

20-6258  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

ARTHUR L. CAMPBELL,

Petitioner,

v.

CYNTHIA GAUSE, ET AL.

Respondent.

FILED  
OCT 29 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Submitted By:

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In Propria Persona  
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November 3, 2020

QUESTION PRESENTED

THE SIXTH CIRCUIT COMMITTED PLAIN ERROR, CONTRARY TO 42 U.S.C. §2000cc et seq., WHEN IT ABDICATED THE RESPONSIBILITY, CONFERRED BY CONGRESS ON THE COURTS, TO APPLY THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT'S RIGOROUS TEST TO A PRISON POLICY THAT SUBSTANTIALLY BURDENS A MUSLIM'S SINCERE BELIEF THAT PRAYER OIL IS REQUIRED 5 TIMES DAILY ACCORDING TO ISLAM.

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Arthur L. Campbell respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Sixth Circuit Court of Appeals' August 13, 2020 Order, denying rehearing en banc, is Appendix A, App 1, to this petition. See also 2020 U.S. App LEXIS 25856 (6th Cir.).

The Sixth Circuit Court of Appeals' April 24, 2020 Order affirming the District Court's June 4, 2019 Order is Appendix B, App 2-8, to this petition. See also 2020 U.S. App LEXIS 13446 (6th Cir.).

The District Court's June 4, 2019 order denying reconsideration is Appendix C, App 9-11, to his petition. See also 2019 U.S. Dist. LEXIS 93020 (E.D. Mich 2019).

The District Court's May 6, 2019 order denying Petitioner's motion to withdraw the stipulated order dismissing, without prejudice, Claim 8 (violation of First Amendment Free Exercise Clause) and Claim 9 (violation of Religious Land Use and Institutionalized Person Act ("RLUIPA")) is Appendix D, App 12-13, to this petition.

JURISDICTION

A Copy of the Sixth Circuit's August 13, 2020 Order denying a timely motion for rehearing en banc appears as Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS INVOLVED

The Religious Land Use and Institutionalized Persons Act. ("RLUIPA"), 42 U.S.C. § 2000cc et seq., provides that,

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 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrate 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.

### STATEMENT OF THE CASE

Petitioner, Arthur L. Campbell ("Campbell"), a Michigan prisoner proceeding pro se appealed the order of a magistrate judge denying his post-judgment motion to withdraw a stipulated order dismissing, without prejudice, two religious-based claims.

The magistrate judge denied Campbell's motion emphasizing that he was not required to consider whether the Michigan Department of Corrections ("MDOC") policies that prohibit him from possessing religious oils violated his rights under the First Amendment Free Exercise Clause and the RLUIPA because "the stipulated order removed these two religious based claims from the jury," rendering his motion to withdraw the order both "untimely" and "moot." Appendix D, App 12.

In his order denying reconsideration, the magistrate judge emphasized that the stipulated order dismissed the religious-based claims "without prejudice" and that Campbell's "remedy, 'if any,' is to file a new action, subject to any affirmative defense that may be available to the Defendants." Appendix C, App 10.

On appeal, Campbell argued that (1) he "was misled into stipulating to the dismissal" of his religious-based claims; (2) his request for declaratory and injunctive relief for his two religious-based claims should have been decided by the magistrate judge "after the jury rendered its verdict against the defendants"; (3) the "defendant['] failure to raise an argument against" his two religious-based claims in their motion for summary judgment constitutes "an admission of the facts alleged"; and (4) the MDOC violated "his rights under the First Amendment free exercise clause and the [RLUIPA]" by prohibiting him from possessing religious oils. Appendix E, Appellant's Brief, App 14-34.

Campbell argued that counsel erroneously advised him that the magistrate judge could not order the MDOC to allow him to possess religious oils, which (mis)led him to believe that he could "withdraw the stipulation and obtain declaratory and injunctive relief" after the jury's favorable verdict. He stressed that the magistrate judge could order the MDOC to allow him to possess religious oils under the RLUIPA "by way of an official-capacity suit against MDOC officials," pointing to his official-capacity claims against Warden Booker. Appendix E, App 19-21.

The Sixth Circuit affirmed, holding that "no injustice will occur" as a result of the magistrate judge's failure to "address the merits of Campbell's two religious-based claims related to the deprivation of his religious oils because of the dismissal of those claims without prejudice by the stipulated order." Appendix B, App 7-8.

On May 6, 2020, Campbell filed a petition for rehearing en banc on whether 42 U.S.C. § 2000cc-2 provide a separate cause of action for injunctive relief under the RLUIPA which required the magistrate judge to rule on his RLUIPA claims. Appendix F, Petition for Rehearing En Banc, App 35-41.

The Sixth Circuit denied rehearing en banc on August 13, 2020. Appendix A, App 1.

Campbell seeks Certiorari in this Court for the following reasons:

REASONS FOR GRANTING THE WRIT

In affirming The magistrate judge's Order, the Sixth Circuit ignored the broad protection for religious liberty Congress provided when it enacted the RLUIPA—governing religious exercise by institutionalize persons. 42 U.S.C. § 2000cc-1. RLUIPA, like its sister statute, the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat, 1488, 42 U.S.C. §2000bb et. seq., "makes clear that it is the obligation of the (federal) courts to consider whether exceptions are required under the test set forth by Congress." See Gonzales v. O Centro Espírito Beneficente Uniao do Vegetal, 546 U.S. 418, 434 (2006). But the magistrate judge and the Sixth Circuit abdicated the responsibility conferred by Congress on the courts, not a jury, to apply RLUIPA's rigorous standard to a prisoner's request for an accomodation sincerely based on a religious belief. See Holt v. Hobbs, 574 U.S. 352, 364 (2015).

This decision is inconsistent with Congress' instruction to the courts to apply the exacting scrutiny required by the RLUIPA to prison regulations, 42 U.S.C. §2000cc-1(a), and conflict with Supreme Court precedent, Holt v. Hobbs, *supra*, and reflect error of exceptional importance.

This Court should grant certiorari, reverse the Sixth Circuit's decision regarding Petitioner's claim for injunctive and declaratory relief under the RLUIPA, and remand for the district court to fulfill its obligation to scrutinize Petitioner's religious-based claim for relief under RLUIPA.

## ARGUMENT

THE SIXTH CIRCUIT COMMITTED PLAIN ERROR, CONTRARY TO 42 U.S.C. §2000cc et seq., WHEN IT ABDICATED THE RESPONSIBILITY, CONFERRED BY CONGRESS ON THE COURTS, TO APPLY THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT'S RIGOROUS TEST TO A PRISON POLICY THAT SUBSTANTIALLY BURDENS A MUSLIM'S SINCERE BELIEF THAT PRAYER OIL IS REQUIRED 5 TIMES DAILY ACCORDING TO ISLAM.

Petitioner Arthur L. Campbell, a practicing Muslim inmate, appealed the order of a magistrate judge denying his post-judgment motion to withdraw a stipulated order dismissing without prejudice claims against officials with the Michigan Department of Corrections (collectively "MDOC"), in their official capacity, alleging separate violations of his right to freely exercise his religion under the First Amendment and the RLUIPA, 42 U.S.C. § 2000cc-1(a), when confiscating his religious oils. Based on these claims, Campbell sought declaratory and injunctive relief. Appendix B, App 7.

Campbell argued that the RLUIPA demands that the courts, not a jury, apply the compelling interest/least restrictive means analysis to the MDOC policies prohibiting him from possessing religious oils. 42 U.S.C. § 2000cc-1(a). Appendix E, App 22-26.

Campbell contends that the Sixth Circuit's holding that "[t]he magistrate judge was not required to rule on" his RLUIPA claim, because "[t]here was no ruling on the merits...by...the jury," ignores the analysis the RLUIPA demands. Appendix B, App 7. The dismissal of the RLUIPA claim from the jury's consideration did not obviate the magistrate judge's congressionally mandated responsibility to apply RLUIPA's rigorous standard to Campbell's claim. The scope of RLUIPA makes it explicitly obvious that Congress requires Federal court judges—not juries—to scrutinize the asserted harm of granting specific exemptions to a particular religious claimants, and "[t]o weed out insincere claims." See Burwell v. Hobby Lobby, 573 U.S. 682, 718 (2014).

Since Congress enacted the RLUIPA, in part, to protect inmates from substantial burdens in freely practicing their religion, 42 U.S.C. § 2000cc-1(a) (2000), RLUIPA created a private right of action for individual prisoners and grants the United States (federal judges) power to enforce the statute through injunctive and declaratory relief. 42 U.S.C. § 2000cc-2(a), (f). Thus, Campbell alleged a separate violation of the RLUIPA because MDOC policies, as a whole, prohibits him from possessing religious prayer oil, regardless of which facility he resides within the MDOC.

Given that the sincerity of Campbell's religious belief is indisputable, RLUIPA required the magistrate judge to ask himself whether the MDOC's complete prohibition on his ability to possess religious prayer oils—"(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a).

The RLUIPA questions are legal ones for a judge, rather than a jury, to decide because it involves the use of legal skills to determine whether prison officials violated Campbell's rights under the RLUIPA when they enforced MDOC Policy Directives (PD) 04.07.112 and 05.03.150 which operate as a complete ban on his ability to obtain and possess religious prayer oils. Appendix B, App 7.

Judges, rather than lay jurors, are better equipped to evaluate the nature and scope of RLUIPA's "'more focused'" inquiry which "'requires the government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" Hobbs v. Holt, 574 U.S. at 363.

RLUIPA requires judges to "'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants'" and "to look to the marginal interest in enforcing" the challenged government action in that particular context. Hobby Lobby, 573 U.S. at 726-727 (quoting O Centro, supra, at 431; alteration in original). That is so because judges are experienced in "[t]he construction of written instruments," such as those normally produced by a government agency to memorialize its considered judgment. Cf. Markman v. Westview Instruments, Inc., 517 U.S. 370, 388 (1996). And judges are better suited than are juries to understand and to interpret agency decisions in light of the governing statutory and regulatory context. Cf. 5 U.S.C. § 706 (specifying that a "reviewing court" not a jury, "shall...determine the meaning or applicability of the terms of an agency action."); See also H.R. Rep. No-1980, 79th Cong., 2d Sess., 44 (1946)(quoting longstanding view that "questions respecting the...terms of an agency action" and its "application" are "questions of law").

To understand RLUIPA as a legal question for judges "make sense" given the fact that judges are normally familiar with principles of administrative law. Doing so would produce uniformity among courts because RLUIPA's questions requires a determination concerning the scope and effect of government agency action. Cf. Markman, 517 U.S. at 390-391. Standard of proof, such as preponderance of evidence and clear and convincing evidence, have no place in the resolution of RLUIPA's questions of law. See Merck Sharp & Dohme Corp. v. Albrecht, 139 S.Ct. 1668 (Alito, concurring)(2019)

RLUIPA, like the laws governing declaratory and injunctive relief authorized by 28 U.S.C. §§ 2201 and 2202 of the Federal Declaratory Judgment Act, Rules 57 and 65 of the Federal Rules of Civil Procedures, respectively,

and the general, legal, and equitable power of the district court pursuant to 28 U.S.C. § 1343(4), is the law set forth by Congress by which a judge, not a jury, is obligated to enforce the statute through injunctive and declaratory relief. 42 U.S.C. § 2000cc-1(a), (f). Holt v. Hobbs, 574 U.S. at 364. Only a "judge" may declare the rights and other legal relations of an interested party seeking declaratory relief, whether or not further relief is or could be sought. 28 U.S.C. § 2201.

The relevant language of RLUIPA prohibits the government from imposing a substantial burden on the religious exercise of inmates and other institutionalized persons. Thus, the test conferred by Congress, to apply RLUIPA's rigorous standard, required the magistrate judge to consider whether the MDOC policies that prohibit Campbell from possessing religious prayer oils created a substantial burden on his religious rights that are not justified by a compelling interest, and are not furthered by the least restrictive means possible. 42 U.S.C. § 2000cc-1(a); Holt, 574 U.S. at 364.

The Court of Appeals' holding that the magistrate judge was not required to rule on Campbell's RLUIPA claim, because "[t]he two religious-based claims were never considered by the jury..." cast aside the test set forth by Congress under the RLUIPA; conflict with the authoritative decision of the United States Supreme Court in Holt v. Hobbs *supra*, and the Sixth Circuit's recognition in Calvin v. Mich. Dep't. of Corr., 927 F.3d 455 (6th Cir. 2019) (citing Holt, 135 S.Ct. 853, 862, 863), and its sister circuit's decision in Charles v. Verhagen, 384 F.3d 601, 606 (7th Cir. 2003), which squarely demonstrate that it is the district court's obligation, not a jury's, to apply the RLUIPA's rigorous test to a particular religious claimant's request for religious accommodations. Appendix B, App 7; Appendix C, App 10 n. 2.

Accordingly, the Sixth Circuit's opinion is clearly wrong on a RLUIPA condition of exceptional importance.

This Court should grant Certiorari in order to—as Justice Amy Coney Barrett explained during her confirmation hearing—"interpret" whether Congress conferred the obligation to apply RLUIPA's rigorous test on judges or juries, to remove further misunderstanding as to Congress' implicit intent.

CONCLUSION

For the reasons stated above, Petitioner ask this Court to grant Certiorari, reverse the Sixth Circuit Court of Appeals' April 24, 2020 judgment, and remand for the district court to conclude whether the MDOC's policy survives scrutiny under RLUIPA.

Respectfully submitted,

  
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