

RUTGERS JOURNAL OF LAW & RELIGION

-NEW DEVELOPMENTS-

*DO NEW JERSEY PRISONERS HAVE THE RIGHT TO PREACH?
AN IN-DEPTH EXAMINATION OF HOWARD THOMPSON JR.'S VICTORY AGAINST A BLANKET
BAN ON PREACHING ESTABLISHED BY PRISON OFFICIALS*

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I. INTRODUCTION

The First Amendment of the United States Constitution² protects the free exercise of religion,³ including the right to preach.⁴ The protections under the First Amendment grant rights not only to ordinary citizens, but also extend the same rights to inmates in correctional facilities.⁵ Congress attempted to supplement this constitutional protection with statutes prohibiting the creation and enforcement of laws that substantially burden the free exercise of religious practices. In September 2000, Congress passed The

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² U.S. CONST. amend. I. The first amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

³ Findlaw, U.S. Constitution: First Amendment, Free Exercise Clause, (last visited on Feb. 9, 2010), available at <http://caselaw.lp.findlaw.com/data/Constitution/amendment01/05.html>, (citing *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 222 -23 (1963)). "The Free Exercise Clause . . . withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions there by civil authority."

⁴ *McDaniel v. Paty*, 435 U.S. 618, 626 (1978). The court asserted preaching as a form of religious exercise.

⁵ *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

Religious Land Use and Institutionalized Persons Act (RLUIPA)⁶ to protect inmates who are dependent on correctional facilities to provide accommodation for their religious exercises.⁷ However, a prisoner's rights to free exercise of religion must be balanced against any security threats that may arise from the dangerous conditions present within our correctional facilities.⁸ This issue presented itself when New Jersey State Prison's (NJSP)⁹ blanket ban on inmate preaching unnecessarily interfered with the religious liberties of Howard Thompson Jr., a Pentecostal¹⁰ minister who had been teaching Bible study classes and preaching at weekly worship services.

The debate over prisoners' rights to preach arose when the American Civil Liberties Union recently filed a lawsuit on Mr. Thompson's behalf against NJSP Administrator Michelle R. Ricci and the New Jersey Department of Corrections Commissioner George W. Hayman.¹¹ The ACLU argued that the blanket ban unconstitutionally violated Mr. Thompson's rights under the RLUIPA and the Free

⁶ The Religious Land Use and Institutionalized Persons Act of 2000, H.R. 4019, § 3 (2005). Section 3 states:

(a) No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

⁷ *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005) (summarizing basis for RLUIPA's protections of prisoners).

⁸ Brief of Defendant at 4, *Thompson v. Ricci*, No. 08-5926 (D.N.J. Jan. 16, 2009).

⁹ The New Jersey State Prison, available at http://en.wikipedia.org/wiki/New_Jersey_State_Prison. The New Jersey State Prison (NJSP), formerly known as Trenton State Prison, is a state prison in the United States operated by the New Jersey Department of Corrections. Located in Trenton, New Jersey, NJSP operates two maximum security units and must provide a level of custodial supervision and control beyond that of any other state correctional facility.

¹⁰ Joe Towns, Talking Pentecostalism: Christian Discussion on Pentecostal Beliefs, available at <http://talkingpentecostalism.blogspot.com/2009/03/worship-what-pentecostals-believe.html>. It states:

Pentecostalism believes that worship is the primary means by which Christians draw near to God to offer him a sacrifice of praise, in faith that his blessings will follow The aim of the worship time is for each individual to achieve genuine openness to God at the deepest (or highest) level. It is during this time that individual 'worshippers' seek and move close to God." In short, worship is the foundation of the Pentecostal belief.

¹¹ American Civil Liberties Union of New Jersey, *Pentecostal Minister Can Now Preach in Prison* (Nov. 30, 2009), available at <http://www.aclu-nj.org/news/pentecostalministercannowp.htm>.

Exercise Clause of the First Amendment.¹² However, before these claims could be litigated, the parties agreed to settle the suit and restored Mr. Thompson's right to preach at weekly worship services and teach Bible study classes.¹³

This article will outline the arguments presented by both parties in the case as garnered from briefs shared by counsel.¹⁴ This article will also carefully analyze whether the blanket ban issued by prison officials violates the RLUIPA by examining its two-part test and comparing this case against an analogous case – *Spratt v. Rhode Island Department of Corrections*.¹⁵ While the case never reached litigation, this article will conclude by making a prediction on the outcome of the case based on the strength of the arguments presented in the briefs by both parties and opinions in prominent cases dealing with prisoners' rights to preach.

II. STATEMENT OF THE CASE & PROCEDURAL HISTORY

A. Facts

After being sentenced to thirty years to life in prison in 1986, Howard Thompson Jr., the plaintiff, has preached at supervised worship services, taught Bible study classes, and founded the Protestant choir at the New Jersey State Prison.¹⁶ As a devout Pentecostal, Mr. Thompson firmly believes that he is compelled to fulfill his religious calling from God by spreading the Word of God through preaching to others within the faith.¹⁷ Mr. Thompson first began preaching at NJSP when he relieved Bishop Joseph P. Ravenell of his duties after he became temporarily ill.¹⁸ Mr. Thompson continued to intermittently preach at Sunday services and teach Bible study classes during the next decade.¹⁹ In October, 2000, he was officially ordained as a Pentecostal minister.²⁰ From October 2000 to September 2006, with Reverend Samuel Atchison's express cooperation

¹² *Id.*

¹³ *Id.*

¹⁴ Telephone Interview with Daniel Mach, Legal Director of the ACLU of New Jersey (Jan. 29, 2010). Mach also provided copies of appellate briefs via email from both Plaintiff and Defendant since they have not yet been published.

¹⁵ *Spratt v. R.I. Dep't of Corrs*, 482 F.3d 33 (1st Cir. 2007).

¹⁶ Complaint at 3, *Thompson v. Ricci*, No. 08-5926 (D.N.J Dec. 3, 2008).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ *Id.*

and supervision, Mr. Thompson prepared and routinely preached the Sunday morning Protestant worship services at NJSP.²¹ During this period, he also taught Bible study classes and conducted special courses to prepare fellow inmates for baptismal services.²²

In September 2006, the New Jersey Department of Corrections replaced Reverend Atchison with Chaplain DeWitt Timmons.²³ Because Chaplain Timmons was not obligated to perform Sunday services every week, Mr. Thompson assumed the responsibility of guaranteeing that religious services would be available to Protestant inmates every Sunday.²⁴ Again, his services were executed with Chaplain Timmon's approval and under the supervision of chaplaincy volunteers and no disturbances or problems with the inmates were ever reported.²⁵

However, on June 25, 2007, without any warning or justification, the NJSP instituted a blanket ban on preaching effective against all inmates, even for preaching done under the direct supervision of prison officials.²⁶ Although prisoners are subject to the control of the state, they are still entitled to the inalienable right to freely exercise their religious beliefs under the law. Recognizing the violation of his rights, Mr. Thompson has repeatedly sought to have the ban lifted since June, 2007, so that he can be permitted to pursue his religious beliefs and preach to the Protestant inmate community.²⁷

B. Procedural History

On April 9, 2008, Mr. Thompson filed an Inmate Remedy System Form²⁸ at New Jersey State Prison seeking accommodations for his religious beliefs and permission to preach.²⁹ His request was rejected. The New Jersey State Prison sent a letter on April 14, 2008, briefly stating, "Staff and volunteers are assigned the duties to provide religious

²¹ *Id.*

²² Complaint, *supra* note 14, at 4.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ The Inmate Remedy System form IRSF-101 is a three-section form that is used to provide routine information, refer the person for an in-person interview, or as a remedy to address complaints and or grievances. Here, Mr. Thompson filed an Inmate Remedy System Form to file a grievance against the New Jersey State Prison in regards to the blanket ban against inmate preaching. See Exhibit A attached at the conclusion of the article as a source of Mr. Thompson's own personal account.

²⁹ Complaint, *supra* note 16, at 6.

services. Not inmates.”³⁰ Next, Mr. Thompson filed a completed administrative appeal form on April 23, 2008.³¹ Again, on April 28, 2008, his appeal was rejected.³² In response, Michelle Ricci, administrator of NJSP, sent a letter explaining that “staff and volunteers will continue to provide religious services to the inmate population at NJSP.”³³

After he exhausted his administrative appeals, the ACLU stepped in to act as counsel for Mr. Thompson. In an attempt to avoid costly litigation, Daniel Mach, plaintiff’s attorney, sent a demand letter on October 2, 2008, to Ms. Ricci and Mr. Hayman, the defendants, emphasizing Mr. Thompson’s statutory and constitutional right to preach.³⁴ In response, Marcus Hicks, Assistant Director for New Jersey’s Department of Corrections’ Office of Community Programs and Outreach Services sent a letter to Thompson’s counsel on November 5, 2008 discussing the procedure that allows volunteers to minister to inmates.³⁵ Rather than addressing the purpose of the October 2nd letter, the preaching ban’s effects on Mr. Thompson’s constitutional and statutory rights, Mr. Hick’s letter avoided the subject entirely.³⁶

Plaintiff’s counsel filed a complaint against Michelle Ricci³⁷ and George Hayman³⁸ in the District Court of New Jersey in December of 2008.³⁹ The complaint stated two claims for relief: one in violation of the Religious Land Use and Institutionalized Persons Act and the second in violation of the Free Exercise Clause of the First Amendment of the United States Constitution. In order to correct the infringement upon Mr. Thompson’s right to free exercise of religion, the plaintiff requested that the court issue a preliminary injunction returning his fundamental right to

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Complaint, *supra* note 16, at 6.

³⁵ *Id.* at 6-7.

³⁶ *Id.*

³⁷ Complaint, *supra* note 16, at 6-7. Defendant Michelle R. Ricci is employed by the New Jersey Department of Corrections as the Administrator of NJSP. She is responsible for the daily operations of NJSP, including all policies relating to prisoners’ freedom to preach and minister to other inmates, Ricci is sued in her official capacity.

³⁸ *Id.* Defendant George W. Hayman is the Commissioner of the New Jersey Department of Corrections. He is responsible for the overall operations of the prison facilities in the State of New Jersey, including NJSP. Hayman is sued in his official capacity.

³⁹ *Id.*

preach.⁴⁰ However, before the case could be litigated, the parties entered into a settlement agreement that restored Mr. Thompson's right to preach at weekly worship services and teach Bible study classes.⁴¹

Despite the court's lack of opportunity to reach a decision based on the merits of the briefs submitted by both parties, this article will discuss the strength of the arguments presented by the plaintiff and defendants. However, for purposes of this article, the discussion will center on Plaintiff's first claim and only analyze whether the prison's policy against inmate preaching violated the RLUIPA.

III. ANALYSIS: DOES THE BLANKET BAN VIOLATE PLAINTIFF'S RIGHTS UNDER THE RLUIPA?

The Plaintiff's Claim under RLUIPA:

Plaintiff's major claim is that the New Jersey State Prison (NJSP) has violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) by implementing a ban on inmate preaching. The RLUIPA bars federally funded prisons from:

[I]mposing a substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless the government demonstrates that imposition of the burden on that person 1) is in furtherance of a compelling governmental interest; and 2) is the least restrictive means of furthering that compelling governmental interest.⁴²

Plaintiff's counsel strengthens Mr. Thompson's case by applying the First Circuit's analysis in *Spratt v. Rhode Island Department of Corrections*,⁴³ a factually analogous case where the plaintiff recently prevailed against a preaching ban on the basis of a RLUIPA violation.

In *Spratt*, an ordained minister who was a prisoner in a maximum-security prison preached to other inmates during weekly religious services under the supervision of the

⁴⁰ Brief of Plaintiff at 1, *Thompson v. Ricci*, No. 08-5926 (D.N.J. Dec. 3, 2008).

⁴¹ Settlement Agreement, *Thompson v. Ricci*, No. 08-5926 (D.N.J. Nov. 24, 2009).

⁴² Brief of Plaintiff, *supra* note 40, at 5.

⁴³ *Spratt v. R.I. Dep't of Corrs.*, 482 F.3d 33 (1st Cir. 2007).

prison's chaplains.⁴⁴ Despite the absence of any disciplinary problems, the prison executed a ban against inmate preaching.⁴⁵ Upon appeal, the First Circuit reversed the district court's grant of summary judgment in favor of the defendant, stating that the defendant's mere assertion that the ban constituted the least restrictive means under the RLUIPA was insufficient.⁴⁶ However, before the district court could decide the issue on remand, the parties agreed to a settlement that allowed the inmates to resume supervised preaching.⁴⁷

Using the court's reasoning in *Spratt*, the plaintiff argues that the NJSP's blanket ban on inmate preaching, like the ban employed by Rhode Island Department of Corrections, constitutes an impermissible restriction on religious exercise within the purview of the RLUIPA.⁴⁸ Plaintiff argues that the NJSP ban on inmate preaching has imposed a substantial burden on Mr. Thompson's religious exercise.⁴⁹ The Supreme Court in *McDaniel v. Paty* found that "the right to the free exercise of religion unquestionably encompasses the right to preach, proselytize, and perform other similar religious functions."⁵⁰ Because the Court also recently reaffirmed this conclusion in *Cutter v. Wilkinson*, the Supreme Court made it clear that the right to preach is an integral part of one's religious exercise.⁵¹

A. The RLUIPA Test – the Substantial Burden Threshold

The crucial question becomes whether the NJSP ban places a substantial burden upon Mr. Thompson's right to preach. The Third Circuit recently developed a controlling definition of "substantial burden" in *Washington v. Klem*.⁵² The court stated:

For the purposes of RLUIPA, a substantial burden exists where: 1) a follower is forced to choose between following the precepts of his religion

⁴⁴ *Id.* at 35.

⁴⁵ *Id.*

⁴⁶ *Id.* at 41-43.

⁴⁷ Eric Tucker, *R.I. Inmate Wins Right to Resume Jailhouse Preaching*, ASSOCIATED PRESS, Aug. 2, 2007, available at <http://www.firstamendmentcenter.org/news.aspx?id=18867>.

⁴⁸ Brief of Plaintiff, *supra* note 40, at 5-6.

⁴⁹ *Id.* at 6.

⁵⁰ *McDaniel v. Paty*, 435 U.S. 618, 626 (1978).

⁵¹ *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005). The court stated, "the exercise of religion often involves not only belief and profession but the performance of physical acts [such as] assembling with others for a worship service or proselytizing"

⁵² *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007).

and forfeiting benefits otherwise generally available to other inmates versus abandoning one of the precepts of his religion in order to receive a benefit; OR 2) the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs.⁵³

Plaintiff argues that the second prong is satisfied in this case: 1) the NJSP ban places substantial pressure on Mr. Thompson to modify his behavior because the ban no longer allows him to engage in a central part of his weekly routine – preaching; 2) the NJSP also violates his beliefs because as a member of the Pentecostal faith, he has a deeply held calling to preach.⁵⁴ In further support, Plaintiff also introduces the factually analogous case of *Spratt v. Rhode Island Department of Corrections*, where the First Circuit found that the RIDOC’s blanket ban on inmate preaching “satisfied the prima facie requirements for a substantial burden under this standard.”⁵⁵

However, rather than directly address whether the NJSP ban places a substantial burden on Mr. Thompson, the defendants attempt to circumvent the RLUIPA test. The defendants argue that the entire basis for Plaintiff’s claim does not exist because the NJSP still permits Mr. Thompson to preach to other inmates in informal groups of six or less and thus his right to preach remains intact.⁵⁶ In response, the Plaintiff argues that under this restricted prison regulation, Mr. Thompson’s right to preach is limited in such a manner that it remains a denial of his fundamental right to preach.⁵⁷ By confining preaching to informal gatherings, Mr. Thompson’s only opportunity to preach is restricted to yard recreation time.⁵⁸ He attends yard recreation time 1-2 hours every three days and during that time he is segregated to an area with a very small number of Christian inmates.⁵⁹ More importantly, Mr. Thompson is forbidden from taking his Bible or any handwritten notes to the yard.⁶⁰ Given the strict access to other Christian inmates and the prohibition on bringing his Bible to the yard, Plaintiff believes that the prison’s

⁵³ *Id.*

⁵⁴ Brief of Plaintiff, *supra* note 40, at 7-8.

⁵⁵ *Id.* at 8.

⁵⁶ Brief of Defendant, *supra* note 8, at 6.

⁵⁷ Reply Brief of Plaintiff at 3-4, *Thompson v. Ricci*, No. 08-5926 (D.N.J. Feb. 9, 2009).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 4.

regulation still substantially burdens his freedom to exercise his right to preach.⁶¹ Therefore, the defendants' purported accommodations create only an illusion that Mr. Thompson's constitutional rights remain intact.

B. The RLUIPA Test – The Compelling Interest Prong

Plaintiff argues that the NJSP ban on inmate preaching fails to provide a compelling governmental interest.⁶² The legislative history of the RLUIPA provides that the courts should give “due deference to the experience and expertise of prison and jail administration in establishing necessary regulations and procedures to maintain good order, security and discipline”⁶³ The defendants argue that this deference entitles the prison administration the discretion to implement the NJSP ban to preserve discipline and maintain institutional security.⁶⁴ However, the Third Circuit has held that the due deference given to prison officials does not give prisons the freedom to enforce a prison policy justified on the sole basis of a general assertion of security concerns.⁶⁵ Rather, the prison policy must specifically demonstrate how the particular policy will further prison security by barring inmates from engaging in the particular activity.⁶⁶ Moreover, the RLUIPA asserts that “prison regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet the Act’s requirements.”⁶⁷

Plaintiff claims that security reasons fail to serve as a compelling government interest for the NJSP ban because there is no history that inmate preaching, specifically in the case of Mr. Thompson, has caused any security threats, disturbances, or problems prior to the ban.⁶⁸ Similarly, the First Circuit in *Spratt* concluded that because the evidence showed no past instances of security threats during Spratt’s seven year period as

⁶¹ *Id.*

⁶² Brief of Plaintiff, *supra* note 40, at 8.

⁶³ *Id.*

⁶⁴ Brief of Defendant, *supra* note 8, at 7.

⁶⁵ Brief of Plaintiff, *supra* note 40, at 9; *see also Klem*, 497 F.3d at 283.

⁶⁶ *Id.* at 9.

⁶⁷ *Id.* at 8.

⁶⁸ *Id.* at 10.

preacher, there was serious doubt about whether prison security could serve as a compelling interest for the RIDOC ban.⁶⁹

In response, defendants argue that the NJSP ban is designed to prevent any inmate disruptions or security threats. The defendants believe that if inmates are permitted to assume leadership roles within religious programs, then the inmates will manipulate their position of control to influence other inmates to follow them rather than the prison staff and its rules and regulations.⁷⁰ The defendants emphasize that “emergent situations” could arise unexpectedly and thus prisons must implement policies that allow the staff to maintain full correctional control over the inmate population.⁷¹ Otherwise, any uncertainty about who is in control can cause an inmate disruption to escalate into a situation that endangers the physical safety of the staff and fellow inmates.⁷²

Plaintiff declares that the defendants’ speculative security concerns do not rise to the level of a compelling interest under the RLUIPA and instead seem to be nothing more than an exaggerated “post-hoc rationalization of their treatment of Mr. Thompson.”⁷³ In further support of their position that the defense only raised generalized security concerns that cannot serve as a compelling interest under the RLUIPA, plaintiff presents evidence that the defendants have permitted inmates in other non-religious groups to assume similar leadership roles such as the prison’s NAACP chapter.⁷⁴ The defendants’ argument that Mr. Thompson’s preaching places him in a position of leadership that would compromise prison security is severely undermined because: 1) Mr. Thompson’s supervised weekly preaching and Bible study classes also constitute a leadership role; and 2) the defendants failed to establish any substantial distinctions between Mr. Thompson’s role as an ordained minister and the other leadership positions.

In addition, the defendants’ failure to cite one example of a security problem during Mr. Thompson’s tenure provides further evidence that the defendants’ justification is based on pure speculation and exaggerated fears – a basis the RLUIPA specifically

⁶⁹ *Id.*

⁷⁰ Brief of Defendant, *supra* note 8, at 8.

⁷¹ *Id.*

⁷² *Id.* at 9.

⁷³ Brief of Plaintiff, *supra* note 40, at 8.

⁷⁴ *Id.* at 10.

stated is insufficient to satisfy a compelling interest.⁷⁵ Finally, Plaintiff emphasizes that the New Jersey Administrative Code, which governs correctional facilities, encourages and permits inmate leadership within prison groups.⁷⁶

In order to meet the compelling interest test, the defendants also argue that allowing Mr. Thompson to have an unregulated ability to decide the time and manner of his preaching without regard to prison regulations would jeopardize the safety and security of this correctional facility.⁷⁷ Plaintiff declares that the defendants' argument mischaracterizes the relief Mr. Thompson was seeking in "a misguided effort to lend more credibility to their proffered security reasons."⁷⁸ Mr. Thompson has never sought "blanket permission to conduct whatever activities he desires, in the manner and time of his choosing,"⁷⁹ rather he simply seeks to return to the same rights he had prior to the ban – the right to preach at weekly church services and teach Bible study classes under the careful supervision of prison officials.⁸⁰

C. The RLUIPA Test – the Least Restrictive Means Test

Even if prison security could serve as a compelling government interest for the NJSP ban on inmate preaching, the plaintiff believes that the defendants would fail to satisfy the second prong of the RLUIPA test because the NJSP ban cannot be considered the least restrictive means of furthering the prison security concerns.⁸¹ The Supreme Court held that the government's burden could not be satisfied without an active consideration of alternative means.⁸² Therefore, the plaintiff persuasively argues that NJSP's preaching ban cannot stand scrutiny under the RLUIPA because NJSP failed to consider whether a prison policy requiring proper prison supervision could serve to protect against any conceivable security concerns.⁸³ Similarly, the First Circuit in *Spratt* reversed the district court's ruling because the RIDOC failed to offer any explanation

⁷⁵ Reply Brief of Plaintiff, *supra* note 57, at 7.

⁷⁶ *Id.* at 6.

⁷⁷ Brief of Defendant, *supra* note 8, at 10.

⁷⁸ Reply Brief of Plaintiff, *supra* note 57, at 8.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Brief of Plaintiff, *supra* note 40, at 11.

⁸² *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 824 (2000).

⁸³ Brief of Plaintiff, *supra* note 40, at 11.

why alternative policies could not be implemented or why such policies would be less effective in controlling prison security.⁸⁴

Plaintiff also draws the court's attention to the federal prison system, where inmates are permitted to deliver sermons and teachings as part of supervised "inmate-led religious programs."⁸⁵ Evidence that the Federal Bureau of Prisons manages their maximum security federal prisons without compromising prison security or the constitutional rights of the prisoners by allowing supervised inmate preaching strongly demonstrates the availability of a less restrictive alternative to the NJSP's ban.⁸⁶ It is doubtful that NJSP's current security interests are so distinct that nothing less than a blanket ban on inmate preaching would address security issues.

Plaintiff also argues that even if NJSP could successfully establish a unique security interest within the state prison system, the ban still fails to satisfy the second prong with respect to Mr. Thompson.⁸⁷ The Plaintiff states, "NJSP's policy could be narrowly tailored to affect only those inmates . . . with a history of disruption . . . Mr. Thompson's preaching has transpired without incident for more than a decade and thus any preaching ban could be less restively tailored to accommodate his religious exercise."⁸⁸ The defendants failed to address the second prong of the RLUIPA test, and thus no arguments can be presented. However, any valid interest the defendants could have in maintaining security cannot justify a prison policy that implements a ban on preaching as the least restrictive means of furthering prison security.

IV. CONCLUSION

Before the New Jersey District Court could decide the matter on the merits of the arguments discussed above, both parties agreed to enter into a settlement agreement restoring Mr. Thompson's right to preach at weekly worship services and teach Bible study classes.⁸⁹ In response to the defendants' decision to lift the two-year ban, the

⁸⁴ *Id.*

⁸⁵ *Id.* at 12.

⁸⁶ *Id.*

⁸⁷ *Id.* at 14.

⁸⁸ *Id.*

⁸⁹ Pentecostal Minister Can Now Preach in Prison, *supra* note 11.

plaintiff's attorney, Daniel Mach,⁹⁰ stated that "the decision by prison officials in New Jersey to allow Mr. Thompson to resume practicing his faith is a welcome acknowledgement that religious freedom in this country extends to all."⁹¹

Although some members of our society may believe that prisoners who have committed vicious crimes deserve to have their rights stripped while imprisoned, the courts believe that "prison walls do not form a barrier separating prisoners from the protections of the Constitution."⁹² Given the Court's attitude about prisoners' rights and the strength of the plaintiff's argument above, it seems plausible that the defendants may have chosen to settle the case to avoid losing the suit. Although the First Circuit's decision in *Spratt* remains non-binding authority, the nearly identical facts would have likely been exceedingly persuasive to the New Jersey District Court's decision regarding the outcome of this case. Daniel Mach also seemed to be confident that the court would have ruled in their favor. He asserted that "the ban on prisoner preaching was clearly at odds with the law and the American value of religious liberty."⁹³

In conclusion, the settlement agreement was a victory for the protection of prisoners' rights and a personal victory for Howard Thompson Jr. After the settlement agreement was reached, Mr. Thompson expressed, "All I have ever wanted was to have my religious rights restored so that I could continue working with men who want to renew their lives through the study and practice of their faith."⁹⁴ His sentiments suggest that removing the NJSP ban would not only reinforce the importance of prisoner's constitutional rights but also assist in prisoner rehabilitation.

⁹⁰ *Id.* Daniel Mach is the Legal Director of the ACLU of New Jersey and served as part of the legal team for the plaintiff. The remainder of the legal team included Heather L. Weaver of the ACLU Program on Freedom of Religion and Belief and Edward Barocas and Nadia Seeratan of the ACLU of New Jersey.

⁹¹ *Id.*

⁹² *Turner v. Safley*, 482 U.S. 78, 84 (1987).

⁹³ Pentecostal Minister Can Now Preach in Prison, *supra* note 11.

⁹⁴ *Id.*

EXHIBIT A

PLEASE SUBMIT THIS FORM INTO THE INMATE REMEDY BOX ONLY TO BE PROCESSED

Form: IRSP 101
N.J.A.C. 10A:1-4

Revised 1/2008

NEW JERSEY DEPARTMENT OF CORRECTIONS
INMATE REMEDY SYSTEM FORM

PART [PARTE] 1

INMATE'S REMEDY OR COMPLAINT AREA:

TYPE OF REQUEST (Only check one box)

ROUTINE INMATE REQUEST

INTERVIEW REQUEST

INMATE'S NAME: Thompson, H.

SRI NUMBER: 97607B

INSTITUTION: NJSP

HOUSING UNIT: 3-EE

DATE: April 9, 2008

Within days of the June 2007 arrival of the new Protestant chaplain, Chaplain Pamela Moore, I had the opportunity to meet with her to discuss issues pertaining to the Protestant congregation at NJSP. Although not covered at this first meeting, in a subsequent meeting, the subject of inmates preaching came up. Chaplain Moore advised me that the administrator, Mrs. Michelle Ricci, had banned all inmates from preaching at all religious services.

In the hope that this would only be a temporary situation which would resolve itself, I held off submitting an institutional remedy objecting to the ban and asking that it be lifted; however, in a recent meeting with Chaplain Moore, she stated that she was still

(continued)

No action taken on this form. DOC Corrective Action form issued with paragraph(s) # marked.

PART [PARTE] 2 THE ABOVE INMATE INFORMATION WAS DETERMINED BY THE COORDINATOR AS ONE OF THE FOLLOWING:

ROUTINE INMATE REQUEST

ROUTINE OR URGENT

INTERVIEW REQUEST

RECEIVED BY: [Signature]

SUBJECT OF REQUEST: Inmate preaching

DATE FORWARDED TO DEPARTMENT: 4-11-08

DATE RESPONSE RETURNED TO I/M: 4-15

DEPARTMENT RESPONSIBLE: Administrator

CASE NUMBER: 08 04 1135

PART [PARTE] 3

STATE RESPONSE AREA

State and Volunteers are assigned the duties to provide religious services with inmates.

STATE SIGNATURE

DATE

SIGNATURE OF ASST DIR OR APPROPRIATE ADMINISTRATIVE DESIGNEE

DATE

- Attachment: Form 1000 [X]
Attachment: Form 1001
Form 1002
DOC Staff Response forms

PART [PARTE] 4 INMATE'S ADMINISTRATIVE APPEAL INFORMATION

The Administrator's response does not address the request made in this remedy to lift the ban on inmate preaching. This remedy addresses the ban on inmate preaching as an arbitrary impediment to the exercise of my religious faith as covered (continued)

ADDITIONAL ATTACHMENTS: [X]

INMATE'S SIGNATURE

DATE

PART [PARTE] 5

DATE APPEAL RECEIVED

DATE APPEAL RETURNED

APPEAL DECISION AND ADMINISTRATOR'S COMMENTS

UPHOLD

MODIFY

DENIED

State and Volunteers will continue to provide religious services to the inmate population at NJSP.

ADMINISTRATOR'S SIGNATURE

DATE

Distribution: (Original) Department of Corrections Request/Remedy File Copy (also to Archive)
(Original) Inmate's Copy (Original) if required Appeal Answer

Administrative Remedy

Page 2 of 3

Thompson, #204289 (97607B) 3-EE
April 9, 2008

bound by the administrator's ban and that, unless it was lifted, I would still not be allowed to preach. At that time it became necessary to submit this remedy requesting that the ban be lifted and that inmates be permitted to resume preaching.

I have been at New Jersey State Prison (NJSP) since June 1986. Over that almost 22 year period, I have participated in the Protestant Christian community here at NJSP in a number of ways including preaching in the worship services. I was formally ordained as a Christian minister on Sunday, October 8, 2000, in a morning worship service. The service was overseen and attended by then Protestant chaplain, Rev. Samuel K. Atchison, the former Protestant chaplain, Bishop Joseph P. Ravenell, and two chaplaincy volunteers. The service was attended by the members of the Protestant congregation, and several officers also watched from a booth overlooking the room where the service was held. After my ordination, I began preaching on a more regular basis.

In September 2006, within a few weeks of coming out of a month-long institutional lockdown, Rev. Atchison was removed from serving as NJSP's Protestant chaplain and chaplaincy supervisor. It was at this point that I began preaching on a weekly basis in Protestant services. Although the Department of Corrections (NJDOC) assigned an interim chaplaincy supervisor and Protestant chaplain, Rev. DeWitt Timmons, he was assigned to serve NJSP on Wednesdays and Thursdays only and was never required or expected to be available for the regularly scheduled Sunday morning Protestant service. Thus, even though there was a Protestant chaplain in the institution, I continued to preach on a weekly basis. This continued until a permanent Protestant chaplain was hired in late June 2007. The last sermon I preached was on Sunday morning, June 24, 2007. The new chaplain began on June 25, 2007.

It is my contention that the ban against inmates preaching in the Protestant services severely impedes my right to freedom of religious expression and the exercise of that right as covered in the Religious Land Use and Institutionalized Person Act (RLUIPA, 42 U.S.C. 2000cc-1). This contention is further supported by a decision in a recent federal case covering this exact issue. The case in question, *Spratt v. Rhode Island Department of Correction (RIDOC)*, pertained to an inmate in the custody of RIDOC who had been banned from preaching even though he had been doing so without incident for seven years prior to the ban. On April 6, 2007, the 1st Circuit Court of Appeals ruled that the ban violated RLUIPA. In July 2007, Rev. Spratt resumed preaching within RIDOC.

For a period of more than 20 years, I have been an active member of the Protestant community here at NJSP, including founding and directing the Protestant choir and also preaching in Protestant services. This administrative ban against inmates preaching was imposed arbitrarily and maliciously even though there have never been any incidents (fights, assaults, altercations) at any service where I or any other inmate was preaching, nor

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have there been any overall institutional issues or security problems as a result of inmates preaching. Both RLHIPA itself and the subsequent Spratt case, which is clearly a finding on this very issue, support my contention that the ban here at NJSP is an unacceptable and substantial burden and imposition on my right to religious freedom and expression. Thus, in consideration of the historical facts and the law in this matter, I request that the ban against inmates preaching be lifted immediately and that inmates be allowed to resume full participation in and exercise of their religious faiths.