

No. 13-6827

In the Supreme Court of the United States

GREGORY HOUSTON HOLT a/k/a
ABDUL MAALIK MUHAMMAD,
Petitioner,

v.

RAY HOBBS, Director, Arkansas
Department of Correction, *et al.*,
Respondents.

*On Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit*

**BRIEF OF AMICI CURIAE DR. RONALD L. AKERS, DR.
BYRON R. JOHNSON, AND DR. SUNG JOON JANG IN
SUPPORT OF PETITIONER GREGORY HOUSTON HOLT
a/k/a ABDUL MAALIK MUHAMMAD**

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are sociologists who have researched and written extensively about the effects of religion or religious commitment on delinquency and recidivism.

Dr. Ronald L. Akers is Professor Emeritus of Criminology and Sociology at the University of Florida. Dr. Akers has conducted research and published in many areas and on many topics within criminology and is the author of one of the leading criminological theories: social learning theory. Dr. Akers is a Fellow of the American Society of Criminology (“ASC”), Past President of ASC, Past President of the Southern Sociological Society (“SSS”), a member of the SSS Roll of Honor, and recipient of the 1988 Edwin H. Sutherland Award from ASC for outstanding contributions to theory and research. Dr. Akers is also co-author of the leading textbook on criminological theories.

Dr. Byron R. Johnson is Baylor University’s Distinguished Professor of the Social Sciences, founding director of the Institute for Studies of Religion, and director of the Program on Prosocial Behavior. Dr. Johnson is one of the leading authorities on the efficacy of religion on behavior and recidivism rates in prison populations, recently completed a series of empirical studies for the Department of Justice on

¹ Pursuant to this Court’s Rule 37, letters of consent from all parties for the filing of this brief have been submitted to the Clerk. *Amici* states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *Amici* or their counsel made a monetary contribution to the preparation or submission of this brief.

the role of religion in prosocial youth behavior, and is a Presidential appointment to the Coordinating Council for Juvenile Justice and Delinquency Prevention. He has been project director / principal investigator on many grants from private foundations as well as federal agencies including the Department of Justice, Department of Defense, U. S. Institute of Peace, Department of Labor, and the National Institutes of Health. Before joining the faculty at Baylor University, Dr. Johnson also directed research centers at Vanderbilt University and the University of Pennsylvania.

Dr. Sung Joon Jang is Associate Professor of Sociology at Baylor University. Dr. Jang's areas of research include crime and deviance, juvenile delinquency, drug use, religiosity and spirituality, and mental health. Dr. Jang has also serves as principal investigator or co-principal investigator on numerous grants from private foundations as well as the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

The outcome of this case is important to *Amici* because the Court's interpretation of RLUIPA could impact prisoners' access to religious resources that studies have indicated are so impactful on recidivism rates and could impact the ability of sociologists to continue to study the impact of religious programs on inmates' recidivism and prosocial development.

SUMMARY OF THE ARGUMENT

A series of studies shows that even relatively modest religious involvement in prison is one of the most significant factors in reducing the recidivism rate

of released prisoners. The effect of such religious involvement on a person's likelihood of being rearrested within three years of release from prison surpasses any effect that has been shown from most secular programs designed to prepare prisoners for life after prison. Inmates' recidivism rates only decrease as religious involvement increases. This effect is extremely beneficial to the state, not only because of the reduced recidivism rate but also because religious activities in prisons are volunteer-driven at no cost to the state, yielding an extremely economical form of rehabilitation.

Congress, in enacting RLUIPA, knew that protecting inmates' religious exercise would inconvenience prison administrators, but they were convinced that the benefits of religious involvement for prisoners outweighed the efforts that would be required of prison administrators. As Charles Colson, president of Prison Fellowship Ministries, told a House subcommittee, "[I]t is sheer social folly to place any obstacles in the way of the many prisoners who, on their own initiative, seek out ministers, priests, rabbis, Bible studies, and so forth." Whatever the motivation of individual prisoners, the available research confirms that religious programs are attractive, efficacious, and cost effective.

In this case, a narrow reading of RLUIPA has erected exactly the sort of obstacle to faith that Congress sought to prevent: prisoners may have a beard for medical reasons, but may not have a beard for religious reasons. This contravenes the plain text and purpose of RLUIPA.

ARGUMENT

I. Religious involvement while in prison is one of the most significant factors in reducing the recidivism rate of released prisoners.

A series of studies performed over the past two decades shows that even relatively modest religious involvement in prison is one of the most significant factors in reducing the recidivism rate of released prisoners. The effect of such religious involvement on a person's likelihood of being rearrested within three years of release from prison surpasses any effect that has been shown from most secular programs designed to prepare prisoners for life after prison.

A. Even moderate participation in a religious program while in prison can dramatically reduce recidivism rates.

Prison Fellowship, supported by over 22,000 volunteers, is the largest organized prison ministry in the United States. Prison Fellowship Ministries, *Restoration: Prison Fellowship Ministries 2013 Annual Report* (2013). Dr. Byron R. Johnson, Dr. David B. Larson, and Dr. Timothy C. Pitts conducted a study of Prison Fellowship programs in four different New York prisons. Byron R. Johnson et al., *Religious Programs, Institutional Adjustment, and Recidivism Among Former Inmates in Prison Fellowship Programs*, 14 *Justice Quarterly* 145 (1997). This study found that prisoners who attended ten or more Bible studies during a one-year period prior to release—less than one per month—were 27% less likely than prisoners who did not attend Prison Fellowship activities to have been arrested one year after release. *Id.* at 156 Table 3 (The

“high” participation column considers prisoners who attended at least ten Bible studies in the year prior to their release). In a more recent study tracking these same prisoners, Dr. Johnson found that those prisoners who had attended only ten or more Bible studies during the year before release maintained a 14% to 21% lower recidivism rate two to three years after release versus prisoners who did not attend Prison Fellowship activities the year before release from prison. Byron R. Johnson, *Religious Programs and Recidivism among Former Inmates in Prison Fellowship Programs: A Long-Term Follow-Up Study*, 21 *Justice Quarterly* 329 (2004).

The efficacy of religious prison reform programs—as reflected in the reduced inmate recidivism rates in the two studies of Prison Fellowship programs—is even more dramatic when contrasted with the results seen in similar studies of secular prison reform programs. One widely cited study found that secular prison reform programs are effectively worthless. Robert Martinson, *What Works? Questions and Answers about Prison Reform*, 35 *Public Interest* 22 (1974). More recent studies show that participation in secular programs designed to reduce inmate recidivism only reduced recidivism rates by 5% to 10% versus non-participation in the programs. Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* 177 (2003).

B. Heavy religious participation while in prison yields even more dramatic reductions in recidivism.

Inspired by the success of its prison ministries, Prison Fellowship decided to launch a program replacing its part-time volunteer approach to prison ministry with a completely faith-based approach to prison. In 1997, this program, the InnerChange Freedom Initiative Pre-Release Program (“IFI”) was officially launched within the Texas Department of Criminal Justice (“TDCJ”). The Texas Legislature directed the Criminal Justice Policy Council (“CJPC”) to evaluate IFI and other prison programs based on their success in reducing recidivism. Prison Fellowship also commissioned an independent evaluation of IFI and its participants.

Under IFI, Prison Fellowship was responsible for all inmate programs while TDCJ was responsible for only security and custody. The IFI programs themselves, which in 2000–2001 cost \$1.45 million, were funded by Prison Fellowship, not by the state of Texas. Effectively, the IFI program forged a private-public partnership that (1) is extremely economical for the state, and (2) tests the proposition that a “sacred-secular” collaboration can achieve the civic purpose of reducing recidivism and thereby increasing public safety.

The CJPC and the independent evaluation of IFI found that IFI graduates—those who completed the IFI program—were 32.7% less likely to be arrested within two years after graduation and 28.3% less likely to be incarcerated within two years after graduation than inmates who did not complete the IFI program. In a

comparison of IFI inmates with a matched group, IFI graduates had a 16.3% lower recidivism rate than that of the matched group. Brittani Trusty & Michael Eisenberg, Criminal Justice Policy Council, *Initial Process and Outcome Evaluation of the InnerChange Freedom Initiative: The Faith-Based Prison Program in TDCJ 23* (2003).

Following its success with IFI in Texas, Prison Fellowship partnered with Minnesota to implement the IFI program at the Minnesota Correctional Facility—Lino Lakes, a medium-security prison. This Minnesota IFI program, started in 2002, was subject to a rigorous evaluation that controlled for 27 variables shown to increase or mitigate recidivism risk. Grant Duwe & Michelle King, *Can faith-based correctional programs work? An outcome evaluation of the InnerChange Freedom Initiative in Minnesota*, 20 *International Journal of Offender Therapy and Comparative Criminology* 1 (2012). This study found that, when compared with the control group, participation in the Minnesota IFI program reduced recidivism by 26% for rearrest, 35% for reconviction, and 40% for reincarceration for a new offense. Grant Duwe & Byron R. Johnson, *Estimating the Benefits of a Faith-Based Correctional Program*, 2 *International Journal of Criminology and Sociology* 227, 232 (2013). Participation in Minnesota's IFI program did not affect revocations for technical violations, however. *Id.* As a result of these reduced recidivism rates, Minnesota's IFI program saved the state approximately \$3 million in its first 6 years—almost \$8,300 per inmate who participated in IFI. *Id.* at 236.

C. Whatever the motivation of individual prisoners, the available research—which is limited for practical and legal reasons—confirms that religious programs are attractive, efficacious, and cost effective.

Religious programs for inmates are not only among the oldest but also among the most common forms of rehabilitative programs found in correctional facilities today. This high prevalence of use is confirmed by the United States Department of Justice, which reports representative data on America's prison population. Among all other types of personal enhancement programs offered in prison, religious activities attracted the most participation: 32 percent of the sampled inmates reported involvement in religious activities such as Bible studies and church services, 20 percent reported taking part in self-improvement programs, and 17 percent reported that they had been involved in counseling. This national survey verifies what many correctional practitioners and volunteers have observed for years: that many inmates attend and participate in religious programs.

Despite the widespread presence of religious programs in American prisons, social science research remains limited for two reasons. First, federal agencies and private foundations have rarely funded or prioritized research on faith-based programs within the field of corrections. Second, because the Establishment Clause has been interpreted to require voluntariness and a complete lack of coercion in custodial religious programs, social science researchers must rely on quasi-experimental designs rather than classical

experimental designs. For example, researchers may not randomly assign prisoners into experimental “religious” groups and “control” groups without risking litigation by Establishment Clause practitioners who argue it is unconstitutional to force prisoners into religious programs.

Although quasi-experimental designs have been commonly used and accepted by scholars for decades, critics of in-prison religious programs often argue that the favorable data are the result of selection bias: inmates who volunteer for religious programs are already qualitatively different from the general population of inmates—more accepting of authority, more motivated to self-improvement, more amenable to behavioral change. Relatedly, these critics also argue that religious programs provide resources widely unavailable to the general population of inmates, offering “false incentives” to proclaim one’s faith and the extent to which faith effects behavioral change. Citing these selection bias factors, critics aver that any positive effects are the byproducts of qualitatively “easier” inmates self-selecting into a religious program that offers a richer menu of resources, services, and human contact.

There are at least two arguments that cut against the selection bias criticism. First, selection bias is of little to no import for public policy decision-makers and taxpaying citizens who are interested in results. If the critics acknowledge the favorable results and reduced recidivism, what does it matter that an individual prisoner may have ulterior motives for joining a religious program? Second, the selection bias may run in the opposite direction: inmates who gravitate to

religious programs for “false incentives” may be qualitatively identical to the general population or worse, skewing the sample downwards. In fact, this is exactly what Dr. Byron R. Johnson discovered in the evaluation of IFI. In-depth interviews with inmates revealed that many enrolled to get close to their hometown (*i.e.*, Houston), not because they were religious or wanted to participate in a faith-based program. Likewise, interviews with chaplains and correctional staff at the same prison indicated a general distrust of inmates enrolling in this religious program. Indeed, correctional staff almost uniformly indicated that many of the enrollees were “cons” hoping to impress the parole board and earn an early parole for having participated in a religious program. In other words, the faith-based program would attract inmates that were anything but devoutly religious. Such inmates would look for any angle to exploit to position themselves in a better light before prison authorities and the parole board. If religious programs rehabilitate such “cons,” they will work with the general population, too.

II. Congress was persuaded that the benefits of protecting religious liberty in prisons warranted broad protection for prisoners’ religious free exercise.

When Congress enacted RLUIPA, it weighed the benefit that granting religious free exercise rights to prisoners would provide against the burden that would be placed upon prison administrators. Congress determined that the scales tipped in favor of providing religious liberty to inmates. 42 U.S.C. § 2000cc-1 (2013) (limiting government’s ability to burden

prisoners' religious exercise to those situations in which the government has a "compelling governmental interest" and uses the "least restrictive means of furthering that" interest).

After *City of Boerne v. Flores*, 521 U.S. 507 (1997), the House Subcommittee on the Constitution heard testimony from Charles Colson, President of Prison Fellowship Ministries (the parent entity of Prison Fellowship), that the loss of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, would particularly harm prisoners and their successful rehabilitation. Mr. Colson said,

I've spent the last twenty years working in prisons. I've seen the doors slam shut to religious services on the whim of administrators. I have experienced the arbitrary refusal of officials to allow religious activities. And immediately after the [*Employment Division v. Smith* decision, prison officials were able to prevent Jewish prisoners from wearing yarmulkes, deny Catholic prisoners access to a priest, and restrict Bible studies for evangelical prisoners.

This would be serious enough if only the personal religious rights of prisoners were at issue. But in fact, there is a societal interest involved here as well. Religious observance by prisoners is strongly correlated with successful rehabilitation. While it seems pretty clear that the First Amendment would prohibit the government from overtly pressuring prisoners to practice religion, it is sheer social folly to place any obstacles in the way of the many prisoners

who, on their own initiative, seek out ministers, priests, rabbis, Bible studies, and so forth. Yet I myself have spoken with wardens who seem more interested in cost containment than in rehabilitating prisoners, and who have told me that, were it not for prisoners' legal ability to sue for denial of free exercise, they would withhold even ordinary, mainstream, non-controversial forms of religious accommodation.

Protecting Religious Liberty After Boerne v. Flores: Hearing Before the House Comm. on the Judiciary, Subcomm. on the Constitution, 105th Cong. 3–11 (July 14, 1997) (statement of Charles W. Colson).

Later, during the hearings for the bill that would eventually become RLUIPA, Glenn S. Goord, Commissioner of the New York State Department of Correctional Services, submitted a statement to the Senate Judiciary Committee opposing the “least restrictive means” test for burdens on prisoners’ religious exercise because it would “subject the day-to-day judgment of prison officials to an inflexible strict scrutiny analysis by federal courts....” *Issues Relating to Religious Liberty Protection, and Focusing on the Constitutionality of a Religious Protection Measure: Hearing Before the S. Comm. on the Judiciary, 106th Cong. 174–75 (1999) (prepared statement of Glenn S. Goord).* Despite his objection to the bill, Commissioner Goord also said, “[L]et me assure the members of this committee that every correctional administrator in the country recognizes the vital role played by most religious practices and beliefs in furthering inmate rehabilitation, in maintaining a sense of hope and

purpose among individual inmates and in enhancing overall institutional safety and well-being.” *Id.*

Congress took note of the public-policy debate between prison administrators and prison reformers extolling the rehabilitative, recidivism-reduction benefits of religion. In the Joint Statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000, Senators Hatch and Kennedy said,

It is well known that prisoners often file frivolous claims; it is less well known that prison officials sometimes impose frivolous or arbitrary rules. Whether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways.

The House Subcommittee on the Constitution heard testimony to this effect from Charles Colson and Patrick Nolan of Prison Fellowship, and in great detail about violations of the rights of Jewish prisoners, from Isaac Jaroslawicz of the Aleph Institute. ...

The compelling interest test is a standard that responds to facts and context. What the Judiciary Committee said about that standard in its report on RFRA is equally applicable to This Act:

“[T]he committee expects that courts will continue the tradition of giving 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.

“At the same time, however, inadequately formulated prison regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the act’s requirements.” Senate Report 103–111 at 10 (1993).

146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Senator Hatch and Senator Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000) (brackets in original).

Like the inmates that Congress desired to protect in enacting RLUIPA, Gregory Holt has found new meaning for his life in his religion. Congress was aware that protecting prisoners’ religious practices limits prison administrators, and Congress decided that removing obstacles to prisoners’ rehabilitations is worth the effort. If RLUIPA is interpreted in such a narrow way that Gregory Holt is prohibited from having a beard for religious purposes—even though such beards are permitted for medical reasons—then Congress’s purposes in enacting RLUIPA are thwarted and prisoners will be discouraged from seeking the religious help that is proven to help most.

CONCLUSION

For the foregoing reasons, the Court should hold that RLUIPA provides a broad protection for religious exercise in prisons and reverse the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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