No. 22-____

IN THE

Supreme Court of the United States

GREEN HAVEN PREPARATIVE MEETING, ET AL.,

Petitioners,

—v.—

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the standing of a religious organization to protect the fundamental practices of its faith from being abridged by the state cease at the prison walls?

2. What is the proper standard for adjudicating the First Amendment "free exercise" of religion rights of religious organizations, ministers and other non-incarcerated religionists in the prison setting where the religion has practiced an active prison ministry since before the founding of the nation and has conducted religious services in the affected prison for over 40 years without incident?

3. Does the requirement that state action cause a "substantial burden" to the claimant's religious practice empower a court to determine that the connection between the action and the burden is too attenuated to constitute a "constitutional substantial burden"?

4. As a matter of statutory construction, does a long-established prison church, which is subject to the jurisdiction and oversight of supervisory organizations in the faith (1) constitute "a person residing in or confined to an institution" as that phrase is used in Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a), and (2) constitute a "prisoner" for purposes of the Prison Litigation Reform Act, 42 USC § 1997e?

PARTIES TO THE PROCEEDINGS

Petitioners are five Quaker institutions and ten individual members of the Religious Society of Friends. The institutional petitioners are New York Yearly Meeting of the Religious Society of Friends, Inc. ("NYYM"), the oversight body for Quakers in New York and parts of Connecticut and New Jersey; Nine Partners Quarterly Meeting of the Religious Society of Friends ("NPQM"), the Quaker body that represents the Quaker Meetings in the Hudson Valley Region; and Bulls Head-Oswego Monthly Meeting ("BHOM"), Poughkeepsie Monthly Meeting ("PMM"), and Green Haven Prison Preparative Meeting ("GHPM"), three monthly meetings within NYYM and NPQM.

The individual petitioners are Yohannes Johnson, individually and as Clerk of GHPM, Gregory Thompson, individually and as a member of GHPM (and subsequently released), Donald Badgley, individually and as Co-Clerk of NPQM, Emily Boardman, individually and as Co-Clerk of NPQM, Carole Yvonne New, individually and as Clerk of BHOM, David Leif Anderson, individually and as Treasurer of BHOM, Frederick Doneit, Sr., as Treasurer of PMM, and Julia Giordano, Margaret L. Seely and Solange Muller, individually. All of the individual plaintiffs are part of, and under the care of, petitioners New York Yearly Meeting, Nine Partners Quarterly Meeting and a plaintiff Monthly Meeting.

Respondents are the New York State Department of Corrections and Community Supervision ("DOCCS"), DOCCS Acting Commissioner Anthony Annucci, DOCCS Deputy Commissioner for Program Services Jeff McKoy, DOCCS Director of Ministerial,

Family and Volunteer Services Alicia Smith-Roberts, Superintendent of Green Haven Correctional Facility ("GHCF") Jamie Lamanna, GHCF Deputy Superintendent of Programs Jaifa Collado, and GHCF Deputy Superintendent of Program Services Marlyn Kopp.

CORPORATE DISCLOSURE STATEMENT

Petitioner New York Yearly Meeting of the Religious Society of Friends, Inc. is a not-for-profit corporation. It has no shareholders, parents, subsidiaries or affiliates.

Petitioners Nine Partners Quarterly Meeting of the Religious Society of Friends, Bulls Head-Oswego Monthly Meeting, Poughkeepsie Monthly Meeting, and Green Haven Prison Preparative Meeting of the Religious Society of Friends are not-for-profit voluntary associations. Each of them has no shareholders, parents, subsidiaries or affiliates.

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PETITION FOR WRIT OF CERTIORARI

For over 350 years, the Religious Society of Friends, better known as Quakers, has conducted an active, peaceful and beneficial ministry among prisoners. Born in the tumult of the mid-Seventeenth Century British religious and civil wars, the first generations of Quakers earned an enduring reputation for their unorthodox beliefs and practices, and for their commitment to prison and criminal justice reform and to the religious, moral and physical sustenance of prisoners.

Jesus taught that God's Kingdom was already in our midst if we would just recognize it and embrace it. Or so, at least, was the spiritual experiences of the seekers who formed the Religious Society of Friends. And because their faith was built on personal communion with the Christ within, it emboldened the meek to share revelation even where they were not welcome and compelled the comfortable to heed Jesus's command to attend to the "least of these brothers of mine."[1]

This marriage of public voice and public duty made the first generations of Quakers an obnoxious bunch.[2]

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[1] Matthew 25:40 (NIV). The predicate to that teaching was Jesus's parable of the sheep and the goats, which states in part:

> "*For I was hungry and you gave me something to eat. I was thirsty and you gave me something to drink. I was a stranger and you invited me in. I needed clothes and you clothed me. I was sick and you looked after me.* ***I was in prison and you came to visit me.***" (Matthew 25:35-36 (NIV) (emphasis added))

[2] This Court has taken notice of the Quakers' experiences as the target of state officials enforcing orthodoxy. *E.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC*, 565 US 171, 183, 132 SCt 694, 181 LEd2d 650 (2012); *City of*

It also led them into deep experience with and abiding concern for prison conditions and prisoners' rehabilitation and welfare. English officials regularly

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Boerne v Flores, 521 US 507, 557-559, 562, 117 SCt 2157, 138 LEd2d 624 (1997) (O'Connor, J., dissenting); *Faretta v California*, 422 US 806, 828, n 37, 95 SCt 2525, 45 LEd2d 562 (1975); *Illinois v Allen*, 397 US 337, 353, 90 SCt 1057, 25 LEd2d 353 (1970) (Douglas, J., dissenting); *Fay v Noia*, 372 US 391, 402-405, 83 SCt 822, 9 LEd2d 837 (1963); *W. Virginia State Bd. of Educ. v Barnette*, 319 US 624, 633 n. 13, 63 SCt 1178, 87 LEd1628 (1943); *United States v Macintosh*, 283 US 605, 632-633, 51 SCt 570, 75 LEd 1302 (1931) (Holmes, CJ., dissenting); *United States v Schwimmer*, 279 US 644, 49 SCt 448, 73 LEd 889 (1929) (Holmes, J., dissenting).

Indeed, protecting unorthodox Quaker practices is virtually synonymous with "the original understanding of the Free Exercise Clause." *City of Boerne v Flores, supra*, 521 US at 548 (O'Connor, J., dissenting). *See, for example*, Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1423, 1424, 1425, 1428, 1439, 1448, 1454, 1461, 1466, 1467, 1468, 1469, 1471-1472, 1475, 1476, 1480, 1511, 1512, 1517 (1989). As former Judge McConnell concluded (*id.* at 1517):

> "Justice Frankfurter [dissenting in *W. Virginia State Bd. of Educ. v Barnette,* 319 US 624, 63 SCt 1178, 87 LEd1628 (1943)] overlooked the unique American contribution to church-state relations and embraced instead the Enlightenment ideal of Locke and Jefferson. Locke and Jefferson may well have been animated, in Justice Frankfurter's words, by the 'freedom from conformity to religious dogma.' But that is not what the Baptists, Quakers, Lutherans, and Presbyterians who provided the political muscle for religious freedom in America had in mind. To them, the freedom to follow religious dogma was one of this nation's foremost blessings, and the willingness of the nation to respect the claims of a higher authority than 'those whose business it is to make laws' was one of the surest signs of its liberality."

jailed them for the crime of preaching in public.[3] Many Quakers died in prison. In response, Quakers entered the prisons to minister to prisoners' physical and spiritual sufferings. In these dark places, Quakers found a receptive audience for their message of the Christ within and took to preaching in the prisons, thereby both frustrating the authorities' efforts to suppress the religion and swelling the ranks of the Society of Friends.[4] As they gained acceptance in their communities, Quakers turned to prison and criminal justice reform,[5] inventing and implementing the "penitentiary",[6] advocating rehabilitation and humane treatment as penological goals, developing separate facilities and programs for women, juveniles and the mentally infirm,[7] creating (at Green Haven Correctional Facility) programs to teach prisoners nonviolence

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[3] *See, e.g.,* Scott Christianson, *With Liberty for Some: 500 Years of Imprisonment in America* (Northeastern University Press 1998), at 19-20 (hereinafter cited as "*500 Years of Imprisonment*").

[4] *500 Years of Imprisonment* at 19-20.

[5] *See, e.g.*, McGowen, *The Well-Ordered Prison: England, 1780-1865*, in The Oxford History of the Prison: The Practice of Punishment in Western Society (N. Morris & D. Rothman eds. 1995) (the "Oxford History"), at 86-88; Zedner, *Wayward Sisters: The Prison for Women*, in the Oxford History, at 298-301.

[6] *See, e.g.*, W. Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848*, at 1-7, 21-22, 28-37, 160-161 (1965) (hereinafter cited as "*From Newgate to Dannemora*"); *500 Years of Imprisonment* at 62-63, 88, 93-101, 155.

[7] *See, e.g.*, Steven Schlossman, *Delinquent Children: The Juvenile Reform School*, in the Oxford History, at 327; *From Newgate to Dannemora* at 160-161; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Aldine Transaction 2008 rev. ed.) at 59-61, 278.

principles and practices,[8] and establishing prison meetings or congregations under the care of Quaker organizations and unincarcerated Quakers. As a result, the Quakers have practiced a vibrant, peaceful, constructive and principled prison ministry for over 350 years.[9] For over 30 years, Quakers in the Hudson River Valley have practiced that ministry in Green Haven Correctional Facility ("GHCF" or "Green Haven Prison").

This case involves the significant dismantling by prison officials of long-standing Quaker programs at Green Haven Prison, a maximum security prison in Dutchess County, New York that is under the supervision of the State's Department of Corrections and Community Supervision ("DOCCS"). The lawsuit is brought by the affected Quaker governing bodies, meetings (congregations) and individuals to vindicate their institutional, collective and personal rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act, 42 USC § 2000cc *et seq.* ("RLUIPA") to continue or resume the Quaker religious observances that had been held in Green Haven Prison for over 30 years without incident.

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[8] *See Bader v Wren*, 532 FSupp2d 308, 310 (DNH 2008) ("AVP [Alternatives to Violence Project] was conceived in the 1970s as a means of teaching incarcerated inmates how to turn away from violence. . . . Its origins are rooted in the Quaker idea of the power within each individual to lead nonviolent lives through self affirmation and respect for others; however, AVP is not built upon nor does it advance any religion."). *See, also,* AVP – USA, https://avpusa.org/; AVP – New York, https://www.avpny.org/; AVP – International, https://avp.international/.

[9] *See, e.g.*, Susan Sachs Goldman, *Friends in Deed: The Story of Quaker Social Reform in America* (Highmark Press 2012), at 167-169.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (App 1a) is reported at *Green Haven Prison Preparative Mtg. of the Religious Socy. of Friends v NY State Dept. of Corr. & Community Supervision*, 16 F.4th 67 (2d Cir 2021). The Second Circuit affirmed the decision of the United States District Court for the Southern District of New York denying petitioners' application for a preliminary injunction. The District Court announced its decision on the record at the conclusion of argument (App 41a) and filed an order denying the motion the same day (App 39a). The decision is not officially reported. The District Court's decision denying petitioners' motion for reconsideration (App 35a) is reported at 2019 U.S. Dist. LEXIS 208222, 2019 WL 6498252 (SDNY 2019).

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Second Circuit's opinion was issued on October 18, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional provisions, treaties, statutes, ordinances and regulations are involved in this case. The text of these provisions is set out in full in the Appendix, beginning at page 59a.

Federal:

Constitutional Provisions:

United States Constitution, First Amendment

United States Constitution, 14th Amendment, Section 1

Statutes:

Dictionary Act, 1 USC § 1

Certiorari, 28 USC § 1254

Civil Action for Deprivation of Rights, 42 USC § 1983

Civil Rights of Institutionalized Persons Act, Definitions, 42 USC § 1997

Prison Litigation Reform Act, 42 USC § 1997e

Religious Land Use and Institutionalized Persons Act, 42 USC § 2000cc-1 through 2000cc-5

Rules:

Capacity to Sue or Be Sued, Federal Rules of Civil Procedure, Rule 17(b)

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Establishment, Use and Designation of Correctional Facilities, New York Corrections Laws, § 70(2)

Action or Proceeding by Unincorporated Association, New York General Association Law, § 12

Trusts for Shakers and Friends, New York Religious Corporations Law, § 202

Conveyance or Incumbrance of Trust Property of Friends, New York Religious Corporations Law, § 203

STATEMENT OF THE CASE

In 1976, Quakers representing petitioners New York Yearly Meeting of the Religious Society of Friends, Inc. ("NYYM"), Nine Partners Quarterly Meeting of the Religious Society of Friends ("NPQM"), Bulls Head-Oswego Monthly Meeting ("BHOM") and Poughkeepsie Monthly Meeting ("PMM") established a "worship group"[10] in Green Haven Prison. Over time, the worship group developed into a "preparative meeting," petitioner Green Haven Prison Preparative Meeting of the Religious Society of Friends ("Green Haven Prison Meeting"), under the care of petitioners PMM, NPQM and NYYM.[11]

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[10] *Faith and Practice: The Book of Discipline of the New York Yearly Meeting of the Religious Society of Friend*s (2018) (hereinafter, "*Faith and Practice*") is propounded and revised by petitioner NYYM for the purpose of providing spiritual and temporal guidance to Quakers throughout NYYM on the bases and fruits of Friends' faith and on Friends' methods of practice and process. (Faith and Practice is included in the exhibits in this proceeding and is available online at nyym.org/faith-and-practice.)

Faith and Practice provides (at 93): "When Friends or other seekers choose to worship together regularly, whether in a community or in a prison, they may form a worship group by requesting the care of a nearby monthly, quarterly, half-yearly or regional meeting."

[11] *Faith and Practice* provides (at 93): "A preparative meeting, like the monthly meeting of which it is a part, has a definite membership list and meets regularly to conduct business, but does not have final authority to receive, transfer, or dismiss members, or to perform marriages. A preparative meeting may be established by a monthly meeting on its own initiative or on request of a group of members desiring to organize a preparative meeting."

Green Haven Prison Meeting met three times a week for worship, study and "meeting for worship with a concern for business" (hereinafter, "Meeting for Religious Business"). As well, Quakers from the surrounding communities annually gathered with prisoners for a "Quarterly Meeting," hosted by Green Haven Prison Meeting. Both Meeting for Religious Business and Quarterly Meeting are core Quaker religious practices.

Beginning in 2015, prison officials at Green Haven Prison dismantled both of these religious exercises.

First, prison officials refused to continue the Quarterly Meeting as it had been practiced in the prison for over 30 years and unilaterally substituted some other program which they named a "Quaker Meeting" but which contained severe participation, duration and program restrictions. The Quakers declined the prison officials' concoction because it made impossible the spiritual requirements and goals of a prison Quarterly Meeting.

As it had been practiced at GHCF, Quarterly Meetings were held on Saturdays over approximately 6 hours in order to include worship, program, discernment, business, food and fellowship. Prison officials imposed no numerical limits nor license requirements for the participating Quakers from the surrounding region. This religious exercise reflected the Quarterly Meetings held among Quakers since the Society's founding and still held regularly throughout New York Yearly Meeting, with due accommodation of penological concerns and needs.

The program that prison officials created and named a "Quaker Meeting" would be limited to four non-incarcerated Quakers who had to be licensed by DOCCS, and would be held over a couple of hours on

a week night after dinner. The constriction in length and the designation of a post-meal night time for the "Quaker Meeting" precluded the inclusion of two-thirds of the actual Quaker Quarterly Meeting religious program.

The required license subjects a person to the control of prison officials and imposes a communications ban that precludes the individual from ethically participating in a Quaker gathering intended to develop and deepen long-term relationships, to report to incarcerated Quakers how the Spirit is moving among unincarcerated Quakers, and to explore how the Spirit is moving among incarcerated Quakers and then report to the broader Quaker Community.

The so-called "Quaker Meeting" designed by prison officials was the equivalent of a 20 minute mass and communion, but without wafer or wine or priest, and held at a time when few could participate.

Petitioner Donald Badgley participated in the Quarterly Meetings pursuant to a "Minute of Travel" issued by his meeting, PMM. A Minute of Travel provides formal approval of a Quaker's ministry by his/her meeting and commends the traveling minister to those to be visited.[12] The license requirement

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[12] *Faith and Practice* provides (at 131): "Where a member proposes to travel under the weight of a concern, the monthly meeting may issue a minute of travel releasing the Friend for a particular service. The minute of travel is a certificate endorsing the Friend's concern, indicating that the meeting is in unity with and in support of this venture. . . . Discretion and sensitivity to divine guidance, as well as to the conditions of those who will be met, are vital qualifications for visitors. A minute of travel should not be granted lightly, and the monthly meeting's preparers should so phrase it that there can be no

imposed by prison officials destroyed his ministry. He could no longer participate without being licensed by prison officials. And participating as a licensee would preclude him from developing spiritual relationships with prisoners.

For three years, the Quaker community tried to find common ground with DOCCS to resolve this matter. Then, in 2018, after learning that the Quakers were preparing to file suit over the destruction of the Quarterly Meeting, GHCF prison officials terminated Green Haven Prison Meeting's Meeting for Religious Business on the basis that it "does not appear to be a study group or a worship service and therefore does not appear necessary."

Meetings for Religious Business are a core Quaker religious practice.[13] They are the means through which Quakers develop, deepen, share and implement their beliefs, practices, ministry, testimony and witness. As a religion without clerical hierarchy and control and without overriding creeds and rituals, Quaker discernment of faith and practice, belief and conduct, flow upward from seekers gathered in a local congregation to the wider body of the Society. That makes gathering frequently to conduct business and discernment central to the evolution of Quaker practice and beliefs, particularly in prison, where the prisoners have limited opportunities for collective discernment.

Petitioners' suit asserts claims under 42 USC § 1983 for, among other claims, violations of their rights under the First Amendment free exercise of

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doubt of the purpose for which the monthly meeting issued it or any basis for confusion with a letter of introduction."

[13] *See Faith and Practice* at 26-28, 81-82, 83, 86-89.

religion guarantee and under the Religious Land Use and Institutionalized Persons Act, 42 USC § 2000cc *et seq*. The district court's jurisdiction is based on 28 U.S.C. § 1331.

THE PROCEEDINGS TO DATE

The Court of Appeals for the Second Circuit affirmed the district court's denial of petitioners' application for a preliminary injunction to reinstate Quarterly Meeting and Meeting for Religious Business during the pendency of the case. In doing so, it relied upon novel holdings in four areas.

1. Standing: The court of appeals held that the unincarcerated institutional petitioners – NYYM, NPQM, PMM and BHOM – have standing to pursue the claims regarding Quarterly Meeting, but not to challenge the termination of Meetings for Religious Business. The court reasoned that the Quaker bodies lack standing because the Meetings for Religious Business "have never been attended by outsiders and involve only Green Haven inmates" and therefor "the Non-Incarcerated Plaintiffs themselves are not directly affected by any changes in the frequency of religious services that they do not attend and claim no right to attend." (App 18a-19a, 26a; 16 F.4th at 79, 83)

The court of appeals offered no legal authorities for this proposition, nor did it address the facts that (1) "Green Haven inmates" are members of and/or under the care of the supervisory Quaker bodies, petitioners NYYM, NPQM and PMM; (2) prisoner and petitioner Yohannes Johnson, the clerk of Green Haven Prison Meeting, is a member of petitioner BHOM; (3) the institutional Quaker organizations have an independent constitutional interest in protecting the

practice of the Quaker religion; and (4) prison officials did not merely refuse to accommodate the request of a single seeker, but rather terminated an entire part of the core practices of a Quaker congregation. The Bishop was not required to show that he attended mass at an affected church in Brooklyn in order to gain standing to protect the faith and flock from arbitrary Covid-19 restrictions.[14]

The court of appeals also concluded that Green Haven Prison Meeting has standing (App 19a; 16 F.4th at 79), but is disabled by the PLRA requirement that a "prisoner" exhaust available grievance processes before filing suit, and cannot bring suit under RLUIPA because it is not a person who resides in an institution. (App 24a-26a; 16 F.4th at 82-83) Those determinations are addressed in item 4, below.

As a result of these holdings, the court of appeals, like the district court, simply did not address the constitutionality or statutory permissibility of the prison officials' termination of Meetings for Religious Business.

2. Constitutional Standard: The court of appeals applied the attenuated constitutional standard applicable to prisoners' exercise of religion claims that was announced by this Court in *O'Lone v Estate of Shabazz*, 482 US 342, 107 SCt 2400, 96 LEd2d 282 (1987) and *Turner v Safley*, 482 US 78, 107 SCt 2254, 96 LEd2d 64 (1987). Citing *Thornburgh v Abbott*, 490 US 401, 404, 109 SCt 1874, 104 LEd2d 459 (1989) and general concerns about prison security, the court reasoned that "the same considerations

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[14] *Roman Catholic Diocese of Brooklyn v Cuomo*, 592 US ___, 141 SCt 63, 208 LEd2d 206 (2020).

apply to Free Exercise claims, such that the Non-Incarcerated Prisoners cannot claim a right to more searching review of prison regulations affecting religious liberty than the reasonableness standard applied to their incarcerated co-religionists." (App 29a; 16 F.4th at 84) The court did not explain why the disabilities flowing from conviction for committing a felony can constitutionally be applied to a religion, a church, its ministers or free congregants.

The court of appeals also conceived of the *Turner* and *O'Lone* "reasonableness" test as limited to requiring prison officials to name a penological concern, with no inquiry into whether the proffered concern is actually implicated by the affected religious activity. The court of appeals concluded: "the Quarterly Meetings create additional security concerns and disrupt equitable allocation of scarce staffing and resources, since special events involving outside visitors require extra security to protect civilian visitors and to maintain safety in the facility – a burden that is heightened on weekends, when fewer staff members are on duty." (App 32a; 16 F.4th at 86) The court of appeals made no findings that the Quarterly Meetings actually required "extra security" in the past or would in the future. Nor could it have: prison officials submitted no evidence that the Quarterly Meetings had ever caused any staffing, resource or security costs or concerns over the past 30+ years, and no evidence that continuation of the religious program would have created such costs or concerns.

3. Substantial Burden Test: The changes to the Quarterly Meeting unilaterally instituted by Green Haven prison officials included (i) limiting participation to four unincarcerated Quakers, (ii) who had to be licensed by prison officials; (iii)

abbreviating a 6-hour program to 2 hours, (iv) thereby eliminating 2/3 of the program; and (v) moving the event to a week night after dinner. The court of appeals found that these actions did not cause the Quaker community to suffer a substantial burden "at least in the constitutional sense." (App 30a-31a; 16 F.4th at 85)

The court first simplified the prison officials' actions into "scheduling changes." (App 3a, 4a, 18a, 19a, 30a, 31a, 32a;16 F.4th at 72, 79, 85, 86) That simplification enabled it to conclude that "Plaintiffs have failed to establish that scheduling the Quarterly Meetings on Saturdays (as opposed to any other day) bears any religious significance whatsoever; the inconveniences they suffer as a result of Defendants' decision, therefore, cannot constitute substantial burdens on their **religious** exercise." (App 31a; 16 F.4th at 85 (emphasis in original)) The court of appeals offered no legal authorities for this proposition. Completing a 1-page form is not an act that "bears any religious significance" yet it can constitute a substantial constitutional burden to a person or an entity with religious beliefs about certain types of health care.[15]

The court of appeals acknowledged that, as a result of prison officials' actions, "it might be impossible for some of them [non-incarcerated Quakers] to attend." (App 32a; 16 F.4th at 85) It dismissed that harm on the bases that (1) "the particular Non-Incarcerated Plaintiffs have no constitutional right to have services at Green Haven scheduled to suit their

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[15] *Little Sisters of the Poor Sts. Peter & Paul Home v Pennsylvania*, ___US___, 140 SCt 2367, 2383, 207 LEd2d 819 (July 8, 2020); *Burwell v. Hobby Lobby Stores, Inc.*, 573 US 682, 725-726, 134 SCt 2751, 189 LEd2d 675 (2014).

convenience" and (2) "other non-incarcerated Quakers might find a weekday event easier to attend." (App 32a; 16 F.4th at 85) The court offered no legal authorities for these propositions, nor did it identify these "other non-incarcerated Quakers" who would find it easier to attend on a weekday night.[16] In fact, the Court just made them up. Finally, the court of appeals accused the Religious Society of Friends of "*intransigence*" for refusing to accede to prison officials' "Quaker Meeting." (App 31a, n. 7; 16 F.4th at 85, n. 7)

4. Statutory Construction: In denying Green Haven Prison Meeting the opportunity to be heard on the merits, the court of appeals determined both that (1) Green Haven Meeting is not "a person residing in or confined to an institution" as that phrase is used in RLUIPA, 42 U.S.C. § 2000cc-1(a); and (2) Green Haven Meeting is subject to the requirements imposed by the PLRA on a "prisoner confined in any jail, prison, or other correctional facility." It did so by interpreting the phrase "a person residing in or confined to an institution" to mean a "prisoner" in order to exclude Green Haven Meeting from RLUIPA's coverage; and by interpreting the phrase "prisoner confined in any jail, prison or other correctional facility" as encompassing an "incorporeal entity" based in the prison in order to subject the church to a special requirement in the PLRA intended to restrict the rights of felons. (App 24a-26a; 16 F.4th at 82-83)

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[16] *Compare Southeastern Promotions, Ltd. v Conrad*, 420 US 546, 95 SCt 1239, 43 LEd2d 448 (1975); *Engel v Vitale*, 370 US 421, 429-430, 82 SCt 1261, 8 LEd2d 601 (1962); *McCurry v Tesch*, 738 F2d 271, 275 (8th Cir 1984).

The court reasoned: "To the extent that Green Haven Meeting can be, for statutory purposes, a 'person,' it plainly is not the kind of person that can 'resid[e] in or [be] confined to an institution.' . . . An incorporeal entity cannot be imprisoned, even if all of its human members are prisoners. To whatever extent one might metaphorically consider an association composed entirely of prisoners to reside, in some sense, in prison, it derives that status entirely from the status of its members. The action brought by Green Haven Meeting is brought to vindicate the rights of its members, and those members, as prisoners, are bound by the requirements of the PLRA. In short, the Incarcerated Plaintiffs may not avoid the exhaustion requirement simply by forming an organization and then suing in the name of that organization. Accordingly, the claims of Green Haven Meeting, as well as those of the Incarcerated Plaintiffs suing in their own names, must be dismissed for failure to exhaust administrative remedies." (App 25a-26a; 16 F.4th at 82-83)

The court of appeals offered no legal authorities for these propositions, nor did it address the facts that (1) Green Haven Meeting was formed by (and is under the continuing supervision of) PMM, with the concurrence of NPQM and NYYM, not by some group of prisoners; (2) Green Haven Meeting was organized over 40 years ago, before any of the current prisoner faithful were in Green Haven Prison or were involved with the Meeting; and (3) "the action brought by Green Haven Meeting" is brought not only "to vindicate the rights of its members," but equally to vindicate its independent right to practice its religion free of unwarranted government interference.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition because:

1. The case raises important issues of first impression involving preeminent constitutional rights.

2. The court of appeals ignored established precedent of this Court.

3. The case involves the faith and practice of a small religion whose unorthodox beliefs and conduct both have long aroused animus and discrimination and, for that reason, were a principal concern of the Founders in guaranteeing the right to exercise our religions free from government interference.

In *United States v Schwimmer*, 279 US 644, 655, 49 SCt 448, 73 LEd 889 (1929),[17] Justice Holmes remarked in dissent: "I would suggest that the Quakers have done their share to make the country what it is, that many citizens agree with the applicant's belief and that I had not supposed hitherto that we regretted our inability to expel them because they believe more than some of us do in the teachings of the Sermon on the Mount."

Invoking "security," Green Haven prison officials seek to diminish, if not expel, the long-standing Quaker ministry in Green Haven Prison. Prison officials might plausibly accuse Quakers of many unorthodox beliefs and conduct, but creating security risks has never been one of them.[18] And prison

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[17] *Schwimmer* was overruled by *Girouard v United States*, 328 US 61, 66 SCt 826, 90 LEd 1084 (1946).

[18] As George Washington wrote to the Quakers from the White House: "Your principles & conduct are well known to me — and it is doing the People called Quakers no more than Justice

officials' destruction of principal elements of that ministry deserves a more respectful hearing than excusing their actions as involving a mere "scheduling change", demeaning the Quakers' concerns as whining about an "inconvenience" and hectoring the Quakers as "intransigent" for not acceding to prison officials' ignorant and hostile conceptions of their faith.

1. Standing.

The court of appeals held that the Quaker organizations other than Green Haven Prison Meeting do not have standing to challenge prison officials' termination of Meetings for Religious Business because "the Non-Incarcerated Plaintiffs themselves are not directly affected by any changes in the frequency of religious services that they do not attend and claim no right to attend." (App 18a-19a, 26a; 16 F.4th at 79, 83))

That is inconsistent with this Court's teachings in two respects.

First, the court of appeals adopted a limited associational conception of the standing of religious organizations to vindicate religious rights that is not correct.[19] For example, in *Church of Lukumi Babalu*

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to say, that (except their declining to share with others the burden of the common defence) there is no Denomination among us who are more exemplary and useful Citizens." Letter from President George Washington to Society of Friends, October 13, 1789 (founders.archives.gov/documents/Washington/05-04-02-0188).

[19] *Compare Korte v Sebelius*, 735 F3d 654, 674-675 (7th Cir 2013): "Indeed, the Supreme Court has enforced the RFRA rights of an incorporated religious sect, *see O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*, 546 U.S. at 439, *aff'g* 389 F.3d 973, 973 (10th Cir. 2004)(*en banc*) (identifying the

Aye v City of Hialeah, 508 US 520, 525, 113 SCt 2217, 124 LEd2d 472 (1993), the Court noted that "The Church and its congregants practice the Santeria religion." Similarly, the Roman Catholic Diocese of Brooklyn was not personally injured by Governor Cuomo's limitations on congregating, but this Court did not hesitate to address the injury to its faith and flock.[20] Petitioners NYYM and NPQM are in the same position here as the Diocese of Brooklyn was in that case: charged with responsibility to protect the practice of their religion throughout their jurisdictions. Would the Diocese's standing be any less if the state had terminated confession at a correctional facility? Unless this Court is to adopt a special rule limiting standing of a religious organization to challenge state action abridging the practice of its faith in a prison, the court of appeals erred in denying the institutional standing of these Quaker bodies with respect to the termination of Meeting for Religious Business.

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plaintiff church as 'a New Mexico corporation'), and the free-exercise rights of an incorporated church, *see Lukumi*, 508 U.S. at 525, 547. **The church corporations in these cases were not in court solely asserting the rights of their members based on associational standing; they were asserting their own rights, too.**" (emphasis added)

[20] *Roman Catholic Diocese of Brooklyn v Cuomo, supra*, 141 SCt at 208 LEd2d 206 (2020). See also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC, supra*, 565 US at 186 ("As we would put it later, our opinion in *[Watson v. Jones*, 80 US 679, 13 Wall 679, 20 LEd 666 (1872)] 'radiates ... a spirit of freedom for religious organizations, an independence from secular control or manipulation – in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'"); *quoting Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 US 94, 116, 73 SCt 143, 97 LEd 120 (1952).

Second, even on the court of appeals' terms, the Quaker organizations have associational standing to challenge the termination of Meetings for Religious Business because the Quaker prisoners are members of or under the care of the Quaker oversight bodies. PMM has immediate responsibility for the Green Haven Prison Meeting and its participants. BHOM has immediate responsibility for its member, prisoner Yohannes Johnson, who clerks Green Haven Prison Meeting. NPQM has first oversight charge of the meetings and Quakers in its area, including Green Haven Prison Meeting; and NYYM has ultimate responsibility for the conduct of the congregations and the practice of Quakerism in its territory.[21]

2. First Amendment Rights of Religious Organizations, Churches, Ministers and Unincarcerated Religionists in the Prison Setting.

Prisoners are afforded only limited constitutional rights under *Turner* and *O'Lone*. The Court has explained that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives -- including deterrence of

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[21] *See, for example,* S*tate v New York Yearly Meeting of Friends*, 61 NJ Eq 620, 621, 48 A 227 (NJ Prerogative Ct 1901), ("The New York Yearly Meeting is the general governing body of the Society of Friends, and has primary control over the missionary purposes and general benefactions of such minor bodies as act by its authority. It has a large number of meetings."); *White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends*, 89 Ind. 136 (Ind. Sup. Ct. 1883); *Harrison v. Hoyle*, 24 Ohio St. 254 (Ohio Sup. Ct. 1873).

crime, rehabilitation of prisoners, and institutional security."[22] In *Thornburgh v. Abbott, supra*, the Court applied some form of the *Turner/O'Lone* factors to a question involving the rights of prisoners to receive and of publishers to send printed material into a prison. But even in that case, the Court undertook a substantially more searching inquiry than typical under *Turner* and *O'Lone*. Subsequent decisions continue to suggest that constitutional rights of non-prisoners in the prison setting may differ from the circumscribed rights accorded prisoners.[23] And in *Johnson v California*, 543 US 499, 125 SCt 1141, 160 LEd2d 949 (2005), the Court held that *Turner* and *O'Lone* do not apply to racial discrimination claims, even in a setting involving only prisoners.[24]

The Court has never determined what standard applies to free exercise of religion claims by religious organizations and ministers in the prison setting. Particularly in the context of action by prison officials directly abridging the long-standing, peaceful prison mission of a church as a whole, rather than denying an accommodation to an individual prisoner, why should the guarantee of "free exercise" be circumscribed?

The Court also has not addressed what standard applies to free exercise claims by ministers in a prison setting. Petitioner Donald Badgley peacefully

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[22] *O'Lone v Estate of Shabazz, supra*, 482 US at 348.

[23] *E.g., United States v Haymond*, ___ US ___, 139 SCt 2369, 204 LEd2d 897 (2019)*; Human Rights Defense Ctr. v Baxter County Arkansas*, 999 F3d 1160, 1165 (8th Cir 2021).

[24] *See also Murphy v Collier*, ___ US ___, 139 SCt 1111, 204 LEd2d 252 (2019) (Alito, J., dissenting from grant of application for a stay).

participated in the Quaker religious program at Green Haven Correctional Facility (Quarterly Meetings) for 15 years as part of his ministry. Prison officials' adoption of a license requirement for the Quakers precluded his continued ministry.

The court of appeals dismissed the harm to Badgley's ministry on the basis that "the particular Non-Incarcerated Plaintiffs have no constitutional right to have services at Green Haven scheduled to suit their convenience." (App 32a; 16 F.4th at 85) But the question is not "convenience." The question is whether a license requirement that imposes a relational prohibition in a confessional setting on a religionist acting in a ministerial role unconstitutionally interferes with ministers' exercise of their religion, or whether the constricted rights permitted of felons applies to a non-prisoner seeking to continue a prison ministry that his religion has practiced for 350 years and he has practiced peacefully for 15 years.[25]

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[25] See, for example, *Watchtower Bible & Tract Socy. of NY, Inc. v Vil. of Stratton*, 536 US 150, 167, 122 SCt 2080, 153 LEd2d 205 (2002) ("[R]equiring a permit as a prior condition on the exercise of the right to speak imposes an objective burden on some speech of citizens holding religious or patriotic views."); *Murdock v Pennsylvania*, 319 US 105, 63 SCt 870, 87 LEd 1292 (1943); *Schneider v State*, 308 US 147, 164, 60 SCt 146, 84 LEd155 (1939) ("To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees."); *Our Lady of Guadalupe Sch. v Morrissey-Berru*, ___ US ___, 140 SCt 2049, 2060, 207 LEd2d 870 (2020) "[A] church's independence on matters 'of faith and doctrine' requires the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities."); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC,*

This case is unusual, if not unique, because it involves the termination or abridgement of long-standing religious programs. That posture materially impacts the prison officials' assertion of penological concerns, not because a court should substitute its judgment for the judgment of prison officials, but because the experience with the program is dramatic evidence of whether, how and to what extent the program has actually implicated the proffered penological concern or is likely to do so in the future.[26] As this Court has noted, "history matters."[27] The court of appeals applied a constitutional standard that asks only if the proffered justifications have facial plausibility in the most general sense.[28] For example:

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supra, 565 US at 184; *Roberts v United States Jaycees*, 468 US 609, 618-619, 104 SCt 3244, 82 LEd2d 462 (1984).

[26] *Cf. Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Sts. v Amos*, 483 US 327, 337, 107 SCt 2862, 97 LEd2d 273 (1987); *W. Virginia State Bd. of Educ. v Barnette, supra*, 319 US at 636-642.

[27] *DOC v. New York*, ___ US ___, 139 SCt 2551, 2567, 204 LEd 2d 978 (2019); *quoting NLRB v. Noel Canning*, 573 US 513, 572, 134 SCt 2550, 189 LEd2d 538 (2014) (Scalia, J., concurring in judgment). *See also Am. Legion v Am. Humanist Assn.*, ___ US ___, 139 SCt 2067, 204 LEd2d 452 (2019)*; Trinity Lutheran Church of Columbia, Inc. v Comer*, ___ US ___, 137 SCt 2012, 2032, 198 LEd2d 551 (2017) (Sotomayor, J., dissenting) ("This Court has consistently looked to history for guidance when applying the Constitution's Religion Clauses."); *Pierce v Socy. of Sisters*, 268 US 510, 534, 45 SCt 571, 69 LEd 1070 (1925); *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Sts. v Amos*, 483 US 327, 337, 107 SCt 2862, 97 LEd2d 273 (1987); *Marsh v Chambers*, 463 US 783, 790-791, 103 SCt 3330, 77 LEd2d 1019 (1983).

[28] *Compare Beard v Banks*, 548 US 521, 535-536, 126 SCt 2572, 165 LEd2d 697 (2006).

– Does it matter that there is no history of Quarterly Meetings causing any security concerns? Given that prison officials could not unearth a single complaint from over 30 years of experience, did the court of appeals apply the proper constitutional standard in determining that "the Quarterly Meetings create additional security concerns"?[29]

– When prison officials invoke staffing and costs, but offer no evidence that the affected religious activity required any additional staffing or imposed any costs over the past 30+ years, did the court of appeals apply the proper constitutional standard in determining that the Quarterly Meetings "disrupt equitable allocation of scarce staffing and resources"?

– When the court of appeals adopts the prison officials' contention that holding Quarterly Meeting on a Saturday would create "a burden that is heightened on weekends, when fewer staff members are on duty," does it matter that prison officials produced no evidence of such a burden over the course of the prior 30+ years of holding Quarterly Meetings on Saturdays? Does it matter that the Quakers proposed two Saturdays for the 2015 Quarterly Meeting and prison officials rejected the proposals even though there were no events at all scheduled for those days?

The Court has never addressed the termination of a long-standing prison religious program, particularly one which has an unblemished record, which

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[29] *Cf. Yellowbear v Lampert*, 741 F3d 48, 57-58 (10th Cir 2014) ("And such factually unsupported 'post-hoc rationalizations' aren't the stuff of summary judgment victories in RLUIPA cases (or in most any other).").

contributes to the rehabilitation of prisoners,[30] which enriches a religious society, and which testifies to the immanence of the Living Spirit.[31] The Court has not explained how the historical record of the Quaker prison ministry that predates the Constitution and was familiar to the Founders "should inform our understanding of the Free Exercise Clause."[32] The Court has never determined whether the treatment of prisoners under *Turner* and *O'Lone*, which amounts to religious rights by judicial grace and subject to unbridled bureaucratic discretion,[33] has any application to the dismantling of a religion's prison ministry and, even if so, whether a court is to consider evidence, to recognize the pertinence of experience in weighing reasonableness, or is to limit its inquiry to determining if prison officials' invocation of general penological interests is plausible.

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[30] *See McKune v Lile*, 536 US 24, 36-37, 122 SCt 2017, 153 LEd 2d 47 (2002) ("The Court has instructed that rehabilitation is a legitimate penological interest that must be weighed against the exercise of an inmate's liberty. . . . Since most offenders will eventually return to society, [a] paramount objective of the corrections system is the rehabilitation of those committed to its custody." (citations & internal quotation marks omitted)).

[31] *Cf. Am. Legion v Am. Humanist Assn., supra*, 139 SCt at 2085 ("These four considerations show that retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality.").

[32] *Espinoza v Montana Dept. of Revenue*, ___ US ___, 140 SCt 2246, 2259, 207 LEd2d 679 (2020).

[33] Derek L. Gaubatz, *RLUIPA at Four: Evaluating the Success and Constitutionality of RLUIPA's Prisoner Provisions*, 28 Harv. J.L. & Pub. Pol'y 501, 504, 507-509 (2005).

3. Substantial Burden

Petitioners explained how the changes unilaterally instituted by prison officials undermined the religious purposes and value of the Quarterly Meetings. Indeed, the Quaker community made it clear that the program devised by prison officials was inadequate by refusing to participate. Nonetheless, the court of appeals concluded that the Quaker community suffered no cognizable injury to their beliefs and practices because they did not ascribe religious significance to the day of the week for the gatherings. (App 31a; 16 F.4th at 85)

The substantial burden test, both within and without the prison setting, is concerned with the effect or impact of a restraint, not whether the chain of causation comports with the magistrate's notions of religiosity.[34] As the Court recently explained, "they could not 'tell the plaintiffs that their beliefs are flawed' because, in the Departments' view, 'the connection between what the objecting parties must do . . . and the end that they find to be morally wrong . . . is simply too attenuated.'"[35]

Neither the court of appeals nor the district court questioned the sincerity of the Quaker community. Consequently, the court had no business questioning the Quaker community's unanimous testimony that the "Quaker Meeting" designed by prison officials did

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[34] *Compare, e.g., Yellowbear v Lampert*, 741 F3d 48, 56 (10th Cir 2014)*; United States v Means*, 627 FSupp 247, 260-262 (DSD 1985).

[35] *Little Sisters of the Poor Sts. Peter & Paul Home v Pennsylvania, supra*, 140 SCt at 2383; *quoting Burwell v. Hobby Lobby Stores, Inc., supra*, 573 US at 725-726. *See also Trinity Lutheran Church of Columbia, Inc. v Comer, supra*, 137 SCt at 2022.

not qualify as a real Quaker Meeting.[36] The "constitutional substantial burden" that the court of appeals sought could be found in:

– The imposition of a licensing requirement, which raises serious constitutional issues[37] and certainly constitutes a substantial burden on Quakers' religious exercise at Green Haven Prison.[38]

– The imposition of numerical limits, which also raises serious constitutional concerns[39] and certainly constitutes a substantial burden on Quakers excluded as a result.

– The reduction in the time allotted from 6 hours to 2 hours, which precluded 2/3 of the Quarterly Meeting program. Even in this era of communication by sound bites, abbreviations and emojis, such a material diminution in the time afforded for developing deep spiritual bonds will be a substantial burden to the practice of the faith.

– Moving the gathering from a Saturday, the day reserved for all comparable events at Green Haven Prison, to a week night, which caused a substantial

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[36] *Holt v Hobbs*, 574 US 352, 369, 135 SCt 853, 190 LEd 2d 747 (2015); *Cutter v Wilkinson*, 544 US 709, 725, n 13, 125 SCt 2113, 161 LEd2d 1020 (2005); *Yellowbear v Lampert*, 741 F3d 48, 54 (10th Cir 2014).

[37] *Watchtower Bible & Tract Socy. of NY, Inc. v Vil. of Stratton*, 536 US 150, 122 SCt 2080, 153 LEd2d 205 (2002); *Schneider v State*, 308 US 147, 164, 60 SCt 146, 84 LEd155 (1939).

[38] *Compare Koger v Bryan*, 523 F3d 789, 798-800 (7th Cir 2008).

[39] *Roman Catholic Diocese of Brooklyn v Cuomo, supra*, 141 SCt at 208.

burden because it prevents participation by unincarcerated Quakers.[40]

The instrument of harm may not be freighted with religious significance, but that does not diminish the religious injury suffered by the affected seeker.[41]

4. Statutory Construction

Green Haven Prison Meeting was conceded to have standing to challenge the actions of prison officials diminishing its religious services and programs. (App 19a; 16 F.4th at 79) The court of appeals nonetheless held that Green Haven Meeting could not be heard on its claims because (1) it is not a "prisoner" for purposes of the Religious Land Use and Institutionalized Persons Act, and (2) it is close enough to being a "prisoner" for purposes of the restrictions of the PLRA. (App 25a-26a; 16 F.4th at 82) Those determinations disregarded fundamental principles of statutory construction applied by this Court and every other Circuit Court.

RLUIPA grants rights to "a person residing in or confined to an institution." 42 U.S.C. § 2000cc-1(a). Green Haven Meeting is a "person" for constitutional and statutory purposes.[42] The court of appeals seemed to accept that, but determined that Green

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[40] Compare *Islamic Ctr. of Mississippi, Inc. v Starkville*, 840 F2d 293, 298-299 (5th Cir 1988).

[41] *Burwell v. Hobby Lobby Stores, Inc., supra*, 573 US at 723-725; *Masterpiece Cakeshop, Ltd. v Colorado Civ. Rights Commn.*, ___ US ___, 138 SCt 1719, 1737-1740, 201 LEd2d 35 (2018) (Gorsuch, J., concurring).

[42] *Burwell v. Hobby Lobby Stores, Inc., supra*, 573 US at 725-726; Dictionary Act, 1 USC § 1; Civil Rights of Institutionalized Persons Act, Definitions, 42 USC § 1997(3). *And see* Prison Litigation Reform Act, 42 USC § 1997e(h) (defining "prisoner").

Haven Meeting is not "residing in an institution" on the theory that "To whatever extent one might metaphorically consider an association composed entirely of prisoners to reside, in some sense, in prison, it derives that status entirely from the status of its members." (App 25a; 16 F.4th at 82)

That is incorrect. An "incorporeal entity" has the independent right to sue and be sued in its own name and derives its residential situs from the location(s) where it conducts its business, not from the residences of its members.[43]

Congress presumably was aware of this when it granted a right of action under RLUIPA to "a person residing in . . . an institution" in addition to persons "confined" to an institution. Congress should be assumed to have chosen this language for a reason and with knowledge of this Court's determinations regarding the legal rights and residence of unincorporated associations.[44]

In contrast, PLRA's requirements are applicable only to "a prisoner confined in any jail, prison, or other correctional facility." Green Haven Prison Preparative Meeting is not a "prisoner" and it is not "confined" to a correctional facility, both of which the court of appeals acknowledged. (App 25a; 16 F.4th at

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[43] *United Mine Workers v Coronado Coal Co.*, 259 US 344, 383-392, 42 SCt 570, 66 LEd 975 (1922); *Denver & R. G. W. R. Co. v Bhd. of R.R. Trainmen*, 387 US 556, 559-562, 87 SCt 1746, 18 LEd2d 954 (1967); *Sperry Prods., Inc. v Assn. of Am. R.Rs.*, 132 F2d 408, 409-412 (2d Cir 1942) (L. Hand, J.); Federal Rules of Civil Procedure, Rule 17(b)(3); *Brown v Father Divine*, 163 Misc 796, 804 (NY Co 1937); New York General Association Law § 12.

[44] *Denver & R. G. W. R. Co. v Bhd. of R.R. Trainmen*, 387 US 556, 561-562, 87 SCt 1746, 18 LEd2d 954 (1967).

82) Yet the court held that the PLRA was a barrier to Green Haven Meeting's assertion of its religious rights because "the Incarcerated Plaintiffs may not avoid the exhaustion requirement simply by forming an organization and then suing in the name of that organization."[45] (App 26a; 16 F.4th at 82)

Modern statutory construction, however, does not permit a court to rewrite a statute to correct errors in the law's coverage perceived by a judge.[46]

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[45] *Compare Page v Torrey*, 201 F3d 1136, 1139-1140 (9th Cir 2000).

[46] *Little Sisters of the Poor Sts. Peter & Paul Home v Pennsylvania, supra* 140 SCt at 2380, 2381 ("Our analysis begins and ends with the text." "It is a fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts."); *Bostock v Clayton County*, ___ US ___ , 140 SCt 1731, 1737, 207 LEd2d 218 (2020); *Rotkiske v Klemm*, ___ US ___, 140 SCt 355, 360, 205 LEd2d 291 (2019) ("We must presume that Congress says in a statute what it means and means in a statute what it says there."); *Food Mktg. Inst. v Argus Leader Media*, ___ US ___ , 139 SCt 2356, 2364, 204 LEd2d 742 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. . . . Where, as here, that examination yields a clear answer, judges must stop."); *Nichols v United States*, ___US___, 136 SCt 1113, 194 LEd2d 324 (2016) ("Yet even the most formidable argument concerning the statute's purposes could not overcome the clarity we find in the statute's text."); *Jones v Bock*, 549 US 199, 216, 127 SCt 910, 166 LEd2d 798 (2007) ("Whatever temptations the statesmanship of policy-making might wisely suggest, the judge's job is to construe the statute – not to make it better." (citation and internal quotation marks omitted)); *BedRoc Ltd., LLC v United States*, 541 US 176, 183-184, 124 SCt 1587, 158 LEd2d 338 (2004); *United States v Bryant*, 996 F3d 1243, 1257-1258 (11th Cir 2021). *See also Salinas v United States RRB*, ___ U S___ , 141 SCt 691, 698, 208 LEd2d 608 (2021) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is

Finally, the court of appeals' assertion that Green Haven Meeting is nothing more than a prisoners' attempt to "avoid the exhaustion requirement simply by forming an organization and then suing in the name of that organization" misrepresents the undisputed record. Formal regular Quaker worship in Green Haven Prison began in 1976. The intention of the incarcerated and unincarcerated Quakers responsible for establishing Green Haven Prison Meeting some 40 years before this litigation is probably unknowable,[47] but it could not include plotting to avoid the requirements of a law that was not adopted until 1996.

Green Haven Meeting is not "simply ... an organization" formed by prisoners. It was born under the care of the Society of Friends. It was continually nurtured in deepening its Quaker religious practice by the Society of Friends. As the worship group grew in the depth and self-sufficiency of its Quaker religious practice, it blossomed into a "preparative meeting" still under the active, continual care of the Society of Friends. At all times, the Green Haven Prison Preparative Meeting has been under the direct care and oversight of petitioner PMM and the further care and oversight of petitioners NPQM and NYYM.

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generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation and internal quotation marks omitted)); *Gonzalez v U.S. Immigration & Customs Enf't*, 975 F3d 788, 815 (9th Cir 2020); *N.A. of Mfrs. v DOD*, ___ US ___ , 138 SCt 617, 631, 199 LEd2d 501 (2018) ("Courts are required to give effect to Congress' express inclusions and exclusions, not disregard them."); *Lexington Ins. Co. v Precision Drilling Co., L.P.*, 830 F3d 1219, 1221-1223 (10th Cir 2016).

47 *Cf., Am. Legion v Am. Humanist Assn., supra*, 139 SCt at 2082 (2019).

To suggest that it is merely a concoction of some prisoners to avoid the facility's grievance procedures is both indefensible and demeaning to the religious practice of the Society of Friends.

Congress chose to limit the scope of the PLRA to "a prisoner confined in any jail, prison, or other correctional facility." It employed a different concept with RLUIPA: "a person residing in or confined to an institution." The court of appeals essentially substituted the PLRA language for the different concept Congress agreed upon in deciding who would be able to take advantage of the rights provided by RLUIPA. The language of RLUIPA is not limited to a suit by a prisoner for a personal deprivation to his/her religious practice. The PLRA is so limited. In addition to claims of harm by individual inmates, RLUIPA encompasses claims to protect the practice of its religion by a responsible religious body operating within a prison. That also would be consistent with this Court's standards for standing of religious organizations. The court of appeals' decision narrows the protections of religious practice afforded by Congress in RLUIPA. It is inconsistent with Congress' direction that the Courts should construe those rights broadly. 42 USC § 2000cc-3(g). And it puts the Second Circuit at odds with the rules of statutory construction applied by this Court and all the other Circuit Courts.

CONCLUSION

The Court should grant the petition.

January 18, 2022

Respectfully submitted,

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APPENDIX

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2020

Argued: October 30, 2020 Decided: October 18, 2021

Docket No. 20-18-pr

GREEN HAVEN PRISON PREPARATIVE MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, AN UNINCORPORATED ASSOCIATION, YOHANNES JOHNSON, INDIVIDUALLY, AND AS CLERK OF GREEN HAVEN PRISON PREPARATIVE MEETING, GREGORY THOMPSON, INDIVIDUALLY, AND AS MEMBER OF GREEN HAVEN PRISON PREPARATIVE MEETING, NINE PARTNERS QUARTERLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, AN UNINCORPORATED ASSOCIATION, DONALD BADGLEY, INDIVIDUALLY, AND AS CO-CLERK OF NINE PARTNERS QUARTERLY MEETING, EMILY BOARDMAN, INDIVIDUALLY AND AS CO-CLERK OF NINE PARTNERS QUARTERLY MEETING, BULLS HEAD-OSWEGO MONTHLY MEETING, AN UNINCORPORATED ASSOCIATION, CAROLE YVONNE NEW, INDIVIDUALLY AND AS CLERK OF BULLS HEAD-OSWEGO MONTHLY MEETING, DAVID LEIF ANDERSON, INDIVIDUALLY AND AS TREASURER OF BULLS HEAD-OSWEGO MONTHLY MEETING, POUGHKEEPSIE MONTHLY MEETING, AN UNINCORPORATED ASSOCIATION, FREDERICK DONEIT, SR., AS TREASURER OF POUGHKEEPSIE MONTHLY MEETING, JULIA GIORDANO, MARGARET L. SEELY, SOLANGE MULLER,

NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, INC.,

Plaintiffs-Appellants,

—v.—

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ANTHONY ANNUCCI, IN HIS CAPACITY AS ACTING COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, JEFF MCKOY, IN HIS CAPACITY AS THE DEPUTY COMMISSIONER FOR PROGRAM SERVICES OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ALICIA SMITH-ROBERTS, IN HER CAPACITY AS THE DIRECTOR OF MINISTERIAL, FAMILY AND VOLUNTEER SERVICES OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, JAMIE LAMANNA, IN HIS CAPACITY AS SUPERINTENDENT OF GREEN HAVEN CORRECTIONAL FACILITY, JAIFA COLLADO, IN HER CAPACITY AS DEPUTY SUPERINTENDENT OF PROGRAMS AT GREEN HAVEN CORRECTIONAL FACILITY, MARLYN KOPP, IN HER CAPACITY AS DEPUTY SUPERINTENDENT OF PROGRAM SERVICES AT GREEN HAVEN CORRECTIONAL FACILITY,

Defendants-Appellees. *

B e f o r e:

LIVINGSTON, *Chief Judge*,
CABRANES, and LYNCH, *Circuit Judges.*

Several unincorporated associations and individual members of the Religious Society of Friends (widely

referred to as "Quakers") appeal from an order of the United States District Court for the Southern District of New York (Karas, *J.*) denying their motion for a preliminary injunction directing defendant officials of the New York State Department of Corrections and Community Supervision to rescind changes in the scheduling of certain regularly-held Quaker religious gatherings at Green Haven Correctional Facility. We agree with the district court that a preliminary injunction is not warranted because Plaintiffs-Appellants are unable to demonstrate a likelihood of success on the merits of their claims. The order of the district court is thus **AFFIRMED**.

FREDERICK R. DETTMER, Law Office of Frederick R. Dettmer, New Rochelle, NY, *on the brief*, *for Plaintiffs-Appellants.*

MARK S. GRUBE, Assistant Solicitor General, State of New York, New York, NY (Letitia James, Attorney General, Barbara D. Underwood, Solicitor General, Anisha S. Dasgupta, Deputy Solicitor General, *on the brief*), *for Defendants- Appellees.*

GERARD E. LYNCH, *Circuit Judge*:

This case arises from scheduling changes made by the New York State Department of Corrections and Community Supervision ("DOCCS") to certain regularly-held religious gatherings of the Religious Society of Friends, generally known as "Quakers," at Green Haven Correctional Facility ("Green Haven").

DOCCS's measures affected the scheduling of two types of Quaker religious gatherings. The first type, called Quarterly Meetings, are held four times a year and involve neighboring Quaker communities gathering at Green Haven to worship with inmates. The second type, referred to as "meetings for worship with a concern for business" ("MFWCBs"), are weekly meetings where inmates at Green Haven who participate in Quaker activities discuss the group's business concerns. The scheduling changes generally prevented inmates from holding these meetings on their preferred days of the week. Plaintiffs-Appellants, who include both Quaker prisoners Yohannes Johnson and Gregory Thompson (the "Incarcerated Plaintiffs") and outside Quaker individuals and organizations who participate in communal worship with the Incarcerated Plaintiffs ("the Non-Incarcerated Plaintiffs") (together, "Plaintiffs") brought this action in the United States District Court for the Southern District of New York challenging the scheduling changes, and moved for a preliminary injunction. Plaintiffs sought to direct Defendants-Appellees, who include DOCCS and several DOCCS and Green Haven officials (collectively, "Defendants"), to reinstate the meetings at their previously scheduled times.

The district court (Kenneth M. Karas, *J.*) concluded that the Incarcerated Plaintiffs were unable to demonstrate a likelihood of success on the merits of their claims, in part because they failed to comply with the Prison Litigation Reform Act's ("PLRA's") requirement to exhaust administrative remedies and failed to demonstrate that they qualified for an exception to the exhaustion mandate. The court further concluded that all Plaintiffs failed to show that the scheduling changes imposed a substantial

burden on their religious exercise. We conclude that the district court did not err in denying the preliminary injunction.

BACKGROUND

I. Quaker Meetings

Adherents of the Quaker faith, formally referred to as "Friends," believe that a person can convene directly with God without a mediator (such as a priest, minister, or other member of the clergy) and that a group of individuals form a congregation when they worship together and submit their independent religious revelations and insights to collective discernment at periodic meetings for worship.[1] Friends who meet and worship together regularly as a congregation may organize themselves into a formal group known as a "Monthly Meeting." A Monthly Meeting is responsible for local matters of business, including organizing worship services, managing membership applications and lists, approving and overseeing marriages, and providing pastoral care. A Monthly Meeting conducts institutional business at specially-convened gatherings called "meetings for worship with a concern for business."

A Monthly Meeting may include multiple congregations which regularly hold their own separate worship services. Such constituent congregations may be organized as "Worship Groups"

[1] Here and throughout this opinion, we base our understanding of Quaker belief and practice on materials submitted in the record by Plaintiffs.

called "Preparative Meetings."[1] Two or more Monthly Meetings and Worship Groups in the same region may form a Quarterly Meeting, which meets four times a year, and two or more Quarterly Meetings in a larger area may unite to form a Yearly Meeting, which meets annually. Friends form Quarterly and Yearly Meetings to "gather for the spiritual enrichment available from a larger body and to conduct business together." Appellants' Br. at 7. In pursuit of meaning and truth through collective deliberation and consensus, Friends use these larger meetings to test and discuss with a broader group insights from their smaller local Meetings.

II. Quaker Meetings at Green Haven

Green Haven is a maximum security correctional facility that houses approximately 1900 inmates with diverse religious affiliations. Formed in 1976, Plaintiff Green Haven Prison Preparative Meeting ("Green Haven Meeting") is the organized Quaker Worship Group at Green Haven; its approximately eight members, including the Incarcerated Plaintiffs, are all prisoners there. Before the implementation of the changes at issue in this appeal, the group met three times a week: Thursday evenings in a study group from 6:00 p.m. to 8:30 p.m. in Building 12 led by a civilian volunteer, Friday evenings for worship from 6:00 p.m. to 8:30 p.m. in the J School led by a civilian volunteer, and Saturdays from 12:30 p.m. until about 2:00 p.m. for MFWCBs in the J School led by Incarcerated Plaintiff Johnson, who was the

[1] Unlike a Monthly Meeting, a Preparative Meeting "does not have final authority to receive, transfer, or dismiss members, or to perform marriages." J. App'x at 138.

designated inmate facilitator.[2] Green Haven Meeting also held Quarterly Meetings four times a year on Saturdays for approximately six hours, starting in the morning and ending in the mid-afternoon.

Green Haven Meeting, Poughkeepsie Monthly Meeting, Bulls Head- Oswego Monthly Meeting and other Quaker meetings in the region belong to Nine Partners Quarterly Meeting ("Nine Partners Quarter"). Poughkeepsie Monthly Meeting, Bulls Head-Oswego Monthly Meeting, and Nine Partners Quarter are not-for-profit unincorporated associations and are Non-Incarcerated Plaintiffs. New York Yearly Meeting, a not-for-profit corporation and also a Non-Incarcerated Plaintiff, is an umbrella organization for all Meetings and worship groups throughout New York and parts of Connecticut and New Jersey. New York Yearly Meeting, the unincorporated associations of non-incarcerated Quakers, and eight individual members of those associations join the Incarcerated Plaintiffs in appealing the district court's order denying the preliminary injunction.

III. Regulatory Framework

DOCCS Directive 4202, titled "Religious Programs and Practices," sets forth DOCCS's policy for the promotion of religious experiences of persons under its supervision. "[I]n recognition of the First Amendment right of 'religious liberty,'" the policy aims "to provide as many opportunities as feasible for the practice of [inmates'] chosen faiths, consistent with the safe and secure operations of the DOCCS

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[2] A facilitator is an inmate designated by DOCCS to serve as the representative of the faith group in the absence of a competent chaplain.

correctional facilities." J. App'x 573. Directive 4202 § VI(B)(2) discusses two types of regularly scheduled religious gatherings: worship services and educational gatherings. Additional special religious holy days, celebrations, or observances are governed by § VII and the Religious Holy Day Calendar, which is distributed annually. Directive 4202 § VI(B)(2) allows faiths with six to ten requesting adherents to hold religious gatherings such as classes or study groups twice a month subject to the availability of space and staffing. The Superintendent may also approve additional gatherings "if the accommodation can be made without incurring any additional costs/ resources." J. App'x at 576. Pursuant to Directive 4750, titled "Volunteer Services Program," civilian religious volunteers must be registered in order to be permitted into correctional facilities to assist in programs.

Plaintiffs do not challenge the reasonableness of these system-wide regulations. Rather, their complaint concerns the specific implementation of the regulations at Green Haven with respect to Quaker gatherings at the prison, starting in 2015.

IV. Policy Changes

In the fall of 2014, following a spate of security breaches involving visitors smuggling in weapons, cash, and contraband, and in at least one instance a corrections officer taking a bribe to smuggle a pound of marijuana to Green Haven inmates, the Acting Commissioner of DOCCS, Defendant Anthony Annucci, installed new Green Haven administrators, including a new Superintendent and several new Deputy Superintendents, including Defendant Jaifa Collado ("Collado") who was Deputy Superintendent for Program Services at Green Haven and responsible

for scheduling religious and other activities. The security concerns prompted the new administration to reevaluate special events and other gatherings held in the facility.

A. Quarterly Meetings

For 35 years, from 1980 to 2015, Green Haven Meeting hosted Friends from Nine Partners Quarter at Green Haven for full-day Quarterly Meetings. Those meetings, which typically took place over six or more hours on Saturdays and included lunch, allowed Quaker inmates and non-incarcerated Friends in the region to worship together and exchange beliefs, practices and concerns. Quarterly Meetings also provided inmates who were not members of the Green Haven Meeting an opportunity to participate in and be introduced to the Quaker religion. Plaintiffs contend that holding these Quarterly Meetings on Saturdays, as opposed to any other day of the week, is "critical to their success" because on Saturdays non-incarcerated Friends are less limited by work schedules, parental obligations, evening travel, and other workweek commitments. J. App'x at 216.

Special events – including Quaker Quarterly Meetings – typically require the presence of extra security staff to protect the non-incarcerated visitors and volunteers who may attend the events and to maintain safety for the general prison population. In light of ongoing security concerns raised by the security breaches in the fall of 2014, the new prison administration sought to reduce the size and number of special events at Green Haven, and special events held on weekends in particular, since the staff on weekend duty is smaller and the prison would have to pay overtime to adequately staff events. Special events also increase "out counts," the number of

inmates away from their cells when a countof inmates occurs. Prison administration sought to reduce the out count since theabsence of inmates from the count carries security risks associated with tracking inmate movement. As a result, in 2015, Green Haven administration moved Quarterly Meetings from Saturdays to Friday evenings after 5:30 p.m.

In 2014, Green Haven Meeting hosted Saturday Quarterly Meetings – which were scheduled on the special events calendar – on March 29, June 7, September 13 and December 27 from 8:30 a.m. to 2:30 p.m. Visitors were prohibited from bringing food, beverages, packages, or gifts into the facility. Green Haven provided food for the Quarterly Meetings in the form of "offline meals," which are meals from the mess hall's regular menu. All registered Quaker inmates, who numbered from six to nine at the relevant times, were allowed but not required to attend these Quarterly Meetings. Green Haven also allowed 15 registered civilian volunteers to attend the March, June and September Quarterly Meetings. After noticing that only a few of the volunteers actually attended the Quarterly Meetings, and in light of ongoing security concerns about events including a large number of civilians, prison administration limited the maximum number of guests at the December 27, 2014 Quarterly Meeting to any four from the list of registered volunteers.

Thaddeus Davis ("Davis"), the designated facilitator for Quaker inmates atGreen Haven before Plaintiff Johnson took over that role, corresponded with prison administration about, inter alia, his four proposed dates for the 2015 Quarterly Meetings, which were all Saturdays. In one of her responses, Collado requested an explanation for Davis's request for four Quarterly Meetings per year since, according

to the approved special events calendar, the Quakers had no special holy days in 2014 other than the common Christian holidays of Easter and Christmas. In a response memo, Davis explained Quaker practices and the religious significance of Quarterly Meetings, but he did not identify any particular significance to holding the Quarterly Meetings on Saturdays.

Green Haven officials determined that it was not possible to implement the preferred schedules for all religious denominations in the community given "security concerns" and "logistical considerations" at the prison. J. App'x at 540. Thus, prison administration moved the Quarterly Meetings to Friday evenings, after 5:30 p.m., and distributed the 2015 special events calendar with Quarterly Meetings scheduled for March 20, June 5, September 11, and December 11. Green Haven Meeting objected to the move, in part, because it already held worship services from 6:00 p.m. to 8:30 p.m. on Friday evenings. Prison administration offered to move the Quarterly Meetings to another weekday evening, but Green Haven Meeting declined the offer. As a result, the Quarterly Meetings were removed from the special events calendar in the years following 2015. Since then, DOCCS and Green Haven Meeting have negotiated about the Quarterly Meetings, which has resulted in DOCCS offering to schedule one of the Quarterly Meetings as a special event, with an out count that would permit a longer meeting along with a meal paid for by the Quakers.

B. MFWCBs

Green Haven also made changes that affected MFWCBs. Green Haven Meeting would typically hold MFWCBs on Saturdays from 12:30 p.m. to about 2:00

p.m. in the J School. Incarcerated Plaintiff Johnson facilitated these meetings, which were attended by inmates who had to "call out," or in other words, receive permission in advance to be away from their cells in order to attend. Correctional officers must accompany an inmate who has called out from his cell to the location of the event, where one or more other correctional officers must stay to monitor the inmate throughout the event.

Defendant Marlyn Kopp ("Kopp") succeeded Collado as Deputy Superintendent for Program Services at Green Haven in March 2017. By January 2018, Kopp and other administrators identified overcrowding as an issue in the J School building, where some Quaker activities were held. The overcrowding stemmed in part from too many call outs by non-Quaker inmates, including several maximum security inmates, attending call-out gatherings such as Green Haven Meeting's MFWCBs. On January 6, 2018, for instance, 21 inmates attended the MFWCB, 9 of whom were registered Quakers and 12 of whom were not registered Quakers. The unusually high ratio of non-Quakers to Quakers prompted Kopp to take action to reduce what officials perceived to be excessive call outs, which she deemed were more likely to be subject to abuse since no chaplain or community volunteer was present.[3]

On February 9, 2018, Johnson corresponded with Green Haven administration in response to an

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[3] Section VI(B)(3) of Directive 4202 limits inmates to attending up to three services or classes per year of religions other than the one for which they are registered in order to "learn more about the religious practices of another faith" (hereinafter, the "Three Times Rule").

inquiry about the purpose of the MFWCB and irregularities in the attendance of non-adherents. Kopp responded by informing Johnson of her decision to revoke permission for MFWCBs. She wrote, in part, "The Quakers, just like any other religion, are already approved to have worship services and study classes. They have Friday Worship and Thursday [b]ook study. The Saturday call-out does not appear to be a study group or a worship service and therefore does not appear necessary. With a congregation of a total of 8 inmates, having a Thursday study group and Friday worship service appears to be sufficient." J. App'x at 560.

C. The Holy Day Calendar

Separate from the regular weekly religious activities, DOCCS prepares and distributes a Religious Holy Day Calendar applicable to all of its correctional facilities, which identifies dates of religious significance throughout the year. The administration of an individual correctional facility, however, may schedule additional religious activities for the various faith groups within each facility. Plaintiffs object to the DOCCS Calendar's identification of the Society of Friends as "Protestant" and the designation of Pentecost as the "Family Event" day for the Society of Friends, along with other groups characterized as Protestant. A Family Event Day enables outside family and friends to join inmates of their faith for worship and celebration. Plaintiffs argue that Quakers do not celebrate Pentecost and that DOCCS is unjustified in its refusal to revise the Calendar to add Quarterly Meetings.

V. District Court Proceedings

The Incarcerated Plaintiffs did not file administrative grievances about any of the rule changes concerning the various Quaker meetings at Green Haven. Instead, Plaintiffs filed the present complaint in September 2018, bringing claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc et seq., the Free Exercise Clause of the First Amendment, the Establishment Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the freedom of religion guarantees in the New York State Constitution, art. I, § 3, and New York Correction Law § 610(1), which guarantees to inmates "the free exercise and enjoyment of religious profession and worship, without discrimination or preference."

In particular, as concerning their RLUIPA claim, the Incarcerated Plaintiffs allege that Defendants' termination of and refusal to reinstate Quarterly Meetings and MFWCBs imposes a substantial burden on their exercise of religion and is neither in furtherance of a compelling government interest nor the least restrictive means of furthering any such interest. They also asserted claims under the Free Exercise Clause of the First Amendment (and corresponding claims under Section 610 of the New York Correction Law), alleging, in relevant part, that Defendants' cancellation of Quarterly Meetings and MFWCBs imposes a substantial burden on their sincerely held religious beliefs and religious exercise and is not reasonably related to legitimate penological interests. Finally, they alleged that Defendants' actions – including their designation of

Quakers as "Protestants" and celebrants of Pentecost – violate the Establishment Clause.[4]

The Non-Incarcerated Plaintiffs asserted claims under the Free Exercise Clause of the First Amendment, alleging that Defendants' cancellation of Quarterly Meetings deprived them of their ability to exercise their religion, a deprivation not reasonably related to legitimate penological interests.

All plaintiffs also asserted corresponding claims under the Free Exercise Clause of the New York State Constitution. Finally, all plaintiffs asserted a claim under the Equal Protection Clause of the Fourteenth Amendment, alleging that DOCCS allows other unspecified faith groups to hold religious events that "are the equivalent of" Quarterly Meetings and MFWCBs. J. App'x at 314. Plaintiffs sought an order directing Defendants to reinstate MFWCBs and Saturday meeting times for Quarterly Meetings at Green Haven Correctional Facility.

Plaintiffs moved for a preliminary injunction on March 29, 2019. The district court heard oral argument on October 30, 2019 and denied the motion orally at the conclusion of the hearing. The district court concluded that the deprivation of religious rights alleged by Plaintiffs was sufficient to establish irreparable harm but Plaintiffs were unable to show a likelihood of success on the merits. First, the district court held that the Incarcerated Plaintiffs' claims were unlikely to succeed because those plaintiffs had failed to exhaust their administrative remedies.

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[4] The Incarcerated Plaintiffs also raised separate claims for "retaliation," alleging that Defendants' decision to terminate the MFWCBs were retaliatory and were intended to deter the Incarcerated Plaintiffs from "vindicating" their rights. J. App'x 317.

Further, the court determined that none of the plaintiffs had shown that the actions of prison administration placed a "substantial burden" on their religious rights. J. App'x at 907. A written order denying the motion was filed the same day. Plaintiffs moved for reconsideration, which was denied on December 3, 2019.

DISCUSSION

I. Standards of Review

We review a district court's denial of a preliminary injunction for abuse ofdiscretion, examining the legal conclusions underpinning the decision *de novo* and the factual conclusions for clear error. *County of Nassau v. Leavitt*, 524 F.3d 408, 414 (2d Cir. 2008); *Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998). We review *de novo* whether a plaintiff has exhausted administrative remedies under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). *Amador v. Andrews*, 655 F.3d 89, 95 (2d Cir. 2011).

A plaintiff "seeking a preliminary injunction must ordinarily establish (1)irreparable harm; (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party; and (3) that a preliminary injunction is in the public interest." *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015) (internal quotation marks omitted), citing *Oneida Nation of N.Y. v. Cuomo*, 645 F.3d 154, 164 (2d Cir. 2011). The PLRA requires that any preliminary injunctive relief concerning prison conditions "be narrowly drawn, extend no further than necessary to correct the harm the court finds

requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). In weighing a request for preliminary injunctive relief, "[t]he court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief." *Id.*

II. Standing

Before turning to the merits of the appeal, we address the threshold issue of standing. Because the question of standing goes to the constitutional limitations on the "judicial Power of the United States," which is limited to resolving "Cases" or "Controversies," U.S. Const. art. III, we"are entitled at any time *sua sponte* to delve into the issue" of standing even if defendants do not raise the issue. *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Div. of Ace Young Inc.*, 109 F.3d 105, 108 (2d Cir. 1997).

A. Non-Incarcerated Plaintiffs' Standing

Plaintiffs assert that the Non-Incarcerated Plaintiffs have constitutional rights in the prison setting which were infringed upon by Green Haven's policy changes and that the organizational Non-Incarcerated Plaintiffs have standing to represent the constitutional rights of their parishioner-members. We agree.

At the preliminary injunction stage, "a plaintiff's burden to demonstrate standing will normally be no less than that required on a motion for summary judgment. Accordingly, to establish standing for a preliminary injunction, a plaintiff cannot rest on . . . mere allegations . . . but must set forth by affidavit or other evidence specific facts" that establish the "three

familiar elements of standing: injury in fact, causation, and redressability." *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011) (internal quotation marks and citation omitted).

Here, the Non-Incarcerated Plaintiffs allege injury on the ground that the prison administration's scheduling changes and treatment of the Society of Friends in the Religious Holy Day Calendar, which they characterize as the "eliminat[ion]" of "entire programs of a church," adversely impact their First Amendment rights. Appellants' Br. at 22. Defendants do not challenge the sufficiency of these harms to establish standing. In the prison context, the Supreme Court has recognized the rights of non-incarcerated individuals under other provisions of the First Amendment. *See Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) ("[T]here is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners.").

Not all of the changes in Green Haven's practices that are challenged in this case affect the Non-Incarcerated Plaintiffs, however. As far as the record reflects, the weekly Saturday MFWCBs have never been attended by outsiders and involve only Green Haven inmates. While the Non-Incarcerated Plaintiffs are understandably distressed by restrictions on their incarcerated co-religionists' opportunities to conduct MFWCBs and by the Green Haven administrators' arguably brusque and incurious response to the Quaker inmates' effort to explain the religious function of these meetings, the Non-Incarcerated Plaintiffs themselves are not directly affected by any changes in the frequency of

religious services that they do not attend and claim no right to attend.

The Quarterly Meetings, on the other hand, are a different matter. The well-pleaded allegations of the complaint allege that Quarterly Meetings at which members of affiliated regional Preparative or Monthly Meetings gather play a significant role in Quaker religious practice, and the Green Haven authorities have for many years allowed non-incarcerated visitors to attend. The different injuries alleged flow directly from the challenged policy changes, and could be redressed by an injunction reversing those changes. Accordingly, we are satisfied that the Non-Incarcerated Plaintiffs have alleged injuries to their constitutional rights sufficient to confer Article III standing to challenge the scheduling changeswith respect to the Quarterly Meetings.

B. Green Haven Meeting Standing

Plaintiffs further argue that Green Haven Meeting has associational standing to pursue both constitutional and statutory claims as an unincorporated association. Defendants "do not contest Green Haven Preparative Meeting's standing to sue based on the alleged injuries to its members." Appellees' Br. 25 n. 9. "It is common ground that . . . organizations can assert the standing of their members." *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). However, Defendants argue that Green Haven Meeting lacks standing as an institution, independent of its members' standing, to challenge the changed Green Haven policies because it is not a "person residing in or confined to an institution" under RLUIPA. 42 USC § 2000cc-1(a). That argument is really a merits question about the

scope of RLUIPA's protections, which we address below.

We conclude that the Non-Incarcerated Plaintiffs have Article III standing to challenge the policy changes relating to the Quarterly Meetings, and Green Haven Meeting has Article III standing to challenge all the policy changes. Andof course, in any event, the individual Incarcerated Plaintiffs unquestionably have Article III standing to challenge all of the policy changes at issue. Accordingly, we have jurisdiction to address the merits of Plaintiffs' claims, andwe thus turn to the merits of the appeal.

III. Irreparable Harm to Plaintiffs

In order to obtain a preliminary injunction, Plaintiffs must show that they are likely to suffer irreparable harm in the absence of injunctive relief. The district court correctly found that there is "no question" that the injury alleged by Plaintiffs satisfies the irreparable harm requirement. Sp. App'x at 11. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). We thus conclude that, at least insofar as they challenge substantive restrictions on their ability to conduct religious services and meetings in accordance with their beliefs, Plaintiffs have established that any violation of their religious liberties would satisfy the irreparable injury standard.[5]

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[5] To the extent that Plaintiffs seek to challenge portions of DOCCS's Holy Day Calendar, Plaintiffs have waived any such challenge because their request for injunctive relief below did not specifically seek an order that DOCCS alter the calendar. *See Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 50 (2d Cir. 2015).

IV. Likelihood of Success on the Merits

We consider next whether Plaintiffs are likely to succeed on the merits of their claims, a prerequisite for obtaining a preliminary injunction and the basis of the district court's denial of Plaintiffs' injunction. First, we consider whether, pursuant to the PLRA, the Incarcerated Plaintiffs exhausted their administrative remedies prior to seeking relief in the district court. Next, we consider whether Plaintiffs have otherwise shown a likelihood of success on the merits of their claims. Plaintiffs principally challenge the policy changes under the Free Exercise clause of the First Amendment and RLUIPA.[6]

A. Legal Framework

Under the PLRA, "a prisoner confined in any jail, prison, or other correctional facility" may not bring an action "with respect to prison conditions . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Under RLUIPA, "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . unless the government

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[6] Plaintiffs allege claims under the Establishment Clause of the First Amendment, the Equal Protection Clause of Fourteenth Amendment, and state law. However, although they recite the applicable legal standards for assessing the constitutionality of state actions under the constitutional provisions, they make no argument applying those standards to the facts of this case that are separate from or independent of their arguments under the Free Exercise Clause and RLUIPA, and do not explain why they are entitled to a preliminary injunction onthose claims. Appellants' Br. 31-34. Moreover, they make no attempt to address their claims under New York state law. Accordingly, those arguments have been waived for purposes of this appeal, and we do not consider them in addressing Plaintiffs' entitlement to a preliminary injunction.

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 U.S.C. § 2000cc-1(a). The Free Exercise Clause of the First Amendment, which is applicable to the States through the Fourteenth Amendment, prohibits the government from making a law "prohibiting the free exercise" of religion. *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

B. The Incarcerated Plaintiffs: Exhaustion of Administrative Remedies

The Incarcerated Plaintiffs, as "prisoner[s] confined in any . . . correctional facility," 42 U.S.C. § 1997e(a), are subject to the exhaustion requirements of the PLRA. The PLRA requires "proper exhaustion" of administrative remedies, meaning exhaustion in "compliance with an agency's deadlines and other critical procedural rules," *Woodford v. Ngo*, 548 U.S. 81, 90 (2006), "using all steps that the agency holds out, and doing so properly." *Amador*, 655 F.3d at 96 (internal quotation marks omitted). The PLRA requires the exhaustion of remedies only insofar as such remedies are "available to the inmate." *Hubbs v. Suffolk County Sheriff's Dep't*, 788 F.3d 54, 59 (2d Cir. 2015) (internal quotation marks omitted). "An administrative procedure is unavailable when (1) it operates as a simple dead end – with officers unable or consistently unwilling to provide any relief to aggrieved inmates; (2) the scheme is so opaque that it becomes, practically speaking, incapable of use, meaning that some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it; or (3) when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or

intimidation." *Hayes v. Dahlke*, 976 F.3d 259, 268 (2d Cir. 2020) (internal quotation marks omitted).

DOCCS regulations establish a three-step Inmate Grievance Program ("IGP") consisting of: (1) a complaint to the Inmate Grievance Resolution Committee (the "IGRC") at the individual correctional facility; (2) an appeal to the facility's superintendent; and (3) a further appeal to the Department's Central Office Review Committee ("CORC"). *See* N.Y. Comp. Codes R. & Regs. ("N.Y.C.R.R.") tit. 7, §§ 701.1(c), 701.5(a)-(d). The parties agree that the Incarcerated Plaintiffs failed to take any of these steps. Indeed, neither Johnson nor Thompson nor anyone else from Green Haven Meeting filed a complaint with the IGP clerk regarding the availability of religious gatherings, much less pursued such grievance through the final level of review provided by DOCCS's IGP. At issue here is whether they should be required to do so. We hold that they are.

Plaintiffs argue, based on language in DOCCS's IGP (Directive 4040) §701.3(d) that excludes claims brought on behalf of a class of prisoners, that the administrative procedures were not available to them because DOCCS's grievance process does not apply to a matter which affects a class of inmates. The district court was unpersuaded by that argument. *See* Sp. App'x at 13-14. We similarly find it unavailing.

Directive 4040 states that individuals "personally affected by a matter which affects a class of inmates may only file a grievance on their own behalf." N.Y.C.R.R. tit. 7, § 701.3(d). As the district court correctly found, this language makes clear that an individual prisoner may still file a grievance on his own behalf, even if other prisoners could benefit from

the outcome. That inmates may not pursue actions formally designated as class actions does not mean that they may not pursue grievances "on their own behalf," even if their success could benefit others; to the contrary, the regulations specifically provide that they may. And if, under the DOCCS regulations, they may, then, under the PLRA, they must. *See Ngo*, 548 U.S. at 85 (noting that the PLRA "strengthened" the exhaustion requirement and that exhaustion of remedies is "mandatory").

Plaintiffs also appear to make a futility argument, claiming that the grievance process was "a dead end" such that they were not required to exhaust administrative remedies. Appellants' Br. at 52-53. The bar for the availability of remedies, however, is low. To constitute an "available" remedy, a process requires only "the *possibility* of some relief." *Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016) (emphasis added) (quotation marks omitted). Here, the Incarcerated Plaintiffs provide no evidence that a grievance asserting that a prisoner's religious liberty has been violated by a limitation on the number or timing of religious services or celebrations could not lead to a change in the challenged prison policies. Plaintiffs are thus unable to avoid the exhaustion requirement, and the Incarcerated Plaintiffs' RLUIPA claims fail.

Nor can the Incarcerated Plaintiffs avoid the exhaustion requirement by suing under the banner of Green Haven Meeting, of which they are members. Plaintiffs argue that Green Haven Meeting is an institutional entity distinct from its individual members, and that, under RLUIPA, it is a "person" whose religious exercise cannot be substantially burdened absent a compelling government interest. But they also contend that at the same time, Green Haven Meeting is not a "prisoner" within the meaning

of the PLRA and thus is not bound by the exhaustion mandate. Plaintiffs rely on *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), in support of their argument. However, while *Burwell* held that a for-profit corporation had standing to assert religious rights, it did not involve either a prison setting or an unincorporated association of individuals, and did not discuss an organization's obligations to exhaust administrative remedies under the PLRA. It is thus of little utility in answering the question before us.

The problem with Plaintiffs' attempt to avoid the PLRA's exhaustion requirement is that it attempts to whipsaw the relevant statutes (RLUIPA and the PLRA) in a manner that vitiates the PLRA's requirements. Moreover, their argument ignores the full context of the word "person" in RLUIPA. We can readily agree that Green Haven Meeting is a "person" within the meaning of RLUIPA; the Dictionary Act, 1 U.S.C. § 1, provides that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] . . . the word[ ] "person" . . . include[s] . . . associations . . . as well as individuals." But the relevant portion of RLUIPA does not grant rights to all "persons." Rather, it applies to "person[s] residing in or confined to an institution." 42 U.S.C. § 2000cc- 1(a). To the extent that Green Haven Meeting can be, for statutory purposes, a "person," it plainly is not the kind of person that can "resid[e] in or [be] confined to an institution." *Id.* An incorporeal entity cannot be imprisoned, even if all of its human members are prisoners. To whatever extent one might metaphorically consider an association composed entirely of prisoners to reside, in some sense, in prison, it derives that status entirely from the status of its members. The action brought by Green Haven Meeting is brought to vindicate the

rights of its members, and those members, as prisoners, are bound by the requirements of the PLRA. In short, the Incarcerated Plaintiffs may not avoid the exhaustion requirement simply by forming an organization and then suing in the name of that organization.

Accordingly, the claims of Green Haven Meeting, as well as those of the Incarcerated Plaintiffs suing in their own names, must be dismissed for failure to exhaust administrative remedies. We thus turn to the claims of the Non- Incarcerated Plaintiffs.

C. The Non-Incarcerated Plaintiffs

As discussed above, the Non-Incarcerated Plaintiffs make no claims under RLUIPA, nor can they, not being "person[s] residing in or confined to an institution." 42 U.S.C. § 2000cc-1(a). Moreover, they lack standing to raise claimson any theory relating to the limitation of the MFWCBs, which they have not attended and which they claim no right to attend, and they have not pressed on appeal their claims under the Establishment Clause, the Equal Protection Clause, or state law. Accordingly, we confine our discussion to their claims that the changes in the times of the Quarterly Meetings, and the eventual cancellation of those meetings, infringed their rights under the Free Exercise Clause of the First Amendment.

In their briefs on appeal, Plaintiffs do not clearly distinguish between the Free Exercise claims of the Incarcerated and Non-Incarcerated Plaintiffs, arguing generally that the undifferentiated "*Plaintiffs* [s]uffered a '[s]ubstantial [b]urden"' on their religious practice. Appellants' Br. at 40 (emphasis added). But while the law applicable to prisoners' religious rights is well developed, Plaintiffs cite no authority

addressing a prison regulation that affects the religious liberty of non-prisoners who wish to attend religious services with prisoners, relying for the most part on the law applicable to prisoners.

That law must take account of both the rights of prisoners to religious liberty and the security needs inherent in prison administration. Precisely because prisoners' lives are (and for the most part must be) closely controlled in ways that non-inmates' lives are not, courts must take care to ensure that prisoners' ability to exercise their religions is not unnecessarily impeded. "Although we recognize that great deference should be accorded to prison officials as they undertake the difficult responsibility of maintaining order in prisons, we have long held that prisoners should be afforded every reasonable opportunity to attend religious services, whenever possible." *Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir. 1989). "A prisoner's first amendment right to the free exercise of his religious beliefs may only be infringed to the extent that such infringement is reasonably related to legitimate penological interests." *Id.* (internal quotation marks omitted), citing *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). We afford deference to prison administrators and judge prison regulations alleged to infringe constitutional rights under a "reasonableness test less restrictive than that ordinarily applied" to claims of violations of constitutional rights outside the prison setting. *O'Lone*, 482 U.S. at 349 (internal quotation marks omitted).

Courts have had fewer occasions to address prison regulations alleged to infringe the religious liberty of non-prisoners. In principle, it could be argued that different considerations apply in such cases. Unlike sentenced prisoners, the Non-Incarcerated Plaintiffs

are free citizens who have committed no crime justifying restrictions on their liberty. At the same time, however, prison officials exercise no direct control over the religious observance of persons residing outside prison, as they do over prisoners. In this case, for example, Quakers not confined at Green Haven are free to schedule the number, location, and timing of their meetings, both for worship and for the conduct of business, at their own discretion and as suits their interest and convenience. Still, as the Supreme Court has noted in cases involving marriage and mail censorship, regulations limiting association of prisoners with outsiders do not affect inmates alone, but can "work[] a consequential restriction on the [constitutional] rights of those who are not prisoners." *Procunier v. Martinez*, 416 U.S. 396, 409 (1974), *overruled on other grounds by Thornburgh*, 490 U.S. 401.

Here, the Non-Incarcerated Plaintiffs claim a right to associate with incarcerated persons for purposes of collective worship and religious discussion. Like non-incarcerated persons who claim a First Amendment right to associate with prisoners for other protected purposes, such as family relationships and political or artistic expression, they seek to enter the domain of the prison itself, where security concerns are pressing. After earlier suggesting that prison rules affecting the rights of non-prisoners may be subject to more searching scrutiny than regulations affecting only prisoners, *see Procunier*, 416 U.S. at 409-12, the Supreme Court ultimately concluded that even where prison regulations affect the First Amendment rights of non-prisoners, the "proper inquiry" remains the standard, derived from *Turner v. Safley*, 482 U.S. 78 (1987), that asks "whether the regulations are 'reasonably related to legitimate penological

interests,'" *Thornburgh*, 490 U.S. at 404, quoting *Turner*, 482 U.S. at 89. We think that the same considerations apply to Free Exercise claims, such that the Non-Incarcerated Prisoners cannot claim a right to more searching review of prison regulations affecting religious liberty than the reasonableness standard applied to their incarcerated co-religionists.

"Courts must evaluate four factors in making the reasonableness determination: whether the challenged regulation or official action has a valid, rational connection to a legitimate governmental objective; whether prisoners have alternative means of exercising the burdened right; the impact on guards, inmates, and prison resources of accommodating the right; and the existence of alternative means of facilitating exercise of the right that have only a de minimis adverse effect on valid penological interests." *Salahuddin v. Goord*, 467 F.3d 263, 274 (2d Cir. 2006) (footnote omitted). "The prisoner must show at the threshold that the disputed conduct substantially burdens his sincerely held religious beliefs." *Id.* at 274–75. "The defendants then bear the relatively limited burden of identifying the legitimate penological interests that justify the impinging conduct; the burden remains with the prisoner to show that these articulated concerns were irrational." *Id.* at 275 (internal quotation marks, alteration, and citation omitted).

Plaintiffs argue that moving Quarterly Meetings from Saturdays to weekdays "means that some Friends cannot attend because of work commitments, parental obligations, transportation limitations and age." *Id.* at 40. In support of their position, Plaintiffs point out that "[s]pending extended time together is a basic element of Quaker religious practice because that is how Jesus taught his disciples to be a loving

community." Appellants' Br. at 30. Plaintiffs accordingly contend that DOCCS should modify the Religious Holy Day Calendar to restore Quarterly Meetings scheduled on Saturdays.

Defendants respond that Plaintiffs have failed to clearly establish that Defendants' actions concerning Quarterly Meetings substantially burden Plaintiffs' exercise of religion since Defendants *rescheduled* the meetings for Friday evenings and did not terminate them. Defendants argue that Plaintiffs' desire to hold Quarterly Meetings on Saturdays is driven by convenience rather than religious significance and is therefore insufficient to show a substantial burden. Moreover, Defendants point out that they sought to accommodate Green Haven Meeting's concerns about meeting length by offering to hold at least one of the four Quarterly Meetings as a special event.

We conclude that Defendants have the better argument. In finding that Plaintiffs "ha[d] not established a clear likelihood of success in proving that the restrictions create a substantial burden on their free exercise rights," the district court noted that Plaintiffs themselves "describe[d] the moving of the meetings as an inconvenience." Sp. App'x at 18. The district court properly cautioned that it was "not making light of the inconvenience." *Id.* at 19. Plaintiffs noted that the scheduling change, *inter alia*, "restricted the number of participants" at Quarterly Meetings, "converted a full day (6 hours) religious gathering to 2 hours," and "eliminated food from the event." Appellants' Br. at 41-42. While these are genuine burdens, particularly in light of the 35-year history of Saturday Quarterly Meetings in Green Haven without adverse incident, we conclude that these burdens do not rise to the level of "substantial" burdens on Plaintiffs' religious exercise,

at least in the constitutional sense. Like the district court, we find it significant that nowhere in the record do Plaintiffs claim that Saturdays have religious significance in the Quaker community. The point is not that only restrictions on practices mandated by a prisoner's religion can be a substantial burden. To the contrary, we have noted that "[n]either the Supreme Court nor we . . . have ever held that a burdened practice must be mandated in order to sustain a prisoner's free exercise claim." *Ford v. McGinnis*, 352 F.3d 582, 593 (2d Cir. 2003). Rather , the point here is that Plaintiffs have failed to establish that scheduling the Quarterly Meetings on Saturdays (as opposed to any other day) bears any religious significance whatsoever; the inconveniences they suffer as a result of Defendants' decision, therefore, cannot constitute substantial burdens on their *religious* exercise.

The scheduling shift proposed by the Green Haven administration did not forbid Quarterly Meetings between incarcerated and non-incarcerated Quakers for communal religious services.[7] Unquestionably, holding the services on weekday evenings rather than Saturdays would inconvenience some of the Non-

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[7] Although Plaintiffs argue that the issue here is the cancellation of the Quarterly Meetings, the record does not support their claim that the issue should be so conceived. It is true that after the Incarcerated Plaintiffs rejected the rescheduled meetings proffered by the administration, the result was that no Quarterly Meetings at all were scheduled. But that outcome appears to have resulted as much from Plaintiffs' intransigence as from any decision of Defendants. There is no indication that Defendants ever rescinded their various proposals for rescheduled Quarterly Meetings, and Defendants even offered to hold one of those meetings as a "special event" with extended hours.

Incarcerated Plaintiffs, even to the point that it might be impossible for some of them to attend. But the particular Non-Incarcerated Plaintiffs have no constitutional right to have services at Green Haven scheduled to suit their convenience. Nor does any inconvenience to particular individuals defeat the ability of inmates and non-inmates to conduct joint services, as other non-incarcerated Quakers might find a weekday event easier to attend. Thus, the various rescheduling proposals provided alternative means for Quaker prisoners and their non-incarcerated brethren to fulfill the religious goal of communal discussion and worship services, in ways that imposed lessened security risks and a lesser burden on prison staff than the risks and burden posed by Plaintiffs'preferred schedule.

Moreover, the record reinforces the district court's conclusion that Defendants' rescheduling decision was supported by legitimate concerns – specifically, that there were irregularities in attendance at Quarterly Meetings, excessive call-outs, and overcrowding in the meeting space. Thus, even if we find that the scheduling changes do create a substantial burden, we conclude that Defendants have met their "burden of identifying the legitimate penological interests that justify the impinging conduct." *Salahuddin*, 467 F.3d at 275. Here, the Quarterly Meetings create additional security concerns and disrupt equitable allocation of scarce staffing and resources, since special events involving outside visitors require extra security to protect civilian visitors and to maintain safety inthe facility – a burden that is heightened on weekends, when fewer staff members are on duty. Defendants thus have a legitimate penological interest in limiting Saturday gatherings. It is possible that other accommodations

or solutions could be imagined that would serve that interest while preserving at least some Saturday meetings involving non-incarcerated Friends. But as the Supreme Court reminds us, "the realities of running a penal institution are complex and difficult," such that "wide-ranging deference [must] be accorded [to] the decisions of prison administrators." *Jones v. N. C. Prisoners' Lab. Union, Inc.*, 433 U.S. 119, 126 (1977). Whatever the result may be once the record is fully developed in this case, at this stage of the proceedings, we cannot say that Plaintiffs have established a likelihood of success on the merits.

V. Balance of Equities and the Public Interest

The final consideration in the preliminary injunction analysis concerns whether the balance of equities tips in favor of granting the injunction and whether that injunction is in the public interest. Defendants suggest that they have an important interest in maintaining "institutional order and security" and proper "allocation of prison resources." *O'Lone*, 482 U.S. at 350, 352. While there is no doubt that Plaintiffs have a strong interest in their religious freedoms, in the prison setting, we think that on balance, the equities tip on favor of Defendants, particularly where, as here, Defendants have offered to hold Quarterly Meetings on any weekday that Plaintiffs choose and continue to support and allocate resources to the Quaker inmates.

Thus, Plaintiffs have not met their burden of showing that a preliminary injunction is warranted in this case.

CONCLUSION

For the reasons stated above, we agree with the district court that a preliminary injunction is not warranted. The order of the district court is therefore **AFFIRMED**.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREEN HAVEN PRISON PREPARATIVE MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, *et al.*, Plaintiffs, v. NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, *et al.*, Defendants.	Case No. 18-CV-8497 (KMK) ORDER

KENNETH M. KARAS, United States District Judge:

At Oral Argument on October 30, 2019, the Court denied Plaintiffs' Motion for a Preliminary Injunction (the "PI Motion"). (Dkt. No. 61.) Before the Court is Plaintiffs' Motion for Reconsideration of that ruling (the "Motion"). (Dkt. Nos. 62-63.) For the following reasons, Plaintiffs' Motion is denied.

I. Discussion

"Motions for reconsideration are governed by Federal Rule of Civil Procedure 59(e) and Local Civil Rule 6.3, which are meant to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a

lost motion with additional matters." *Arthur Glick Truck Sales, Inc. v. Stuphen E. Corp,* 965 F. Supp. 2d 402, 404 (S.D.N.Y. 2013) (citation and quotation marks omitted), *aff'd,* 577 F. App'x 11 (2d Cir. 2014). The standard for such motions is "strict" and "should not be granted where the moving party seeks solely to relitigate an issue already decided." *Shrader v. CSX Transp., Inc.,* 70 F.3d 255, 257 (2d Cir. 1995); *see also In re Gen. Motors LLC Ignition Switch Litig.,* No. 14-MC-2543, 2017 WL 3443623, at* 1 (S.D.N.Y. Aug. 9, 2017) ("It is well established that the rules permitting motions for reconsideration must be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the [c]ourt." (citation and quotation marks omitted)). A movant may not "rely upon facts, issues, or arguments that were previously available but not presented to the court." *Indergit v. Rite Aid Corp.,* 52 F. Supp. 3d 522, 523 (S.D.N.Y. 2014) (citation omitted). Nor is a motion for reconsideration "the proper avenue for the submission of new material." *Sys. Mgmt. Arts, Inc. v. Avesta Tech., Inc.,* 106 F. Supp; 2d 519, 521 (S.D.N.Y. 2000). "Rather, to be entitled to reconsideration, a movant must demonstrate that the [c]ourt overlooked controlling decisions or factual matters that were put before it on the underlying motion, which, had they been considered might reasonably have altered the result reached by the court." *Arthur Glick Truck Sales,* 965 F. Supp. 2d at 405 (citation and quotation marks omitted); *Shrader,* 70 F.3d at 257 (same). In other words, "[a] motion for reconsideration should be granted only when the [movant] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Alvarez v. City of New*

York, No. 11-CV-5464, 2017 WL 6033425, at *2 (S.D.N.Y. Dec. 5, 2017) (quoting *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.,* 729 F.3d 99, 104 (2d Cir. 2013)); *see also Indergit,* 52 F. Supp. 3d at 523 (same).

The Court has reviewed the submitted documents. *(See* Not. of Mot.; Pls.' Mem. In Supp. of Mot. ("Pls.' Mem."); Defs.' Mem. in Opp'n to Mot. ("Defs.' Mem.") (Dkt. Nos. 62-63, 67)). Here, Plaintiffs have identified no intervening change of controlling law, availability of new evidence, or need to correct a clear error. *See Alvarez,* 2017 WL 6033425, at *2. Instead, Plaintiffs reiterate the same arguments that were expressly considered and rejected in the Court's ruling. Because Plaintiffs "seek[] solely to relitigate an issue already decided," *Shrader,* 70 F.3d at 257, pointing to no issue that the Court did not expressly consider and no case law or fact that the Court overlooked, the Motion is denied. *See Cyrus v. City of New York,* 450 F. App'x 24, 26 (2d Cir. 2011) (affirming denial of motion for reconsideration where the plaintiff"fail[ed] to point to any case law or other relevant information that the district court overlooked," and his arguments merely "amount[ed] to a disagreement with the district court's conclusions with respect to the case law that was already before it"); *Bryant v. AB Droit Audiovisuels,* No. 07-CV-6395, 2017 WL 2954764, at *2 (S.D.N.Y. July 11, 2017) ("[A] party's disagreement with a [c]ourt's decision is simply not a basis for reconsideration."); *Women's Integrated Network, Inc. v. US. Specialty Ins. Co.,* No. 08-CV-10518, 2011 WL 1347001, at *1 (S.D.N.Y. Apr. 4, 2011) ("The Court will not re-litigate the merits of the underlying dispute on a motion for reconsideration."), *aff'd,* 495 F. App'x 129 (2d Cir. 2012); *Grand Crossing, L.P. v. U.S. Underwriters Ins. Co.,* No. 03-CV-5429, 2008 WL

4525400, at *4 (S.D.N.Y. Oct. 6, 2008) ("Because [the] [p]laintiffs present no new factual information or law that requires a different outcome in the underlying motion, reconsideration is inappropriate." (citation omitted)); *Davidson v. Scully,* 172 F. Supp. 2d 458,464 (S.D.N.Y. 2001) ("Although plaintiff might see this motion as a way to vent his frustration and point out where he believes the Court erred in its reasoning, that is not the purpose of a Rule 59(e) motion for reconsideration.").

II. Conclusion

For the foregoing reasons, Plaintiffs' Motion for Reconsideration is denied.

The Clerk of the Court is respectfully requested to terminate the pending Motion. (Dkt. Nos. 62-63).

SO ORDERED.

DATED: December 3, 2019
White Plains, New York

/s/ Kenneth M. Karas
KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREEN HAVEN PRISON PREPARATIVE MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS, *et al.*, Plaintiffs, v. NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, *et al.*, Defendants.	Case No. 18-CV-8497 (KMK) ORDER

KENNETH M. KARAS, District Judge:

For the reasons stated on the record at the Oral Argument on October 30, 2019, the Court denies Plaintiffs' Motion for a Preliminary Injunction (the "Motion").

The Clerk of Court is directed to terminate the pending Motion, (Dkt. No. 25).

Further, as discussed, Defendants are ordered to submit a pre-motion letter to the Court by November 15, 2019, and Plaintiffs are ordered to respond to the letter by November 22, 2019.

Following receipt of the letters, the Court will schedule a conference.

SO ORDERED.

DATED: October 30, 2019
White Plains, New York

/s/ Kenneth M. Karas
KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

Appendix D

Excerpt of Transcript of Proceedings (Pages 1, 54–72)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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GREEN HAVEN PRISON
PREPARATIVE MEETING OF THE
RELIGIOUS SOCIETY OF FRIENDS,
an unincorporated association, et al.,

Plaintiffs,

Case No. 18-cv-8497

-vs-

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION, et al.,

Defendants.

----------x

United States Courthouse
White Plains, New York

October 30, 2019
11:17 a.m.

B e f o r e:

HONORABLE KENNETH M. KARAS

District Judge

A P P E A R A N C E S:

LAW OFFICE OF FREDERICK R. DETTMER
Attorneys for Plaintiffs
BY: FREDERICK R. DETTMER

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES
Attorneys for Defendants
BY: STEVEN SCHULMAN

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THE COURT: Right.

MR. SCHULMAN: But as I have said, the inmates could have.

THE COURT: Right. But again, the mechanism – the state administrative mechanism for grievances is designed for incarcerated individuals. All right? So the nonincarcerated individuals –

MR. SCHULMAN: I agree. I am not saying that –

THE COURT: I would have thought your argument would have been that the Friends, the nonincarcerated Friends, are not banned from coming to the prison; they just have to do it on a different day.

MR. SCHULMAN: I think that's what it said.

THE COURT: Okay.

MR. SCHULMAN: I hope. Maybe it wasn't clear, but yes.

THE COURT: Okay.

MR. SCHULMAN: It is.

THE COURT: Okay. All right.

MR. SCHULMAN: Thank you, Your Honor.

THE COURT: All right. All right. So since this is an application for a preliminary injunction, I don't think it is advisable to have everybody wait while I dot I's and cross T's among the opinions we have to write and the other 500-plus cases that are on our docket, so I am going to give you my ruling now.

In terms of the relevant facts, the plaintiffs are either unincorporated associations or individuals associated with the Religious Society of Friends, also known as Quakers, as we have discussed. Two of the individual plaintiffs are inmates at Green Haven. The Green Haven Meeting consists of approximately ten registered inmates and as many as 15 to 18 attending some of that. We talked about the numbers also during the argument here; and everything that is represented about the Quaker faith in plaintiffs' memorandum of law and what counsel has said here today of course is accepted, and I think, as Mr. Schulman rightly concedes, there is no doubting the sincerity of the individuals who are part of the Friends who do practice their religion in prisons, and even the historical basis for that, again, is not doubted.

And of course there is an acceptance of the representation of the religious significance of things like the Quarterly Meeting, as well as the – which is discussed at length in the papers, as well as the Meetings for Worship With a Concern for Business.

Now, in terms of how that has played out at Green Haven, this seems to be undisputed, but plaintiffs' allegation is that from 1980 until approximately 2015, members of the Nine Partners Quarterly Meeting and others came into Green Haven for a full day of gatherings with Green Haven Meeting Friends

at least once a year, and these meetings took place on Saturdays. They included worship, business and fellowship as well as lunch paid for by the visiting Friends. Initially they were called seminars, and then they were ultimately called Quarterly Meetings. There are certain benefits to these meetings being on Saturday. For example, it's represented that it was the only way that Friends with employment or parenting responsibilities could attend; and also it was helpful to those who had to travel long distances to get to Green Haven; and of course, as I said, it's represented that the Quarterly Meetings are a critical part of the practice of the Quaker faith.

Now DOCCS publishes a religious calendar, Holy Day Calendar annually, and there is a whole series of allegations about the calendar misidentifying the Quaker group as Protestant. There was the colorful description by Mr. Dettmer here about, apparently, Quakers don't know what Pentecost is. I doubt that's true, but anyways, there is a difference in the religion, which I accept.

And so there are allegations that back in 2012, that one of the Green Haven Meeting members had requested DOCCS add Quarterly Meetings to the Quakers' page on the Religious Holy Day Calendar. That was rejected by Cheryl Morris, who was then the Director of Ministerial Family and Volunteer Services, claiming that it already was in the religious calendar.

In 2013, Davis submitted a request to Annucci, who was the acting commissioner of DOCCS. That was rejected by McKoy, who was the DOCCS deputy commissioner for program services. The letter in response is part of the record, but it is, in essence, McKoy wrote that it wasn't possible to implement all

of the religious practices within the facilities that are practiced in outside faith communities due to institutional safety and security concerns, and then citing the supposed Quaker section in the Religious Holy Day Calendar.

Plaintiffs take issue with the veracity of those representations indicating, again, that for years DOCCS had been informed that the Religious Holy Day Calendar was incorrect.

Then plaintiffs allege that there was a request for Quarterly Meetings to Wayne Carroll, who was the special subject supervisor as well as Reverend Dr. Gideon Jebamani, the "Protestant Chaplain and Staff Advisor." Collado, who was then the deputy superintendent of program services wrote back to Davis asking to be advised of the, "Need or reason for the Quarterly Meetings," and plaintiffs alleged that the Green Haven meeting provided Collado with, "Substantial material and information in an effort to explain the importance of the Quarterly Meetings."

Notwithstanding that representation, Collado terminated the Quarterly Meetings, according to plaintiffs, writing, "It is not possible to implement all the religious practices within the facilities that are practiced in outside faith communities due to security concerns, institutional safety, and logistical consideration in this facility."

And so, according to plaintiffs, the Green Haven Meeting was not permitted to host a Quarterly Meeting in Green Haven in 2015. That led to a meeting between certain members of the Quaker faith and from the New York Yearly Meeting and the DOCCS leadership to discuss the possibility of resuming these Quarterly Meetings. That meeting apparently went nowhere.

Then in September of 2015, the New York Yearly Meeting wrote again to DOCCS reiterating the importance of the Quarterly Meetings, but Morris said that the issue had already been addressed in the earlier meeting, and it would need to be discussed with executive staff at each facility.

More requests were made to Green Haven personnel for permission to include the Quarterly Meetings in their Religious Holy Days Calendar, which according to plaintiffs, were rejected on the basis that the Quakers already had one designated family event day, Pentecost.

Then there is the whole separate series of allegations regarding the Meetings With Worship With a Concern for Business. According to plaintiffs, Kopp, who was the Deputy Superintendent of Program Services at Green Haven, terminated Green Haven Meetings, Weekly Meetings for Worship With a Concern for Business. Kopp wrote a letter explaining this to Rabbi Chill, but the meetings were terminated because the Saturday, "Callout does not appear to be a study group or a worship service," and that, "For a congregation of a total of eight inmates having a Thursday study group and Friday worship service appears to be sufficient."

Plaintiffs take issue with the timing of this letter because it's soon after the prison officials had been advised of the desire by individuals to go to court, and there was a meeting in July of 2018 protesting the cancellation, but that was never responded to, according to plaintiffs.

The defendants take a different view at least of some of the facts, saying that although the Quarterly Meetings were not on the DOCCS Religious Holy Days Calendar, they had been occurring anyway. So,

for example, in 2014, there were Quarterly Meetings at Green Haven on March 29, June 7, September 3rd and December 27th, which were all Saturdays.

But in 2014, there were some events that increased concern for security. So, for example, in August of '14, there was a corrections officer at Green Haven who was arrested for taking a bribe to smuggle in some marijuana. There was a complete lockdown ordered at Green Haven in a facility-wide search, and according to defendants, there was, "Credible evidence that significant amounts of contraband had been smuggled into the facility on a systemic – systematic basis over time." That's all from Collado, at paragraph 4 of his declaration.

So the whole administration at Green Haven got replaced to fix these issues.

There were, according to Collado, some additional contraband violations in 2015, including a visitor who attempted to bring a razor blade into the facility. There were a couple of visitors who tried to bring in drugs. There was another visitor trying to smuggle in cash and contraband, and then two inmates escaped from Clinton, a different facility, in June of 2015, with the help of civilian prison staff and smuggling contraband into the facility.

And so there was a decision made to reduce the size and number of special events at Green Haven, according to Collado at paragraph 6; and so beginning in 2015, what defendants say is that they moved the meetings, the Quarterly Meetings, from Saturday to Friday, and listed them in the special events calendar for March 20, June 5, September 11 and December 11. That was rejected, defendants acknowledge, by the Quaker community, so the defendants said that Collado offered to permit the Quarterly Meetings on

any weekday, but that was refused as well; and according to defendants, the facility is willing to allow the Quarterly Meetings to happen on four weekday evenings per year, including having one Quarterly Meeting per year with a meal, which would permit a longer meeting.

With regard to the Meetings for Worship With a Concern for Business, the defense view is that the Friends inmates are permitted to meet weekly on Fridays from 6:00 to 8:30 p.m. for worship and on Thursdays from 6:00 to 8:30 for a study group, which sessions normally can be led or were led by a civilian volunteer.

According to the defense – this is from Kopp's declaration at paragraph 5 – Quaker inmates were historically also permitted to hold, "An additional callout on Saturdays from 12:30 to 2:00," for gatherings that were described as classes, but they could be attended only by inmates, not by anybody else, including civilians.

But because of overcrowding on Saturdays in the area where the meetings were held, there had to be a reevaluation; and so the way it's described is that defendants would claim that the callouts defined as, "Permission to inmates to be at locations other than assigned," required to conduct the meetings where, "Part of the problem was they were attended by more non-Quakers than Quakers."

And plaintiffs dispute a great deal of this, and we talked about it, and I, of course, have read the papers, and Mr. Dettmer went through some I think what he considers some of the highlights of some of the lack of basis or sort of lack of persuasiveness of some of the claims, as well as lack of truth of some of the claims.

The complaint was filed in September of 2018. The request for the PI was – first came by way of a letter in late December of 2018. There was a conference in February, and the briefing was done by July, sort of mid to late July.

In terms of the legal standard, a preliminary injunction has been described as, "An extraordinary remedy," and of course is not awarded as a matter of right. It's designed to preserve the status quo and prevent irreparable harm until the Court has an opportunity to rule on the lawsuit's merits or to change the status quo to avoid irreparable harm.

The standard is such that a party seeking a preliminary injunction normally must establish first irrevocable harm, and second, either a likelihood of success on the merits or sufficiently serious questions going to the merits of its claims to make a fair grounds for litigation, plus the balance of the hardships to being decidedly in favor of the moving party; that the balance of hardships tips in its favor, and that a preliminary injunction is in the public interest.

The showing of irreparable harm is considered the most important prerequisite, and to satisfy the irreparable harm requirement, the plaintiff has to demonstrate that, absent a preliminary injunction, there will be a suffering of an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if the Court waits until the end of trial to resolve the harm. That's from *Freedom Holdings versus Spitzer*, 408 F.3d 112 at 114.

The heightened – the terms of the likelihood of success on the merits or heightened standards for the likelihood of success is appropriate where an

injunction is mandatory or the injunction will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. That's from *Schneiderman*, 787 F.3d at 650.

In the case of a mandatory preliminary injunction, which this clearly is, the movant must show a, "Clear or substantial likelihood of success." That's from *Hoblock versus Albany County Board of Elections*, 422 F.3d 77 at 97.

The balance of hardships just asks which of the two parties would suffer most if the preliminary injunction were wrongly decided, and the public interests in this factor requires the Court to ensure that the public interest would not be disserved by the issuance of the preliminary injunction.

Now, for purposes of the irreparable harm, loss of first First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury. That's what the Supreme Court said in *Elrod versus Burns*, 427 U.S. 347 at 373. So there is really no question that the type of injury that plaintiffs are alleging here satisfies the irreparable harm requirement.

In terms of the likelihood of success on the merits, the starting point is the exhaustion requirement. The PLRA provides that, "No action shall be brought with respect to prison conditions under Section 1983 or any other federal law by a prisoner confined in jail, prison or other correctional facility until such administrative remedies as are available are exhausted." That's 42 U.S.C. 1997e(a). This language is mandatory, said the Supreme Court in *Ross versus Blake*, 136 Supreme Court 1850 at 1856.

Now, the grievance program that's applicable here is the DOCCS Inmate Grievance Program, the IGP. So as the first step, the inmates submit a written grievance to the Inmate Grievance Review Committee, which attempts to resolve the issue informally, and if there is no resolution, conducts a hearing to answer the grievance or make a recommendation to the superintendent. If the IGRC's determination is adverse to the inmate at the second step, the inmate appeals to the prison superintendent, and if the superintendent's determination is adverse to the inmate, at the third and final step, the inmate appeals to the Central Office Review Committee known as the CORC.

Only after CORC has received the appeal and rendered a decision are New York grievance procedures exhausted. All that is from *King versus Puershner*, 2019 Westlaw 4519692 at Star 7.

The PLRA and its requirements applies to prisoner suits whether they are pursuing monetary or injunctive relief. That's from *Royster versus Spitzer*, 2011 Westlaw 202044244 at Star 2.

Now, an inmate does not have to exhaust where the administrative remedies are unavailable. The *Ross* case lays out the three circumstances where that happens: Where the procedure operates as a dead end; where the procedure is so opaque that it becomes incapable of use; or where the prison administrators thwart inmates from taking advantage of the process through machination, misrepresentation or intimidation.

In the Court's view, the inmate plaintiffs have failed to exhaust their administrative remedies as required by the PLRA and the IGP, which undermines their ability to show a likelihood of

success on the merits. Indeed, it's not clear that the plaintiffs filed any grievance at all, much less appealed it to the final stages or received a final decision from CORC. So instead of trying to make that point, what they – what plaintiffs suggest or argue is a number of reasons why the PLRA does not apply to them. So they argue that the issues raised by the motion are excluded from the PLRA because the PLRA does not apply to, "A matter which affects a class of inmates," because, "The facts relating to defendant's termination of Quarterly Meetings plainly take this claim outside the facility."

Because plaintiffs' grievances are in part against DOCCS central management, which is not covered by the PLRA, because McKoy already denied the addition of Quarterly Meetings to the calendar, and there is, "No higher authority to grieve his decision."

None of these arguments is persuasive. While it's true that the IGP states that, "Class actions are not accepted," inmate plaintiffs routinely raise issues pertaining to religious practice through the grievance procedures, even though their grievances might apply to other inmates who share the same religious beliefs. Among the cases so noting are *Alster versus Fischer*, 2017 Westlaw 3085842 at stars 1 through 3. *Williams versus King*, 56 F. Supp 3d 308 to 316-317.

It's also worth noting that the plaintiffs are not a class. This is not a class action. This is a discrete number of inmates who share a claim that their religious right to practice their religion and also their religion under the First Amendment under RLUIPA are being violated. That is not a class. This class – this would not be certified as a class action as it's currently alleged; but even if they wanted to proceed as a class, the PLRA does not exempt them from

exhaustion entirely, but provides, "Grievances which are raised in terms of class actions should be referred to the Inmate Liaison Committee." Indeed, the PLRA further specifies if an inmate is unsure whether an issue is grievable, the inmate should, "File a grievance, and the question will be decided through the grievance process."

What's more is that Section 701.2(a) of the IGP specifies that inmates may file a complaint with an IGP clerk about, "The substance or application of any written or unwritten policy, regulation, procedure or rule," and I will put in brackets, "of DOCCS, or any of its program units."

So to the extent, for example, that some of the complaint here deals with DOCCS Religious Holy Days Calendar, that does not exempt plaintiffs from complying with the PLRA.

PLRA also says that merely addressing a letter to a facility or central office is not a grievance. So there is simply no claim that, for example, writing to McKoy somehow qualifies as a grievance under the PLRA. Nor does Kopp's alleged lack of response excuse plaintiffs from – the inmate plaintiffs – from complying with the PLRA. So to begin, the letter itself doesn't really qualify as a grievance, and also it only directs the parties – the PLRA, that is, only directs the parties to attempt to resolve the grievance informally, but then if that doesn't occur, then the grievance process has to move to a more formal hearing process.

And "Where a prisoner files a grievance, and the IGRC does not respond, the inmate must nevertheless exhaust his appeal to the facility superintendent and the CORC." That's from

Hernandez versus Coffey, 2003 Westlaw 22241431 at star 4.

Then there is the claim that the Green Haven Meeting is an unincorporated association and not an individual prisoner, and therefore, it does not have to exhaust. So – and the legal basis for saying that it has standing to pursue a First Amendment claim comes from *Hobby Lobby*, but of course that case says nothing about the PLRA. And the reality is the Green Haven Meeting doesn't have rights except derivatively through the prisoners. Green Haven Meeting is made up of the prisoners, and the notion that the prisoners can circumvent the exhaustion requirement and all that it's supposed to accomplish just by creating an association, or even being an association, finds zero support in the case law. None.

To the extent that the plaintiffs suggest, in their reply papers especially, that the PLRA process wasn't available to them because the administrators thwarted the grievance process, there is absolutely no support for this claim. All there is is basically a view that the prison officials' responses were confusing or maybe they didn't agree with them, but certainly nothing close to suggesting – even close to suggesting beatings or threats of retaliation for filing a grievance, or that there was somehow no opportunity for them to file the grievance. This is all discussed in *Ruggiero versus County of Orange*, 467 F.3d 170 at 178. Nowhere is there a claim that any of the inmate plaintiffs filed a grievance, tried to file a grievance, and so therefore, their claim fails on the likelihood of success on the merits.

Now, in terms of the other pieces of the merits, of course, prisoners continue to retain constitutional protection afforded by the free exercise clause. That's

been said many times. Among the cases saying so is *Ford versus McGinnis*, 352 F.3d 582 at 588. "A prisoner's free exercise rights are balanced against the interests of prison officials charged with complex duties arising from the administration of the penal system." That's from *Brown versus Griffin*, 2013 Westlaw 4688461 at star 5. And the Thornburgh case, which we talked about earlier, 490 U.S. 401, applies a similar standard to non-inmates.

Now to establish a First Amendment violation a prisoner has to show that – the threshold is that the disputed conduct substantially burdens his sincerely-held religious beliefs. The defendants then bear the relatively limited burden of identifying the legitimate penological interests that justify the impinging conduct. The burden remains with the prisoner to show that these articulated concerns were irrational. That is *Salahuddin versus Goord*, 467 F.3d 263 at 274-275.

RLUIPA protects institutionalized persons who are unable to freely attend their religious needs and are therefore dependent on the government's permission to – permission and accommodation for exercise of their religion. That's from *Cutter versus Wilkinson*, 544 U.S. 709 at 721. RLUIPA does call for a more stringent standard than does the First Amendment. So that the government is barred from imposing a substantial burden on a prisoner's free exercise unless the challenged conduct or regulation, "Furthers a compelling governmental interest and the least restrictive means of furthering that interest." That's from *Holland versus Goord*. In terms of substantial burden, the circuit – our circuit has assumed that substantial burden is a term of art in the free exercise arena that Congress by so using it

intended to incorporate the same use of it in the RLUIPA context.

It does bear noting that the non-prisoner plaintiffs don't have a RLUIPA claim because they are not institutionalized persons.

Now in terms of substantial burden, it is important to note that the courts have said that mere convenience – inconvenience, excuse me, to the adherence is insufficient to establish a substantial burden, even if establishing a substantial burden is not an onerous task for a plaintiff asserting such a claim. That's from *Singh versus Goord*, 520 F. Supp 2d 487, 498-99.

In the Court's view, the plaintiffs have not clearly shown that the limitations on the business meetings or the Quarterly Meetings create a substantial burden on their ability to engage in their beliefs. Again, there is no doubting the sincerity of the beliefs of all of the plaintiffs, but rather that the plaintiffs just have not established a clear likelihood of success in proving that the restrictions create a substantial burden on their free exercise rights. Indeed, there are a number of times when plaintiffs describe the moving of the meetings as an inconvenience, and I think that's really what we are talking about here; and I am not making light of the inconvenience, but there is a difference between saying it's harder for us to get to meeting or do a meeting on a Friday or a Friday night than it is on a Saturday than saying the religion requires us to meet on Saturdays, and that's what we are talking about here.

So it may very well be that there will be fewer outside visitors on Friday, but that doesn't mean that the prisoners can't exercise their right to have a Quarterly Meeting, and as I said, they don't have

anything that says that their sincerely-held belief requires – that their religion requires the meetings to be on Saturdays; and so it just – I just don't think they have established at all a substantial burden in terms of the timing of these meetings, and the same is true with respect to the non-prisoners, assuming – assuming they don't have to exhaust. I am going to assume here for these purposes – we are talking about not the religious significance of Saturday versus Friday, but a convenience factor.

And, of course, the record suggests that there is at least a 2-to-1 ratio of non-prisoners to prisoners who attended the meeting on Saturdays in any event, and there is absolutely nothing about the religious requirement of such a ratio; and weighed against this is the justification provided by the prison officials having to do with the reduced staff on Saturdays; having to do with the conduct and contraband involving razor blades, involving drugs and the fact that the prison made the decision to reduce outside meetings on Saturdays, not because there was a fear that the Friends had done anything wrong. Indeed, there's never been an assertion of that, but because it makes it harder for the prison to protect anybody who is in the prison. So it really is the idea that the prison has an obligation to protect non-prisoners who are in the prison, and it's harder for them to do that on weekends than it is during the week.

And so the combination of the fact that I don't think the plaintiffs have identified anything other than preferences, and so not meeting the substantial burden requirement, combined with the rational penological justification given for the moving of the meetings means that, in my view, the plaintiffs are unlikely to succeed on the merits, and the balance of the hardships in the public interest in my view.

Without a clear likelihood of success on the merits that any constitutional violation has occurred, the plaintiffs don't show that they have suffered more grievously than the defendant if the injunction should not issue.

And so for those reasons, the application is denied.

Now, Mr. Schulman, from your perspective, I know you are eager to file a motion to dismiss.

MR. SCHULMAN: Yes, Your Honor.

THE COURT: The exhaustion claim, this is kind of an

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Appendix E

Text of
Constitutional Provisions, Statutes and Regulations Involved in the Case
Pursuant to the Rules of the United States Supreme Court, Rule 14(1)(f)

Federal

Constitutional Provisions:

United States Constitution, First Amendment:

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.

United States Constitution, 14th Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes:

Dictionary Act, 1 USC § 1:

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well;

words used in the present tense include the future as well as the present;

the words "insane" and "insane person" shall include every idiot, insane person, and person non compos mentis;

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

"officer" includes any person authorized by law to perform the duties of the office; "signature" or "subscription" includes a mark when the person making the same intended it as such;

"oath" includes affirmation, and "sworn" includes affirmed;

"writing" includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise.

Certiorari, 28 USC § 1254:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Civil Action for Deprivation of Rights, 42 USC § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Civil Rights of Institutionalized Persons Act, Definitions, 42 USC § 1997:

As used in this Act—
(1) The term "institution" means any facility or institution—
(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and
(B) which is—
(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;
(ii) a jail, prison, or other correctional facility;
(iii) a pretrial detention facility;
(iv) for juveniles—
(I) held awaiting trial;
(II) residing in such facility or institution for purposes of receiving care or treatment; or
(III) residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or
(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.
(2) Privately owned and operated facilities shall not be deemed "institutions" under this Act if—
(A) the licensing of such facility by the State constitutes the sole nexus between such facility and such State;
(B) the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII, or under a State plan approved under title XIX, of the Social Security Act [42 USCS

§§ 1381 et seq., §§ 1395 et seq., or §§ 1396 et seq.], constitutes the sole nexus between such facility and such State; or

(C) the licensing of such facility by the State, and the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII, or under a State plan approved under title XIX, of the Social Security Act [42 USCS §§ 1381 et seq., §§ 1395 et seq., §§ 1396 et seq.], constitutes the sole nexus between such facility and such State;

(3) The term "person" means an individual, a trust or estate, a partnership, an association, or a corporation;

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term "legislative days" means any calendar day on which either House of Congress is in session.

Prison Litigation Reform Act, 42 USC § 1997e:

(a) Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure. The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis

for an action under section 3 or 5 of this Act [42 USCS § 1997a or 1997c].

(c) Dismissal.

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees.

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), such fees shall not be awarded, except to the extent that--

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 2 [722] of the Revised Statutes; and

(B)

(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 [722] of the Revised Statutes of the United States (42 U.S.C. 1988).

(e) Limitation on recovery. No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18, United States Code).

(f) Hearings.

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other

Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply.

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined. As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and

conditions of parole, probation, pretrial release, or diversionary program.

Religious Land Use and Institutionalized Persons Act, 42 USC §§ 2000cc-1 through 2000cc-5:

§ 2000cc-1. Protection of Religious Exercise of Institutionalized Persons:

(a) General rule. 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.
(b) Scope of application. This section applies in any case in which—
(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

§ 2000cc-2. Judicial Relief:

(a) Cause of action. A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a

government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion. If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2 [42 USCS § 2000cc], the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit. Adjudication of a claim of a violation of section 2 [42 USCS § 2000cc] in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) [Omitted]

(e) Prisoners. Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this Act. The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation. If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

§ 2000cc-3. Rules of Construction:

(a) Religious belief unaffected. Nothing in this Act shall be construed to authorize any government to burden any religious belief.
(b) Religious exercise not regulated. Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.
(c) Claims to funding unaffected. Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.
(d) Other authority to impose conditions on funding unaffected. Nothing in this Act shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) Governmental discretion in alleviating burdens on religious exercise. A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law. With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) Broad construction. This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) No preemption or repeal. Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) Severability. If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

§ 2000cc-4. Establishment Clause Unaffected:

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

§ 2000cc-5. Definitions:

In this Act:
(1) Claimant. The term "claimant" means a person raising a claim or defense under this Act.
(2) Demonstrates. The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.
(3) Free Exercise Clause. The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government. The term "government"—
(A) means—
(i) a State, county, municipality, or other governmental entity created under the authority of a State;
(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
(iii) any other person acting under color of State law; and
(B) for the purposes of sections 4(b) and 5 [42 USCS §§ 2000cc-2(b) and 2000cc-3], includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.
(5) Land use regulation. The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.
(6) Program or activity. The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).
(7) Religious exercise.
(A) In general. The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.
(B) Rule. The use, building, or conversion of real property for the purpose of religious exercise shall

be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

Rules:

Capacity to Sue or Be Sued, Federal Rules of Civil Procedure, Rule 17(b):

(b) Capacity to sue or be sued is determined as follows:
(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;
(2) for a corporation, by the law under which it was organized; and
(3) for all other parties, by the law of the state where the court is located, except that:
(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and
(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

State

Statutes:

Establishment, Use and Designation of Correctional Facilities, New York Corrections Laws, § 70(2):

2. Correctional facilities shall be used for the purpose of providing places of confinement and

programs of treatment for persons in the custody of the department. Such use shall be suited, to the greatest extent practicable, to the objective of assisting sentenced persons to live as law abiding citizens. In furtherance of this objective the department may establish and maintain any type of institution or program of treatment, not inconsistent with other provisions of law, but with due regard to:
(a) The safety and security of the community;
(b) The right of every person in the custody of the department to receive humane treatment; and
(c) The health and safety of every person in the custody of the department.

Action or Proceeding by Unincorporated Association, New York General Association Law, § 12:

An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association to recover any property, or upon any cause of action, for or upon which all the associates may maintain such an action or special proceeding, by reason of their interest or ownership therein, either jointly or in common. An action may likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members.

Trusts for Shakers and Friends, New York Religious Corporations Law, § 202:

All deeds or declarations of trust of real or personal property, executed and delivered before January first, eighteen hundred and thirty, or since May fifth, eighteen hundred and thirty-nine, to any person in trust for any United Society of Shakers, or heretofore executed and delivered to any person or persons in trust for any meeting of the Religious Society of Friends, or any of the purposes thereof, and the legal estates, interests and trusts purported to be conveyed, created or declared thereby, shall be valid. Trusts of real or personal property, for the benefit and use of the members of any United Society of Shakers, or of any meeting of the Religious Society of Friends, or any of the purposes thereof, may hereafter be created, according to the religious constitution of such society of Shakers, or the regulations and rules of discipline of such Society of Friends. Such deeds or declarations of trust, heretofore or hereafter executed and delivered, shall vest in the trustees the legal estates and interests purported to be conveyed or declared thereby, to and for the uses and purposes declared therein; and such legal estates and trusts, and all legal authority with which the original trustees were vested by virtue of their appointment and conferred powers, shall descend to their successors in office or trust, who may be chosen in conformity to the constitution of such society, or the directions of such meeting. In case of the death of all the trustees of any trust for the benefit of any meeting of the Religious Society of Friends or any of the purposes thereof, heretofore appointed, or who may be hereafter appointed by virtue of this section, any such

meeting may appoint a trustee or trustees in place of such person or persons, and the person or persons thus appointed by such meeting shall succeed to, and be invested with, all the powers, rights and duties conferred by this section and the deed or declaration of trust upon the trustee or trustees. In case of the consolidation of two or more meetings of the Religious Society of Friends into one meeting, all real and personal property held in trust for either or any of the meetings so consolidated, or any of the purposes thereof, shall continue to be vested in the trustees holding the same at the time of such consolidation, until their successors shall be chosen as above provided. Such consolidated meeting shall have the same rights, powers and duties in respect to such property, estates and trusts and in respect to the appointment of such trustees and their successors as the meetings so consolidated or either of them previously had. This section does not impair or diminish the rights of any person, meeting or association claiming to be a meeting of the Religious Society of Friends, which such person, meeting, or association claiming to be a meeting, had to any real or personal property held in trust for the use and benefit of any meeting of such society, before the division of such society which took place at the annual meeting held in the city of New York in May, eighteen hundred and twenty-eight. An incorporated or unincorporated society or meeting of Shakers or the Religious Society of Friends may take and hold property of the value or yearly income permitted by statute to a corporation other than a stock corporation. No person shall be a trustee at the same time of more than one society of Shakers or meeting of Friends. A society of

Shakers includes all persons of the religious belief of the people called Shakers, resident within the same county.

Conveyance or incumbrance of trust property of Friends, New York Religious Corporations Law, § 203:

The trustee or trustees, or survivor of any trustees, of any meeting of the Religious Society of Friends, appointed pursuant to the last preceding section, may sell, convey and grant, mortgage, or demise any or all of the trust property described in said trust deed or declaration of trust, to any person absolutely or in trust for such meeting, whenever any meeting of said society by resolution so directs. Any conveyance or mortgage of real estate or property so held in trust by any meeting of the Religious Society of Friends, which is hereafter made in pursuance of a resolution of such meeting as provided herein, shall be as valid and effectual for the conveyance or mortgage of the title of any real estate so held in trust, as if the heirs of any trustee who has died prior to the passage of such resolution had joined in the execution of such conveyance, mortgage or demise. Any instrument for the sale, mortgage, or demise of such property shall embody such resolution, and be executed and acknowledged by such trustee or trustees; and in such acknowledgment such trustee or trustees shall make an affidavit that the person or persons executing such conveyance, mortgage or demise are the trustee or trustees of the trust property, and that the resolution embodied in such conveyance, mortgage or demise was duly passed by such

meeting. Such affidavit shall be prima facie evidence of the facts therein stated.