CUTTER v. WILKINSON
SUPREME COURT OF THE UNITED STATES
544 U.S. 709
May 31, 2005
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OPINION: GINSBURG...Section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA or Act) provides in part: **"No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the burden furthers "a compelling governmental interest" and does so by "the least restrictive means."** Petitioners are current and former inmates of institutions operated by the Ohio Department of Rehabilitation and Correction and assert that they are adherents of "nonmainstream" religions: the Satanist, Wicca, and Asatru religions, and the Church of Jesus Christ Christian. They complain that Ohio prison officials, in violation of RLUIPA, have failed to accommodate their religious exercise "in a variety of different ways, including retaliating and discriminating against them for exercising their nontraditional faiths, denying them access to religious literature, denying them the same opportunities for group worship that are granted to adherents of mainstream religions, forbidding them to adhere to the dress and appearance mandates of their religions, withholding religious ceremonial items that are substantially identical to those that the adherents of mainstream religions are permitted, and failing to provide a chaplain trained in their faith."

For purposes of this litigation at its current stage, respondents have stipulated that petitioners are members of bona fide religions and that they are sincere in their beliefs.

In response to petitioners' complaints, respondent prison officials have mounted a facial challenge to the institutionalized-persons provision of RLUIPA; respondents contend that the Act improperly advances religion in violation of the First Amendment's Establishment Clause. The District Court denied respondents' motion to dismiss petitioners' complaints, but the Court of Appeals reversed that determination. **The appeals court held, as the prison officials urged,**

that the portion of RLUIPA applicable to institutionalized persons, 42 U. S. C. § 2000cc-1, violates the Establishment Clause. We reverse the Court of Appeals' judgment.

"This Court has long recognized that the government may...accommodate religious practices... without violating the Establishment Clause." *Hobbie* v. *Unemployment Appeals Comm'n of Fla.*[1] Just last Term, in *Locke* v. *Davey*[2], the Court reaffirmed that "there is room for play in the joints between" the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause. "At some point, accommodation may devolve into `an unlawful fostering of religion.'" But §3 of RLUIPA, we hold, does not, on its face, exceed the limits of permissible government accommodation of religious practices.

I

A

RLUIPA is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens, consistent with this Court's precedents. **Ten years before RLUIPA's enactment, the Court held, in *Employment Div.* v. *Smith*[3] that the First Amendment's Free Exercise Clause does not inhibit enforcement of otherwise valid laws of general application that incidentally burden religious conduct. In particular, we ruled that the Free Exercise Clause did not bar Oregon from enforcing its blanket ban on peyote possession with no allowance for sacramental use of the drug. Accordingly, the State could deny unemployment benefits to persons dismissed from their jobs because of their religiously inspired peyote use. The Court recognized, however, that the political branches could shield religious exercise through legislative accommodation, for example, by making an exception to proscriptive drug laws for sacramental peyote use.**

Responding to *Smith*, Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA). RFRA "prohibits `government' from `substantially burdening' a person's exercise of religion even if the burden results from a rule of general applicability unless the government can demonstrate the burden `(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *City of Boerne* v. *Flores*[4]. **"Universal" in its coverage, RFRA "applied to all Federal and State law," but notably lacked a Commerce Clause underpinning or a Spending Clause limitation to recipients of federal funds. In *City of Boerne*, this Court invalidated RFRA as applied to States and their subdivisions, holding that the Act exceeded Congress' remedial powers under the Fourteenth Amendment.**

Congress again responded, this time by enacting RLUIPA. Less sweeping than RFRA, and invoking federal authority under the Spending and Commerce Clauses, RLUIPA targets two areas: Section 2 of the Act concerns **land-use regulation**; §3 relates to **religious exercise by institutionalized persons.** Section 3, at issue here, provides that "no state or local government

[1] Case 1A-R-075 on this website.
[2] Case 1A-R-103 on this website.
[3] Case 1A-R-087 on this website.
[4] Case 1A-R-097 on this website.

shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the government shows that the burden furthers "a compelling governmental interest" and does so by "the least restrictive means." The Act defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." Section 3 applies when "the substantial burden on religious exercise is imposed in a program or activity that receives Federal financial assistance," or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." "A person may assert a violation of RLUIPA as a claim or defense in a judicial proceeding and obtain appropriate relief against a government."

Before enacting §3, Congress documented, in hearings spanning three years, that "frivolous or arbitrary" barriers impeded institutionalized persons' religious exercise. To secure redress for inmates who encountered undue barriers to their religious observances, Congress carried over from RFRA the "compelling governmental interest"-"least restrictive means" standard. Lawmakers anticipated, however, that courts entertaining complaints under § 3 would accord "due deference to the experience and expertise of prison and jail administrators."

B

Petitioners initially filed suit against respondents asserting claims under the First and Fourteenth Amendments. After RLUIPA's enactment, petitioners amended their complaints to include claims under § 3. Respondents moved to dismiss the statutory claims, arguing that § 3 violates the Establishment Clause and the United States intervened in the District Court to defend RLUIPA's constitutionality.

Adopting the report and recommendation of the Magistrate Judge, the District Court rejected the argument that § 3 conflicts with the Establishment Clause. As to the Act's impact on a prison's staff and general inmate population, the court stated that RLUIPA "permits safety and security—which are undisputedly compelling state interests—to outweigh an inmate's claim to a religious accommodation." On the thin record before it, the court declined to find, as respondents had urged, that enforcement of RLUIPA, inevitably, would compromise prison security.

On interlocutory appeal..., the Court of Appeals for the Sixth Circuit reversed. Citing *Lemon* v. *Kurtzman*[5] the Court of Appeals held that § 3 of RLUIPA "impermissibly advances religion by giving greater protection to religious rights than to other constitutionally protected rights." Affording "religious prisoners rights superior to those of nonreligious prisoners," the court suggested, might "encourage prisoners to become religious in order to enjoy greater rights."

We granted certiorari to resolve the conflict among Courts of Appeals on the question whether RLUIPA's institutionalized-persons provision is consistent with the Establishment Clause of the First Amendment...We now reverse the judgment of the Court of Appeals for the Sixth Circuit.

II

A

[5] Case 1A-R-042 on this website.

The...Establishment Clause commands a separation of church and state. The...Free Exercise Clause requires government respect for, and noninterference with, the religious beliefs and practices of our Nation's people. While the two Clauses express complementary values, they often exert conflicting pressures...

Our decisions recognize that "there is room for play in the joints" between the Clauses, some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause. See *Smith* ("A society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation. . . ."); *Bishop v. Amos*[6] (Federal Government may exempt secular nonprofit activities of religious organizations from Title VII's prohibition on religious discrimination in employment); *Sherbert* v. *Verner*[7] (Harlan, J., dissenting) ("The constitutional obligation of `neutrality' is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation." In accord with the majority of Courts of Appeals that have ruled on the question, we hold that § 3 of RLUIPA fits within the corridor between the Religion Clauses: On its face, the Act qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause.

Foremost, we find RLUIPA's institutionalized-persons provision compatible with the Establishment Clause because it alleviates exceptional government-created burdens on private religious exercise. See *Kiryas* v. *Grumet*[8] (government need not "be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice"); *Amos* (removal of government-imposed burdens on religious exercise is more likely to be perceived "as an accommodation of the exercise of religion rather than as a Government endorsement of religion"). Furthermore, the Act on its face does not founder on shoals our prior decisions have identified: Properly applying RLUIPA, courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries; and they must be satisfied that the Act's prescriptions are and will be administered neutrally among different faiths.

"The `exercise of religion' often involves not only belief and profession but the performance of . . . physical acts such as assembling with others for a worship service or participating in sacramental use of bread and wine. . . ." *Smith*. Section 3 covers state-run institutions—mental hospitals, prisons, and the like—in which the government exerts a degree of control unparalleled in civilian society and severely disabling to private religious exercise. "Institutional residents' right to practice their faith is at the mercy of those running the institution." RLUIPA thus protects institutionalized persons who are unable freely to attend to their religious needs and are therefore dependent on the government's permission and accommodation for exercise of their religion.

We note in this regard the Federal Government's accommodation of religious practice by members of the military...In *Goldman* v. *Weinberger*[9], we held that the Free Exercise Clause did not require the Air Force to exempt an Orthodox Jewish officer from uniform dress regulations so that he could wear a yarmulke indoors. In a military community, the Court observed, "there is

[6] Case 1A-R-078 on this website.
[7] Case 1A-R-035 on this website.
[8] Case 1A-R-093 on this website.
[9] Case 1A-R-073 on this website.

simply not the same individual autonomy as there is in the larger civilian community." Congress responded to *Goldman* by prescribing that "a member of the armed forces may wear an item of religious apparel while wearing the uniform," unless "the wearing of the item would interfere with the performance of military duties or the item of apparel is not neat and conservative."

We do not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety. Our decisions indicate that an accommodation must be measured so that it does not override other significant interests. In *Thornton v. Caldor*[10], the Court struck down a Connecticut law that "armed Sabbath observers with an absolute and unqualified right not to work on whatever day they designated as their Sabbath." We held the law invalid under the Establishment Clause because it "unyieldingly weighted" the interests of Sabbatarians "over all other interests."

We have no cause to believe that RLUIPA would not be applied in an appropriately balanced way, with particular sensitivity to security concerns. While the Act adopts a "compelling governmental interest" standard, "context matters" in the application of that standard. Lawmakers supporting RLUIPA were mindful of the urgency of discipline, order, safety, and security in penal institutions. They anticipated that courts would apply the Act's standard with "due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources."

Finally, RLUIPA does not differentiate among bona fide faiths. In *Kiryas Joel*, we invalidated a state law that carved out a separate school district to serve exclusively a community of highly religious Jews, the Satmar Hasidim. We held that the law violated the Establishment Clause, in part because it "singled out a particular religious sect for special treatment." RLUIPA presents no such defect. It confers no privileged status on any particular religious sect, and singles out no bona fide faith for disadvantageous treatment.

B

The Sixth Circuit misread our precedents to require invalidation of RLUIPA as "impermissibly advancing religion by giving greater protection to religious rights than to other constitutionally protected rights." Our decision in *Amos* counsels otherwise. There, we upheld against an Establishment Clause challenge a provision exempting "religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion." The District Court in *Amos*, reasoning in part that the exemption improperly "singled out religious entities for a benefit," had "declared the statute unconstitutional as applied to secular activity." Religious accommodations, we held, need not "come packaged with benefits to secular entities."...

Were the Court of Appeals' view the correct reading of our decisions, all manner of religious accommodations would fall. Congressional permission for members of the military to wear religious apparel while in uniform would fail as would accommodations Ohio itself makes. Ohio could not, as it now does, accommodate "traditionally recognized" religions: The State provides

[10] Case 1A-R-069 on this website.

inmates with chaplains "but not with publicists or political consultants," and allows "prisoners to assemble for worship, but not for political rallies."

In upholding RLUIPA's institutionalized-persons provision, we emphasize that respondents "have raised a facial challenge to the Act's constitutionality, and have not contended that under the facts of any of petitioners' specific cases . . . that applying RLUIPA would produce unconstitutional results." The District Court, noting the underdeveloped state of the record, concluded: A finding "that it is *factually impossible* to provide the kind of accommodations that RLUIPA will require without significantly compromising prison security or the levels of service provided to other inmates" cannot be made at this juncture. We agree.

"For more than a decade, the federal Bureau of Prisons has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners." The Congress that enacted RLUIPA was aware of the Bureau's experience. ("We do not believe RLUIPA would have an unreasonable impact on prison operations. RFRA has been in effect in the Federal prison system for six years and compliance with that statute has not been an unreasonable burden to the Federal prison system."). We see no reason to anticipate that abusive prisoner litigation will overburden the operations of state and local institutions. The procedures mandated by the Prison Litigation Reform Act of 1995, we note, are designed to inhibit frivolous filings.

Should inmate requests for religious accommodations become excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution, the facility would be free to resist the imposition. In that event, adjudication in as-applied challenges would be in order.

For the reasons stated, the judgment of the United States Court of Appeals for the Sixth Circuit is reversed...

CONCURRENCE: THOMAS...I join the opinion of the Court. I agree with the Court that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is constitutional under our modern Establishment Clause case law. I write to explain why a proper historical understanding of the Clause as a federalism provision leads to the same conclusion.

I

The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion." As I have explained, an important function of the Clause was to "make clear that Congress could not interfere with state establishments." The Clause, then, "is best understood as a federalism provision" that "protects state establishments from federal interference." Ohio contends that this federalism understanding of the Clause prevents federal oversight of state choices within the "play in the joints" between the Free Exercise and Establishment Clauses. In other words, Ohio asserts that the Clause protects the States from federal interference with otherwise constitutionally permissible choices regarding religious policy. In Ohio's view, RLUIPA intrudes on such state policy choices and hence violates the Clause.

Ohio's vision of the range of protected state authority overreads the Clause. Ohio and its *amici* contend that, even though "States can no longer establish preferred churches" because the Clause has been incorporated against the States through the Fourteenth Amendment, "Congress is as unable as ever to contravene constitutionally permissible *State choices regarding religious policy.*" That is not what the Clause says. The Clause prohibits Congress from enacting legislation "respecting an *establishment* of religion"; it does not prohibit Congress from enacting legislation "respecting religion" or "taking cognizance of religion." At the founding, establishment involved "coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*"...In other words, establishment at the founding involved, for example, mandatory observance or mandatory payment of taxes supporting ministers. To proscribe Congress from making laws "respecting an establishment of religion," therefore, was to forbid legislation respecting coercive state establishments, not to preclude Congress from legislating on religion generally.

History, at least that presented by Ohio, does not show that the Clause hermetically seals the Federal Government out of the field of religion. Ohio points to, among other things, the words of James Madison in defense of the Constitution at the Virginia Ratifying Convention: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation." Ohio also relies on James Iredell's statement discussing the Religious Test Clause at the North Carolina Ratifying Convention: "Congress certainly has no authority to interfere in the establishment of any religion whatsoever . . . . Is there any power given to Congress in matters of religion? Can they pass a single act to impair our religious liberties? If they could, it would be a just cause of alarm . . . . If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorized to pass, by the Constitution, and which the people would not obey." Debate in North Carolina Ratifying Convention (July 30, 1788).

These quotations do not establish the Framers' beliefs about the scope of the Establishment Clause. Instead, they demonstrate only that some of the Framers may have believed that the National Government had no authority to legislate concerning religion, because no enumerated power gave it that authority. Ohio's Spending Clause and Commerce Clause challenges, therefore, may well have merit.

In any event, Ohio has not shown that the Establishment Clause codified Madison's or Iredell's view that the Federal Government could not legislate regarding religion. An *unenacted* version of the Clause, proposed in the House of Representatives, demonstrates the opposite. It provided that "Congress shall make no laws touching religion, or infringing the rights of conscience." The words ultimately adopted, "Congress shall make no law respecting an establishment of religion," "identified a position from which Madison had once sought to distinguish his own." Whatever he thought of those words, "he clearly did not mind language less severe than that which he had previously used." The version of the Clause finally adopted is narrower than Ohio claims.

Nor does the other historical evidence on which Ohio relies—Joseph Story's Commentaries on the Constitution—prove its theory. Leaving aside the problems with relying on this source as an indicator of the original understanding, it is unpersuasive in its own right. Justice Story did say that "the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their own sense of justice, and the state constitutions." In context,

however, his statement concerned only Congress' inability to legislate with respect to religious *establishment:* ("The real object of the amendment was . . . to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government"); ("It was deemed advisable to exclude from the national government all power to act upon the subject. . . . It was impossible, that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendancy, if the national government were left free to create a religious establishment").

In short, the view that the Establishment Clause precludes Congress from legislating respecting religion lacks historical provenance, at least based on the history of which I am aware. Even when enacting laws that bind the States pursuant to valid exercises of its enumerated powers, Congress need not observe strict separation between church and state, or steer clear of the subject of religion. It need only refrain from making laws "respecting an establishment of religion"; it must not interfere with a state establishment of religion. For example, Congress presumably could not require a State to establish a religion any more than it could preclude a State from establishing a religion.

II

On its face—the relevant inquiry, as this is a facial challenge—RLUIPA is not a law "respecting an establishment of religion." RLUIPA provides, as relevant: "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," first, "furthers a compelling governmental interest," and second, "is the least restrictive means of furthering that compelling governmental interest." This provision does not prohibit or interfere with state establishments, since no State has established (or constitutionally could establish, given an incorporated Clause) a religion. Nor does the provision require a State to establish a religion: It does not force a State to coerce religious observance or payment of taxes supporting clergy, or require a State to prefer one religious sect over another. It is a law respecting religion, but not one respecting an establishment of religion.

In addition, RLUIPA's text applies to all laws passed by state and local governments, including "rules of general applicability," whether or not they concern an establishment of religion. State and local governments obviously have many laws that have nothing to do with religion, let alone establishments thereof. Numerous applications of RLUIPA therefore do not contravene the Establishment Clause, and a facial challenge based on the Clause must fail...

It also bears noting that Congress, pursuant to its Spending Clause authority, conditioned the States' receipt of federal funds on their compliance with RLUIPA. ("This section applies in any case in which . . . the substantial burden is imposed in a program or activity that receives Federal financial assistance"). As noted above, RLUIPA may well exceed the spending power. Nonetheless, while Congress' condition stands, the States subject themselves to that condition by voluntarily accepting federal funds. The States' voluntary acceptance of Congress' condition undercuts Ohio's argument that Congress is encroaching on its turf.