

Religion in Prison

Osher Lifelong learning Institute
Vanderbilt University
Nashville, Tennessee
April 9 and 16, 2019

Ronald G. Turner

Ph.D., J.D.

615-430-6938

rturn787@gmail.com

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Introduction

- Don't shoot the messenger
- This is not legal advice or a legal opinion
- Staff members **MUST** follow policy

Federal Courts of Appeals Cases

* 2000 – 2014	83 cases	5.5/year
* 2015 – 2018	42 cases	10/year
* 2019 (Jan./Mar.)	9 cases	36/year

Topics

1. Why is religion in prison so hot?
2. Legal protection
3. Processing religious requests
4. Federal Court system
5. Recent cases
6. Where are we headed?
7. Suggestions

Why is Religion in Prison So Hot?

- History
- Inmate population and diversity
- Legal protection

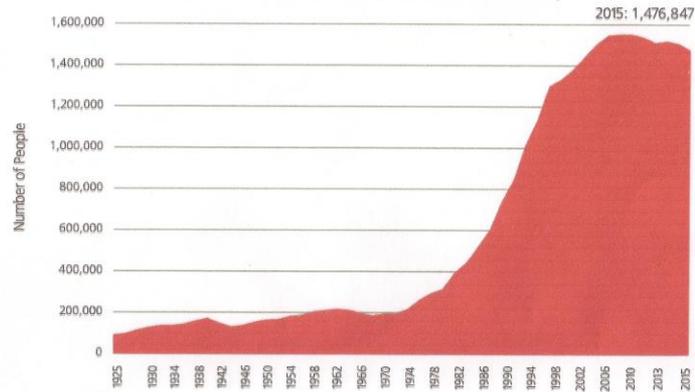
History

- Why did early settlers come to the new world?
- One reason - religious freedom
 - * No government-sponsored religion
 - * Free to worship

Inmate Population 1925-2015

Trends in U.S. Corrections

U.S. State and Federal Prison Population, 1925-2015



Source: Bureau of Justice Statistics Prisoners Series.

Religious Diversity – TN 2015

- Christian - Protestant
- Christian - Catholic
- Muslim – Nation of Islam
- Muslim - Traditional
- Rastafarian
- Native American
- Wiccan
- Jewish
-

- Jehovah's Witnesses
- Bahai
- Buddhist
- Christian Identity
- Christian Science
- Greek Orthodox
- Hebrew Israelite
- Hindu

Legal Protection of Inmates' Religious Rights

1. The First Amendment
2. Acts of Congress
3. Court cases
4. Policies & procedures

The First Amendment (1791)

“ Congress shall make no law respecting an **establishment** of religion, or prohibiting the **free exercise** thereof...”

ACTS OF CONGRESS

- * 1990-2005
- * Congress v. Supreme Court
- * Why?

1990 - The Supreme Court made it hard for inmates to win religious lawsuits.
Employment Division v. Smith, 494 U.S. 872 (1990).

1991-93 – Congress didn't like that / held hearings / found "arbitrary and capricious" barriers to religion

1993 – Congress passed the Religious Freedom Restoration Act (RFRA)

- Goal of RFRA – to undo the 1990 Supreme Ct decision and strengthen religious rights of all
- Supported by liberals & conservatives
- Co sponsored by Senators Kennedy & Hatch

*The...pioneers who
founded America came
here...to practice their
faiths free from
government
interference...convinced
...of the need to assure
for all Americans for all
time the right to
practice their religion
unencumbered...*



Senator Ted Kennedy
September 18, 1992

*(this law) is important
for the preservation
of...religious freedom
...(of) all American
people, especially for
those whose religious
beliefs and practices
differ from the
majority...*

Senator Orrin Hatch
September 18, 1992



- * RFRA was opposed by Commissioners and Secretaries of Corrections in all 50 states
- * 1993 - Congress passed RFRA
- * 1997 – Sup. Ct. held RFRA only applies to feds

- 2000 – Congress didn't like that / passed Religious Land Use & Institutionalized Persons Act (RLUIPA)
- 2005 – Sup Ct held RLUIPA constitutional
- 2015 – Sup Ct explained RLUIPA (*Holt*)

RFRA & RLUIPA IN PLAIN ENGLISH

1. Before we limit an inmate's religious practice (i.e., diet) we need a **very good reason**.
2. We must limit religion in the **least restrictive** way.
3. Religious practices are protected even if **not** required by the faith

RLUIPA Section 2000 cc-1(a)

“ No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution...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.”

RLUIPA

Section 2000-cc 3 (g)

“This chapter shall be construed
in favor of a **broad protection**
of religious exercise...”

Section 2000-cc 3 (c)

“...this chapter may require a government to **incur expenses...** to avoid imposing a substantial burden on religious exercise.”

Section 2000 cc-5 (7)

“The term ‘religious exercise’ includes any exercise of religion **whether or not compelled** by, or central to, a system of religious belief.”

Religious Request Process

1. Does the request relate to **religion**?
2. Is the inmate **sincere**?
3. Have we **substantially burdened** it?
4. If so, we **must approve** it
5. **Even if not required by the faith**
6. **Unless** we can show a **very good reason** to deny it, and
7. We must limit it **as little** as possible

Safety and Security

- * Safety and security is a **very good reason** to limit religious exercise --- it is a compelling governmental interest
- * But **we** must be sincere.
- * And we have to impose the limit in the **least restrictive** way.

Request: Sweat lodge

1. Does the request relate to **religion**?
2. Is the inmate **sincere**?
3. Have we **substantially burdened** it?
4. If so, we **must approve** it
5. **Even if not required by the faith**
6. **Unless** we can show a **very good reason** to deny it, and
7. We must limit it **as little** as possible

Court Cases



U.S. Supreme Ct.

1. 2005 – RLUIPA is constitutional
2. 2011 – monetary damages not allowed
3. 2015 – detailed discussion of RLUIPA
4. 2019 – chaplain in execution chamber

Holt v. Hobbs

2015

- * MUSLIM INMATE – ½ INCH BEARD – REL.
- * POLICY: ¼ INCH - MEDICAL REASONS
- * REQUEST DENIED – HE FILED SUIT

TRIAL COURT FOUND:

A. PRAYER RUG

B. CORRESPONDED WITH REL. ADVISOR

C. RELIGIOUS DIET

D. OBSERVED RELIGIOUS HOLIDAYS

TRIAL COURT ALSO FOUND:

- 1. THE POLICY HELPED PREVENT CONTRABAND**
- 2. INMATE WITH A BEARD COULD CHANGE HIS APPEARANCE BY SHAVING**
- 3. SPECIAL PRIVILEGES COULD RESULT IN RETALIATION BY OTHER INMATES**
- 4. THE POLICY HELPED MAINTAIN SAFETY AND SEC.**

- * **THE TRIAL COURT: NO BEARD**
- * **8TH CIRCUIT: NO BEARD**
- * **US SUPREME COURT: BEARD OK**

Holt v. Hobbs

1. The Supreme Ct. allowed the beard (9-0)
2. Important decision.
3. What did the Supreme Court say?

Holt v. Hobbs

1. The goal of RLUIPA – “**broad protection** of religious liberty.

Holt v. Hobbs

2. Religious liberty includes:

“Any exercise of religion **whether or not compelled** by a system of religious belief.”

Holt v. Hobbs

3. “ ...RLUIPA may require a government to **incur expenses** ...to avoid imposing a substantial burden on religious exercise.”

Holt v. Hobbs

4. His religious exercise was **substantially burdened** - he had to choose:

(i) Engage in conduct that seriously violates his religious beliefs,

OR

(ii) be punished.

Holt v. Hobbs

5. Being allowed to practice his religion in the other ways does NOT matter.

The question under RLUIPA is whether prohibiting **the beard** is a substantial burden on his religious exercise

Holt v. Hobbs

6. The government has a **compelling interest** in stopping contraband

But the argument that security would be seriously compromised by allowing a 1/2 inch beard is “hard to take seriously.”

Holt v. Hobbs

- * It is hard to see why an inmate would hide contraband in a 1/2 inch beard rather than the hair on his head.
- * The lower courts thought they **had to defer** to the Dept.'s assertion that the beard would undermine security.

Holt v. Hobbs

- * RLUIPA **does not permit** such **unquestioning deference** to the Department.
- * The Dept. must prove that denying the beard is the least restrictive means of stopping contraband.

Holt v. Hobbs

7. If a less restrictive way to stop contraband is available, the Government **must** use it.

There are **less restrictive** ways to stop contraband:

Holt v. Hobbs

- a. **Search** the inmate's beard.
- b. Have the **inmate run a comb** through his beard.
- c. **Photograph** inmates before and after.

Holt v. Hobbs

- * Half inch beards and quarter inch beards pose similar risks.
- * The vast majority of states and the feds permit half inch beards.
- * Contraband can be hidden in clothing, shoes, and hair on the head.

Holt v. Hobbs

We **reject** the argument that

“If I make an exception for you, I’ll
have to make an exception for
everybody.”

Holt v. Hobbs

8. RLUIPA gives prison officials other ways to maintain safety and security:
 - a. **Withdraw the religious exercise** if the inmate abuses it and undermines safety and security.

Holt v. Hobbs

- b. Appropriately **question** whether the inmate's religiosity is **authentic**.
- c. Courts should always remember they are dealing with a **prison setting**.

Where are we going?

Congress

The First Step Act of 2018

- Senate(87-12) House (356-36) President
- Federal prisons only
- Funded through 2023

- GOAL: Reduce recidivism
 1. Assess inmate's risk of recidivism
 2. Housing and programming

The First Step Act of 2018

- a. Max 500 miles from home
- b. Prerelease help with ID
- c. Elderly early release
- d. Mentors for youth
- e. Pregnant – no restraints

Where are we going?

Recent Court Cases

Dunn v. Ray
U.S. Supreme Court
February 2019

Dunn v. Ray

US Sup Ct – February 2019

- 1995 - inmate in AL sentenced to death
- 2006 – became devout Muslim
- 2018 – execution date set for 2-7-19

Dunn v. Ray

US Sup Ct – February 2019

- 1-23-19 inmate learned his imam could not attend – only the prison's Christian chaplain could attend
- 1-28-19 inmate filed Motion to Stay Exec
- 1-31-19 Motion denied (filed too late)

Dunn v. Ray

US Sup Ct – February 2019

- 2-6-19 11th Cir Ct of App reversed the trial court and stayed the execution
- 2-7-19 US Sup Ct (5 to 4) vacated the stay because motion was filed too late
- 2-8-19 Inmate executed

Dunn v. Ray

US Sup Ct – February 2019

- Justices Roberts, Alito, Thomas, Gorsuch, Kavanaugh (5)
- Justices Kagan, Ginsburg, Breyer, Sotomayor (4) dissented: First Amend.

(More details)

Dunn v. Ray

US Sup Ct – February 2019

- In 1995 he murdered 2 teenage brothers
- Then convicted and sentenced to death
- For robbing, raping and murdering a 15 year old girl

Murphy v. Collier
7th Circuit Court of Appeals
March 2019

Murphy v. Collier

7th Circuit – March 2019

- 2000 – inmate in TX sentenced to death
- 2018 – execution date set for 3-28-19
- Inmate wanted his Buddhist spiritual advisor present

Murphy v. Collier

7th Circuit – March 2019

- Policy only allowed state chaplains (Christians or Muslims)
- 3-20-19 inmate petitioned TX Ct of Crim Appeals for Writ of Prohibition

3-25-19 petition denied – filed too late

Murphy v. Collier

7th Circuit – March 2019

- 3-26-19 – inmate filed Motion to Stay the Execution in federal trial court

Motion Denied – filed too late

3-27-19 Inmate appealed to 5th Cir C/A

Murphy v. Collier

7th Circuit – March 2019

- 3-27-19 Stay of Exec denied by 5th Cir:
Filed too late
- 3-28-19 Inmate executed

(More details)

Murphy v. Collier

7th Circuit – March 2019

- In 2000 inmate murdered a police officer
- Email was sent to inmate's attorney on 3-5-19 telling him of the policy but he waited until 3-20-19

Murphy v. Collier

7th Circuit – March 2019

- Inmate's attorney had a reputation for filing late motions
- He had been barred from practicing for a year in one TX court for filing late motions in another case

Where are we going?

- 2000 - Congress (inmate)
- 2005 – Supreme Court (inmate)
- 2015 – Supreme Court (inmate)
- 2018 – Congress (inmate)
- 2019 – Supreme Court (state)

My Predictions

- Congress will not amend RLUIPA
- Congress will not repeal RLUIPA
- Supreme Court – 2020 election

Conclusion to Staff

- * What if we disagree or think a request is silly?
- * As state employees we must respect it
- * But never jeopardize safety and security

AMEN