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Madison v. Riter

Madison v. Riter
474 F.3d 118 (4th Cir. 2006)

FACTS

Ira W. Madison is an inmate held in custody at a Virginia state correctional facility.[1] Madison is a Hebrew Israelite and belongs to the Temple Beth El, whose members are required to eat a kosher diet and celebrate Passover.[2] In July 2000 and again in March 2001, he notified Virginia correctional officials that his religious beliefs required him to eat this kosher diet or a "Common Fare" diet.[3] Although local officials granted these requests, Central Classifications Services (CCS), an agency of the Virginia Department of Corrections (VDOC), overturned these approvals.[4] CCS believed the current menus provided to Madison offered him sufficient food alternatives.[5] CCS also questioned the sincerity of Madison's religious beliefs and considered his history of disciplinary problems in coming to its decision.[6] In August 2001, Madison brought suit against the Commonwealth of Virginia and various VDOC officials, claiming, inter alia, that these denials of kosher meals violated the Religious Land Use and Institutionalized Persons Act (RLUIPA).[7]

Virginia argued that RLUIPA was unconstitutional because it not only violated the Establishment Clause,[8] but also exceeded Congress' authority under both the Spending Clause[9] and Commerce Clause.[10] The federal district court held that RLUIPA violated the Establishment Clause and dismissed Madison's RLUIPA claims.[11] This court reversed, and remanded the case back to the district court for consideration of Virginia's

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1 Madison v. Riter, 474 F.3d 118, 123 (4th Cir. 2006).

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5 (2000); *Madison*, 474 F.3d at 123.

8 U.S. CONST. amend. I.

9 U.S. CONST. art. I, § 8, cl. 1.

10 U.S. CONST. art. I, § 8, cl. 3; *Madison*, 474 F.3d at 123.

11 *See* Madison v. Riter, 240 F. Supp. 2d 566, 570 (W.D. Va. 2003) (stating that RLUIPA is a clear violation of the Establishment Clause because it has the primary effect of advancing religion above other fundamental rights), *rev'd*, 355 F.3d 310 (4th Cir. 2003), *cert. denied*, 545 U.S. 1103 (2005).

other constitutional arguments.[12] On remand, the district court found RLUIPA did not exceed Congress' authority under the Spending Clause, and thus declined to address the Commerce Clause argument.[13] The district court also ruled that because Virginia had accepted federal funds, it had also waived its sovereign immunity with regard to RLUIPA damages claims.[14] Pursuant to 28 U.S.C. § 1292(b),[15] the district court certified its rulings on RLUIPA's constitutionality for interlocutory appeal.[16] Virginia requested such an appeal, and this court granted its request for interlocutory review.[17] Virginia also appeals the ruling that it waived its sovereign immunity against damages claims under the collateral order doctrine.[18]

HOLDING

Writing for a three-judge panel of the Fourth Circuit Court of Appeals, Circuit Judge Wilkinson held that RLUIPA is a valid exercise of Congress' power under the Spending Clause, and because Virginia voluntarily accepted federal funds, it must also abide by RLUIPA's requirements.[19] The court found that because RLUIPA unambiguously conditions federal funds on a State's consent to suit, Virginia had waived its Eleventh Amendment sovereign immunity.[20] However, the court held that because this condition does not unequivocally state that it applies to money damages, the Eleventh Amendment bars Madison's damages claims against the State.[21]

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[12] *See* Madison v. Riter, 355 F.3d 310, 313 (4th Cir. 2003) (stating Congress can accommodate religion in section 3 of RLUIPA without violating the Establishment Clause), *cert. denied*, 545 U.S. 1103 (2005).

[13] *See* Madison v. Riter, 411 F. Supp. 2d 645, 648 (W.D. Va. 2006) (finding that Congress properly exercised its spending power in section 3 of RLUIPA).

[14] *Id.* at 656.

[15] *See* 28 U.S.C. § 1292(b) (2000) (stating when a district judge feels that his order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order).

[16] *Madison*, 474 F.3d at 123.

[17] *Id.*

[18] *Id.* (citing Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 147 (1993)).

[19] *Id.* at 122.

[20] *Id.* at 133.

[21] *Id.* at 133.

ANALYSIS

Section 3 of RLUIPA prohibits the government from imposing a substantial burden on the religious exercise of a prisoner unless the government demonstrates that this burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.[22] This provision applies whenever a substantial burden is imposed in a program that receives federal funding.[23] The term "program" includes an agency such as the VDOC that receives federal funding assistance.[24]

Virginia first disputes the district court's holding that RLUIPA does not exceed Congress' Spending Clause authority.[25] This court stated that the Spending Clause is a permissible method for Congress to use to encourage states to meet federal policy choices because the states still have the choice to conform to such policies.[26] Congress' Spending Clause authority has been restricted by the Supreme Court.[27] In *South Dakota v. Dole*,[28] the Court established several requirements that must be met: (1) the spending power must be exercised for the general welfare; (2) the conditions must be unambiguous; (3) the conditions must be related to the purpose of the federal spending; (4) the conditions must not be otherwise unconstitutional; and (5) the financial inducement offered by Congress must not be coercive in nature.[29]

The court addressed each of these *Dole* restrictions and upheld the district court's holding that RLUIPA is a valid exercise of Congress'

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22 Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a) (2000).

23 42 U.S.C. § 2000cc-1(b)(1) (2000).

24 *Madison*, 474 F.3d at 124.

25 *Id.*

26 *Id.* (citing New York v. United States, 505 U.S. 144, 168 (1992)).

27 *Id.*

28 South Dakota v. Dole, 483 U.S. 203 (1987). The Supreme Court considered the issue of federalism and Congressional power under the Taxing and Spending Clause. In 1984, Congress passed legislation withholding a certain percentage of federal highway funds from states that did not adopt a minimum drinking age of twenty-one-years-old. *Id.* at 205. South Dakota allowed nineteen-year-olds to purchase beer containing up to 3.2% alcohol and sued to challenge the federal statute. *Id.* The Supreme Court held that Congress had engaged in a valid exercise of its power under the Taxing and Spending clause. *Id.* at 203. Congress' spending is subject to four restrictions: first, it must promote "general welfare;" it must be unambiguous; it should relate to the federal interest in particular national projects; and other constitutional provisions may supersede conditional grants. *Id.* at 207–08. However, the Court held that the statute was not an attempt to induce states to engage in activities that would be unconstitutional, and thus, the Twenty-first Amendment does not bar conditional grant of funds so as to invalidate the statute. *Id.* at 210. The highway funds were merely a pressure on the state to comply, not a compulsion to do so. *Id.* at 204.

29 *Madison*, 474 F.3d at 124.

spending power. First, the court looked to see if RLUIPA promotes the general welfare. The court had "no trouble" in concluding that RLUIPA tries to protect prisoners' religious beliefs and also promotes their rehabilitation and thus falls within Congress' pursuit of the general welfare.[30]

Second, the court determined whether the RLUIPA conditions are stated unambiguously. It cited the clear statement rule which declares that when Congress looks to alter the usual constitutional balance between the federal government and the states, it must make its desire to do so unmistakably clear in the statute's language.[31] In order to determine whether RLUIPA's conditions apply to the states, they must furnish clear notice regarding the liability at issue.[32] The court found that the language of Section 3 of RLUIPA does indeed provide clear notice of RLUIPA's religious liberty protections.[33] There also is clear notice that these conditions apply to state entities that accept federal funds.[34] The court thus concluded there was nothing unfair about holding Virginia to its obligations as established by RLUIPA.[35]

Third, the court decided whether the RLUIPA conditions on federal grants are related to the purpose of the federal spending. The court found that this requirement was met because these conditions are triggered only where a state agrees to accept federal funding for institutions such as prisons, and not when it accepts funding for unrelated matters such as education.[36] Virginia had two arguments that the court quickly shot down. It first argued that there is no federal interest in the operation of state prisons.[37] The court cited numerous Circuit opinions that found that prisoner rehabilitation and religious liberty protections are legitimate interests related to federal funding of state prisons.[38] Moreover, RLUIPA's religious liberty protections help to further the process of rehabilitating the prisoner.[39] Virginia also argued that while Congress may specifically appropriate federal funds, it may not impose

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30 *Id.* at 125 (citing Charles v. Verhagen, 348 F.3d 601, 607 (7th Cir. 2003)).

31 *Id.* (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 65 (1989)).

32 *Id.* (citing Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S.Ct. 2455, 2459 (2006)).

33 *Id.* (citing Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)(1) (2000)).

34 *Id.* (citing 42 U.S.C. § 2000cc-1(a)(2)(A) (2000)). *See also* 42 U.S.C. § 2000cc-5(4)(A) (2000) (stating that the statutory definition of government includes state agencies).

35 *Id.*

36 *Madison*, 474 F.3d at 126.

37 *Id.*

38 *Id.* (citing Cutter v. Wilkinson, 423 F.3d 579, 587 (6th Cir. 2005); Benning v. Georgia, 391 F.3d 1299, 1308 (11th Cir. 2004); Charles v. Verhagen, 348 F.3d 601, 608 (7th Cir. 2003); Mayweathers v. Newland, 314 F.3d 1062, 1067 (9th Cir. 2002)).

39 *See Cutter*, 423 F.3d at 587 (stating that RLUIPA's religious protections not only are related to the federal interest in prisoner rehabilitation, but also are an important part of that process).

general, program-wide restrictions.[40] The court stated that the Spending Clause has never required Congress to impose conditions on a grant-by-grant basis.[41] It also mentioned that it had recently rejected a similar Spending Clause challenge to a condition of the Age Discrimination Act[42] even though it applies on a program-wide basis.[43]

Fourth, the court determined whether another constitutional provision bars RLUIPA's conditions on federal funds. Virginia argued that RLUIPA's religious liberty protections are unconstitutional because Congress is prohibited from imposing RLUIPA's requirements on the States directly.[44] The court responded by stating that objectives that Congress may not attain through its Article I powers may nonetheless be achieved through the use of its spending power and the conditional grant of federal funds.[45] The unconstitutional conditions doctrine only proposes that the Spending Clause cannot be used to induce the states to engage in unconstitutional activities.[46] The court found that RLUIPA does not induce the States to engage in unconstitutional activities and thus meets the fourth *Dole* requirement.[47]

Virginia apparently tried to avoid this precedent by arguing that the Supreme Court in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*[48] changed the judiciary's view of the Spending Clause.[49] This court referred to an explanation it gave in an earlier opinion where it discussed James Madison's and Alexander Hamilton's opposing views of the Spending

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[40] *Madison*, 474 F.3d at 126.

[41] *Id.* (citing Oklahoma v. United States Civil Serv. Comm'n, 330 U.S. 127, 129 n.1 (1947)).

[42] Age Discrimination Act, 42 U.S.C. § 6101 (2000).

[43] *Id.* (citing Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 493–94 (4th Cir. 2005)).

[44] *Id.*

[45] *Madison*, 474 F.3d at 126 (citing South Dakota v. Dole, 483 U.S. 203, 207 (1987)).

[46] *Id.* at 127 (citing *Dole*, 483 U.S. at 210).

[47] *Id.*

[48] Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 126 S.Ct.1297 (2006). The Supreme Court considered the issue of the constitutionality of the Solomon Amendment. The Solomon Amendment requires a law school and its university to offer military recruiters the same access to its campus and students that it offers to nonmilitary recruiters in order to receive federal funding. *Id.* at 1304. An association of law schools and law professors sued, alleging the Solomon Amendment infringed their First Amendment freedoms of speech and association. *Id.* at 1302. The Supreme Court held that the Solomon Amendment did not place an unconstitutional condition on the receipt of federal funds, nor did it violate the law schools' freedom of speech or association. *Id.* at 1297. It found that because the First Amendment would not prevent Congress from directly imposing the Solomon Amendment's access requirement, it doesn't place an unconstitutional condition on the receipt of federal funds. *Id.* at 1307. It follows then that Congress could impose this condition indirectly through the Spending Clause. *Id.*

[49] *Madison*, 474 F.3d at 127.

Clause.[50] Whereas Hamilton took a broad view of the Spending Clause, Madison understood it to give Congress no additional power.[51] Virginia argued that *Rumsfeld* adopted Madison's view that the Framers intended to limit the scope of the spending power to those powers otherwise stated in the Constitution.[52] The court, however, found fault in this argument. It mentioned first that *Rumsfeld* rejected, not upheld a Spending Clause challenge.[53] Moreover, the Supreme Court not only failed to adopt Madison's view, but further confirmed Hamilton's view, stating that the spending power is arguably greater than Congress' power to achieve its goals directly.[54]

Virginia finally argued that RLUIPA is unconstitutional because it requires the states to provide prisoners religious accommodations that aren't required by the Constitution.[55] The court rejected this argument by stating that Congress is not prohibited from exceeding the Constitution's reach when placing conditions on federal funds.[56] It cited to the statute held valid in *Dole*, which required the states to adopt a minimum drinking age of 21, an age limit not to be found in the Constitution's language.[57]

Finally, the court determined whether RLUIPA's conditions on federal funding are coercive in nature. The court stated that the coercion analysis looks to distinguish between choices that are truly voluntary and those that are illusory, passing the point where pressure becomes compulsion.[58] Although RLUIPA conditions 100% of federal funding for state institutions on compliance with it, the VDOC received only 1.3% of its funding from the federal government in 2005.[59] The court found that this left Virginia with a real choice to accept the federal funding and attached conditions.[60] The court, however, cautioned that anytime a Spending Clause statute conditioned all of the funding on state compliance with its requirements, coercion concerns would be raised.[61] But where, as here,

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50 *Id.* (citing Litman v. George Mason Univ., 186 F.3d 544 (4th Cir. 1999)).

51 *See Litman*, 186 F.3d at 556 & n* (stating that while Hamilton believed that the term "general welfare" as used in the Spending Clause embraced a vast variety of particulars, which are susceptible neither of specification nor of definition, Madison believed it to vest Congress with no additional authority).

52 *Madison*, 474 F.3d at 127.

53 *Id.*

54 *Id.* (citing *Rumsfeld*, 126 S.Ct. at 1306).

55 *Id.*

56 *Madison*, 474 F.3d at 127 (citing *Dole*, 483 U.S. at 205).

57 *Id.*

58 *Id.* at 128 (citing *Dole*, 483 U.S. at 211).

59 *Id.*

60 *Id.*

61 *Id.*

Congress has offered merely mild encouragement to the States to comply with the statute, the choice to accept or reject federal funding remains strictly with the states.[62] Virginia simply was not coerced into taking this funding, and in fact, never argued it needed the federal funding to operate its prisons.[63]

In sum, the court concluded that addressing Virginia's Spending Clause challenge was a straightforward process. Congress has a legitimate interest in how federal funds are spent, and a legitimate interest in protecting the religious freedoms of those who are institutionalized.[64] Congress has made it clear that funding will only be received if RLUIPA's requirements are met.[65] Finally, states are free to reject funds that amount to only a tiny fraction of their entire budgets.[66] Virginia has mainly argued that it has the sovereign authority to operate its state prisons and establish religious policies within its borders so long as they don't violate the Constitution.[67] However, state sovereignty may be waived in the pursuit of other objectives, such as obtaining federal funding.[68] Virginia has essentially made the untenable argument that state sovereignty is unwaivable, and that the federal government must continue to provide funding even without a waiver.[69] In conclusion, to acknowledge Virginia's argument and uphold the Spending Clause challenge would be an "extraordinary assertion of judicial authority."[70]

Virginia next disputes the district court's holding that it knowingly consented to and waived immunity against damages claims against the state. The court discussed how the Eleventh Amendment restricts Article III judicial authority, and also that Article I cannot be used to avoid the constitutional limitations placed upon federal jurisdiction.[71] A dual sovereignty arrangement exists between the states and federal government, so that each has the ability to control each other and also itself.[72] Entrenched in this is the principle that a private party may not file suit against an

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62 *Id.* (citing *Dole*, 483 U.S. at 211).

63 *Id.*

64 *Id.*

65 *Madison*, 474 F.3d at 128.

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.* at 129.

71 *Id.* (citing Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 72–73 (1996)).

72 *Id.* (citing United States Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring)). *See also* The Federalist No. 51, at 291 (James Madison) (stating that the different governments will control each other, at the same time that each will be controlled by itself).

unconsenting state.[73] However, a state may waive this immunity by voluntarily participating in a federal spending program so long as Congress has made it clear that this participation is conditioned on the state's consent to waive its constitutional immunity.[74] General participation in such a program is not enough to waive immunity;[75] rather, the waiver must be unequivocally expressed in the language of the statute.[76]

The court looked at the text of RLUIPA in order to determine whether Virginia had waived its immunity. First, it decided whether it waived its immunity against claims for equitable relief. Section 4(a) of RLUIPA states that any person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.[77] RLUIPA's definition of "government" includes states and their agencies and departments.[78] Therefore, the court found that on its face, RLUIPA creates a private cause of action against the state.[79] The court concluded that because the term "appropriate relief" ordinarily includes injunctive and declaratory relief, Madison's claims for equitable relief are not barred by the Eleventh Amendment.[80]

The court then determined whether Virginia had also waived its immunity against monetary damages awards. It stated that Congress may condition funds upon a waiver of immunity against liability without waiving a state's immunity from monetary damages.[81] In order to sustain a claim that a state is also liable for monetary damages awards, the waiver of sovereign immunity must extend unambiguously to such monetary claims.[82] It cited *United States v. Nordic Vill., Inc.*,[83] where the Supreme Court held that

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[73] *Id.* (citing Fed. Maritime Comm'n v. S.C. State Ports Auth., 535 U.S. 743, 767–68 (2002)).

[74] *Id.* (citing Litman v. George Mason Univ., 186 F.3d 544, 550 (4th Cir. 1999)).

[75] *Id.* at 130 (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 246–47 (1985)).

[76] *Id.* (citing Lane v. Pena, 518 U.S. 187, 192 (1996)).

[77] *Id.* (citing Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-2(a) (2000)).

[78] *Id.* (citing 42 U.S.C. § 2000cc-5 (2000)).

[79] *Id.*

[80] *Id.* at 130–31 (citing Shea v. County of Rockland, 810 F.2d 27, 29 (2d Cir. 1987)).

[81] *Id.* at 131 (citing *Lane*, 518 U.S. at 196).

[82] *Id.* (citing *Lane*, 518 U.S. at 192).

[83] United States v. Nordic Vill., Inc., 503 U.S. 30 (1992). The Supreme Court considered the issue of whether section 106(c) of the Bankruptcy Code waives the sovereignty immunity of the United States from an action seeking monetary recovery in bankruptcy. Section 106(c) provides that notwithstanding any assertion of sovereign immunity, a provision of this title that contains 'creditor,' 'entity,' or 'governmental unit' applies to governmental units; and a determination by the court of an issue arising under such a provision binds governmental units. *Id.* at 32. The Supreme Court held that section 106(c) does not waive federal sovereign immunity from an action seeking monetary recovery in bankruptcy. *Id.* at 39. It stated that section 106(c) fails to establish unambiguously that the waiver extends to monetary claims, as it can be interpreted in at least two ways that preclude monetary relief from being awarded. *Id.* at 34.

section 106(c) of the Bankruptcy Code did not waive federal sovereign immunity for monetary relief.[84] This was because section 106(c) did not include the "unequivocal textual waiver" required to waive immunity for monetary relief.[85] Based on this case, the court concluded that RLUIPA's language lacked the unequivocal textual waiver required to waive state immunity from monetary damages awards.[86] First, RLUIPA does not expressly refer to monetary relief.[87] Moreover, its reference to "appropriate relief" can be interpreted in different ways, either to include or preclude monetary damages awards.[88] The D.C. Circuit recently held that the Religious Freedom Restoration Act's (RFRA)[89] identical "appropriate relief" provision was insufficient to waive federal sovereign immunity against damages awards, stating it wasn't the unequivocal waiver required by precedent.[90] Because it found this language to be ambiguous, such language was not enough to result in a waiver of sovereign immunity.[91] This court concluded that Congress could have easily effected a waiver of sovereign immunity against damages awards simply by placing unambiguous language in the statute containing an unequivocal textual waiver of immunity against these awards.[92]

Madison argued that even if RLUIPA does not have the required unequivocal textual waiver, the Civil Rights Remedies Equalization Act of 1986 (CRREA)[93] does.[94] The statute provides:

> A State shall not be immune under the Eleventh Amendment from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.[95]

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84 *Madison*, 474 F.3d at 131 (citing *Nordic Vill.*, 503 U.S. at 39).

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.* at 131–32 (citing Webman v. Fed. Bureau of Prisons, 441 F.3d 1022, 1026 (D.C. Cir. 2006)).

89 Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (2000).

90 *Webman*, 441 F.3d at 1026.

91 *Id.*

92 *Madison*, 474 F.3d at 132.

93 Civil Rights Remedies Equalization Act, 42 U.S.C. § 2000d-7 (2000).

94 *Madison*, 474 F.3d at 132.

95 42 U.S.C. § 2000d-7(a)(1) (2000).

The court stated that although the CRREA unambiguously conditions the receipt of federal funds on a State's waiver of sovereign immunity, and although this waiver sometimes applies to damages awards, the CRREA does not clearly apply to RLUIPA; in fact, it makes no mention of RLUIPA whatsoever.[96]

Madison nevertheless claimed that the catch-all provision of CRREA, "any other Federal statute prohibiting discrimination," includes RLUIPA and thereby waives sovereign immunity in this case.[97] The court again rejected this part of the argument, stating the catch-all provision does not serve as an unequivocal textual waiver.[98] It mentioned that all of the statutes listed in CRREA all expressly prohibit discrimination.[99]

Based on interpretative canons of *noscitur a sociis*, and *ejusdem generic*, the court declared that where general words follow specific words in a statute, the general words are construed to embrace only objects similar in nature to those objects mentioned specifically.[100] So, in order for CRREA's catch-all provision to apply to RLUIPA, RLUIPA must be like the statutes expressly listed.[101] The court found, however, that RLUIPA is not a statute aimed at discrimination, but rather aimed at forbidding substantial and unjustified religious burdens on prisoners.[102] RLUIPA also differs from the non-discrimination statutes mentioned in CRREA, which require identical treatment of similarly situated persons, because it requires states to accommodate religious requests more favorably than non-religious requests.[103] The court concluded that the catch-all provision was too ambiguous to constitute an unequivocal textual waiver against damages awards.[104]

CONCLUSION

The Fourth Circuit's recognition that the protection of prisoners' religious liberties helps to facilitate their rehabilitation reflects an increasing viewpoint that the exercise of religious beliefs plays a major role in improving prisoners' state of minds and behavior. This has been seen in

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96 *Madison*, 474 F.3d at 132.

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.* at 133 (citing Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 384 (2003)).

101 *Id.*

102 *Id.*

103 *Madison*, 474 F.3d at 133.

104 *Id.*

both the legislative and judicial branches, as well as realized by society in general. Congress first attempted to protect the religious liberties of prisoners by enacting RFRA in 1993. After the Supreme Court held RFRA could not be enforced against the states in 1997,[105] Congress did not stay quiet, but instead tried again. As Senator Kennedy stated before Congress during a discussion of RLUIPA, the "bill is an important step in protecting religious liberty in America. Sincere faith and worship can be an indispensable part of rehabilitation, and these protections should be an important part of that process."[106] Thereafter, RLUIPA was enacted, showing Congress' continued pursuit of protecting the religious liberties of prisoners.

The Fourth Circuit is now the fifth circuit to hold that RLUIPA does not violate the Spending Clause, and the sixth circuit to state that protecting prisoners' religious liberties aids their rehabilitation. In 1969, the D.C. Circuit mentioned that allowing prisoners to practice religion furthers their rehabilitation.[107] In 2002, the Ninth Circuit first concluded that the federal government has a strong interest in monitoring the treatment of federal inmates housed in state prisons and in contributing to their rehabilitation.[108] Congress may allocate federal funds freely, then, to protect the free exercise of religion and to promote rehabilitation.[109] In 2003, the Seventh Circuit stated that religion can play an important role in the process of rehabilitating prisoners.[110] In 2004, the Eleventh Circuit declared that both the protection of the religious exercise of prisoners and their rehabilitation are rational goals of Congress, and that those goals are related to the use of federal funds for state prisons.[111] The last circuit to comment on this before the Fourth Circuit was the Sixth Circuit in 2005, which stated that a prison's compliance with RLUIPA satisfies one of the statute's main purposes, which is to allow inmates greater freedom of religion in order to promote their rehabilitation.[112] This uniformity amongst the circuits respects Congress' intention to rehabilitate prisoners through the use of religion, and also means

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[105] *See* City of Boerne v. Flores, 521 U.S. 507, 532–36 (1997) (ruling that the religious protections required by RFRA exceeded Congress' remedial power under section 5 of the Fourteenth Amendment).

[106] 146 CONG. REC. S6678, 6689 (daily ed. July 13, 2000) (statement of Sen. Kennedy).

[107] *See* Barnett v. Rodgers, 410 F.2d 995, 1002 (D.C. Cir. 1969) (stating that religion in prison subserves the rehabilitative function by providing an area within which the inmate can reclaim his dignity and reassert his individuality).

[108] Mayweathers v. Newland, 314 F.3d 1062, 1067 (9th Cir. 2002).

[109] *Id.*

[110] Charles v. Verhagen, 348 F.3d 601, 608 (7th Cir. 2003).

[111] Benning v. Georgia, 391 F.3d 1299, 1308 (11th Cir. 2004).

[112] Cutter v. Wilkinson, 423 F.3d 579, 587 (6th Cir. 2005).

that the Supreme Court is likely not needed to rule on RLUIPA's constitutionality with relation to the Spending Clause.

Legal scholars and society at large also now understand the importance of religion in rehabilitating prisoners. In 1993, a prison in New York announced it would start offering Kosher meals to Jewish prisoners beginning with the Jewish New Year.[113] The prison tried to encourage religious activities, believing it would rehabilitate the prisoners.[114] The assistant commissioner of correction at the time, the Reverend Earl Moore, stated, "[i]n a state of incarceration, you don't have many hope pegs to hang your being on. Religion is one of those hope pegs."[115] An inmate who had been convicted of drug possession stated that the kosher meals would have "both spiritual and physical benefits."[116] Another example of religion at work has occurred at a California prison formerly ravaged by numerous gang attacks. Beginning in 2003, inmates began participating in a religious program based on a book, The Purpose Driven Life, by the Reverend Rick Warren.[117] The first 200 inmates finished the program in April 2003, and violent incidents inside the prison in the year since have decreased across the board as compared with such incidents over the previous year.[118] Prison spokesman Lt. Kenny Calhoun stated that the religious program "has definitely played a role" in this decrease.[119]

Legal minds have also commented on the utility of religion in the prison context. Jamie Forman, a partner at Bedell & Forman LLP in New York, has opined that spiritual development and religious study are perhaps the most valuable tools for rehabilitation and to prevent recidivism.[120] Matthew P. Blischak has written that permitting prisoners to practice their religion arguably would provide significant benefits to the prison system and society.[121] Jim Thomas and Barbara Zaitzow, professors of sociology and criminal justice respectively, have written that religion functions similar to

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[113] Ari L. Goldman, *Sing Sing Inmates Hail Plan to Offer Kosher Meals*, N.Y. TIMES, Sept. 6, 1993, at 20.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] Don Thompson, *Officials: Prison Program Answer to Our Prayers*, MIAMI HERALD, May 13, 2004, at 7.

[118] *See id.* (stating that during the previous year, there were five riots, 103 violent incidents, four staff assaults, 1,226 inmate disciplinary reports and five lockdowns, and in the year since, there was one riot, 67 violent incidents, four staff assaults, 1,067 inmate disciplinary reports and one lockdown).

[119] *Id.*

[120] Jamie Aron Forman, *Jewish Prisoners and Their First Amendment Right to a Kosher Meal: An Examination of the Relationship between Prison Dietary Policy and Correctional Goals*, 65 BROOK. L. REV. 477, 484 (1999).

[121] Matthew P. Blischak, O'Lone v. Shabazz: *The State of Prisoners' Religious Free Exercise Rights*, 37 AM. U. L. REV. 453, 484 (1988).

gang affiliation and the need to connect to other people.[122] Like gangs, religious affiliation can provide safety, access to otherwise unobtainable resources, contact with others (including the opposite sex) in a relatively safe environment, and a sense of social solidarity and higher purpose.[123] If so, the availability of religious programming would be expected to reduce the likelihood of gang affiliation.[124] Finally, Harry R. Dammer, a professor of sociology and criminal justice, has noted that many prisoners achieve a peace of mind from religious observance, something which helps them survive psychologically while imprisoned.[125]

There have been a number of studies conducted which have found positive results of incorporating religious activity into prison life. In one study conducted in 2003, a faith-based prisoner reform program was evaluated.[126] The results showed that those who participated were 50% less likely to be arrested and 60% less likely to be thrown back into prison the first two years after being released.[127] A study conducted in 1997 looked at prisoners who had participated in Prison Fellowship programs versus those who hadn't participated in such programs in New York state prisons.[128] The results indicated that those who were active in Bible studies were significantly less likely to be rearrested than those who did not.[129] Finally, a national study conducted at twenty different prisons discovered that religiosity was positively correlated with self-esteem and with the degree to which prisoners felt adjusted to prison.[130] Those prisoners who were religiously active were also less likely to suffer from depression.[131]

It is quite clear that religion can play an important role in furthering the legitimate goal of prisoner rehabilitation. This is a sentiment shared by the courts, by Congress, by legal scholars, and by those who work in prisons.

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[122] Jim Thomas & Barbara H. Zaitzow, *Conning or Conversion? The Role of Religion in Prison Coping*, 86 PRISON J. 242, 254 (June 2006), *available at* http://tpj.sagepub.com/cgi/reprint/86/2/242.

[123] *Id.*

[124] *Id.*

[125] Harry R. Dammer, *The Reasons for Religious Involvement in the Correctional Environment*, 35 J. OF OFFENDER REHAB. 35, 41 (Dec. 2002).

[126] Jeanette M. Hercik, *Prisoner Reentry, Religion and Research*, 2003, http://peerta.acf.hhs.gov/pdf/prisoner_reentry.pdf (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *See* Todd R. Clear & Melvina T. Sumter, *Prisoners, Prison, and Religion: Religion and Adjustment to Prison*, 35 J. OF OFFENDER REHAB. 127, 150–51 (2002) (stating that religiosity was measured as a composite of religious activity, attitudes, and beliefs).

[131] *Id.* at 151.

RLUIPA has encouraged prisoners to exercise their religious beliefs, even if their requests are at first denied, such as in Madison's case. Furthermore, prisons should be encouraged to institute religious programs because of the positive results of such programs. RLUIPA appears to be a statute that will be here for good and one that will allow prisoners to better themselves through religion just as any of us can.

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