CHAPTER 15: RELIGIOUS FREEDOM IN PRISON

A. INTRODUCTION

The Louisiana Constitution protects your right of religious freedom.[1] The First Amendment of the U.S. Constitution as well as federal and state laws also protect this right.[2] The Supreme Court of Louisiana has ruled that the religious freedom protections provided by the Louisiana Constitution are similar to the religious freedom protections provided by the federal Constitution.[3] The Louisiana Supreme Court has also ruled that Louisiana state courts can use interpretations of the federal Constitution to help with interpreting the state constitution.[4] As a result, federal statutes and federal constitutional law will be important as you think about a potential claim. Chapter 27 of the main *JLM* explains federal law on religious freedom in greater detail.

Sometimes, Louisiana constitutional or statutory law provides greater protections than the federal constitution. This depends on the situation, but most of the time you can assume that the federal Constitution gives you the maximum amount of protection that you can get.

This Chapter will cover several issues regarding religious freedoms that are unique to Louisiana. These issues include your ability to change your name for religious reasons, to access prison chaplains and priests, and to access faith-based programs in prison. Read Chapter 27 of the main *JLM* to give yourself a background in the issues before you read about specific issues in Louisiana.

B. RESTRICTIONS ON RELIGIOUS NAME CHANGES

At some point, especially if you convert to a new religion, you may want to change your name. You may feel that changing your name is important to the practice of your new religion. Prisons will often not want to let you do this and argue that changing your name will make it more difficult for them to keep track of you and more difficult for other people to identify violent offenders. Name changing, in general, is described in Chapter 27 of the main *JLM*. This section will discuss some of the relevant statutes specific to Louisiana. These restrictions have been challenged under the Free Exercise Clause of the First Amendment of the Federal Constitution and could also be challenged under the Religious Land Use and Institutionalized Persons Act (RLUIPA).[5]

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[1] LA. CONST. art. I, § 8 ("No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."). The wording of this section is nearly identical to the language used in the First Amendment to the U.S. Constitution.

[2] *See* Chapter 27 of the main *JLM*.

[3] *See* Seegers v. Parker, 256 La. 1039, 1049–1050, 241 So. 2d. 213, 216–217 (La. 1970), *cert. denied* 403 U.S. 955, 91 S. Ct. 2276, 29 L. Ed. 2d 865 (1971).

[4] Seegers v. Parker, 256 La. 1039, 1050, 241 So. 2d. 213, 217 (La. 1970) ("The great similarity of the establishment clause of our Constitution and that of the United States Constitution allows us to use the United States Supreme Court interpretations of the federal clause as an aid for interpreting our own."). The adoption of a new Louisiana constitution in 1974 did not change this. *See* State v. Forbs, 2007-1007, p. 7 (La. App. 4 Cir. 4/23/08); 983 So. 2d 954, 958 (citing Seegers v. Parker, 256 La. 1039, 241 So. 2d. 213 (La. 1970)); *see also* Delcarpio v. St. Tammany Parish Sch. Bd., 865 F. Supp. 350, 362 (E.D. La. 1994), *rev'd on other grounds*, 64 F.3d 184 (5th Cir. 1995) ("Moreover, under Louisiana jurisprudence, judicial determination of a claim brought pursuant to the parallel sections of the federal constitution is applicable to Article 1, sections 7 and 8 of the state constitution."); La. Att'y Gen. Op. No. 75-1731 (Jan. 9, 1976), 1976 La. AG LEXIS 15, at *2 ("Because the language of La. Const. Art. 1, § 8 is virtually identical to the parallel provision in the federal constitution, the two constitutional provisions should be interpreted in a like manner, and decisions of the United States Supreme Court construing the establishment clause of the first amendment are applicable to determining limitations imposed by legislative actions by this provision of the state constitution.").

[5] You could bring a claim under the Religious Freedom Restoration Act if you were in a federal prison in Louisiana. Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb–bb-4 (2012); City of Boerne v. Flores, 521 U.S. 507, 534, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624, 648 (1997). For more information on how to bring a claim under RFRA, *see* Chapter 27 of the main *JLM*.

1. Federal Rights and Protections

Under the Free Exercise Clause of the First Amendment of the Federal Constitution, a prison may refuse to recognize your choice of a religious name, if the refusal is "logically connected to a legitimate penological interest."[6] This means that prison officials can prohibit you from changing your name if they can give a reason that's related to running the prison. Prisons usually say they prohibit name changes to maintain adequate identification records.[7] Courts have upheld prohibitions on name changes based on this reason.[8] *See* Chapter 27 of the main *JLM* for more information about First Amendment challenges to restrictions on name changes.

Under RLUIPA, a prison may refuse to recognize your choice of a religious name if (1) the refusal substantially burdens your religious exercise, (2) it furthers a compelling governmental interest and (3) uses the least restrictive means.[9] This means that prohibiting you from changing your name would need to violate your beliefs, pressure you to change your behavior, or prevent you from engaging in religious actions that causes you more than just small trouble.[10] Some courts have been reluctant to find that a restriction on name changes would substantially burden your religious exercise.[11] *See* Chapter 27 of the main *JLM* for more information about RLUIPA challenges to restrictions on name changes.

2. Laws in Louisiana

According to Section 13:4751 of the Louisiana Statutes, to change your name as a prisoner, you must present a name-change petition ". . . to the district court of the parish in which [you] were *sentenced*," describing "the reasons for the desired change."[12] People who are no longer in prison can choose what parish to file in.

However, the statute also states that "[a] person who has been convicted of a felony shall not be entitled to petition for a change of name under the provisions of this Section until his sentence has been satisfied."[13] This restriction on name changes for those convicted of felonies continues even if the prisoner is no longer in prison and is instead on probation or parole.[14] Once your sentence has been served, however, this restriction is lifted. This is the 13:4751(D)(1) restriction and is your first obstacle to changing your name in prison.

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[6] *See* Matthews v. Morales, 23 F.3d 118, 118 (5th Cir. 1994).
[7] *See* Matthews v. Morales, 23 F.3d 118, 118 (5th Cir. 1994) (holding that a state statute barring name changes by the prisoners did not violate an inmate's free exercise of religion because it was enacted for security reasons and thus has a logical connection to legitimate governmental interests); Barrett v. Virginia, 689 F.2d 498, 500 (4th Cir. 1982) ("Testimony put on by the state, however, indicated that a prisoner's records are maintained in the name of the prisoner and a number which is assigned to him at the time of incarceration, and that legal recognition of plaintiff's adopted name would lead many other prisoners to change their names and would jeopardize the maintenance of adequate identification records.").
[8] Matthews v. Morales, 23 F.3d 118, 118 (5th Cir. 1994)
[9] Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc–cc-5 (2012).
[10] *See* Thomas v. Review Bd., 450 U.S. 707, 718, 101 S. Ct. 1425, 1432, 67 L. Ed. 2d 624, 634 (1981); *see also* Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1227 (11th Cir. 2004) (summarizing the Supreme Court's interpretation of "substantial burden" and noting that "a 'substantial burden' must place more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct."); Coronel v. Paul, 316 F. Supp. 2d 868, 880 (D. Ariz. 2004) (holding that "state action substantially burdens the exercise of religion within the meaning of the RLUIPA when it prevents a religious adherent from engaging in conduct both important to the adherent and motivated by sincere religious belief.").
[11] *See* Amun v. Culliver, No. 04-0131-BH-M, 2006 U.S. Dist. LEXIS 75949, at *1 (S.D. Ala. Oct. 18, 2006) (unpublished) (holding that prison's refusal to add prisoner's religious name to visitor list, prisoner location list, and prison correspondence was not a "substantial burden" on prisoner's exercise of religious beliefs).
[12] LA. REV. STAT. ANN. § 13:4751(B) (2017).
[13] LA. REV. STAT. ANN. § 13:4751(D)(1) (2017).
[14] LA. REV. STAT. ANN. § 13:4751(D)(1) (2017).

The statute provides a second restriction, the 13:4751(D)(2) restriction, on those prisoners convicted of specific felonies. Some prisoners can never petition to change their names, even when their sentences are completed.[15] This lifetime restriction depends on the kind of crime you were convicted of.[16]

There are forty-three crimes that will automatically bar you from changing your name forever.[17] These crimes are listed in Section 14:2(B) of the Louisiana Revised Statutes and are labeled "crimes of violence."[18]

The statute defines crimes of violence in two ways. First, it includes any crime that involves the use, threatened use, or attempted use of "physical force" against another person or his property. That crime, by its nature, must "involve a substantial risk" that physical force may be used.[19] Second, crimes of violence include crimes that involve a "dangerous weapon."[20] The statute lists forty-three felonies that are *automatically* crimes of violence, but other felonies may also qualify if they meet the definitions mentioned above.[21]

The automatic crimes of violence are: Solicitation for murder; First degree murder; Second degree murder; Manslaughter; Aggravated battery; Second degree battery; Aggravated assault; Mingling harmful substances; Aggravated or first degree rape; Forcible or second degree rape; Simple or third degree rape; Sexual battery; Second degree sexual battery; Intentional exposure to AIDS virus; Aggravated kidnapping; Second degree kidnapping; Simple kidnapping; Aggravated arson; Aggravated criminal damage to property; Aggravated burglary; Armed robbery; First degree robbery; Simple robbery; Purse snatching; Extortion; Assault by drive-by shooting; Aggravated crime against nature; Carjacking; Illegal use of weapons or dangerous instrumentalities; Terrorism; Aggravated second degree battery; Aggravated assault upon a peace officer; Aggravated assault with a firearm; Armed robbery, use of firearm, additional penalty; Second degree robbery; Disarming of a peace officer; Stalking; Second degree cruelty to juveniles; Aggravated flight from an officer; Battery of a police officer; Trafficking of children for sexual purposes; Human trafficking; Home invasion; Domestic abuse aggravated assault; and Vehicular homicide, when the operator's blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood.[22] Other crimes may also qualify.

3. Cases Challenging the Louisiana Restrictions

Neither the Louisiana Supreme Court nor any federal court has addressed the issue of restricting religiously-motivated name changes under Section 13:4751.

a. First Amendment Challenges to 13:4751(D)(1) (Flat Ban During Sentence)

One Louisiana Court of Appeal did address Section 13:4751 name changes in *Whitmore v. State*.[23] This case involved a challenge to Section 13:4751 based on the Free Exercise Clause of the First Amendment of the Federal Constitution. In this case, Mr. Whitmore, a prisoner, converted to Islam and wished to change his name. He was prevented from doing so by § 13:4751(D).[24] The court found § 13:4751(D) to be

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[15] LA. REV. STAT. ANN. § 13:4751(D)(2) (2017) ("Notwithstanding the provisions of Paragraph (1) of this Subsection or any other provision of law to the contrary, a person convicted of any felony enumerated in R.S. 14:2(B) shall not be entitled to petition for a change of name.").
[16] LA. REV. STAT. ANN. § 13:4751(D)(2) (2017).
[17] LA. REV. STAT. ANN. § 14:2(B) (2017).
[18] LA. REV. STAT. ANN. § 14:2(B) (2017).
[19] LA. REV. STAT. ANN. § 14:2(B) (2017) ("In this Code, 'crime of violence' means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.").
[20] LA. REV. STAT. ANN. § 14:2(B) (2017).
[21] LA. STAT. ANN. § 14:2(B) (2017) (listing crimes defined as a "crime of violence.").
[22] LA. STAT. ANN. §§ 14:2(B)(1)–(47) (2017).
[23] Whitmore v. State, 99-1988 (La. App. 1 Cir. 02/18/00); 752 So. 2d 365.
[24] Whitmore v. State, 99-1988, p. 2 (La. App. 1 Cir. 02/18/00); 752 So. 2d 365, 366.

constitutional because the statute is logically connected with a "legitimate government interest."[25] The "legitimate government interest" was the state's desire "to maintain adequate identification records and to preserve the criminal history of convicted felons."[26] Other courts have also employed the "logical connection to a legitimate government interest" test for similar name-changing restrictions, and it appears to be the standard.[27]

Bartley, another case involving a convert to Islam attempting to change his name, was decided similarly to *Whitmore*.[28] In *Bartley*, the court found that § 13:4751(D) did not sufficiently restrict the free exercise of religion to be invalidated under the First Amendment of the Federal Constitution.[29]

It is likely that Louisiana courts will find that the First Amendment doesn't prohibit prisons from restricting name changes while a prisoner serves his sentence.

b. First Amendment Challenges to 13:4751(D)(2) (Lifetime Ban)

Whitmore and *Bartley* and did not involve a prisoner restricted by the lifetime restriction (§ 13:4751(D)(2)).[30] Additionally, even the *Whitmore* case noted that the restriction in § 13:4751(D)(1) is constitutional as it is not a *complete* ban on name changes. It only runs for the length of the sentence.[31] The separate § 13:4751(D)(2) ban for prisoners convicted of certain felonies, however, is much more complete and continues for the life of the prisoner, even after he has served his sentence.[32] It is a different kind of ban. Even other courts that used the "logical connection to legitimate government interests" test—the same test used in *Whitmore*—to uphold flat bans on name changes for current prisoners did not address *life-time* bans. Life-time bans are even more restrictive.[33] Whether it is constitutional is unclear—no case has

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[25] Whitmore v. State, 99-1988, p. 3 (La. App. 1 Cir. 02/18/00); 752 So. 2d 365, 366. In an earlier case, a Louisiana court came to the opposite conclusion. In *Sparks*, denying a name change to a prisoner—also a convert to Islam—was found to violate the prisoner's First Amendment rights. But *Sparks* was decided before the restriction in § 13:4751(D) was enacted and was centered on a district attorney's denial to recognize the new name because of record-keeping convenience. In addition, even the *Sparks* case admitted that there might be times when it would be reasonable to restrict name changes for "legitimate . . . interests." Sparks v. Ware, 509 So. 2d 811, 812–813 (La. App. 1 Cir. 1987) ("The district attorney did not file a brief in this court, but we assume from his answer to the petition that his objection to petitioner's name change is based on the idea that it would disrupt prison records, prison operations, the detainer system, and efforts to recapture escaped prisoners. Although we realize that there is some risk of confusion in prison record keeping when a prisoner takes a new name, prison authorities must routinely deal with inmates who have several names at the time they enter prison. Such a prisoner's record reflects both his legal name and all known aliases. When a prisoner takes his religious name as his legal name, the prison record system could simply add the new name to the existing records reflecting his previous legal name."). Thus, *Whitmore* and the new § 13:4751(D) provision at least partly overruled *Sparks*.

[26] Whitmore v. State, 99-1988, p. 3 (La. App. 1 Cir. 02/18/00); 752 So. 2d 365, 366 ("LSA-R.S. 13:4751 D is logically connected to legitimate governmental interests. It was enacted for security reasons and is intended to maintain adequate identification records and to preserve the criminal history of convicted felons. The provision is necessary to maintain security, order, and administrative efficiency in penal institutions. Because the statute's limitation on prisoners' name changes is reasonably related to legitimate penological interests, it is not unconstitutional.").

[27] *See, e.g.*, Matthews v. Morales, 23 F.3d 118, 119–120 (5th Cir. 1994).

[28] Bartley v. Mamoulides, 97-42 (La. App. 5 Cir. 4/29/97); 694 So. 2d 1050.

[29] Bartley v. Mamoulides, 97-42, p. 4 (La. App. 5 Cir. 4/29/97); 694 So. 2d 1050, 1052 (1997) (". . .we believe the requirements of prison record-keeping and identification of convicted felons can take precedence over religious practices unless those practices are shown to be compelling requirements of the religion. The petition here sets forth no compelling reason for the name change. . . . We do not find the statutory limitations place substantial burdens on his religious liberty.").

[30] Bartley v. Mamoulides, 97-42, p. 4 (La. App. 5 Cir. 4/29/97); 694 So. 2d 1050, 1052 (1997).

[31] Whitmore v. State, 99-1988, p. 3 (La. App. 1 Cir. 02/18/00); 752 So. 2d 365, 367 ("LSA-R.S. 13:4751 D provides a legitimate limitation, as opposed to a complete ban on name changes. Only those convicted of a felony are impacted and the time frame is limited to satisfaction of sentence.").

[32] *See* LA. REV. STAT. ANN. § 13:4751(D)(2) (2017).

[33] Matthews v. Morales, 23 F.3d 118, 119–120 (5th Cir. 1994) ("Under the standard announced in *O'Lone*, we must determine whether a statute barring name changes by prisoners and probationers, like the regulation barring prisoners from returning to the main building, has 'a logical connection to legitimate governmental interests.' [Section] 32.22 was enacted for security reasons. It is intended to protect the ability to identify persons sought on warrant and

addressed this issue directly. *See* Chapter 27 of the main *JLM* for more information on name change restrictions.

c. RLUIPA Challenges to Flat Bans During Sentence and Lifetime Bans

Whitmore and *Bartley* were also decided before RLUIPA was enacted and there are no cases that have challenged Section 13:4751(D) under RLUIPA. Therefore, it might be possible to challenge both types of name restrictions under RLUIPA. *See* Chapter 27 of the main *JLM* for more information on name change restrictions and how to challenge restrictions on your religious freedom.

In conclusion, your ability to change your name for religious reasons in prison is heavily restricted. The restriction that lasts for the whole length of a sentence has been upheld twice in state courts. If you are trying to change your name for religious reasons and your sentence is still running, you may not be able to do it. You can attempt to show the court that changing your name immediately is a requirement of your religion, but this will be difficult to do. Recently, courts have denied such cases.

On the other hand, if your sentence has run but you have committed one of the felonies that will trigger § 13:4751(D)(2), you may *never* be allowed to change your name. Whether this is constitutional or valid under RLUIPA or other legislation is currently unclear. No cases have discussed this specific provision, but courts *might* be against flat, life-time bans.

C. ACCESS OF CHAPLAINS/PRIESTS TO INMATES

Your religion might require you to hold group or community meetings that possibly are led by a religious leader, also known as a chaplain. Or you may feel that you need more instruction in the ways of your religion and want a chaplain to guide you through religious teachings. Sometimes this may involve bringing in "outside volunteers" to lead religious meetings or teach new converts.

Prisons often object to bringing in new chaplains for a variety of reasons. They might say that security is an issue. They might argue that they have too little space. They might tell you that there are too few participants in your religion to merit getting its own chaplain. Most of the time, courts will agree that prisons do not have to let you practice your religion how you see fit and will not force prisons to hire new chaplains for your religion. On the other hand, if other religious groups have access to chaplains and there are volunteers willing to serve your religious group, prisons will have a harder time convincing courts that you should not be allowed access to a chaplain. These issues are all discussed in Chapter 27 of the main *JLM*.

These cases will be very fact specific, but you should focus on any discriminatory practices that the prison engages in if you decide to file suit.

1. Statutory Access to Chaplains and Priests

Louisiana provides two statutory protections that guarantee prisoners the ability to access priests and chaplains of other religious denominations.

The first is Section 15:858, which states that the warden must provide to prisoners the services of a full-time Catholic priest.[34] The section also provides that you must have access to this priest at all times.[35]

In addition to a full-time Catholic priest, Section 15:857 requires the warden to provide all prisoners with a full-time Protestant chaplain who is to represent the "predominant non-Catholic denomination" of

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detainer, and to preserve the criminal history of felons. Matthews himself concedes in his brief that these are 'legitimate state penological concerns.'") (citing O'Lone v. Estate of Shabazz, 428 U.S. 342, 349 (1987)).

[34] LA. REV. STAT. ANN. § 15:828 (2017).

[35] LA. REV. STAT. ANN. § 15:828 (2017).

the prison.[36] Section 15:857 also *allows* the warden to hire additional *part-time* chaplains of *any* religious denomination, but the section *does not require* the appointment of any additional chaplains.[37]

There are not currently any state or federal cases interpreting these two sections.

2. Challenging Access to Chaplains and Priests

Generally, there is no First Amendment or other Federal Constitutional claim that guarantees you access to a chaplain of your choice. In other words, you are not guaranteed a religious leader to lead your religious denomination. This is discussed in Chapter 27 of the main *JLM*.

But prisons cannot unreasonably limit your access to chaplains and other religious leaders who are available and who volunteer to lead congregations in your prison. You can challenge these restrictions in the same way you can challenge the restriction on name changes discussed in Part B. You can challenge these restrictions under the Free Exercise Clause of the First Amendment of the Federal Constitution or the Religious Land Use and Institutionalized Persons Act.

a. First Amendment Challenges to Chaplain Access

The test that courts use to determine if a restriction is constitutional under the First Amendment is the same one discussed in Part B: whether the regulation restricting access is "reasonably related to legitimate penological interests."[38]

Usually, restrictions that are based on security, space, or staff limitations are upheld.[39] For example, there are restrictions that forbid religious groups to gather without an outside-volunteer-religious leader present.[40] These restrictions are upheld as long as alternative means of worship—such as worshipping alone in your cell—are available.[41] Prisons do not have to let you worship in the exact way you want. For more detailed information on what prisons must provide and what they may allow about the practice of religion, please read Chapter 27 of the main *JLM*.

Under the First Amendment analysis, courts have found it important that prison policies regarding the practice of religion are neutral.[42] This does not mean that the prison must accommodate every religious

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[36] LA. REV. STAT. ANN. § 15:857 (2017) ("The warden shall provide for the services on a contractual basis of a full-time minister of the predominant non-Catholic denomination who shall serve as the Protestant chaplain. The inmates shall at all times have access to the Protestant chaplain.").

[37] LA. REV. STAT. ANN. § 15:857 (2017) ("The warden may provide for the employment of additional part-time chaplains of any religious denomination on a contractual basis and shall have authority to fix their fees.").

[38] Mayfield v. Texas Dep't. of Criminal Justice, 529 F.3d 599, 607 (5th Cir. 2008).

[39] Mayfield v. Texas Dep't. of Criminal Justice, 529 F.3d 599, 608 (5th Cir. 2008) ("The TDCJ's asserted justifications for the volunteer requirement involve prison security concerns, as well as staff and space limitations. These are valid penological interests. We have recognized in previous cases that the TDCJ's volunteer requirement is rationally related to these legitimate concerns."); Baranowski v. Hart, 486 F.3d 112, 121 (5th Cir. 2007) ("The record demonstrates that the prison policies at issue here are logically connected to legitimate penological concerns of security, staff and space limitations.")

[40] Baranowski v. Hart, 486 F.3d 112, 121 (5th Cir. 2007) ("Baranowski's main complaint is that the prison could accommodate the need for weekly Jewish services if inmates were permitted to lead the services without the assistance of a rabbi or approved outside volunteer. However, *Adkins* rejected this argument, and we do so again here."); Adkins v. Kaspar, 393 F.3d 559, 571 (5th Cir. 2004) ("The requirement of an outside volunteer . . . does not place a substantial burden on Adkins's religious exercise.").

[41] Baranowski v. Hart, 486 F.3d 112, 121 (5th Cir. 2007) ("The summary judgment evidence shows that despite being denied weekly Sabbath services and other holy day services when a rabbi or approved volunteer is not present, Baranowski retains the ability to participate in alternative means of exercising his religious beliefs, including the ability to worship in his cell using religious materials and the ability to access the chapel and lockers containing religious materials on certain days and times.").

[42] Mayfield v. Texas Dep't. of Criminal Justice, 529 F.3d 599, 607 (5th Cir. 2008) ("[The] standard also includes a neutrality requirement--'the government objective must be a legitimate and neutral one . . . [and] [w]e have found it important to inquire whether prison regulations restricting inmates' First Amendment rights operated in a neutral fashion.'") (quoting Turner v. Safely, 482 U.S. 78, 90 (1987)).

group equally; prisons can consider the overall size of the group and the demand for that specific religious practice.[43] But the prison cannot intentionally discriminate against your religious group unless it has good reason for doing so.[44]

The current Louisiana statute seems to give better treatment to practicing Catholics and Protestants, as those are the only groups that are *required* to have full-time chaplains appointed by the warden. This statute is facially discriminatory which means that at first glance, the language of the statute (the way it's written) outwardly discriminates against certain people. The statute may even be invalid, especially if your prison uses this to discriminate against your religious group. For more information about how to challenge statutes that might discriminate based on your religion, *see* Chapter 27 of the main *JLM*.

b. RLUIPA

If you feel that your religious group is being discriminated against because the prison refuses to provide you with access to a chaplain or another religious leader of your choice, you may be able to make a claim under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).[45] *See* Chapter 27 of the main *JLM* for more information on how to make claims under those provisions.

Generally, courts will analyze claims for violations of RLUIPA by evaluating two factors. First, courts will look to see if the practice of religion has been substantially burdened.[46] If it has, courts then look to see if the prison is using the least restrictive means possible.[47]

Substantial Burden: For a court to find a substantial burden on the practice of religion, you will have to allege that it is nearly impossible for you to practice your religion under the circumstances. Substantial burdens may include situations where practitioners are completely unable to meet together and practice their religion, or where there are no outside volunteers available to lead meetings.[48] If you absolutely need an outside chaplain to practice your religion, your prison is not providing you with one, and you have no other options, you may have a claim.

Least Restrictive Means: If you can prove that there is a substantial burden on your practice of religion, you will also need to show that it would be possible for the prison to use less restrictive methods in furthering its interest in regulating prisoners. Prisons will argue that they need outside volunteers to run meetings for security reasons and to make sure prisoners don't exert influence on one another.[49] Courts may not be persuaded by arguments that these restrictions make it totally impossible for you to worship

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[43] Cruz v. Beto, 405 U.S. 319, 322 n.2 (1972) ("We do not suggest, of course, that every religious sect or group within a prison—however few in number—must have identical facilities or personnel. A special chapel or place of worship need not be provided for every faith regardless of size; nor must a chaplain, priest, or minister be provided without regard to the extent of the demand.").

[44] Mauro v. Arpaio, 188 F.3d 1054, 1068 (9th Cir.1999) (en banc) (Kleinfeld, J., dissenting) (The term penological relates to "the 'theory and practice of prison management and criminal rehabilitation.'")

[45] You could bring a claim under the Religious Freedom Restoration Act if you were in a federal prison in Louisiana. Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb–bb-4 (2012); City of Boerne v. Flores, 521 U.S. 507, 534, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624, 648 (1997). For more information on how to bring a claim under RFRA, *see* Chapter 27 of the main *JLM*.

[46] Newby v. Quarterman, 325 Fed. App'x. 345, 350 (5th Cir. 2009).

[47] Newby v. Quarterman, 325 Fed. App'x. 345, 351 (5th Cir. 2009) ("Having determined that there is a reasonable basis for a factfinder to conclude that the outside-volunteer policy substantially burdens [a prisoner's] free exercise, we must still evaluate whether that policy is the least restrictive means of furthering a compelling governmental interest.").

[48] Newby v. Quarterman, 325 Fed. App'x. 345, 350 (5th Cir. 2009). ("In making this determination [in *Mayfield v. Texas Dep't of Criminal Justice*, 529 F.3d 599, 614–615 (5th Cir. 2008)], we noted the lack of evidence that a volunteer would become available in the future to reduce the burden on Mayfield's ability to worship. Newby has alleged that the TDCJ-ID's outside-volunteer policy has precluded members of the Buddhist faith on the Roach Unit from meeting, and the *Martinez* report corroborates that there is a total lack of approved Buddhist volunteers to conduct meetings. These facts suggest that the burden on Newby is greater than that of the inmate in *Mayfield*.").

[49] Newby v. Quarterman, 325 Fed. App'x. 345, 351 (5th Cir. 2009).

communally (in a group),[50] especially if it can be shown that there are other ways for you to hold communal meetings without an outside volunteer or that other groups have found ways to hold communal meetings while facing similar security concerns.[51] In addition, you may allege disparate application of prison policy (that your religious group is being treated differently than other groups) regarding communal meetings to show that least restrictive means are not being used.[52] If you can show that you are being treated differently than other religious groups, you may be able to state a claim. For more information on RLUIPA, please read chapter 27 of the main *JLM*.

If you feel that the practice of your religion is restricted because the prison will not provide you with a chaplain and will not allow you alternative means by which to practice, make sure to make claims under both the First Amendment and RLUIPA, as discussed in Chapter 27 of the main *JLM*. Courts will generally be sensitive to situations in which your religious group is being treated differently from others. If you can show that other similar groups are getting better treatment, you may be able to state a claim for relief.

D. FAITH-BASED PROGRAMS (R.S. § 15:828.2)

Chapter 27 of the main *JLM* discusses the recent increase in faith-based rehabilitation programs. Your prison may have some of these programs, and Louisiana has enacted a statute that specifically addresses them.

There is very little case law, either at the state or federal level, discussing faith-based programs. However, it is unlikely that prisons will be able to discriminate against your religious groups using these programs.

1. Current Louisiana Laws

Louisiana has passed a unique statute regarding faith-based rehabilitation programs. The statute states that "faith-based programs offered in state and private correctional institutions and facilities have the potential to facilitate prisoner institutional adjustment, to help prisoners assume personal

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[50] Newby v. Quarterman, 325 Fed. App'x. 345, 352 (5th Cir. 2009) ("[W]e cannot see 'why many of the security concerns voiced by Texas cannot be met by using less restrictive means, even taking into account cost.' For instance, Chaplain Nino or other prison staff could supervise, rather than conduct, Buddhist ceremonies, thus ensuring that no inmate exerts undue influence over his peers. Newby alleges that 'numerous Buddhist clergy [have] offered remote supervision, audio/video tapes, and consultation for Chaplain Nino,' who through exercise of his supervisory authority could ensure that any communal worship is consistent with the tenets of the Buddhist faith.").

[51] Newby v. Quarterman, 325 Fed. App'x. 345, 352 (5th Cir. 2009) ("Newby alleges that 'numerous Buddhist clergy [have] offered remote supervision, audio/video tapes, and consultation for Chaplain Nino,' who through exercise of his supervisory authority could ensure that any communal worship is consistent with the tenets of the Buddhist faith. While Buddhists might not be entitled to the benefits of the consent decree in *Brown v. Beto,* the fact that Muslims regularly engage in communal worship without an approved religious volunteer is some evidence that the security and safety concerns identified by Texas can be addressed through less restrictive alternatives. The feasibility of these alternatives and others can be explored on remand.").

[52] *See* Newby v. Quarterman, 325 Fed. App'x. 345, 352 (5th Cir. 2009) ("Newby also alleges that Chaplain Nino is targeting Buddhists through the disparate application of TDCJ-ID's outside-volunteer policy. According to Newby, (1) Muslims may hold services without an approved religious volunteer, but Buddhists may not; and (2) Chaplain Nino conducts or supervises a variety of Christian activities, but not Buddhist activities. Newby alleges that TDCJ-ID does not allow him to meet with other Buddhists under the same conditions as these "god-based groups." These allegations of disparate application might provide a reasonable basis for a factfinder to conclude that the outside-volunteer policy is not the least restrictive means of furthering a compelling governmental interest."); *see also* Cruz v. Beto, 405 U.S. 319, 322 (1972) ("If Cruz was a Buddhist and if he was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, then there was palpable discrimination by the State against the Buddhist religion, established 600 B.C., long before the Christian era.").

responsibility, and to reduce recidivism."[53] The statute also states that the legislature intends for faith-based programs to be made more available to prisoners.[54]

The statute then says that prisons *shall* do three things: (1) "[m]easure recidivism rates for all prisoners participating in faith-based or religious programs,"[55] (2) try to increase the number of "volunteers ministering to prisoners from various faith-based institutions in the state,"[56] and (3) "[d]evelop community linkages with churches, synagogues, mosques, and other faith-based institutions to assist in the release of participants back into the community."[57]

Currently, only one federal case (and no state case) has mentioned this provision, and that case mentioned it only in passing.[58] While cases haven't discussed what this statute requires prisons to do, it may be useful to mention when advocating for faith-based programs or brining a claim based on your religious freedoms.

E. CONCLUSION

Your First Amendment protections are not erased once you go to prison. However, since prisons have an interest in orderly administration, courts have found that prisons can limit your ability to practice your religion as long as those limitations are reasonable, non-discriminatory, and serve some sort of prison-related interest. Prisons cannot single out your religious group for punishment, however. They have to listen to your requests and try to provide you with the ability to practice your religion when possible. You might not always be able to practice your religion how you want but prisons generally cannot discriminate against you, or keep you from practicing your religious beliefs without reasons that are supported by law. This chapter covers the law relating to religious freedom in prisons, and the ways in which Louisiana law has developed in these areas. If you feel that you may have a case based on reading this chapter, it is important that you try to first exhaust your resources in the prison before seeking litigation. Read Chapter 27 of the main *JLM* for more information about your religious freedom in prison.

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[53] LA. REV. STAT. ANN. § 15:828.2 (2017).
[54] LA. REV. STAT. ANN. § 15:828.2 (2017) ("It is the intent of the legislature that the Department of Public Safety and Corrections and private vendors operating private correctional facilities work toward ensuring the availability and development of such programs at the correctional institutions and facilities of this state . . . .").
[55] LA. REV. STAT. ANN. § 15:828.2(1) (2017).
[56] LA. REV. STAT. ANN. § 15:828.2(2) (2017).
[57] LA. REV. STAT. ANN. § 15:828.2(3) (2017).
[58] Orso v. Shumate, No. 3:10-CV-1069, 2010 U.S. Dist. Lexis 140978, at *11 (W.D. La. Oct. 13, 2010).