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Religious Land Use and Institutionalized Persons Act (RLUIPA)

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-2128

Public Law 106-274, codified as 42 U.S.C. §2000 cc et seq., is a United States federal law that prohibits the imposition of burdens on the ability of prisoners to worship as they please and gives churches and other religious institutions a way to avoid burdensome zoning law restrictions on their property use. It was enacted by the United States Congress in 2000 to correct the problems of the Religious Freedom Restoration Act (RFRA) of 1993.

In the 2005 case of *Cutler v. Wilkinson*, five prisoners in Ohio – including a Wiccan, a Satanist, and a member of a racist Christian sect – successfully sought to apply the protections of the act into their religious practices. The U.S. Court of Appeals for the Sixth Circuit had held that RLUIPA violated the Establishment Clause by impermissibly advancing religion by bestowing benefits to religious prisoners that were unavailable to non-religious prisoners.

The U.S. Supreme Court disagreed, unanimously holding that RLUIPA was a permissible accommodation of religion justified by the fact that the government itself had severely burdened the prisoners' rights through the act of incarceration.

In a unanimous opinion issued March 15, 2011, the entire U.S. 9th Circuit Court of Appeals held that an Orange County courthouse lockup is an "institution" under RLUIPA, meaning a Muslim woman who sued after being forced to remove her headscarf in front of strange men is entitled to the act's protections. The case is *Khatib v. County of Orange*, 08-56423. The lawsuit stated that as a result of court bailiffs ordering the woman to remove her headscarf while she was temporarily being held inside the courthouse lock up while a county court judge was deciding whether or not to revoke her misdemeanor probation (she was released that same day after the judge decided not to). It is the first time that a temporary holding facility (like a courthouse lock up) has been deemed to be an "institution" under the Act. The law prohibits the government from imposing a "substantial burden" on prisoner's religious practice unless officials can show a compelling need for the restrictions.

In *Ha'min v. Lewis*, 440 F.Supp.2d 715 a Muslim county jail inmate incarcerated in Montgomery County, TN sued claiming that the county violated his First Amendment rights by failing to accommodate his religious needs. The district court held that the Establishment Clause was not violated when the county provided Bibles to inmates, but did not provide the Quaran to the Muslim inmate, where the county, which did not pay for any religious materials, distributed donated Bibles to inmates and would have distributed donated Quarans, if any had been received. The inmate requested the county to remove his personal copy of the Quaran from his property and give it to him, which they did. The court found that the county did not violate the free exercise of religious rights of the inmate by failing to hold Muslim services, where two Imams recruited by the county quit, the county was searching the Muslim community for a replacement, the complaining inmate was barred from conducting services himself by a policy against any inmate led religious ceremonies, and the county accommodated the inmate in private worship by providing a Quaran, prayer rug, and a compass.

In *Ciempa v. Jones*, 745 F.Supp.2d 1171 (N.D.Okla. 2010) an inmate brought claims against state prison officials under § 1983 for alleged violations of the RLUIPA. The court held that prison officials did not violate the inmate's First Amendment right to free exercise of religion, RLUIPA, the inmate's due process rights, or equal protection, by denying him access to particular issues of a religious publication based on guidelines prohibiting publications that advocate terrorism, criminal behavior, racial, religious, or national hatred. According to the court, the guidelines were reasonably related to the legitimate penological goal of maintaining order and security, individual review of incoming publications was a rational means of achieving that goal and did not deprive the inmate of all means of exercising his religion, and allowing such materials would have a significant negative impact on other inmates and guards.

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