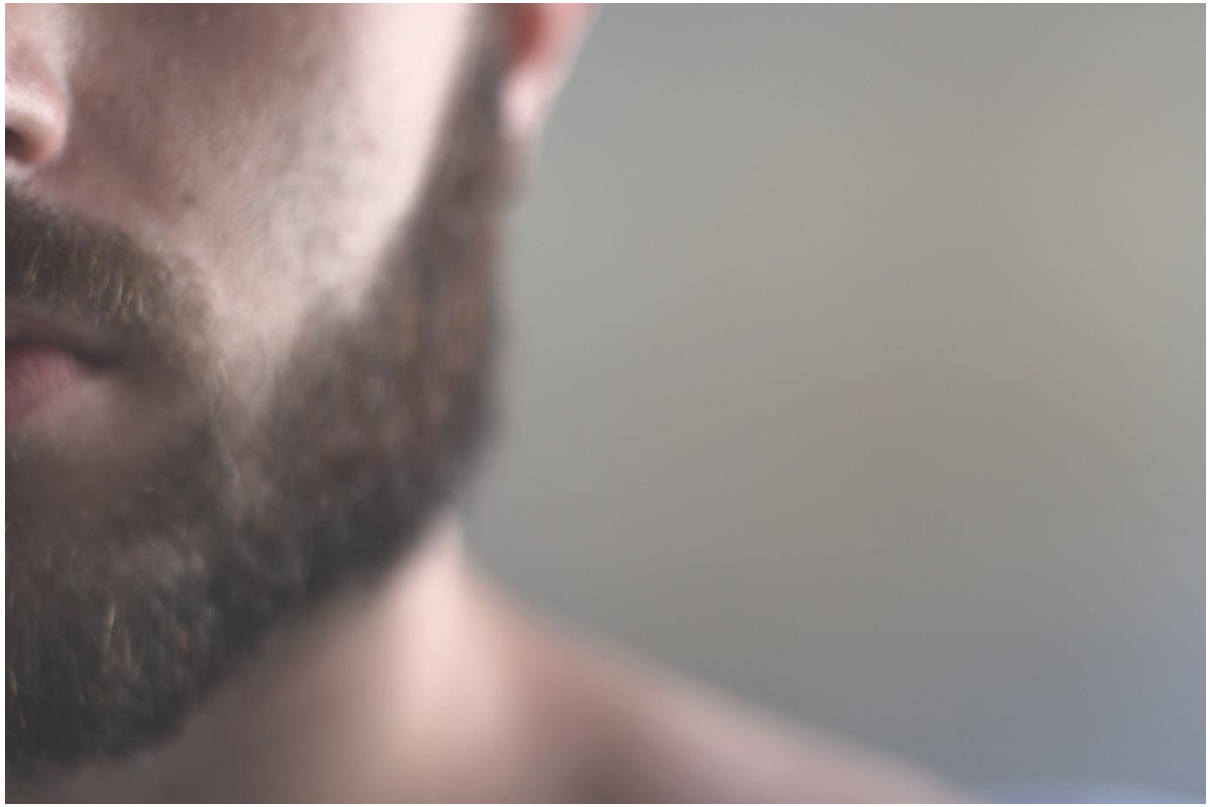
- Budgetary Concerns?
  - Budgetary concerns alone are not compelling interests.
    - *Willis v. Com'r, Indiana Dep't of Corrections*, 753 F. Supp. 2d 768 (S.D. Ind. 2010). Court rejected DOC's argument that the cost of kosher diets was unacceptably high and thus created a compelling government interest in reducing "spiraling costs" as more inmates requested kosher diets.
    - "[A]ccommodating a religious practice will generally be more expensive than a failure to accommodate" and RLUIPA specifically contemplates that the law "may require a government to incur expenses in its own operations to avoid imposing a substantial burden."

Litigating a RLUIPA Claim

- Budgetary concerns <u>with</u> security concerns may be compelling.
  - *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007): 5th Circuit Appellate Court held that there was compelling interest where prison demonstrated that:
    - (1) that the budget was not big enough to provide a separate kosher kitchen or bring in kosher food from the outside and simultaneously provide a nutritionally appropriate meal to other offenders,
    - (2) that such a policy would breed resentment which may result in a security risk, and
    - (3) that there would be an increased demand for similar diets among inmates.

Examples

Examples



- Prison policy prohibited beards (but allowed neatly trimmed mustaches).
- Muslim inmate wanted to grow a ½-inch beard.

Examples

- *Holt v. Hobbs*, 135 S. Ct. 853 (2015).
  - Supreme Court held that prison policy violated RLUIPA.
  - Undisputed that the policy substantially burdened the inmate's sincerely held religious beliefs.
  - No evidence that inmate could hide contraband in ½ inch beard.
    - Prison did not require inmates to have no or short head hair.
  - No evidence that policy furthered prison's interest in inmate identification, since the inmate could be photographed both with and without a beard and periodically thereafter as commonly occurred at other prisons.

Examples

- Wiccan wants to wear 1-inch medallion (image from opinion).
- The medallion was small enough to comply with prison regulations regarding jewelry worn by prisoners.
- Policy prohibits 5- and 6-pointed star symbols are used as gang identifiers.
- Inmate agreed to wear his medallion under his shirt whenever he's outside his cell to protect himself from being identified as a gang member.

Examples

- *Knowles v. Pfister*, 829 F.3d 516 (7th Cir. 2016).
- Court granted a preliminary injunction.
- No compelling interest found.
  - "And while the warden contends that other inmates might see the medallion while the plaintiff is showering, nothing in the record supports this contention; there isn't even evidence that the plaintiff ever wears his medallion in the shower, or that the wearing of a pentacle medallion, whether openly or under one's shirt, by any prisoner at Pontiac has ever caused a problem."

Examples

- Navajo inmate wants to celebrate Ghost Feast, a religious harvest celebration that includes eating traditional foods.
- Inmate wants "game meat" (vension) for the traditional Navajo tacos of venison, lettuce, and tomatoes. Requested a sealed platter from an outside vendor.
  - Offered to compromise – ground beef.

- The prison has told the inmate to use stew meat from the regular cafeteria line even though the prison permits Jewish inmates to have outside vendors furnish sealed Seder platters for Passover and permits participants in monthly sweat lodge ceremonies to import packets of appropriate foods.

Examples

- *Schlemm v. Wall*, 784 F.3d 362, 365 (7th Cir. 2015).
  - Court found a RLUIPA violation.
  - Rejected prison's claim that it had a compelling interest in requiring USDA-inspected meats for food safety purposes:
    - "Wisconsin has not offered any evidence to show that no USDA-inspected game meats are available—and the fact that venison is widely sold in supermarkets and served in restaurants shows that it can be safe for human consumption. It is difficult for us to believe that Wisconsin would be unable to find game meats that could be served without danger to the prisoners; certainly we cannot indulge such an assumption on an empty record."

Examples

- *Schlemm v. Wall*, 784 F.3d 362, 366 (7th Cir. 2015).
  - Court also rejected prison's argument that it would open the door to every prisoner demanding a religious diet.
    - Court criticized the prison's failure to estimate what it would cost to honor the inmate's request.
    - Court found it difficult to credit the prison's argument that culinary accommodation will be too expensive overall when the prison provides external platters for Passover and sweat lodges.
  - "On this record the cost of accommodating Navajo inmates appears to be slight, and the costs of accommodating other inmates' requests (should any be made) can be left to future litigation."

Questions?

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