

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

LUMUMBA K. INCUMAA, #155651)
also known as THEODORE)
HARRISON, JR.)

Plaintiff,)

vs.)

BRYAN P. STIRLING,)
Acting Director of the South Carolina)
*Department of Corrections,*¹)

Defendant.)

No. 9:12-cv-3493-DCN

ORDER

The court requests supplemental briefing on defendant’s currently pending motion for summary judgment.

Specifically, the court requests further briefing regarding plaintiff’s claim under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Under RLUIPA, the government is required to establish that the challenged policy is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. §2000cc-1(a). The Fourth Circuit has “required that the government, consistent with the RLUIPA statutory scheme, acknowledge and give some consideration to less restrictive alternatives.”

Couch v. Jabe, 679 F.3d 197, 203 (4th Cir. 2012); see also Smith v. Ozmint, 578 F.3d 246 (2009) (vacating grant of summary judgment in favor of prison officials because the

¹ Bryan P. Stirling became the Acting Director of the South Carolina Department of Corrections on October 1, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Bryan P. Stirling should be substituted for the Honorable William R. Byars, Jr. as the defendant in this lawsuit.

affidavit they relied on was insufficient to show that the policy at issue was the least restrictive means of furthering the identified compelling interest).

In his motion for summary judgment and reply brief, defendant has not submitted any affidavit showing that the South Carolina Department of Corrections has acknowledged and given consideration to less restrictive alternatives, especially in light of declining number of incidents involving Five Percenters.

Therefore, the court requests supplemental briefing and affidavits, if necessary, on this issue from the defendant within 30 days. Plaintiff will have 15 days to file a reply.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

**DAVID C. NORTON
UNITED STATES DISTRICT JUDGE**

**January 28, 2014
Charleston, South Carolina**