IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GEORGE GOFF; WILLIAM BARBEE; JIM DORSEY; TOM YARGES; JEFF RAGLAND; JAMES HALL; MICHAEL GUNN; JON JON KING; ADAM TANNER; SAM ARCHER; MICHAEL O'DONNELL; PAT CUPPLES; JEFF WINTERS; and ART POYNER; Plaintiffs, v. LEONARD GRAVES; JAMES HELLING; and BERNARD EAVES; Defendants.	CIVIL NO. 4-97-CV-90341 MEMORANDUM OPINION, RULINGS PARTIALLY ADOPTING AND PARTIALLY REJECTING REPORT AND RECOMMENDATION, AND ORDERS DISMISSING PART OF COMPLAINT AND COUNTERCLAIM AND RECOMMITTING CASE TO MAGISTRATE JUDGE

Plaintiffs, current or former inmates at the Iowa State Penitentiary, bring a complaint against defendants, alleging violations of their First Amendment Free Exercise Clause rights and of this court's orders in *Remmers v. Brewer*, 361 F. Supp. 537, 544 (S.D. Iowa 1973), and *Loney v. Scurr*, 474 F. Supp. 1186, 1197 (S.D. Iowa 1979). They seek injunctive relief for the alleged First Amendment violations and injunctive relief and a finding of contempt for the violations of *Remmers* and *Loney*. Defendants bring a counterclaim, seeking the following three declarations: (1) that plaintiffs are insincere in their professed religious beliefs, (2) that plaintiffs' professed religious activities are nonreligious and therefore not entitled to First Amendment protection, and (3) that legitimate penological interests outweigh plaintiffs' claims. The case was referred to Chief Magistrate Judge Ross A. Walters, pursuant to 28 U.S.C. § 636(b)(1)(B), who presided over an evidentiary hearing on October 27, 28, and 29, 1998, and June 1, 1999. Judge Walters's report

2110.

and recommendation recommends dismissal of plaintiffs' complaint and defendants' counterclaim. Plaintiffs filed objections to the report and recommendation, and defendants responded to plaintiffs' objections.

I. STANDARD OF REVIEW

Title 28 U.S.C. § 636 provides the applicable standard of review.

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

Objections are to be liberally construed to assure that the district court maintains substantial control over the ultimate disposition of the referred case. *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995). A district court must conduct a de novo review of any portion of a report and recommendation to which an objection has been lodged, and that review is independent of and applies no presumption of validity to the objected-to findings and recommendations. *Id.* Even if no objections are made, a district court must still decide for itself whether the magistrate judge was correct. *Lorin Corp. v. Goto & Co., Ltd.*, 700 F.2d 1202, 1206 (8th Cir. 1983) ("[T]he failure to file objections will relieve the district court of the obligation to review de novo those portions of the report to which objection is made. It does not follow, however, that the absence of objection relieves the district court of its obligation to act judicially, to decide for itself whether the Magistrate's report is correct."). A party who fails to object, however, should know that "as a practical matter . . . the chances of getting the Magistrate's report rejected are less than they would be if he brought specific objections to the attention of the district judge." *Id.*

II. OBJECTIONS

A. NUMBER ONE

Plaintiffs object to Judge Walters's conclusion that denial of Celebration of Life banquet food to Church of the New Song ("CONS") inmates in lock-up does not violate the First Amendment or *Remmers*'s and *Loney*'s equal-treatment rule. The equal-treatment rule is inextricably intertwined with the First Amendment issue. It simply says that CONS members have "the right to exercise their religion equally with other religions," *Remmers*, 361 F. Supp. at 544, and that CONS members are "to be accorded the same treatment accorded other recognized religions, with respect to both privileges and restrictions," *Loney*, 474 F. Supp. at 1197, because Eclatarianism is a legitimate, judicially-recognized religion.[1] *Remmers*, 361 F. Supp. at 542; *Loney*, 474 F. Supp. at 1195. The rule, therefore, necessarily invokes First Amendment protections. *Remmers*, 361 F. Supp. at 542; *see Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir. 1985) ("[O]nly sincerely held beliefs which are 'rooted in religion' are protected by the free exercise clause."); *cf. id.* ("First Amendment religious protection is not extended to 'so-called religions which tend to mock established institutions and are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'") (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974)).

Judge Walters's discussion and resolution of the two issues are found on pages fourteen

---

[1]The equal-treatment rule does not require that all religious members receive the very same accommodations. For example, the fact that Muslims in lock-up receive special food to celebrate the end of Ramadan does not necessarily mean that CONS members in lock-up must receive special food to celebrate their holidays. Rather, the rule merely requires that all religious members receive a reasonable opportunity to pursue their faith. *See Cruz v. Beto*, 405 U.S. 319, 322 & n.2 (1972) (per curiam).

through seventeen of the report and recommendation. His conclusions are based on the following three reasons: (1) because Eclatarianism, the CONS religion, does not require adherence to any dietary restrictions or traditions, the feast requirement is not a religious belief,[2] (2) because dietary restrictions or traditions are not central tenets of Eclatarianism, there is no substantial burden upon plaintiffs' exercise of their religion, and (3) there is insufficient evidence to conclude that the unequal treatment of Muslims in lock-up and CONS members in lock-up violates *Remmers* and *Loney*.

The fact that Eclatarianism in general is protected by the First Amendment does not mean that all beliefs and practices of CONS members are similarly protected. "Purely secular views or personal preferences will not support a Free Exercise Clause claim." *Ochs v. Thalacker*, 90 F.3d 293, 296 (8th Cir. 1996). Only religious beliefs or preferences, namely those that are "rooted in religion," are protected. *Love v. Reed*, 216 F.3d 682, 689 (8th Cir. 2000); *Wiggins*, 753 F.2d at 666-67.

Judge Walters concluded that the denial of banquet food does not violate the equal-treatment rule because the feast is not religiously motivated or compelled, and thus not a religious belief. Report and Recommendation at 14, 16-17. He found the feast more akin to a church supper or social event than a ritual meal or ceremony. He based this on the facts that plaintiffs did not testify that Eclatarianism requires food for the banquet, and that the Paratestament, Eclatarianism's principal doctrinal source, does not indicate that banquet food is required. *Id.* Because the equal-treatment rule is inextricably intertwined with the First Amendment, Judge

---

[2]The court assumes, for purposes of this opinion, that Judge Walters made this conclusion on pages sixteen and seventeen of the report and recommendation.

Walters's findings and conclusion are relevant to the First Amendment issue of whether the feast is a religious belief.

The case of *Spies v. Voinovich*, 173 F.3d 398, 406-07 (6th Cir. 1999), supports the principle that a court may inquire whether religious conduct is central to that religion in determining whether the conduct is a religious belief for First Amendment purposes. In that case, the court rejected the plaintiff's claim of a right to a vegan diet, a strict diet to which the person consumes no animal-based food products, including dairy and egg products, *id.* at 402 n.1, because Spies admitted that a vegan diet was not a requirement for Zen Buddhist practice. *Id.* at 406.[3] The dissenting judge took strong issue with this analysis. *Id.* at 409 (Moore, J., dissenting) ("It is not our role to determine whether a particular practice is a 'required' aspect of a religion."). The Third Circuit Court of Appeals in *DeHart v. Horn*, 227 F.3d 47, 55-57 & n.6 (3d Cir. 2000), also disagreed with the *Spies* court's analysis.

This court agrees with *DeHart* and the *Spies* dissent, and concludes that a determination that the feast is not a requirement of Eclatarianism, and therefore not a religious belief, is an inquiry inconsistent with Supreme Court and Eighth Circuit law. *See id.* at 56-57 (listing relevant Supreme Court cases on the issue); *Ochs*, 90 F.3d at 296 (refusing to decide case on ground that plaintiff's belief was not supported by his religion because "[c]ourts must be cautious in attempting to separate real from fictitious religious beliefs."); *Wiggins*, 753 F.2d at 666-67 ("A court is not to determine religious orthodoxy."). *Spies* itself is distinguishable in a fundamental way because there the court did not make the determination, but rather the plaintiff did through an

---

[3]The court did explain that its conclusion was also relevant to the second of the four *Turner v. Safley*, 482 U.S. 78 (1987), factors. *Spies*, 173 F.3d at 407.

admission. *Spies*, 173 F.3d at 407 ("Spies admits that adherence to a vegan diet is not required under Zen Buddhist practice . . . [and] [t]hus we need not make this determination in this case."). In this case, there is no direct admission by plaintiffs that the feast is not a religious requirement.

The facts found by Judge Walters clearly support a finding that the feast is rooted in religion, and therefore is a religious belief. The only asserted CONS holiday identified in the record is the Celebration of Life. Report and Recommendation at 7. It commemorates the day on which CONS was founded by Harry Theriault in 1970. *Id.*; *Theriault v. Carlson*, 339 F. Supp. 375, 377 (D.D.C. 1972), *vacated by* 495 F.2d 390 (5th Cir. 1974), *cited by Remmers*, 361 F. Supp. at 540. Plaintiffs or other CONS members have celebrated the holiday from 1973 to 1998, although it is unclear whether it has consistently been an annual event. Report and Recommendation at 7-8 & n.6. The focal point of the holiday is "a banquet for general population CONS inmates. Food is catered in from outside the penitentiary and paid for by the inmates from the church's prison accounts. In the past food trays were delivered to church members in lock-up status." *Id.* at 7. Furthermore, the feast has direct support in the Paratestament, Defendants' Exh. S, at 62 verse 149 ("[E]ach year on the same date the Seminary of the Fountainhead . . . will hold the Annual Sacred Unity Feast . . . ."); *see Love*, 216 F.3d at 689 (noting that plaintiff's religious practice was supported "by direct reference to a passage in his religious text"), and plaintiffs testified that verse 149 is the source of the feast requirement. Trial Trans. at 57, 244.

These facts do not support a finding that the feast is *purely* secular or a personal preference. *Cf. Ochs*, 90 F.3d at 296 ("*Purely* secular views or personal preferences will not support a Free Exercise Clause claim.") (emphasis added); *id.* (questioning whether belief was religious because it was "directed at an entirely secular aspect of life, the race of his cellmate");

Africa v. Pa., 662 F.2d 1025, 1026-27 (3d Cir. 1982), *cited by Wiggins*, 753 F.2d at 666 n.4 (noting that plaintiff "simply believed that everything he did had religious significance"). The facts that plaintiffs may enjoy the Celebration of Life feast and view it as a religious and social event do not strip it of First Amendment protection. The First Amendment "protects the area where [secular and religious] overlap." *Love*, 216 F.3d at 689; *Wiggins*, 753 F.2d at 666 n.5 ("'The devout Seventh-Day Adventist may enjoy his Saturday leisure; the Orthodox Jew or Mohammedan may dislike the taste of pork. Such personal considerations are irrelevant to an analysis of the claimants' free exercise rights, so long as their religious motivation requires them to keep the Sabbath and avoid pork products.'") (quoting *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981)). The fact that an individual's interpretation of his religious laws or doctrines may be objectively questionable is of no moment either because the relevant question is whether the practice or belief is rooted in religion, not whether it is logical, comprehensible to others, or consistent with ecclesiastical law. *Id.* at 666; *Love*, 216 F.3d at 687, 689 n.9. This court concludes the facts support a finding that plaintiffs' feast during the Celebration of Life is rooted in religion, and therefore is a religious belief.[4]

Although the feast is a religious belief, the defendants can deny banquet food to CONS members in lock-up if it does not substantially burden their ability to freely exercise their religion. *Id.* at 689. For a regulation to be a substantial burden,

> the government action must "significantly inhibit or constrain conduct or expression that manifests some central tenet of a [person's] individual [religious] beliefs; must meaningfully curtail a [person's] ability to express adherence to his or her faith; or must deny a [person] reasonable opportunities to engage in those activities that are fundamental to a [person's] religion."

---

[4]The sincerity of plaintiffs' beliefs will be addressed at the end of this opinion.

Weir v. Nix, 114 F.3d 817, 820 (8th Cir. 1997) (alterations in original) (quoting *In re Young*, 82 F.3d 1407, 1418 (8th Cir. 1996), *vacated sub nom. Christians v. Crystal Evangelical Free Church*, 521 U.S. 1114 (1997)). To be a substantial burden, the regulation must fall on conduct that is religiously compelled, not conduct that is merely religiously motivated. *See Young*, 82 F.3d at 1418 (comparing the different scopes of the substantial-burden test depending on whether it is applied in the First Amendment or Religious Freedom Restoration Act context) (citing *Sasnett v. Sullivan*, 908 F. Supp. 1429 1440-45 (W.D. Wis. 1995), *vacated by* 521 U.S. 1114 (1997)). Judge Walters concluded that there is no substantial burden because the feast has no religious significance, is not religiously motivated or compelled, is not a fundamental religious activity, and the inmates in lock-up are still able to pray and allowed access to inmate ministers. Report and Recommendation at 14-17.

Initially, this court is wary of engaging in an in-depth debate of whether the feast is religiously compelled. *See Ochs*, 90 F.3d at 295 (questioning, but not deciding, whether the prison substantially burdened the prisoner's sincere religious beliefs); *Young*, 82 F.3d at 1418 (assuming, for purposes of analysis, "that courts can constitutionally determine the parameters of religious belief, what beliefs are important or fundamental, and whether a particular practice is of only minimal religious significance"). However, this court is required to do so, as discussed in *Weir*.

The record supports a finding that denying banquet food to CONS members in lock-up during the Celebration of Life does substantially burden the free exercise of their religion. Importantly, the feast has direct support in the Paratestament, Defendants' Exh. S, at 62 verse 149; *see Love*, 216 F.3d at 689, and plaintiffs testified that verse 149 is the source of the

requirement to hold a feast for the Celebration of Life. Trial Trans. at 57, 244. Although there is no requirement that a certain type of food be eaten at the feast, *id.* at 30, 31, 104, the food eaten at the feast is determined by a majority vote of the CONS members. *Id.* at 57. As Judge Walters found, the menu itself does not have religious significance because Eclatarianism does not have dietary requirements or restrictions. However, this does not resolve the issue because the feast itself is religiously compelled, as evidenced in the Paratestament and by plaintiffs' testimony. The act of partaking in the feast is the religiously-significant practice. Refusing the banquet food to CONS members in lock-up definitely burdens their free exercise of religion in a substantial way.

This is not a situation like in *Weir* where the "religious practices" were many, some of which were outlandish. *Weir*, 114 F.3d at 820-22 (describing Weir's request for a "well-rounded research library" in his cell as outlandish). The banquet is held only one day a year to celebrate the founding of the religion. The fact Eclatarianism may be an unconventional religion does not cheapen it in the First Amendment's eyes. *See Wiggins*, 753 F.2d at 667 n.7 ("The free exercise clause . . . requires that [inmates] be given a 'reasonable opportunity of pursuing [their] faith comparable to the opportunity afforded fellow prisoners who adhere to *conventional* religious precepts. . . .'") (emphasis added) (second alteration in original) (quoting *Cruz*, 405 U.S. at 322).

Providing CONS members in lock-up with alternate means to practice their religion does not require the conclusion that the denial of banquet food does not substantially burden religious practice.[5] Prison inmates are entitled to reasonable accommodations of their religious dietary needs, and a refusal to reasonably accommodate these needs can result in a substantial burden on

[5]Alternate means of practicing religion is relevant to the second *Turner* factor, as discussed later in this opinion.

free religious exercise. *See Love*, 216 F.3d at 689-90. Allowing CONS members in lock-up to pray and consult with an inmate minister does not allow them a legitimate way to commemorate the Celebration of Life feast. As Judge Walters found, the focal point of the Celebration is a banquet feast for CONS members. Denying CONS members in lock-up any banquet food effectively denies them any opportunity to participate in the Celebration of Life feast. Like the situation in *Love*, an alternative of praying or meeting with an inmate minister is not an alternative at all. *Id.* at 689. It is comparable to refusing *any* halal meat to a Muslim in lock-up during Eid-al-Fitr. *Cf. Hicks v. Acevedo*, No. 4-96-cv-70072, at 6 (S.D. Iowa Dec. 17, 1996) (unpublished) (finding that request for *hot* halal meat was not religiously motivated but was a personal preference). This court, therefore, finds that the failure to provide CONS members in lock-up with any banquet food on the day of the Celebration of Life substantially burdens their ability to freely exercise their religion.

Defendants' actions can still be upheld if they are "reasonably related to legitimate penological interests." *Love*, 216 F.3d at 690 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). In determining whether the denial of banquet food is reasonable, this court must consider the following four factors:

> (1) whether there is a valid, rational connection between the [denial of banquet food] and the interest asserted; (2) whether alternative means of exercising the right remain open to the prisoner; (3) the effect the requested accommodation will have on guards, other inmates, and the allocation of prison resources; and (4) whether there is some alternative which will accommodate the prisoner's needs with de minimis impact on the prison's asserted interests.

Id. (quoting *Turner*, 482 U.S. at 89-91). Judge Walters did not reach this issue, but he did find

that the defendants' security concerns[6] would not justify treating CONS members in lock-up differently than Muslims in lock-up who receive food trays for purposes of Eid-al-Fitr, that the impact of providing banquet food to CONS members in lock-up would have minimal impact on the prison, and that inspection of the meals would be a reasonable alternative to address the security concerns. Report and Recommendation at 17 n.10; *see id.* at 24-25 (discussing *Turner* factors in context of defendants' counterclaim to deny *any* Eclatarian activity in the prison). Judge Walters's discussion and findings on this issue, with which this court agrees, show that *Turner* factors one, three, and four favor the conclusion that the denial of banquet food is not reasonable. *Turner* factor two favors a finding of reasonableness because there are alternate means of expression available to CONS members in lock-up, namely praying and consulting with an inmate minister. *See O'Lone v. Shabazz*, 482 U.S. 342, 352 (1987) (finding the second *Turner* factor supported finding that the regulation was reasonable because respondents had the ability "to participate in other religious observances of their faith"); *DeHart*, 227 F.3d at 54 (concluding that the term "right" in the second *Turner* factor means the right to free religious expression, not the right to a specific means of practice or communication). However, on balance, the factors demonstrate that the denial of banquet food is not reasonably related to a legitimate penological interest. *See Love*, 216 F.3d at 690-91.

B. NUMBER TWO

Plaintiffs argue that they are a partially prevailing party for purposes of attorney fees. This issue is not properly before the court at this time, and therefore it will not be addressed.

---

[6]The defendants' security concerns are contained in their proposed findings of fact, conclusions of law, and orders, which are filed under seal.

III. RULINGS AND ORDERS

Plaintiffs do not object to Judge Walters's report that there is no First Amendment violation from defendants' refusal to allow plaintiffs to hold the Celebration of Life feast on plaintiffs' chosen date. This court **ADOPTS** that part of the report and **ADOPTS** Judge Walters's recommendation that this claim be dismissed. It is **ORDERED** that this part of plaintiffs' complaint be dismissed.

The court **ADOPTS** Judge Walters's report and recommendation to deny defendants' requested declarations that plaintiffs' Eclatarian activities are nonreligious and not protected by the First Amendment, and that legitimate penological interests justify refusing to allow plaintiffs to engage in any Eclatarian activity. It is **ORDERED** that these parts of the counterclaim be dismissed.

Because this court concludes that the denial of banquet food to CONS members in lock-up during the Celebration of Life is not reasonably related to legitimate penological interests, the denial violates the First Amendment Free Exercise Clause rights of those plaintiffs who sincerely believe in Eclatarianism. The court, therefore, **REJECTS** the report on this issue. The report, however, did not address the sincerity issue, but did note that some of the plaintiffs were sincere and some were not. Report and Recommendation at 21. Because the First Amendment only protects those who are sincere in their religious beliefs, *Wiggins*, 753 F.2d at 666, this issue needs to be resolved before this court can decide whether to adopt or reject Judge Walters's recommendation to dismiss the remaining claim in plaintiffs' complaint. This court, therefore **RECOMMITS** the case to Judge Walters for a report that determines the sincerity of each individual plaintiff's beliefs in Eclatarianism. Because defendants raise the sincerity issue in their

counterclaim, the court **RECOMMITS** that part of the counterclaim to Judge Walters for a report and recommendation.

Dated this 29th day of January, 2001.

Robert W. Pratt
U.S. District Court Judge