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United States District Court, E.D. California.

Karluk M. MAYWEATHERS; Dietrich J. Pennington; Jesus Jihad; Terrance Mathews; Aswad Jackson; Ansar Kees, individually and on behalf of all others similarly situated, Plaintiff,
v.
Calvin TERHUNE; A.C. Newland; Barry Smith; Bonnie Garibay; N. Fry; M.E. Valdez; N. Bennett; and F.X. Chavez, Defendants.

No. CIVS961582LKKGGHP. | July 2, 2001.

Opinion

ORDER

KARLTON, Senior J.

***1** Plaintiffs are a class of Muslim state prisoners housed at California State Prison, Solano seeking relief under, *inter alia,* the Religious Land Use and Institutionalized Persons Act of 2000, Pub.L. No. 106-274, 114 Stat. 803, codified at 42 U.S.C. §§ 2000cc *et seq.* ("RLUIPA"), for alleged violations of the right to the free exercise of their religion. This matter comes before the court on defendants' motion to dismiss plaintiffs' RLUIPA claim on the grounds that the act violates the constitution. I decide the motion based on the papers and pleadings filed herein and after oral argument.

I.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

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 imposition of the burden on that person .... is in furtherance of a compelling governmental interest[ ] and ... is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). The Act applies to any "program or activity that receives Federal financial assistance" or when "the substantial burden affects, or removal of that burden would affect [ ] commerce ... among the several states...." 42 U.S.C. § 2000cc-1(b)(1) and (2).

II.

DISMISSAL STANDARDS UNDER FED. R. CIV. P. 12(b)(6)

On a motion to dismiss, the allegations of the complaint must be accepted as true. *See Cruz v. Beto,* 405 U.S. 319, 322 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *See Retail Clerks Intern. Ass'n, Local 1625, AFL-CIO v. Schermerhorn,* 373 U.S. 746, 753 n. 6 (1963). Thus, the plaintiff need not necessarily plead a particular fact if that fact is a reasonable inference from facts properly alleged. *See id.; see also Wheeldin v. Wheeler,* 373 U.S. 647, 648 (1963) (inferring fact from allegations of complaint).

In general, the complaint is construed favorably to the pleader. *See Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). So construed, the court may not dismiss the complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief. *See Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957)). In spite of the deference the court is bound to pay to the plaintiff's allegations, however, it is not proper for the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that the defendants have violated the ... laws in ways that have not been alleged." *Associated General Contractors of California, Inc. v. California State Council of Carpenters,* 459 U.S. 519, 526 (1983).

III.

ANALYSIS

***2** Defendants argue that Congress exceeded its authority under the Spending Clause when it enacted RLUIPA. They also argue that RLUIPA violates the Establishment

Clause of the First Amendment as well as the Tenth, Eleventh and Fourteenth Amendments to the United States Constitution and the Separation of Powers and Commerce Clauses. I address their arguments below.

A. THE SPENDING CLAUSE

Defendants aver that Congress exceeded its authority under the Spending Clause by enacting RLUIPA because the Act is not in pursuit of the general welfare, its requirements are too vague, it is unrelated to a federal interest and it is coercive. I address their argument below.

The Constitution empowers Congress to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States[.]" U.S. Const. art. I, § 8, cl. 1. "Incident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." *South Dakota v. Dole,* 483 U.S. 203, 206 (1987) (quoting *Fullilove v. Klutznick,* 884 F.2d 445, 447 (9th Cir.1989)) (internal quotation marks omitted). Although "the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution[,]" *United States v. Butler,* 297 U.S. 1, 66 (1936), it does have its limits.

As I now explain, the High Court has held that under current doctrine, there are four limitations to congressional authority under the Spending Clause. First, the plain language of the clause itself requires that the exercise of the spending power be in pursuit of the "general welfare." *Dole,* 483 U.S. at 207 (citing *Helvering v. Davis,* 301 U.S. 619, 640-641 (1937) and *Butler,* 297 U.S. at 65). Second, "if Congress desires to condition the States' receipt of federal funds, it must do so unambiguously ... enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation." *Dole,* 483 U.S. at 207 (quoting *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 17 (1981)) (internal quotation marks omitted). Third, "federal grants might be illegitimate if they are unrelated to the federal interest in particular national projects or programs." *Dole,* 483 U.S. at 207-208 (quoting *Massachusetts v. United States,* 435 U.S. 444, 461 (1978) (plurality opinion)) (internal quotation marks omitted). Finally, other constitutional provisions may provide an independent bar to the conditional grant of federal funds. *Dole,* 482 U.S. at 208 (citations omitted).

i. *General Welfare*

Defendants' bald assertion that RLUIPA does not advance the general welfare is not well taken. In considering whether an expenditure is intended to serve general public purposes, courts defer substantially to the judgment of Congress. *Dole,* 483 U.S. at 207 (citing *Helvering v. Davis,* 301 U.S. 619, 640, 645 (1937)). In fact, "the concept of welfare or the opposite is shaped by Congress...." *Helvering,* 301 U.S. at 645. The level of deference accorded a congressional decision is such that the Court has recently questioned whether "general welfare" is a judicially enforceable restriction at all. *See Dole,* 483 U.S. at 207 fn. 2 (quoting *Buckley v. Valeo,* 424 U.S. 1, 90-91 (1976) (per curiam)).

***3** It is clear from the Act that Congress was endeavoring to ensure religious liberty, a concern of constitutional dimension. The Congressional Record reveals that the religious freedom of the incarcerated were of special concern to RLUIPA's sponsors.

> 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.

146 Cong. Rec. S7775 (daily ed. July 27, 2000) (Joint Statement of Senator Hatch and Senator Kennedy). In light of the Congressional Record, the plain intent of RLUIPA, and the level of deference due a congressional determination of the general welfare, the court concludes that RLUIPA serves general public purposes.

ii. *Notice*

Defendants argue that RLUIPA does not provide sufficient notice concerning the obligations attendant to the receipt of federal funds. Specifically, they contend that § 3 of RLUIPA is invalid because it does not detail specific conduct which is prohibited but rather provides broad protection against state interference with the free exercise of religion.

"When Congress acts pursuant to its spending power, it generates legislation much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Davis v. Monroe Cty. Bd. of Educ.,* 526 U.S. 629, 640 (1999) (quoting *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 17 (1981)) (internal quotation marks omitted). "In interpreting language in spending legislation, we thus insis[t] that Congress speak with a clear voice, recognizing that [t]here can, of course, be no knowing

acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it." *Davis,* 526 U.S. at 640 (quoting *Pennhurst,* 451 U.S. at 17) (internal quotation marks omitted).

Contrary to defendants' position, the court concludes that RLUIPA's prohibition is clear. The Act bars the recipient of federal funds from placing substantial burdens on an inmate's free exercise of religion absent a compelling interest and the employment of the least restrictive means. Similar language has been held to provide sufficient notice to other recipients of federal funding. *See Davis,* 526 U.S. at 640-644 (Title IX of the Education Amendments Act of 1972 which prohibits discrimination on the basis of sex in education provided sufficient notice that the recipients of federal funding can be held liable for their deliberate indifference to sexual discrimination by third parties).

iii. ***Relatedness***

Generally, where Congress attaches a condition to the receipt of federal finding, the condition "must (among other requirements) bear some relationship to the purpose of the federal spending." *New York v. United States,* 505 U.S. 144, 167 (1992) (citations omitted). The High Court has left open the question of whether the condition must be directly related to the main purpose of the funding. *Dole,* 482 U.S. at 209 n. 3. In any event, defendants argue that RLUIPA fails the relatedness prong because there is no federal financial assistance for inmate religious programs to which the condition could relate.

***4** The "relatedness" requirement does not apply where the federal government endeavors to ensure that its funds are not used to engage in conduct with which it disagrees. In *Lau v. Nichols,* the Court held that Congress acted within its Spending Clause powers by requiring schools receiving federal funds to comply with Title VI of the Civil Rights Act of 1964. 414 U.S. 583 (1974). The *Lau* Court observed that Congress had not exceeded the limits of the Spending Clause by requiring federal funds recipients to comply with Title VI because " '[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." ' *Id.* at 789 (quoting 110 Cong. Rec. 6543 (Sen. Humphrey, quoting from President Kennedy's message to Congress, June 19, 1963)).

In essence, RLUIPA seeks to ensure that federal funds are in no way used to suppress religious freedom. *See* 42 U.S.C. § 2000cc-1(b)(1). This goal is analogous to conditioning the receipt of federal education assistance so as to ensure that federal funds are not used to subsidize racial discrimination. *See Lau,* 414 U.S. 583. Moreover, as I now explain, even if the *Dole* relatedness standard applied, RLUIPA's purpose is related to the purposes underlying the federal funding.

RLUIPA's provisions are directly related to the rehabilitation of federal inmates housed in state prisons. According to defendants, the California state prison system currently receives federal funding in exchange for housing federal prisoners and INS detainees who would otherwise be kept at federal institutions. Had those prisoner been housed in federal institutions, they would enjoy protection of their religious freedoms under the Religious Freedom and Restoration Act, *see* 42 U.S.C. § 2000bb-1 ("RFRA"). In enacting RFRA, Congress found that religion played a vital role in the rehabilitative process for some inmates. *See, e.g.,* 139 Cong. Rec. S578 (daily ed. Oct. 27, 1993) (statement of Sen. Hatch) ("[E]xposure to religion is the best hope we have for rehabilitation of a prisoner. Most prisoners, like it or not, will eventually be returning to our communities.") RLUIPA seeks to extend the protection of religious freedom embodied in RFRA to, *inter alia,* federal inmates housed at state institutions. In sum, as to those prisoners, the rehabilitative concerns underlying RFRA apply with equal force to the concerns underlying RLUIPA, and thus, are germane to the purpose of the federal funding. Moreover, as noted, to the extent that Congress has determined that rehabilitation of prisoners limits the commission of crimes, a result which clearly affects the general welfare, the extension of the act to state prisoners is also well within the germaneness limitation of the Spending Clause.

iv. ***Independent Constitutional Bar***

Finally, defendants argue that the RLUIPA is unconstitutionally coercive because it conditions the receipt of all federal funding upon compliance with RLUIPA and not just a percentage of the federal funds as was the case in *Dole.* I cannot agree.

***5** Although the *Dole* Court noted that some prior decisions had "recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion," ' it ultimately concluded that "to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties." *Dole,* 483 U.S. at 211 (quoting *Steward Machine Co. v. Davis,* 301 U.S. 548, 589-590 (1937)) (internal quotation marks omitted). The *Steward Machine* Court, itself, expressed doubt as to whether the concept of coercion "can ever be applied with fitness to the relations between state and nation." 301 U.S. at 590. Instead, the Court has, over time, "been guided by a robust common sense which assumes" that states employ their "freedom of the will" in choosing whether to accept or reject conditional grants of federal financial

assistance. *Id.* Similarly, the Ninth Circuit has noted that the coercion test "has been much discussed but infrequently applied in federal case law, and never in favor of the challenging party." *Nevada v. Skinner,* 884 F.2d 445, 448 (9th Cir.1989) (upholding threatened reduction of federal highway funds by 95 percent).

In the case at bar, Congress has not made compliance with RLUIPA § 3 mandatory; rather, a state "seeking to escape the statute's obligations could simply forgo federal funding." *Board of Education v. Mergens,* 496 U.S. 226, 241 (1990). Indeed, the Supreme Court has recognized that, even in cases where forgoing federal funding would in fact "be an unrealistic option," compliance with the mandates of a Spending Clause condition "is the price a federally funded [entity] must pay." *Id.*[1]

Defendants also contend that RLUIPA violates the Establishment Clause of the First Amendment, the Tenth and Eleventh Amendments, the separation of powers and the Commerce Clause. I now turn to these arguments.

B. THE ESTABLISHMENT CLAUSE

Defendants argue that the RLUIPA violates the Establishment Clause by promoting religion over irreligion. Defendants are mistaken.

The Establishment Clause of the First Amendment to the United States Constitution provides that, *inter alia,* "Congress shall make no law respecting an establishment of religion." There are "three main evils against which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in religious activity." *Lemon v. Kurtzman,* 403 U.S. 602, 612 (1971) (internal citation and quotation marks omitted).

Under the *Lemon* standard, a court may invalidate a statute only if it is motivated wholly by an impermissible purpose, *see Lynch v. Donnelly,* 465 U.S. 668, 680 (1984); *Stone v. Graham,* 449 U.S. 39, 41 (1980), if its primary effect is the advancement of religion, *see Estate of Thornton v. Caldor, Inc .,* 472 U.S. 703, 708 (1985), or if it requires excessive entanglement between church and state. *See Lemon,* 403 U.S. at 613. As I explain below, RLUIPA is guilty of none of these vices.

***6** Defendants cite to *Bd. of Educ. of Kiryas Joel v. Grumet,* 512 U.S. 687 (1993) in support of their argument that RLUIPA does not have a secular purpose. In *Kiryas Joel,* the Court struck down New York Education Law § 1709 which specifically created a separate school district for a religiously-oriented community. The Court held that the law violated the Establishment Clause because it delegated political control to a religious group. 512 U.S. at 698. Contrary to defendants' suggestion, however, the Court did not hold that government protection of religious freedom ran afoul of the Establishment Clause. In fact, each opinion in that case disavowed any notion that government action to mitigate the impact of burdens on religion violates the Establishment Clause. *See* 512 U.S. at 705-708 (Souter, Blackmun, Stevens, O'Connor, Ginsberg, JJ.); *id.* at 711-12 (Stevens, Blackmun, Ginsberg, JJ.); *id.* at 714-16 (O'Connor, J.); *id.* at 722-723 (Kennedy, J.); *id.* at 743-45 (Scalia, Rehnquist, Thomas, JJ., dissenting).

In *Corporation of the Presiding Bishop v. Amos,* the Court considered an Establishment Clause challenge to the exemption from Title VII of the Civil Rights Act of 1964, codified as 42 U.S.C. § 2000e-1, for the secular nonprofit activities of a religious organization. 483 U.S. 327 (1987). In affirming the exemption, the Court observed that "[t]here is ample room under the Establishment Clause for benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." *Amos,* 483 U.S. at 334 (quoting *Walz v. Tax Comm'n,* 397 U.S. 664, 668 (1970)) (internal quotation marks omitted). The Court went on to note that "[u]nder the *Lemon* analysis, it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Amos,* 483 U.S. at 335; *see also Lynch v. Donnelly,* 465 U .S. 668, 673 (1984) ("Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.")

Nor does RLUIPA improperly advance or inhibit religion. While it is true that RLUIPA protects religious freedom, this is not fatal. As the Supreme Court has explained, "[f]or a law to have forbidden 'effects' under *Lemon,* it must be fair to say that the *government itself* has advanced religion through its own activities and influence." *Amos,* 483 U.S. at 337 (emphasis in original). Section 3 of RLUIPA does not itself promote or subsidize a religious belief or message. Rather, it frees religious groups and individuals to practice as they otherwise would in the absence of certain state-imposed regulations. "A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose." *Id.* (emphasis in original). The Supreme Court

> ***7** has never indicated that statutes that give special consideration to religious groups are per se invalid. That would run contrary to the teaching of our cases that there is ample room for accommodation of religion under the Establishment Clause. Where, as here, government acts with the proper

> purpose of lifting a regulation that burdens the exercise of religion, we see no reason to require that the exemption come packaged with benefits to secular entities.

Amos, 483 U.S. 327, 338 (1987).

Finally, RLUIPA does not "foster an excessive entanglement with religion." *Lemon,* 403 U.S. at 613. To the contrary, the Act seeks to protect religious liberty from intrusion by the States. As the *Amos* Court explained, "[i]t cannot be seriously contended that [the statute] impermissibly entangles church and state; the statute effectuates a more complete separation of the two...." 483 U.S. at 339.

C. THE TENTH AND ELEVENTH AMENDMENTS

Defendants next argue that RLUIPA violates the Tenth and Eleventh Amendments to the United States Constitutions.

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State."

The Supreme Court has held that, notwithstanding the Eleventh Amendment, federal courts have jurisdiction to hear suits seeking prospective injunctive relief against state officials who violate federal law. *See Ex parte Young,* 209 U.S. 123 (1908). The Court has since explained that the *Ex parte Young* exception to state sovereign immunity is "necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to the supreme authority of the United States." *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 105 (1984). In this case, plaintiffs seek only such injunctive relief.[2]

Nor does it appear that the Act violates the Tenth Amendment which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Supreme Court has explained that "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York v. United States,* 505 U.S. 144, 156 (1992); *Gregory v. Ashcroft,* 501 U.S. 452, 460 (1991) ("As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States."); *see also United States v. Jones,* 231 F.3d 508, 515 (9th Cir.2000) ("[I]f Congress acts under one of its enumerated powers, there can be no violation of the Tenth Amendment."). As explained above, § 3 of RLUIPA is a valid enactment pursuant to Congress' Spending and Commerce Clause powers and therefore does not violate the Tenth Amendment.

D. THE COMMERCE CLAUSE

***8** Finally, defendants argue that Congress exceeded it authority under the Commerce Clause when it enacted the RLUIPA. Again, I cannot agree.

In addition to anchoring § 3(a) of RLUIPA in the Spending Clause, Congress alternately provided that § 3(a) applies in those instances when "the substantial burden affects or removal of that burden would affect, commerce with foreign nation, among the several States, or with Indian tribes." The jurisdictional element in § 3(b)(2) thereby ensures that Congress' Commerce Clause power is only exercised in those cases where interstate commerce is directly affected by the prison regulation at issue. *See United States v. Lopez,* 514 U.S. 549, 561 (1995) ("Section 922(q) has no jurisdictional element which might limit its reach to a discrete set of firearms possessions that additionally have an explicit connection with or effect on interstate commerce.") Thus, by definition, § 3 of RLUIPA does not exceed the boundaries of the Commerce Clause.

E. SEPARATION OF POWERS

Next, defendants contend that § 3 of the RLUIPA seeks to reverse the Supreme Court's interpretation of the First Amendment's Free Exercise Clause as announced in *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990). Defendants also complain that § 4(b) of the RLUIPA seeks to reverse the Supreme Court's analysis of prisoners' constitutional claims against state officials as outlined in *Turner v. Safely,* 482 U.S. 78 (1987).

While Congress cannot, through ordinary legislation, amend the Court's authoritative interpretation of the Constitution, "congressional disapproval of a Supreme Court decision does not impair the power of Congress to legislate a different result, as long as Congress had that power in the first place." *United States v. Marengo County Comm'n,* 731 F.2d 1546, 1562 (11th Cir.1984); *see also City of Boerne v. Flores,* 521 U.S. 507, 535 (1997) ("When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution. This has been clear from the early days of the Republic.") As explained above, Congress acted properly pursuant to its power under the Spending Clause and the Commerce Clause in enacting

RLUIPA.

F. SECTION 5 OF THE FOURTEENTH AMENDMENT

Finally, defendants argue that Congress did not satisfy the requirements of section 5 of the Fourteenth Amendment to the United States Constitution when it enacted the RLUIPA. Plaintiffs concede as much but argue that the Act is nonetheless proper under the Commerce and Spending Clauses. There is no indication in the Act that Congress relied on the Fourteenth Amendment and any such defect would not impact the constitutionality of the Act insofar as it rests on independent constitutional authority.

IV.

ORDERS

Accordingly, the court hereby ORDERS that defendants' motion to dismiss plaintiffs' RLUIPA claim is DENIED.

***9** IT IS SO ORDERED.

Footnotes

1 Although not necessary to the court's determination that RLUIPA is not unduly coercive, plaintiffs have provided the court with an excerpt of the California Department of Correction's 2001-2002 budget which indicates that federal funding amounts to a paltry 1.9 million dollars out of the Department's annual budget of roughly 4.8 million dollars. The court takes judicial notice of plaintiffs' submission. *See* Fed.R.Evid. 201.

2 Because the instant suit seeks only prospective injunctive relief, the court need not consider whether a suit for damages lies under RLUIPA and, if so, what consequences flow from such a conclusion.