

No. 18-7300

IN THE
United States Court of Appeals
for the Fourth Circuit

ALFONZA HARDY GREENHILL,
Plaintiff-Appellant,

v.

HAROLD W. CLARKE, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Virginia, Roanoke Division
Case No. 7:16-cv-00068-JPJ-RSB
Honorable James P. Jones

**BRIEF AMICI CURIAE OF FORMER CORRECTIONS OFFICIALS DAN
PACHOLKE, JEANNE WOODFORD, PHIL STANLEY, DICK MORGAN,
AND ELDON VAIL IN SUPPORT OF PLAINTIFF-APPELLANT AND
REVERSAL**

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Former corrections officials Dan Pacholke, Jeanne Woodford, Phil Stanley, Dick Morgan, and Eldon Vail respectfully submit this brief as *amici curiae* in support of Plaintiff-Appellant Alfonza Hardy Greenhill's position on the merits and in support of reversal of the district court's judgment under review.

Dan Pacholke has a long tenure as an officer for the Washington State Department of Corrections. Among other positions, he has served as Secretary of the Department (October 2015-March 2016), Deputy Secretary (April 2014-October 2015), Director of Prisons (July 2011-April 2014), and Deputy Director of Prisons (July 2008-July 2011). He also served as the Superintendent of a number of individual Corrections Centers. He has over 33 years' experience in the field of corrections.

Jeanne Woodford served the California Department of Corrections and Rehabilitation for many years. Among her roles, she was Director (February 2004-July 2005) and Undersecretary (July 2005-July 2006) of the Department, and Chief

¹ Pursuant to Federal Rule of Appellate Procedure 29(a), *amici* represent that all parties have consented to the filing of this brief *amici curiae*. Pursuant to Rule 29(a)(4)(E), the undersigned counsel further represent that no party or party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparation or submission of this brief; and that no person other than the *amici curiae* and counsel identified herein contributed money that was intended to fund preparation or submission of this brief.

of the San Francisco Adult Probation Department (November 2006-May 2008). She was also Warden of San Quentin State Prison (February 1999-February 2004). She has over 30 years' experience in the field of corrections.

Phil Stanley is a long-time officer serving both the New Hampshire Department of Corrections and the Washington State Department of Corrections. In New Hampshire, he was Commissioner of Corrections (May 2000-November 2003). In Washington, his roles have included Director of a regional justice center (2007-2012), Probation Officer (2004-2017), Regional Administrator (1997-2000), and Superintendent (1992-1997). He has about 49 years' experience in the field of corrections.

Dick Morgan is a veteran officer and administrator for the Washington State Department of Corrections. He served as Secretary of the Department (March 2016-January 2017), Director of Prisons (2008-2010), and Assistant Deputy Secretary of Prisons (2006-2008). He also served as Superintendent of three different prisons. He has over 35 years' experience in the field of corrections.

Eldon Vail is a long-serving corrections official for the Washington State Department of Corrections. He was Secretary of the Department (2007-2011), Deputy Secretary (1999-2006), and Superintendent of three institutions (1987 and 1989-1994). He has over 35 years' experience in the field of corrections.

As former corrections officials with over 180 years of collective experience, *amici* have substantial first-hand experience administering secure prisons while accommodating religious freedom under the Free Exercise Clause of the First Amendment, Section 3 of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1, and analogous provisions of the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb-1. In the experience of *amici*, granting reasonable requests for religious accommodations—in Mr. Greenhill’s case, by permitting him to watch Jum’ah on television once a week and to maintain a four-inch beard—serves to *enhance* prison security and rehabilitation, while rejecting such requests has the opposite effect. The importance of accommodating religion is only heightened when prisoners, like Mr. Greenhill, are in long-term solitary confinement. *Amici* respectfully submit this brief to set forth the basis for those views.

SUMMARY OF ARGUMENT

Alfonza Hardy Greenhill is an observant Muslim prisoner in the custody of the Virginia Department of Corrections (the “Department”) and housed in solitary confinement. Consistent with the obligations of his faith, Mr. Greenhill wishes to participate in a weekly Friday prayer—the Jum’ah—and maintain a four-inch beard. Based on his security classification, the Department has prevented Mr. Greenhill from physically attending in-person group prayer services and from

watching the televised service broadcast by the prison. Additionally, Department grooming policies prohibit Mr. Greenhill from growing the four-inch beard that his religious observance requires. Appellees have cited (and the district court credited) prison security and the success of the Department's incentive-based Step-Down Program as the basis for denying Mr. Greenhill's requests for religious accommodations.

Based on the observations and experience of *amici* across a variety of correctional settings, Appellees' prison security and rehabilitation claims are inconsistent with sound penal policy, contradicted by experience, and not entitled to the deference they were given by the court below. Reasonably accommodating individual religious practice can have a demonstrably *positive* effect on prisoner adjustment and rehabilitation and, as a result, on the prison security environment as a whole. In contrast, restrictions that unreasonably impede individual religious practice under the banner of prison security and rehabilitation are likely to have the opposite effect. In *amici's* experience, allowing latitude in prisoner religious exercise meaningfully contributes to both prison security and individual rehabilitation.

The district court's decision should be reversed.

ARGUMENT

In the experience of *amici*, reasonable religious accommodations operate to enhance prison security and individual rehabilitation. The requested accommodations in this case are, in fact, far more likely to support prison security than to diminish it. Consistent with *amici*'s own experience, an established body of academic literature supports the proposition that the free exercise of religion among prisoners contributes to their adjustment to harsh prison life and rehabilitation from prior criminal activity. Both of these effects, in turn, have a positive impact on prison security and public safety. Accordingly, Appellees' actions in denying Mr. Greenhill's requests for reasonable religious accommodations are unlikely to further the cited interests in rehabilitation and prison safety on which the district court relied in entering summary judgment in Appellees' favor.

I. THE EMPIRICAL LITERATURE DEMONSTRATES THAT ACCOMMODATING PRISONER RELIGIOUS PRACTICE PROMOTES PRISON SECURITY.

Abundant social science research shows that respecting the right of prisoners to practice their religion promotes their adjustment to prison life, enhances rehabilitation, and reduces recidivism. *Amici*'s collective experience administering prisons confirms this research. "Broad[ly]" accommodating religious practices to the "maximum extent" permitted by the state's demonstrated security objectives

puts prisons in the best possible position to take advantage of these very real benefits. 42 U.S.C. § 2000cc-3(g).

A. Allowing Prisoners to Practice Their Religion Promotes Adjustment.

Allowing prisoners to practice their religion in accordance with their faiths can serve an important role in promoting prisoners' adjustment to the new environment in which they find themselves.

Studies show a robust relationship between prison policies that accommodate religious practices and a diminished deviance among prisoners. This relationship is observed across various measures of religious practice or participation when tested against indicators of "deviance" as varied as instances of disciplinary confinement, Todd R. Clear & Melvina T. Sumter, *Prisoners, Prison, and Religion*, 35 J. of Offender Rehab. 125, 125, 152 (2002); the number of infractions, Thomas P. O'Connor & Michael Perryclear, *Prison Religion in Action and its Influence on Offender Rehabilitation*, 35 J. of Offender Rehab. 11, 11, 26, 28 (2002); and the propensity to engage in conflict with fellow prisoners, Kent R. Kerley *et al.*, *Religiosity, Religious Participation, and Negative Prison Behaviors*, 44 J. for the Sci. Study of Religion 443, 453 (2005). In sum, multivariable studies consistently show that "religiousness is directly important in reducing infractions," "even after other variables [like age and prior record are] entered into the equation." Todd R. Clear *et al.*, *Does Involvement in Religion Help Prisoners*

Adjust to Prison? NCCD Focus (Nov. 1992), at 1, 4 (confirming the importance of religion as a “potential suppressor of [infractions]” and concluding that religion may help prisoners in “dealing with the emotional strains of incarceration and dealing with the deprivations of the prison environment” (emphases in original omitted)); *see also* Byron R. Johnson, *Religious Participation and Criminal Behavior*, in *Effective Interventions in the Lives of Criminal Offenders* 1, 14-15 (J.H. Humphrey & P. Cordella eds., 2014).

Amici’s experience confirms the conclusions in the research: allowing prisoners to exercise their religious beliefs can help moderate the harsh impact of prison life, particularly where prisoners are housed in solitary confinement. Incarceration introduces severe deprivations of freedoms, including significant impediments to the ability of religious prisoners to practice their religion at a time when those prisoners may need the solace and stability provided by their faiths more than ever. For some, faith and religious exercise can provide a new sense of purpose or meaning in the absence of these freedoms. SpearIt, *Religion as Rehabilitation? Reflections on Islam in the Correctional Setting*, 34 Whittier L. Rev. 29, 38-39 (2012); *see also* O’Connor & Perryclear, *supra*, at 28 (faith can contribute “hope and motivation to change” for some prisoners in the correctional setting). For others, the freedom to exercise religious beliefs can lead to engagement with religious communities within the prison, which can have its own

intrinsic benefits as well as steering prisoners away from more harmful social groups like prison gangs. *See Clear et al., supra*, at 6 (religious exercise “exposes a prisoner less to the problems of prison life”); *SpearIt, supra*, at 48. It is *amici*’s experience that allowing prisoners reasonable latitude to exercise their religious beliefs as they see fit enables prison administrators to harness the positive influence of religion in the prison setting.

B. Accommodating Religious Exercise Promotes Prisoner Rehabilitation and Reduced Recidivism.

Allowing prisoners to practice their faith in accordance with their beliefs also promotes rehabilitation and moderates the likelihood of recidivism. Again, the research is abundant.

In 2012, Byron R. Johnson and Sung Joon Jang conducted “the most comprehensive assessment of the religion-crime literature to date by reviewing 270 studies published between 1944 and 2010.” Byron R. Johnson & Sung Joon Jang, *Crime and Religion: Assessing the Role of the Faith Factor, in Contemporary Issues in Criminological Theory and Research The Role of Social Institutions*, Am. Soc’y of Criminology 2010 Conference 117, 120 (2012). The results of this meta-analysis “confirm[ed] that the vast majority of the studies”—approximately 90 percent (244 out of 270)—“report pro-social effects of religion and religious involvement on various measures of crime and delinquency.” *Id.* The studies that were part of this systematic review “utilize[d] vastly different methods, samples,

and research designs,” and yet nearly all pointed to the same conclusion: “increasing religiosity is consistently linked with decreases in various measures of crime or delinquency,” a link that was “particularly pronounced among the more methodologically and statistically sophisticated studies that rely upon nationally representative samples.” *Id.*; accord Byron R. Johnson *et al.*, *A Systematic Review of the Religiosity and Delinquency Literature: A Research Note*, 16 *J. of Contemp. Crim. J.* 32, 46 (2000); Christopher P. Salas-Wright *et al.*, *Buffering Effects of Religiosity on Crime: Testing the Invariance Hypothesis Across Gender and Developmental Period*, 41 *Crim. J. & Behavior* 673, 689 (2014), <http://cjb.sagepub.com/content/early/2014/02/04/0093854813514579>.²

Further, the Pew Research Center’s Forum on Religious and Public Life conducted a large-scale survey of professional prison chaplains from across the U.S. in order to collect data on the role of religion in prisons. Pew Research

² See also Jeff Duncan *et al.*, *Women’s Engagement with Humanist, Spiritual and Religious Meaning-Making in Prison: A Longitudinal Study of Its Impact on Recidivism*, 9 *Religions* 1, 1, 10-12 (2018), <https://www.mdpi.com/2077-1444/9/6/171> (“Controlling for ethnicity, risk of recidivism, participation in other programs (education, substance use, cognitive and work), length of time incarcerated, and infractions during incarceration we found an overall significantly positive impact of [humanist, spiritual and religious] involvement on recidivism [in women] during the first year after release and over a 13-year follow-up period post prison.”); Richard Stansfield *et al.*, *The Role of Religious Support in Reentry: Evidence from the SVORI Data*, 54 *J. of Res. in Crime & Delinquency* 111, 135 (2017) (finding that religious and spiritual support “had strong and robust prosocial effects on both postrelease employment and substance use”).

Center, *Religion in Prisons: A 50-State Survey of Prison Chaplains*, at 8-9 (Mar. 22, 2012), <http://www.pewresearch.org/wp-content/uploads/sites/7/2012/03/Religion-in-Prisons.pdf>. When asked about which elements were “important for successful rehabilitation and reintegration into society,” the vast majority of chaplains rated access to religion-related programs as among such elements. *Id.* at 13, 63. Indeed, about 73% of surveyed prison chaplains considered access to “high-quality religion-related programs” while in prison to be “absolutely critical” for rehabilitation and re-entry, and an additional 23% said those kinds of programs were “very important.” *Id.*

II. IN PROMULGATING RLUIPA, CONGRESS WAS WELL AWARE OF THE RELATIONSHIP BETWEEN RELIGIOUS ACCOMMODATIONS AND PRISONER REHABILITATION AND SECURITY.

Congress enacted RLUIPA against the foregoing academic backdrop—well developed even by 2000, when RLUIPA was passed. The statute’s text confirms Congress’s determination that prison officials must accommodate religious freedom to the maximum extent possible, and the legislative history is replete with references to the importance of allowing prisoners the right to exercise their faiths as they see fit. This legislative history again is consonant with *amici*’s experience.

For example, Senator Strom Thurmond observed that for some prisoners, allowing religious practice “helps rehabilitate them and makes them less likely to commit crime after they are released.” *Religious Liberty: Hearing before the*

Senate Committee on the Judiciary on issues relating to religious liberty protection, 106th Cong. 20 (1999) (Statement of Sen. Strom Thurmond). And even while testifying *against* the bill, New York’s Department of Correctional Services Commissioner acknowledged that “every correction administrator in the country recognizes the vital role played by most religious practices and beliefs * * * in maintaining a sense of hope and purpose among individual prisoners *and in enhancing overall institutional safety and well-being.*” *Id.* at 175 (Prepared Statement of Glenn Goord, Commissioner, New York State Department of Correctional Services) (emphasis added). As Mr. Goord stated: Most prisoners who sincerely practice their religious beliefs “do not pose institutional problems,” but rather “promote institutional stability.” *Id.* Indeed, witnesses emphasized the “societal interest” in protecting prisoner religious liberty, given that “[r]eligious observance by prisoners is strongly correlated with successful rehabilitation.” *Protecting Religious Freedom After Boerne v. Flores: Hearing Before the House of Representatives Subcomm. on the Constitution of the Comm. on the Judiciary*, 105th Cong. 7 (1997) (Testimony and Prepared Statement of Charles Colson, President, Prison Fellowship Ministries) (the “*Protecting Religious Freedom Hearing*”); *see also id.* at 76, 79 (peaceful practice of prisoners’ religious beliefs has been shown empirically “to have powerful rehabilitative effects” (Testimony

and Prepared Statement of Prof. Thomas C. Berg, Cumberland Law School, Samford University)).³

This abundant testimony was not lost on Congress. In a floor statement urging the passage of RLUIPA, Senator Hatch explained that “[s]incere faith and worship can be an indispensable part of rehabilitation, and these protections [provided by the bill] should be an important part of that process.” 146 Cong. Rec. S6687, S6689 (daily ed. July 13, 2000) (Statement of Sen. Hatch on behalf of himself and Sens. Kennedy, Hutchison, Daschle, Bennett, Lieberman and Schumer). In sum, the rehabilitative impact of freedom of religious practice was squarely before Congress when it considered and passed RLUIPA in 2000, and constituted a motivating factor in the passage of the bill.

III. COURTS AND EXPERTS RECOGNIZE THE POSITIVE IMPACT THAT ACCOMMODATING RELIGIOUS EXERCISE CAN HAVE ON PRISONER ADJUSTMENT AND REHABILITATION.

Courts, too, have recognized the salutary relationship between accommodating religious practices inside prison and a prisoner’s adjustment and rehabilitation. Most recently, taking note of “the policies followed at other well-

³ See also *Protecting Religious Freedom* Hearing at 59, 86 (Testimony of Sixth Circuit Judge Jeffrey Sutton, then Solicitor of the State of Ohio) (discussing positive role of religion in rehabilitation); *Protecting Religious Freedom After Boerne v. Flores (Part III): Hearing Before the House of Representatives Subcomm. on the Constitution of the Comm. on the Judiciary*, 105th Cong. 40, 43 (1998) (Testimony and Prepared Statement of Isaac M. Jaroslawicz, Director of Legal Affairs, Aleph Institute) (same).

run institutions” with respect to beard length restrictions, the Supreme Court concluded: “That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the Department could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks.” *Holt v. Hobbs*, 135 S. Ct. 853, 866-67 (2015) (quoting *Procunier v. Martinez*, 416 U.S. 396, 414 n.14 (1974)) (finding that grooming policy violated RLUIPA “insofar as it prevents petitioner from growing a ½-inch beard in accordance with his religious beliefs”). Similarly, in *Brown v. Livingston*, a Texas prisoner challenged prison policies that prevented unsupervised gatherings of more than four persons for religious services and limited the supervision of prisoners for the purpose of holding religious services to no more than one hour per week. 17 F. Supp. 3d 616, 619 (S.D. Tex. 2014). The court held evidentiary hearings and received “undisputed testimony” that “overall, the regular practice of religion improves prison safety.” *Id.* at 626. The court acknowledged the body of social science research supporting this point, and found that allowing religious prisoners to practice their faith makes for a safer prison unit and a safer community. *Id.* Even the *State’s* witnesses supported these points. *Id.*

In sum, courts recognize that “accommodating a genuine religious observance might reduce rather than increase the risk of prisoner misconduct.” *Grayson v. Schuler*, 666 F.3d 450, 453 (7th Cir. 2012); *see also Sasnett v. Sullivan*,

908 F. Supp. 1429, 1439 (W.D. Wis. 1995), *aff'd*, 91 F.3d 1018 (7th Cir. 1996), *cert. granted, judgment vacated on other grounds*, 521 U.S. 1114 (1997) (“Religious practice confers many benefits to prisoners. Religious practice and faith can introduce an element of morality into inmates’ thinking that leads them to behave lawfully. Religious practice and faith can give prisoners a great degree of personal satisfaction. Inmates who are involved in church activities and who are behaving in ways consistent with religion usually act in ways that are consistent with penological goals.”). That conclusion is consistent with the experience of *amici* demonstrating that reasonable religious accommodations support prison safety and enhance the rehabilitation of individual prisoners.

* * *

That accommodation of religion can have a positive impact on prisoner rehabilitation and prison security is well established in social science research and academic literature, was a motivating factor underlying RLUIPA’s passage, and has been routinely recognized by the judiciary. It also is consistent with the practical experience of *amici* across diverse correctional systems. The modest religious accommodations that Mr. Greenhill requests fall well within the “maximum extent” available under the law, 42 U.S.C. § 2000cc-3(g), and are likely to promote (rather than to detract from) prison safety.

CONCLUSION

For the foregoing reasons, as well as those set forth in Plaintiff-Appellant's brief, the District Court's judgment should be reversed.

Respectfully submitted,

/s/ Elizabeth Hagerty

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January 21, 2019

CERTIFICATE OF COMPLIANCE

Pursuant to Fed R. App. P. 29(a)(4)(G) and 32(g)(1), I certify the following:

1. The foregoing brief complies with the type-volume limitations in Fed. R. App. P. 29(a)(5) and 32(a)(7) because it contains 3,088 words, excluding those parts exempted by Fed. R. App. P. 32(f).

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/s/ Elizabeth Hagerty
Elizabeth Hagerty

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I certify that on January 21, 2019, the foregoing was electronically filed through this Court's CM/ECF system. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

/s/ Elizabeth Hagerty
Elizabeth Hagerty

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