

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FILED

OCT 1 2001



CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

JAMES LIMBAUGH, *et al.*,)

Plaintiffs,)

v.)

LESLIE THOMPSON, *et al.*,)

Defendants.)

CIVIL ACTION NO. 93-D-1404-N

NATIVE AMERICAN PRISONERS)

OF ALABAMA - TURTLE WIND)

CLAN, *et al.*,)

Plaintiffs,)

v.)

STATE OF ALABAMA DEPARTMENT)

OF CORRECTIONS, *et al.*,)

Defendants.)

CIVIL ACTION NO. 95-D-554-N

ORDER

Pending before the court is the plaintiffs' motion to amend their complaint to add claims under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, *et seq.*, and claims under the Alabama Religious Freedom Amendment to the Alabama Constitution. The RLUIPA amendment is proper by virtue of the remand to this court by the United States Court of Appeals for the Eleventh Circuit which directed this court "to determine whether . . . [RLUIPA] entitles plaintiffs to the relief they seek . . ." Thus, the court will allow that amendment.

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However, the amendment to the complaint additionally seeks to add a direct claim under Amendment No. 622 to the Alabama Constitution, the Alabama Religious Freedom Amendment,¹ a claim which has never been considered by any Alabama appellate court.

¹Amendment No. 622 provides as follows:

SECTION I. The amendment shall be known as and may be cited as the Alabama Religious Freedom Amendment.

SECTION II. The Legislature makes the following findings concerning religious freedom: (1) The framers of the United States Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution, and the framers of the Constitution of Alabama of 1901, also recognizing this right, secured the protection of religious freedom in Article I, Section 3. (2) Federal and state laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise. (3) Governments should not burden religious exercise without compelling justification. (4) In *Employment Division v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion. (5) The compelling interest test as set forth in prior court rulings is a workable test for striking sensible balances between religious liberty and competing governmental interests in areas ranging from public education (pedagogical interests and religious rights, including recognizing regulations necessary to alleviate interference with the educational process versus rights of religious freedom) to national defense (conscription and conscientious objection, including the need to raise an army versus rights to object to individual participation), and other areas of important mutual concern. (6) Congress passed the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, to establish the compelling interest test set forth in prior federal court rulings, but in *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997), the United States Supreme Court held the act unconstitutional stating that the right to regulate was retained by the states.

SECTION III. The purpose of the Alabama Religious Freedom Amendment is to guarantee that the freedom of religion is not burdened by state and local law; and to provide a claim or defense to persons whose religious freedom is burdened by government.

SECTION IV. As used in this amendment, the following words shall have the following meanings: (1) DEMONSTRATES. Meets the burdens of going forward with the evidence and of persuasion. (2) FREEDOM OF RELIGION. The free exercise of religion under Article I, Section 3, of the Constitution of Alabama of 1901. (3) GOVERNMENT. Any branch, department, agency, instrumentality, and official (or other person acting under the color of law) of the State of Alabama, any political subdivision of a state, municipality, or other local government. (4) RULE. Any government statute, regulation, ordinance, administrative provision, ruling guideline, requirement, or any statement of law whatever.

SECTION V. (a) Government shall not burden a person's freedom of religion even if the burden results from a rule of general applicability, except as provided in subsection (b). (b) Government may burden a person's freedom of religion only if it demonstrates that application of the burden to the person: (1) Is in furtherance of a compelling governmental interest; and (2) Is the least restrictive means of furthering that compelling

Furthermore, the amendment is one which this court previously has denied because of the novel issue of state law presented by it. The plaintiffs argue that because the Eleventh Circuit specifically stated that it did not intend to restrict this court's consideration of any issues it deems appropriate, this court should allow the amendment. The plaintiffs' argument, of course, begs the question of whether it is appropriate for the court to consider the Alabama constitutional question.

Under 28 U.S.C. § 1367(c)(1), this court may decline to exercise supplemental jurisdiction over claims raising "a novel or complex issue of State law." The plaintiffs request this court to enforce against state officials a recent amendment to the Alabama Constitution to which no state court has spoken. Aside from the complexity of the issue presented, forging ahead would place this court in the position of instructing state officials on the meaning, extent and limitations of a state constitutional amendment which can be read to place constraints on official action which far exceed the constraints of federal constitutional law. Consideration of federalism and comity demand that this court decline

governmental interest. (c) A person whose religious freedom has been burdened in violation of this section may assert that violation as a claim or defense in a judicial, administrative, or other proceeding and obtain appropriate relief against a government.

SECTION VI. (a) This amendment applies to all government rules and implementations thereof, whether statutory or otherwise, and whether adopted before or after the effective date of this amendment. (b) Nothing in this amendment shall be construed to authorize any government to burden any religious belief. (c) Nothing in this amendment shall be construed to affect, interpret, or in any way address those portions of the First Amendment of the United States Constitution permitting the free exercise of religion or prohibiting laws respecting the establishment of religion, or those provisions of Article I, Section 3, of the Constitution of Alabama of 1901, regarding the establishment of religion.

SECTION VII. (a) This amendment shall be liberally construed to effectuate its remedial and deterrent purposes. (b) If any provision of this amendment or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this amendment.

to consider the state constitutional law question. This court should not be the first court addressing the difficult question of the nature of the constraints which the Alabama Religious Freedom Amendment places on state prison officials who are charged with the extraordinarily difficult duty of protecting the public through their management of prisons and prison inmates. *See e.g. Hewitt v. Helms*, 459 U.S. 460, 467 (1983) (Prison officials granted wide range of discretion in management of prisons because of difficulty).

Accordingly, it is

ORDERED as follows:

1. The motion to amend to add claims under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, *et seq.*, is GRANTED, and the plaintiffs shall file an amended complaint consistent with this order on or before October 10, 2001.

2. The motion to amend to add claims under the Alabama Religious Freedom Amendment is DENIED. It is further

ORDERED as follows:

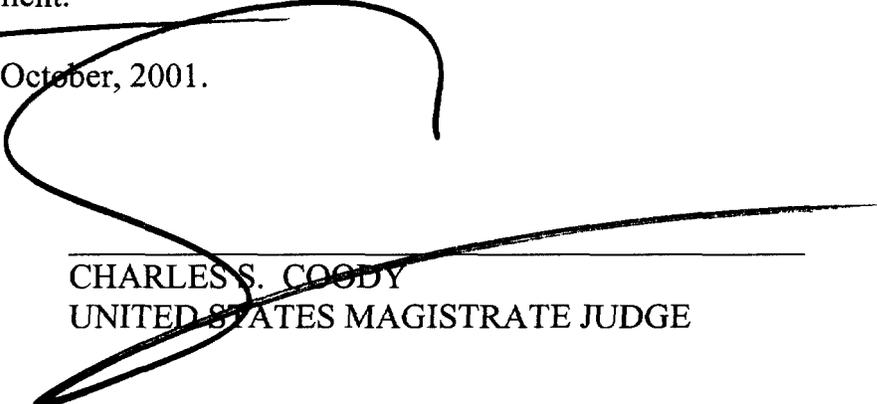
1. The defendants shall file an answer to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) claims on or before October 30, 2001.

2. On or before November 16, 2001, the parties shall file with the court a joint notification about whether any discovery is necessary on issues raised in the amendment to the complaint.

3. Unless discovery is allowed based on the parties' joint notification, dispositive motions and any supporting evidentiary materials shall be filed on or before December 3,

2001. The movant shall file a brief in support of the motion. This brief may incorporate briefs previously filed. Responsive briefs and any opposing evidentiary materials shall be filed on or before December 17, 2001, at which time the court will take the motions under advisement without oral argument.

Done this 17 day of October, 2001.



CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE