IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MASTON WILLIS, *et al.*,

Plaintiffs,

v.

COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION; *et. al*.

Defendants.

Case No. 1:09-cv-815-JMS-DML

STATEMENT OF INTEREST OF THE UNITED STATES

I. INTRODUCTION

The United States files this Statement of Interest, pursuant to 28 U.S.C. § 517, because this litigation implicates the proper interpretation and application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"). In addition to private plaintiffs, Congress gave the United States the authority to bring suit to protect the federal religious rights of individuals confined to institutions. *See* 42 U.S.C. § 2000cc-2(f). Accordingly, the United States has a strong interest in ensuring that RLUIPA's requirements are vigorously and uniformly enforced.

This case presents an issue of significant importance to the interpretation of RLUIPA: whether the Court should stay an injunction of prison policies that the Court has determined violate federal law and impinge upon fundamental freedoms in response to the assertion of concerns about the cost of complying with the injunction during the pendency of the appeal. The United States believes the financial interests asserted by the Indiana Department of Corrections ("DOC") in this litigation do not entitle the DOC to the extraordinary relief they request, nor do they justify perpetuating the substantial burden imposed on prisoners' religious liberty, one of

our society's most fundamental rights. *See Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002) (RLUIPA is designed to "guard against unfair bias and infringement on fundamental freedoms"). As President Clinton said in signing RLUIPA, "[r]eligious liberty is a constitutional value of the highest order, and the Framers of the Constitution included protection for the free exercise of religion in the very first Amendment. This Act recognizes the importance the free exercise of religion plays in our democratic society." *See* Statement by President William J. Clinton Upon Signing S. 2869, 2000 U.S.C.C.A.N. 662 (September 22, 2000).

Indeed, Congress enacted RLUIPA to combat "egregious and unnecessary" restrictions on religious exercise, "[w]hether from indifference, ignorance, bigotry, or lack of resources." 146 Cong. Rec. 16698-99 (2000). DOC's failure to provide kosher meals because of an asserted lack of resources is precisely the type of unnecessary restriction targeted by the Act. The United States has a strong interest in the resolution of this matter and urges this Court to deny Defendants' Motion to Stay its injunction.

II. ARGUMENT

A motion to stay a district court ruling pending appeal "is a request for extraordinary relief." *Chan v. Wodnicki*, 67 F.3d 137, 139 (7th Cir. 1995); *see also Hinrichs v. Bosma*, 410 F.Supp. 2d 745, 748-49 (S.D. Ind. 2006) ("a stay is considered extraordinary relief for which the moving party bears a 'heavy burden'") (quotation omitted). Under Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a), such extraordinary relief is appropriate only where a movant demonstrates the propriety of a stay according to four factors: (1) the movant's likelihood of success on the merits; (2) the likelihood of irreparable injury to the movant absent a stay; (3) whether a stay will substantially injure other parties to the litigation; and (4) "where the public interest lies." *Glick v. Koenig*, 766 F.2d 265, 269 (7th Cir.1985).

As set forth in Plaintiffs' Opposition to Defendants' Motion for Stay ("Pls' Opp."), DOC's arguments in support of its Motion for Stay are unavailing. The United States submits this Statement of Interest, however, primarily to underscore the important public interests advanced by RLUIPA's protections for religious freedom and the irreparable harm that inmates suffer by the failure to accommodate their religious practices. These interests militate strongly against issuing a stay in this matter, regardless of this Court's analysis of the other relevant factors.

A. The Public Interests Animating RLUIPA Weigh Against a Stay

It is well-settled that "the public has an interest in protecting the civil rights of all persons." *Edmisten v. Werholtz*, 287 Fed. Appx. 728, 735 (10th Cir. 2008) (reversing denial of preliminary injunctive relief). The federal government's interest in protecting individual rights is particularly salient in the context of the religious protections afforded by RLUIPA, "the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens." *Cutter v. Wilkinson*, 544 U.S. 709, 713 (2005). RLUIPA passed both houses of Congress unanimously and was supported by more than seventy religious and civil rights groups representing a diversity of religious and ideological viewpoints. *See* 146 Cong. Rec. S7777-78. Its enactment followed a three year Congressional investigation into free exercise violations involving the religious practices of institutionalized persons. *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 380 (7th Cir. 2010). As set forth in a joint statement by RLUIPA co-sponsors Orrin Hatch and Edward Kennedy, Congress found that "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *See* 146 Cong. Rec. 16698-99 (2000). The restrictions identified by the Congressional record include a prison's refusal to provide Halal

food to Muslim inmates while offering Kosher food to Jewish prisoners, unwillingness to provide Jewish inmates with sack lunches to facilitate breaking their fasts after nightfall, and denial of Sacramental Wine for use by Catholic prisoners to celebrate the Mass. *See Cutter*, 544 U.S. 716, n.5.

Moreover, facilitating the religious exercise of incarcerated persons serves the important societal interest in rehabilitation of inmates. This interest in rehabilitation was one of the motivations for Congress's passage of RLUIPA. When introducing the bill that would become RLUIPA, Senator Kennedy specifically noted that restrictions on the practice of religion in the prison context could be counter-productive: "[s]incere faith and worship can be an indispensible part of rehabilitation." *See* 146 Cong. Rec. S6689. Further, this interest has been repeatedly recognized by federal courts. In a decision affirming a district court's finding that a prison violated RLUIPA by denying prayer oils to a Muslim inmate, the Seventh Circuit explained that "RLUIPA's attempt to protect prisoners' religious rights and to promote the rehabilitation of prisoners falls squarely within Congress' pursuit of the general welfare." *Charles v. Verhagen*, 348 F.3d 601, 607 (7th Cir. 2003); *see also, e.g.*, *Benning v. Georgia*, 391 F.3d 1299, 1310 (11th Cir. 2004) ("rehabilitation of prisoners is also a[n] [] interest underlying RLUIPA").

DOC's general citations to cost concerns to support its argument that a stay would be in the public interest are unpersuasive. Congress underlined the importance of eradicating burdens on religious exercise by explicitly providing that compliance with 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). Indeed, as this Court recognized, "the idea that cost alone could provide a compelling government interest directly contravenes Seventh Circuit precedent." (Order at 16). *See also Koger v. Bryan*, 523 F.3d 789, 800 (7th Cir. 2008) (while

"efficient food service" is a legitimate penological interest in the First Amendment context, "no appellate court has ever found th[is] to be [a] compelling interest[]"). Just as the Court determined that DOC's cost concerns are inadequate to justify a substantial burden inmates' practice of religion under RLUIPA, so should those same interests be inadequate to burden inmates' religious practice during the pendency of the DOC's appeal.

DOC's failure to provide a kosher diet substantially burdens a fundamental freedom and frustrates RLUIPA's objectives. Staying this Court's injunction would perpetuate these ills.

B. Issuing a Stay Would Perpetuate Irreparable Harm to Jewish Inmates

Further, staying this Court's injunction would perpetuate serious harm to Jewish inmates incarcerated at DOC facilities. Plaintiffs are sincere adherents of the Jewish faith attempting to follow the laws of kasruth, an intrinsic part of the daily life of observant Jews. Pls' Mot. for Summ. J. (Dkt. No. 81) at 3. As this Court recognized in its Order, DOC's failure to provide a kosher diet violates Plaintiffs' sincerely-held beliefs and substantially burdens their religious practice. Order at 13-14. Indeed, Plaintiffs believe that forced consumption of non-kosher food harms their souls. Pls' Mot. for Summ. J. at 3. Plaintiffs have already been forced to choose between enduring this harm and consuming nutritionally adequate meals since DOC discontinued its kosher food program in June 2009. Staying this Court's injunction would needlessly prolong their hardship.

Even a temporary inability to obtain a kosher diet will irreparably harm Plaintiffs and substantially burden their religious practice. The Seventh Circuit has held "that a prisoner's religious dietary practice is substantially burdened when the prison forces him to choose between his religious practice and adequate nutrition." *Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009). "Given the strong significance of keeping kosher in the Jewish faith, [a Department of

Correction's] policy of not providing kosher food may be deemed to work a substantial burden upon [an inmate's] practice of his faith." *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007). The failure to keep kosher even for a few months or a year while the appeal is pending will still result in a substantial burden on Jewish inmates' religious practice and cause irreparable harm. Indeed, the status quo forces Jewish inmates to choose between exercising their religious beliefs and consuming nutritionally adequate meals. As the Supreme Court has explained in the First Amendment context, "the loss of [] freedoms, for even minimal periods of time, unquestionably constitutes irreparable harm." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

By contrast, DOC's broad claims about the cost of complying with this Court's order do not allege an irreparable injury. Indeed, DOC fails to even identify the specific cost of its compliance. Even if the DOC did identify these costs, however, "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to warrant the extraordinary relief DOC requests. *American Hospital Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980) (denying hospital association's motion to enjoin regulations promulgated by the U.S. Department of Health, Education and Welfare).

* * *

In short, staying this Court's injunction would extend the injuries wrought by DOC's denial of kosher meals and frustrate the important public interests underlying RLUIPA. The United States respectfully asks that the Court decline DOC's invitation to do so.

III. CONCLUSION

For the reasons set forth herein, the Court should deny Defendants' Motion to Stay. With the Court's permission, counsel for the United States will be present at any hearings on this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing STATEMENT OF INTEREST with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties in this matter via electronic notification or otherwise:

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This 14th day of January, 2011.

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