



against the policy and further asks that his kosher diet be restored. Nominal damages are requested against defendants Hall and Hodges.

**Jurisdiction, venue, cause of action**

2. This Court has jurisdiction of this matter pursuant to 28 U.S.C § 1331.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the laws of the United States.

**Parties**

6. Maston Willis is an adult prisoner currently confined to the Miami Correctional Facility in Bunker Hill, Indiana.
7. The Commissioner of the Indiana Department of Correction is the duly appointed person in charge of the Indiana Department of Correction and is named in the claims for injunctive and declaratory relief pursuant to Fed.R.Civ.P. 17(d).
8. Dr. Stephen Hall is the Director of Religious Services for the Indiana Department of Correction and is sued in both his official capacity for declaratory and injunctive relief and in his individual capacity for nominal damages.
9. Chaplain Merle Hodges is an employee of the Indiana Department of Correction and is the chaplain at the Miami Correction Facility. He is sued in both his official capacity for declaratory and injunctive relief and in his individual capacity for nominal damages.

**Legal Background**

10. The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”)

provides that:

[n]o 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 the 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 interest.

*See* 42 U.S.C. § 2000cc-1(a).

11. The term “institution” is defined as any facility or institution that “is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State” and includes, *inter alia*, a “jail, prison, or other correctional facility.” *See* 42 U.S.C. § 1997(1).

12. The term “religious exercise” is defined to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *See* 42 U.S.C. § 2000cc-5(7)(A).

13. RLUIPA applies in any case in which “the substantial burden [on the religious exercise of a person] is imposed in a program or activity that receives Federal financial assistance.” *See* 42 U.S.C. § 2000cc-1(b)(1).

### **Factual Allegations**

14. The Indiana Department of Correction receives federal financial assistance and therefore is subject to RLUIPA.

15. Maston Willis is an observant Orthodox Jew.

16. As an Orthodox Jew he is commanded to obey the laws of kashrut and to keep kosher in his diet.

17. Orthodox Jews, and Mr. Willis, believe that the laws of kashrut are commanded by God and are explicitly set out in the text of the Torah (the first five books of the Bible) in both Leviticus and Deuteronomy.

18. Among other things, kosher laws proscribe that:

- a. Certain foods may not be eaten at all. For example, only land animals which have a cloven foot and chews their cud may be eaten. (Leviticus 11:3-8). Thus pork may not be eaten, because pigs do not chew a cud. (Leviticus 11:7). Fish may be eaten, but not sea food that has neither fins nor scales. (Leviticus 11:9-12). Certain birds, including birds of prey, may not be eaten, although chicken and turkey may be eaten. (Leviticus 11:13-19).
- b. In order to be kosher, animals must be killed in accordance with Jewish law. (Deuteronomy 12: 20-24).
- c. Meat and dairy products may not be eaten together. This law derives from the Torah's prescription that "You shall not boil a kid in its mother's milk." (Deuteronomy 14:21).
- d. Utensils and cooking services that have been used to prepare or eat meat may not be used to prepare or eat milk dishes, and vice-versa. But, the status of a dish or utensil can be transferred from food and vice-versa, only in the presence of heat.
- e. The separation between foods demanded by the laws of kashrut apply also to the dishwashers and sinks in which the plates, pots, pans and utensils are cleaned.
- f. Although vegetables and fruit are kosher, they may not come into contact with non-kosher food, utensils or dishes

19 Orthodox Jews believe that the Torah is the word of God and they are therefore compelled to follow the laws of kashrut.

20. Keeping kosher is therefore a central and essential tenet of Orthodox Judaism.

21. The DOC recognizes that a kosher diet is essential for Orthodox Jews.

22. Prior litigation in this Court, *Preston and Johns v. Donahue* (No. 1:05-cv-260), resulted in a Private Settlement Agreement providing that kosher diets should be

provided to the two plaintiffs in the litigation. Subsequent to the execution of the Private Settlement Agreement kosher diets were provided to Jewish prisoners who requested the diet and were approved for the diet by each institution's Chaplain.

23. The DOC contracts its food services to a private entity, Aramark Corporation.

24. The kosher meals were provided through pre-packaged kosher meals, prepared by Aramark, being delivered to the approved Jewish prisoners when they went through the meal line.

25. Each prisoner approved for a kosher diet is given a kosher diet card that denotes his eligibility to receive the kosher diet.

26. As an Orthodox Jewish prisoner who was approved for a kosher diet, Mr. Willis was placed on the kosher diet list at Miami Correctional Facility and received a kosher diet card.

27. As a result he has received pre-packaged kosher lunches and dinners for a number of years.

28. Although pre-packaged kosher lunches and dinners have been provided, Mr. Willis and the other Orthodox Jews at Miami Correctional Facility have not been provided with pre-packaged kosher breakfasts.

29. Instead, the prisoners on the kosher diet list receive only the breakfasts that all prisoners are served. No special accommodations are made for the breakfast meal although the prisoners are required to show their kosher diet card before they receive the non-kosher diets.

30. A number of these breakfasts contain meat and milk products which means that the meals are not kosher.

31. Moreover, the meals feature hot foods, such as pancakes, which are prepared with pans, utensils, and cook surfaces which are not kosher. Therefore, the meals are not kosher.

32. Additionally, the silverware used for the breakfasts is the same silverware that is used for other meals which may include non-kosher foods or combinations of food (*e.g.* meat and milk) that violate the rules of kashrut. The silverware is not kosher.

33. The trays on which the breakfast food is placed are the same trays on which other foods are placed for other meals. The trays, and therefore the food on them, are not kosher. By contrast, the kosher meals served at the prison are on disposable trays which are not re-used.

34. Given that the breakfast meal is not kosher Mr. Willis and a number of the other Jewish prisoners did not eat breakfast. Instead, they stayed in their living areas, with permission of prison personnel, and did not go to the dining hall.

35. Given that the breakfast food is not kosher, Mr. Willis determined that he could not eat the breakfasts as a matter of his religious faith and principles. He continued to eat the pre-packaged kosher lunches and dinners.

36. He did not go through the breakfast diet line and he did not use his kosher diet card inasmuch as he did not eat breakfast.

37. Dr. Hall has created a new policy that if a prisoner does not use a diet card at least 75% of the time he will be removed from the diet list for a period of thirty (30) days, after which he may be restored to the diet by the Chaplain if it is a religious diet.

38. Mr. Willis and the other prisoners were not given notice of this policy.

39. Because of this policy, Mr. Willis was removed from the kosher diet list because

he did not use his diet card for breakfasts.

40. Chaplain Hodges confiscated his diet card.

41. Because Mr. Willis did not present his kosher diet card for breakfast, because he did not go to breakfast, defendants Hall and Willis treated him as if he was not obeying the laws of kashrut.

42. This removal and confiscation occurred despite the fact that the breakfast meal was not kosher.

43. He timely filed and exhausted his grievances to appeal this removal. His grievance documents are attached to this complaint.

44. His grievances were denied.

45. During his suspension period he was not allowed to receive any kosher diet and was forced to eat the regular food at the institution.

46. This is grossly contrary to his religious beliefs and the commands that are imposed upon him as an Orthodox Jew.

47. The other Orthodox Jewish prisoners who were refusing to eat the non-kosher diets also had their kosher diet cards suspended and confiscated by defendant Hodges.

48. At the end of the thirty (30) day period he reapplied for his kosher diet card from defendant Hodges.

49. Defendant Hodges informed him that Defendant Hall had imposed a new policy that resulted in Mr. Willis being allowed only a vegetarian diet, not a kosher diet.

50. A vegetarian diet is not kosher because the meals are prepared with the pots, pans, utensils, etc, in the Miami Correctional Facility which are not kosher.

51. Prisoners who had not, or have not, had their kosher diet cards taken continue to

receive the pre-packaged kosher meals.

52. If Mr. Willis had not been terminated from his kosher diet because of Dr. Hall's policy, implemented by Chaplain Hodges, he would still have his kosher diet card and would still be receiving the pre-packaged kosher lunches and dinners.

53. As it is now, he is not receiving any kosher diet at all.

54. As applied to Mr. Willis, a person who refused breakfasts because they were not kosher, defendants' policy terminating the kosher diet has imposed a substantial burden on the exercise of his religion without justification.

55. Dr. Hall and Chaplain Hodges are personally liable to plaintiff Willis for the nominal damages caused by the unlawful termination of his kosher diet.

56. If the kosher diet is restored to Mr. Willis, he will continue to refuse to eat breakfast as long as it not kosher.

57. At all times defendants have acted under color of state law.

58. The actions and inactions defendants are causing plaintiff irreparable harm for which there is no adequate remedy at law.

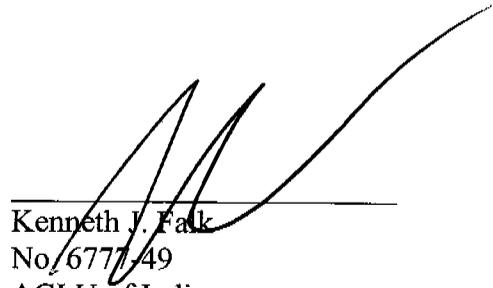
**Legal claim**

56. The policy, created by and/or implemented by the defendants, under which Mr. Willis' kosher diet was terminated after he failed to use his kosher diet card to obtain non-kosher meals, imposes, without justification, a substantial burden on Mr. Willis' religion and religious exercise, and is therefore unlawful as violating RLUIPA, 42 U.S.C. § 42 U.S.C. § 2000cc-1(a).

WHEREFORE, plaintiff requests that this Court:

- a. Accept jurisdiction of this case and set it for hearing.

- b. Declare that defendants have violated plaintiff's rights under RLUIPA as specified above.
- c. Enter a preliminary injunction, later to be made permanent, which enjoins defendants' policy terminating kosher diets for non-compliance when the non-compliance is occasioned by the failure to serve meals which are kosher and enjoining defendant to place Mr. Willis back in the same position he would have been in but for the unlawful termination.
- d. Award plaintiff his nominal damages against defendants Dr. Hall and Chaplain Hodges in their individual capacities.
- e. Award plaintiff his costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
- f. Award all other proper relief.



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