

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

_____	:	
HOWARD THOMPSON, JR.,	:	
	:	
Plaintiff,	:	Civil No. 08-5926 (AET)
	:	
v.	:	<b><u>MEMORANDUM AND ORDER</u></b>
	:	
MICHELLE R. RICCI, et al.,	:	
	:	
Defendants.	:	
_____	:	

THOMPSON, U.S.D.J.

INTRODUCTION

This matter comes before the Court on Plaintiff’s Motion for a Preliminary Injunction [2]. On December 29, 2008, the Court issued an Order [6] adjourning the matter until February 17, 2009. On February 17, 2009, the Court heard oral arguments in the matter. For the reasons stated below, Plaintiff’s motion is denied.

BACKGROUND

A. Factual Background

Plaintiff Howard Thompson, Jr., is an inmate at the New Jersey State Prison (“NJSP”). Plaintiff brings suit against Michelle Ricci, the administrator of the NJSP; and George Hayman, the Commissioner of the New Jersey Department of Corrections (“NJDOC”)(collectively “Defendants”). In 1986, Thompson was sentenced to thirty years-to-life in prison. Plaintiff states that since his incarceration began at NJSP—a high security prison, he has participated in NJSP’s Protestant Christian community, including preaching at worship services. Plaintiff

adheres to the Pentecostal faith and believes he has a religious calling to spread “the Good News of the Kingdom of God” through preaching and ministering to others. Plaintiff states he was ordained as a minister in 2000 and the former chaplain at NJSP, Rev. Atchinson, approved of Plaintiff leading Protestant services at NJSP. In 2006, Plaintiff states he began regularly preaching at weekly services.

In 2007, Rev. Atchinson’s tenure as chaplain terminated, at which point he was replaced by Rev. Moore. Rev. Moore did not permit Plaintiff to continue preaching, allegedly citing a ban on formal inmate-led preaching. Defendants assert that NJSP chaplains did not and do not have the authority to permit Plaintiff to preach at formal services, and that there is no formal blanket ban on inmate preaching. Defendants further assert that Plaintiff is allowed to preach informally, in groups of six persons or less, but that prison policies against formal inmate leadership and assembling in groups of more than six inmates are necessary for the safe administration of the prison.

**B. Procedural Background**

On April 9, 2008, Plaintiff filed an administrative complaint with the NJDOC regarding restrictions on his preaching. NJDOC instructed Plaintiff that the task of providing religious services to inmates was assigned to staff and outside volunteers, not to other inmates. In October 2008, Plaintiff, through counsel, requested Defendants lift their ban on inmate-led preaching. Plaintiff was dissatisfied with the response he received from NJDOC and filed the instant action, requesting a preliminary injunction forbidding Defendants from enforcing a blanket policy against inmate preaching, contending it violates his rights under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). For the reasons stated below, Plaintiff’s request for

injunctive relief is denied.

## DISCUSSION

### A. Standard for Preliminary Injunction

When considering a motion for injunctive relief, the Court must consider: (1) the likelihood of the movant's success on the merits; (2) the probability of irreparable injury to the movant in the absence of injunctive relief; (3) the possibility of harm to the non-movant if relief is granted; and (4) the public interest. Gerardi v. Pellulo, 16 F.3d 1363, 1373 (3d Cir. 1994) (citations omitted). Furthermore, injunctive relief is by its nature an extraordinary remedy which should be granted in limited circumstances. Frank's GMC Truck Ctr., Inc., v. Gen. Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988).

### B. The Prisoner Litigation Reform Act

Because Plaintiff is a prisoner litigant, the Court must also consider the Prison Litigation Reform Act ("PLRA") before it can grant injunctive relief to an incarcerated individual. When granting injunctive relief pursuant to the PLRA, four additional criteria must be met: (1) the relief must be narrowly drawn; (2) the relief must extend no further than necessary to correct the violation of the federal right; (3) the relief must be the least intrusive means necessary to correct the violation of the federal right; and (4) substantial weight must be given to any adverse impact on public safety or the operation of the criminal justice system that might be caused by the relief. 18 U.S.C. § 3626 (a)(2).

### C. Religious Land Use and Institutionalized Persons Act

RLUIPA governs the religious rights of incarcerated individuals at federally funded

prisons.<sup>1</sup> RLUIPA bars federally funded prisons from “impos[ing] a substantial burden on the religious exercise of a person . . . unless the government demonstrates that imposition of the burden on that person . . . (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling interest.” 42 U.S.C. § 2000cc(a). To state a claim under RLUIPA, a prisoner must establish that his religious exercise has been “substantially burdened.” Once a claimant satisfies this element, the burden shifts to the government to show that the burden on the prisoner’s religious exercises furthers a “compelling governmental interest” and “is the least restrictive means of achieving that interest.” Washington v. Klem, 497 F.3d 272, 277 (3d Cir. 2007).

D. Analysis of Plaintiff’s Request for Injunctive Relief

Plaintiff contends his inability to lead groups larger than six people in prayer with his Bible violates his right to religious freedom under RLUIPA and the First Amendment. Defendants explain that their policy of restricting inmates from preaching to groups of larger than six persons and their policy to prevent inmates from assuming leadership positions are in place to maintain safety. Plaintiff responds that NJSP policies effectively ban him from the free exercise of his religion and are not the least restrictive means to effectuate the prison’s objectives.

The Court has carefully considered Plaintiff’s request for injunctive relief but finds that Plaintiff has not established his entitlement to such relief. Though Plaintiff’s religion requires him to proselytize and attract new members to his faith, the six-person congregant limitation

---

<sup>1</sup> Because the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) provides heightened protections to prisoners beyond those established under the First Amendment to the U.S. Constitution, the instant motion is discussed under RLUIPA. See Washington v. Klem, 497 F.3d 272, 277 (3d Cir. 2007).

imposed by Defendants at NJSP reasonably satisfies that need. Defendants assert a threat to security when inmates lead a religious service over a certain number of participants. Defendants explain that there is a real concern to prison safety in this situation because if prison inmates are permitted to assume a leadership role, they are tacitly placed in a position of control over inmates. This abdication of leadership jeopardizes prison security because it presents an alternate structure of authority from which prisoners could take commands. This poses a threat to prison control. Therefore, balancing the parties' competing interests, Defendants' restriction on inmate-led preaching is not unreasonable and Plaintiff is denied injunctive relief on these grounds.

Plaintiff also contends that NJSP's limit on prisoners from gathering in large groups violates his Pentecostal faith. The Court is persuaded that NJSP's restriction on inmates from gathering in groups of six persons or greater is secular in nature. Defendants indicate—and the Court agrees—that group size is reasonably related to security concerns within the institution. Defendants' concern regarding inmate religious gatherings was not shown to be unreasonable. Plaintiff can still pray and lead small groups of congregants in his religious faith informally. He can attend and participate in religious services led by volunteers and staff. Therefore, the Court finds Plaintiff is not at risk of suffering irreparable harm as he may practice his Pentecostal faith in ways that do not run afoul of NJSP's policies designed to maintain safety and order.

#### CONCLUSION

For the reasons given above, and for good cause shown,

It is on this 23rd day of February, 2009,

ORDERED that Plaintiff's Motion for a Preliminary Injunction [2] is DENIED.

s/ Anne E. Thompson  
ANNE E. THOMPSON, U.S.D.J.