

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL

LANCELOT U. ARMSTRONG,

Petitioner,

-vs-

DC Case No: _____

MICHAEL D. CREWS,
DEPT. OF CORR. SECRETARY,

Respondent.

PETITION TO ADOPT EXISTING RULE
FOUND IN PROCEDURE 503.006
RELIGIOUS DIET PROGRAM

Comes now the Petitioner, pro se, pursuant to § 120.54 (7)(b), Fla. Stat. (2012), and request that the Secretary adopt and existing rule for the following reasons:

PRELIMINARY STATEMENT

All references to documentary exhibits will be by: “App:-(page)” and found in the attached “APPENDIX”.

STATEMENT OF FACTS

1. The Petitioner has been incarcerated in the Florida Department of Corrections since the year 1990.

2. I First accepted JESUS CHRIST as my Lord and savior in Jamaica. My denomination was mainly S.D.A. Church as well as my training.

3. I have always felt that I should practice my belief the same way that **JESUS (YESHUA)** did in the first century.

4. Through the years, I requested to participate in the “**JEWISH DIETARY ACCOMMODATION**” program for kosher meals under the past Procedure 503.005, which is our firm practice.

5. On August 16, 2007, the JDA program was eliminated and the department removed all pork products from food service and stated that inmates with religious dietary needs will have to use **Vegan** or **Alternate** meals to accommodate their needs.

6. On or about March 22, 2013, the Department of Corrections promulgated a Procedure titled “**RELIGIOUS DIET PROGRAM**”. This procedure was to take the place of the old Jewish Dietary Accommodations Program to provide those inmates who practice Judaism with a kosher meal attached in the Appendix. (App: 1-9).

7. According to this new procedure, an inmate who wishes to participate in the “**CERTIFIED FOOD OPTION**” must take a “**SINCERITY TEST**” which makes the inmate eat either a “**VEGAN or ALTERNATE**” meal for 90 days before s/he can participate in the kosher food portion called Certified Food Option. In other words, *you must eat non-kosher meals for 90 days to show your sincerity in your faith in eating kosher meals.* Procedure 503.006 (5)(d)1. (March 22, 2013). (I do not understand this type of sincerity test), (App: 6).

ARGUMENTS

A) CONSTITUTIONAL LAW

8. It is well settled law that the First Amendment of the United States grants the right for inmates who practice forms of Judaism have the right to eat kosher meals in order to maintain their faith. This is proved by the fact that the Bureau of Prisons has a good kosher diet program for inmates who practice forms of Judaism.

9. It is well settled law that Art. I, § 3 of the Florida Constitution also grants the right for inmates who practice forms of Judaism have the right to eat kosher meals in order to maintain their faith.

B) STATUTORY LAW

10. According to the “Religious Land Use and Institutionalized Persons Act” and connected case law interpreting same, inmates who practice forms of Judaism have the right to eat kosher meals in order to maintain their faith. 42 U.S.C. § 2000cc (a)(1).¹

11. According to the State of Florida’s own “Religious Freedom Restoration Act”, and the connected case law interpreting same, inmates who practice forms of Judaism have a State right to eat kosher meals in order to maintain their religious beliefs. § 761.03 (1), Fla. Stat. (2012).

12. Judges Edmondson, Dubina and Politz, of the Federal Eleventh Circuit Court of Appeals sent a certified question to the Florida Supreme Court asking:

¹ The Bureau of Prisons has an excellent kosher diet program for inmates who practice forms of Judaism that is economically sound. A Jewish kosher diet can meet the needs of other religious diets. It should be also noted that the BOP give the Jewish inmates meat, bread, cheese and milk with a wide variety in meals.

Does the Florida Religious Freedom Restoration Act Broaden, and to what extent does it broaden, the definition of what constitutes religiously motivated conduct protected by law beyond the conduct considered protected by the decisions of the United States Supreme Court?

(Warner v. City of Boca Raton, 267 F.3d 1223 at 1228 (Fla. 11th Cir. 2001)). Justice Quince, Pariente, Wells, Anstead and Lewis, answered this certified question in the affirmative by stating:

The protection afforded to the free exercise of religiously motivated activity under the FRFRA is broader than that afforded by the decisions of the United States Supreme Court for two interrelated reasons. First, the FRFRA expands the free exercise right as construed by the Supreme Court in *Smith* because it reinstates the Court's pre-*Smith* holdings by applying the compelling interest test to neutral laws of general application. Second, under the FRFRA the definition of protected "exercise of religion" subject to the compelling state interest test includes any act or refusal to act whether or not compelled by or central to a system of religious belief.

Warner v. City of Boca Raton, 887 So.2d 1023 at 1032 (Fla. 2004). In effect, the Florida Supreme Court stated that Florida inmates get more religious freedom from § 761.03 (1), Fla. Stat. than the First Amendment or RLUIPA.

C). STATE CREATED LIBERTY INTEREST

13. To accommodate prisoners' rights to a religious diet, The Florida Legislature authorized the Department to promulgate rules relating to feeding of prisoners which included religious diets. § 944.09 (1)(p), Fla. Stat. (2012).

14. The Florida Legislature further stated that it found that faith based religions have the potential to facilitate good institutional adjustment and helps

assume personal responsibility and reduce recidivism and that it was their intent to expand and encourage these faith based religious beliefs, this includes providing kosher meals for inmates who practice forms of Judaism. § 944.803 (1)(2), Fla. Stat. (2013).

15. The Secretary complied with the legislative mandate when he promulgated rules 33-204.003 (Food Service) & 33-503.001 (Chaplaincy Services) through the States Administrative Procedures Act. §120.54, Fla. Stat. (2012).

16. Accordingly, the Department promulgated the Chaplaincy Services rules which states:

“...Inmates who wish to observe religious dietary laws shall be provided a diet sufficient to sustain them in good health [WITHOUT VIOLATING] those dietary laws...” (Emphasis added).

(*Fla. Admin. Code* § 33-503.001 (13) (10-27-11)). The portion of the procedure in question that requires a 90 day sincerity test violates this rule in that it requires an inmate to eat non-kosher when kosher food is available (App: 6).

17. And the department’s food service rules relating to religious diets states that:

“The alternate entrée and Vegan meal pattern provides meal options for the religious requirements of inmates whose religions require a pork-free, lacto-ovo, lacto vegetarian, or vegan diet.”

(*Fla. Admin. Code* § 33-204.003 (6)). As shown here, this diet does not provide for a Jewish kosher diet. The meat, milk, and eggs has to be checked to ensure that there is NO BLOOD in them and they have to be prepared separately as shown in the kosher laws. All of this of course will be considered by the **“Orthodox Kashrut Supervision Service”** as shown in Procedure 503.006 (8)(b) (App: 10).

D). **PROCEDURE 503.006**

18. According to Florida law, a "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. § 120.52 (16), Fla. Stat. (2012).

19. The "unadopted rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54. See § 120.52 (20), Fla. Stat. (2012).

20. *FDC Procedure 503,006 (5) (d)1.-4. (3/22/2013)*, states in part that an inmate **HAS TO EAT NON-KOSHER FOR 90-DAYS** in order to PROVE that s/he is sincere in their religious faith **BEFORE** that can eat the Certified Food Option which is suppose to be certified by an **Orthodox Kashrut Supervising Service**.

21. The way the procedure is written, it violates the First Amendment of the U.S. Constitution and Art. I, § 3, Fla. Const. as well as 42 U.S.C. 2000cc and §761.03, Fla. Stat. (2012) as listed above. It further is an invalid exercise of delegated legislative authority in that it was never properly promulgated through the Administrative Procedures Act and is contradictory and adds to other rules contrary to § 120.52 (8), Fla. Stat. (2012).

22. According to the APA an "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. The existing rule is an invalid exercise of delegated legislative authority because:

(a) The agency has materially failed to follow the applicable rule making procedures or requirements set forth...

(b) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(d) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(§ 120.52 (8) (a-e), Fla. Stat. (2012)). The Procedure in question violates the above referenced laws and forces inmates to further violate the religious diets by continuing to eat non-kosher when kosher meals are available.

CONCLUSION

23. I would like to state that I know it is a difficult demand to try and accommodate inmate religious diets. But I believe by implementing a **KOSHER** diet program—it would satisfy almost every inmates religious dietary needs. But please, do not make an inmate have to eat **NON-KOSHER** meals in order to **PROVE** there sincerity of there religious practices before they can eat **KOSHER** which further prejudiced petitioner firm religious rights.

24. Also, please remember that inmates who practice various forms of Judaism can and do eat—**MEAT, EGGS, BREAD** and drink **MILK**. There are some times differences in how the kosher laws are interpreted by the Rabbis, but the basics are agreed on.

WHEREFORE I pray that the Secretary will grant this Petition by promulgating it through the Administrative Procedures Act and allowing outside sources to allow impute on **KOSHER MEALS** for inmates who practice various forms of Judaism.

Respectfully Submitted:

/s/ Lancelot Armstrong ^{DC #} 693504

Lancelot U. Armstrong # 693504

Union Correctional Institution

7819 N. W. 228th Street

Raiford, Florida 32026

5/14/13,
Date

Appendix Pages 1-9 – Procedure 503.006 Religious Diet Program

**APPENDIX
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