

Appendix I
Texas RFRA

Senate State Affairs Committee
April 13, 2000

Statement of Douglas Laycock

Thank you for inviting me to appear as a resource witness on the implementation of the Texas Religious Freedom Restoration Act. I am professor of constitutional law at The University of Texas at Austin, and I have studied religious liberty issues for many years. I appear in my personal capacity, and of course The University takes no position on this Act.

So far as I can tell, the first seven months under Texas RFRA has been much as expected. There have been no dramatic decisions and no great changes in religious or governmental practice. There have been a series of relatively low visibility disputes, mostly involving land use, and most of which have been amicably settled. Texas RFRA has provided a basis for Texas churches to open a conversation and require that Texas cities take a second look at the church's situation.

As of April 12, 2000, there are no reported cases under Texas RFRA. There is no central data base or gathering point for collecting pending or unreported cases. I can report the cases I have heard about, mostly from lawyers or the press. For most of these cases, I have few details, but none of them appear to involve a serious threat to the public interest. In some of them the facts may be disputed, or there may be facts favorable to the city that I have not been told. That is why we have courts, to find the facts one case at a time. The cities may yet win some of these case. But at least on initial review, most of these cases seem to be the sort of intrusive regulation that Texas RFRA was designed to protect against. None of the non-prison cases is frivolous; Texas RFRA is being used in serious disputes.

1. Church music, Tyler. In a case handled by James Volberding in Tyler, Smith County deputies issued a disorderly conduct citation to the pastor of an Hispanic church, on the ground that the church's music was too loud. This case was prosecuted before a jury in a Justice of the Peace court. After a ruling that the RFRA defense could be submitted to the jury, and after the officers testified that they knew no compelling reason to shut down the music and that they had not tried civil enforcement, the prosecutor dismissed the case.

I don't know the details of this case, but it seems to be RFRA working at its best. This appears to have been unthinking governmental interference with a worship service, in pursuit of a very modest state interest, giving no weight to the constitutional right on the other side. RFRA forced the prosecutor to think about what he was doing; the litigation cost to both sides was modest.

2. His House Family Church, Groves. This case is being handled by David Starnes of Beaumont. This is a black church, in a small town business district, near a middle class and predominantly white neighborhood. The church had been operating for several years without incident when people from the neighborhood complained about its ministry to the disadvantaged.

I am told that the nearest residential neighbor will testify that none of the things other neighbors claim to be worried about have ever happened. The Planning and Zoning Commission voted to close the church immediately, under a rule that requires an 80% affirmative vote in the Commission to permit a church over the objections of the neighborhood. Many businesses, apparently including bars, would be permitted as of right in the same building. A state judge issued a temporary restraining order to keep the church open, and the city has removed the case to federal court. Settlement negotiations are in progress.

If this zoning ordinance works as it has been described to me, it should be unconstitutional with or without Texas RFRA. But there is no doubt that Texas RFRA helped get the city's attention and force serious negotiations.

3. Castle Hills First Baptist Church. This case, which just settled, was handled by Stephen Allison for the church and Lowell Denton for the city, both of San Antonio. This was a dispute over parking for a large church in Castle Hills. One of the recurring complaints about large churches is that on Sunday morning they take up all the street parking in the neighborhood. In addition, this church had an old parking lot that had been badly designed and caused runoff problems for some of its neighbors. The church voluntarily undertook to build more parking, and the neighbors objected. Press reports indicate that the zoning ordinance permitted the church but arguably restricted the right to build parking lots. The principal argument in the case was about the meaning of the zoning law, but the church also asserted a Texas RFRA claim. The case recently settled in an agreement that authorizes the new parking lot but limits further church expansion, requires landscaping, and requires flood control on both the old and new parking lot. Both sides seem happy with the agreement.

4. Christian Academy of Abilene. This case is being handled by Randy Rouse of Abilene. It is an unusual case of a challenge to the administrative details of a safety regulation. Obviously the safety of children is a compelling interest, but this case illustrates that code enforcement can sometimes be more about bureaucratic red tape than about safety.

As I understand the facts, the building meets code and is permitted for use as a church, including Sunday School and Vacation Bible School, but it is not permitted for use as a school. Part of the irony is that it serves far more people on Sunday as a church than on Monday as a school. Moreover, the building has apparently passed city inspection and meets all the requirements that apply to existing schools in the city, and if the proper form had been filled out at the time of the earlier inspection, the church would now have a permit as a school. I am also told that all the safety experts who testified said that the building is safe for use as a school. But the city is requiring expensive renovations to satisfy newly enacted requirements that apply only to new schools. Existing schools are grandfathered in under the old requirements, but Christian Academy is not grandfathered in because of the missing paperwork from the previous inspection. This case has been tried, and the last I heard, is awaiting decision in the trial court. There also may be settlement discussions going on.

5. Hyde Park Baptist Church, Austin. This long running dispute is in mediation, and no litigation has been filed. This is the genuinely hard case of an older church that has outgrown its location in a residential neighborhood. Ten years ago, the church entered into an agreement with the neighborhood association, accepting rights to acquire land and build up to a certain point without further objection, in exchange for surrendering any rights to grow beyond that. The church now proposes to build under the terms of the agreement, and the neighbors are objecting. There is some dispute about the details of the agreement, but mostly the neighbors seem to claim that they are not bound by the neighborhood association's agreement. It will be very hard to settle these disputes if churches cannot rely on the settlements. Here as in Castle Hills, part of what the church proposes to build is parking, which would alleviate parking problems in the neighborhood. The neighborhood is opposed anyway.

Hyde Park Baptist also encountered opposition when it attempted to acquire forty acres of land at the edge of Austin. The plan was to move to a site where it would have ample space and would not be a burden to its neighbors. But there are forces in the community that don't want churches anywhere, and there was immediate zoning opposition to this possible move. I do not know the current status of that negotiation.

6. Prisons. The Committee has received a report from the Texas Department of Criminal Justice on Texas RFRA in the prisons, including a very helpful compilation of claims and cases. The first striking thing is that they report only five claims in the whole prison system. They report twenty pending religious liberty cases in court, none of which involve Texas RFRA. It would appear that prisoners have not discovered Texas RFRA yet, and that next year's hearing might be more informative. But at least so far, the number of claims is tiny in comparison to the size of the system.

TDCJ reports that it is preparing to offer pork-free and vegetarian diets to accommodate the needs of certain religious minorities, including Jewish and Muslim prisoners. This is welcome news, although this has been done for decades in many prison systems. The federal prison system has designed a common diet that is not just pork-free, but satisfies many other rules of Jewish and Muslim dietary laws at little or no incremental cost to the prisons. I am no expert on these dietary matters, but I would ask whether TDCJ has looked at the federal diets, and whether they have merely eliminated pork or have instead designed a diet that will satisfy as many religious minorities as possible.

The other striking thing about the TDCJ report is that, except for the planned improvements in diet, they do not report having granted a single request for religious accommodation. The legislature intended that prison authorities make a good faith evaluation of whether accommodation of a prisoner's religious needs is consistent with safety and security. The "religious practice issue assessment form" should be designed to facilitate that good faith decision. It should be just a bureaucratic exercise to justify routine or universal denials.

It is one thing to say that the state cannot provide paid staff from every denomination or subgroup of Christianity or Islam; it is quite another to suggest that the state is reluctant to

accept volunteers who would meet some of these religious needs. Yet that seems to be the implication of the first paragraph at the top of page 6 of the TDCJ statement, fearing that a decision requiring separate services for Shiite and Sunni Muslims "would open the door to sects and sub-sects of every religion requesting separate services, Bible study, volunteers etc."

There is, as TDCJ says, an Eighth Circuit decision holding that federal RFRA, when it was in effect, did not require prisons to provide sweat lodges for Native American prisoners. Yet numerous states have done so. Has TDCJ consulted the experience of those states with respect to cost, safety, and security? It may be unworkable; it may be entirely workable; it may be workable with the help of volunteers or financial support from Native American organizations.

What I have said about prisons is cautious; I claim no expertise in the details of prison administration. But I am concerned that the tone of TDCJ's report suggests compliance in form and across-the-board resistance in substance. I hope I am wrong, but I am not optimistic. I would be more optimistic if TDCJ at least occasionally found a claim it could grant.



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Wayne Scott
Executive Director

Carl Reynolds
General Counsel

April 5, 2000

The Honorable Florence Shapiro
Chair, Senate State Affairs Committee
Room 380, Sam Houston Building
Austin, Texas

via Hand Delivery

RE: Interim Charge to Monitor S.B. 138

Dear Senator Shapiro:

Enclosed for the committee's consideration is the TDCJ report on the Texas Religious Freedom Restoration Act or S.B. 138, compiled in collaboration with the Law Enforcement Defense Division, Office of the Attorney General. As you will see, there are several instances where inmate requests and TDCJ policies collide, but to date there is no litigation activity under the new legislation to report to you.

We will continue to keep you informed of meaningful developments. Thank you for the opportunity to report to you on this interesting and significant topic.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Reynolds".

Carl Reynolds

c: Representative Scott Hochberg
Senator David Sibley
Representative Steve Wolens
Attorney General John Cornyn
Don Willett, Office of the Governor
MaryAnne Wiley, Office of the Lt. Governor
Louis Carrillo, OAG
Wayne Scott, TDCJ
Carl Jeffries, TDCJ
Debbie Roberts, TDCJ
Jeff Baldwin, TDCJ

Report to the Senate State Affairs Committee

April 13, 2000

TDCJ Implementation of TRFRA (S.B. 138, 1999)

Introduction

This report is intended to update the Senate Committee on State Affairs regarding the evolution of religious practice issues within the state prison setting. The report describes procedural improvements that have occurred since passage of S.B. 138, recent inmate requests for religious accommodations, and existing inmate litigation involving religious practice claims. Trends, and the concerns they present to TDCJ, are noted at the end.

Religious Practice Committee

The TDCJ Religious Practice Committee (RPC), charged with assisting in the implementation of TRFRA and offender requests for religious accommodation, revised Agency policy to reflect the intent of several provisions of TRFRA. (Internal staffing is still underway, and a signed copy of the policy will be provided to Senate committee staff.) One of the more complex issues faced by the RPC was developing a method to accommodate or deny an offender's request without infringing upon sincerely held beliefs or compromising compelling penological interests of the agency. To that end, the RPC developed, with the insightful input of the Office of the Governor and Representative Hochberg, what is known as the "religious practice issue assessment form," for use by unit chaplains initially faced with a request for accommodation by an offender. The form requires that the investigating chaplain:

- State what religion is involved.
- State the nature of the request or issue.
- Interview the offender.
- If the religion at issue is unfamiliar or obscure, research the role the requested practice has in the offender's religion. This research would include gathering authoritative or sacred writings of the religion sacred writings, if any, and contacting religious authorities who either practice or have substantial knowledge of the rituals and practices associated with the religion.
- Consider any alternative methods to accommodate the practice.
- Forward the information with a recommendation to the unit warden for security considerations.

The form goes on to task the unit warden to review the request with an eye towards the following factors:

- Would granting the request detrimentally impact the security of the institution, the rehabilitation of offenders, the allocation of personnel, or be cost prohibitive?

- Are there any alternative means to accommodate the request that do not compromise security, rehabilitation, or another compelling penological interest?

All denied requests are forwarded to the RPC for review. To date the RPC has handled the following issues and offender requests:

- Diet is a potential religious accommodation issue that has been addressed by TDCJ Food Service in conjunction with the RPC. Food Service is currently preparing to offer all offenders one of three diets, normal, pork free (with a protein supplement when pork is served), and vegetarian (with a protein supplement) in an attempt to add uniformity to the religious diet concerns of offenders. Such diets have been offered in the past, but the new system of choices will allow offenders to choose their preferred diet without any necessity to explain a religious rationale.
- The World Church of the Creator, which advocates a white supremacist ideology (See <http://www.rahowa.com/manual.htm>), requested inclusion on the religious diet list as a vegetarian group, and group meetings. The diet request will be addressed by the change described above, and the request for meetings was denied because allowing the group to convene is considered a threat to security.
- An offender whose faith preference is Odinist (Odin is the supreme deity in Norse mythology) asked to be allowed to possess and use rune stones (small scrabble sized stones with Norse lettering). The request was denied for security concerns, as runes could be used to pass information or coded messages.
- Several offenders who identified themselves as Satanists requested medallions. The requests were denied on security grounds, as the medallions could serve as a means of identifying members of a religion that advocates violence, animal sacrifices, and hostility towards staff and inmates.
- Offenders identifying themselves as a splinter group of the Nation of Islam (NOI) requested meetings separate from the established TDCJ Islamic programs. The request was denied on two grounds: (1) generic Islamic services are already provided to all offender wishing to participate, comparable to the provision of generic Christian services; and (2) the NOI splinter group requested TDCJ to enforce impermissible attendance requirements (meetings restricted to offenders of one race).
- An offender whose faith preference is Lutheran requested inclusion on the religious diet list as a vegetarian. The response to this request was postponed in light of the proposed Food Service changes.

Litigation

Currently there are 20 pending cases involving offenders with complaints concerning the free exercise of religion or related First Amendment issues. This number includes cases filed both before and after the passage of S.B. 138, and no case, so far, invokes the provisions of S.B. 138/TRFRA. Following is a brief description of the plaintiff's position in each pending case.

Freeman, William et al. v. TDCJ-ID, et al., United States District Court, Northern District, Amarillo Division. Very recently filed, this case purports to be a class action lawsuit on behalf of all Church of Christ offenders. They allege that TDCJ's non-denominational Protestant services are not adequate to their needs and are seeking injunctive relief to allow them to hold separate services. At present, the complaint presents purely federal constitutional claims.

Gowan, Boyce Lee v. Officer Kinney, et al. United States District Court, Southern District, Galveston Division. Gowan converted to Judaism after entering the system. Jewish orthodoxy requires that no work be done on the Sabbath or other Holy days. Although Gowan had a lay-in pass from work, a TDCJ Correctional Officer ordered Gowan to clean up his cell as it was not in compliance. The CO observed cockroaches crawling in and around the cell, noted that Gowan's area had not been swept or mopped, and that there was a significant amount of trash in his area. The CO also lifted up Gowan's mattress to see if there were items that had been improperly stored there and a number of roaches exited from his bedding. Offender Gowan claims that the order to clean was in violation of his religious practices.

Donalson, Barney Joe v. Charles Bell, et al., 52nd District Court, Coryell County. Offender Donalson claims to be a practicing Scientologist who, as a part of his religion, needs to be able to listen to tape recorded lectures by L. Ron Hubbard. Donalson was a Level III Administrative Segregation inmate and was not allowed to have a tape recorder.

Joiner, Claude E. v. Wayne Scott, et al., United States District Court, Eastern District, Tyler Division. Offender Joiner is a Muslim inmate whose faction requires that he learn Arabic so he may read the Koran in its original language. As with the *Donalson* case, Joiner is not permitted to possess a tape player because he is in AdSeg Level III.

Orozco, Paul v. State of Texas, et al., 132nd District Court, Scurry County. Offender Orozco is a Native American inmate and claimed a variety of violations of his First Amendment right to practice his religion. Specifically, that he was not able to possess certain religious items (items which he already possessed and would only serve to duplicate), that he had been excluded from certain religious prayer meetings (due to his own behavior) and that he was denied a Native American religious feast (which does not exist).

Ar-raïd, Adisa R.A.M. v. Chaplain Omar Shakir, et al., United States District Court, Western District, San Antonio Division. Offender Ar-raïd is a Muslim Shiite inmate whose complaint is that during the holy month of Ramadan in December of 1999, he was not permitted to join others after sundown for a meal service after he had fasted during the day. He contends he was unfairly excluded because he was not on the lists of those who had previously attended prayer service and because he is a Shiite Muslim, rather than some other kind of Muslim.

Ali, Ahmad Yusef v. Omar Shakir, et al., United States District Court, Western District, San Antonio Division. Offender Ali is a Shi'ite Muslim who complains that the "Umbrella of Islam" worship services provided to Muslim inmates at the Connally Unit are, in effect, Sunni services in which Sunni theology and practice dominate to the exclusion of the Shi'a sect. He also alleges that inmates are prohibited from observing unspecified Shi'a practices and customs and teaching their faith. Ali also complains that the chaplains refuse to allow Shi'ites their own meetings, prayer sessions, etc.

Thomas, Dan v. D. Livas, et al., 411th District Court, Polk County. Offender Thomas (one of TDCJ's more prolific litigators) complains in this case of two guards who allegedly refused to allow him to attend Muslim worship services despite his "approved" status for such activity. The defendants are also accused of making statements to the effect that they dislike Muslims and intended to prevent or at least interfere with Muslim inmates attending worship.

Asif, Mohammad Munir v. Audrey L. Smith, et al., United States District Court, Western District, Pecos Division. Offender Mohammad claims defendants were prejudiced, threatened him, and punished him because of his religion. He claims that they denied him religious materials and access to religious services because of cell restrictions.

Harrison, Alvin Lee v. TDCJ, et al., 52nd District Court, Coryell County. Offender Harrison initially complained that close custody inmates were not allowed to attend services. His case has now evolved to a complaint that the generic Muslim services offered by TDCJ do not adequately address the beliefs of his Muslim sect.

McGrew, Kevin v. Omar Shakir, United States District Court, Southern District, Corpus Christi Division. Offender McGrew, a Muslim, wanted a pork-free diet. He claims that the unit chaplain refused to change his travel card to reflect that he was Muslim, therefore, he could not receive a pork-free diet.

Ali, Ahmad Yusef v. Neva Yarborough, United States District Court, Southern District, Houston Division. TDCJ policy forbids beards other than for medical reasons, because, among other things, they provide an immediate way (shaving) to alter one's appearance after an escape, and they can provide a place to hide objects. Ali, a Muslim, claimed that his religion required him to wear a beard and brought suit under prior federal RFRA. He prevailed under that law's standard, TDCJ complied for a time, then TDCJ ceased

compliance after RFRA was overturned in *City of Boerne*. Ali has recently reasserted his claimed necessity to grow a beard.

Brown, Bobby v. Dr. George Beto, United States District Court, Southern District, Houston Division. This is a class action lawsuit brought by Muslim inmates in the late 1960s, which still exists in the form of a consent decree providing for Islamic services and access to certain written materials.

Rose, Michael v. TDCJ-ID, et al., United States District Court, Southern District, Corpus Christi Division, United States Court of Appeals for the Fifth Circuit. Offender Rose contends that the unit chaplain infringed upon his right to practice his religion while he was incarcerated at the McConnell Unit of the TDCJ-ID. Specifically, Rose complains that when he was classified as a close custody inmate he was not permitted to attend the Friday Islamic Juma'ah prayer services.

Canady, Warren v. J. Morgan, et al., 278th District Court, Walker County. Offender Canady, a Muslim, claims that from March 13, 1998 to July 15, 1999 he was confined to a medium custody cellblock following a major disciplinary hearing. Canady claims that because of his confinement, he was kept from attending Friday Juma'ah prayer services and from properly practicing and celebrating Ramadan and the I'Dul-fitr and I'Dul-adha feast.

Thomas, Dan v. J. Frerichs, et al., 411th District Court, Polk County. In this case, Offender Thomas, a Muslim, claims that on October 29, 1999 he was denied the right to participate in the Friday Juma'ah prayer by defendants because of an argument between Thomas and one of the defendants which occurred earlier.

Walton, James O'Dell v. Herman Callahan, et al., United States District Court, Southern District, Corpus Christi Division. Offender Walton, a Muslim inmate, brought suit claiming that he was denied pork-free meals in administrative segregation.

White, Ronald (aka Firedancer) v. Wayne Scott, et al., United States District Court, Northern District, Wichita Falls Division. Offender White, a Native American, brought suit claiming that his religion required that he have access to a pipe ceremony and sweat lodge at his unit.

Thompson, Lawrence Edward v. Cheryl J. Stansberry, et al., District Court of Houston County. Offender Thompson, a Muslim, claims that the policy allowing cross-gender strip searches (when unavoidable) violates his religious freedoms in that a Muslim man is not supposed to allow himself to be seen nude by any female other than his wife.

Williams, Cecil A. v. Chaplain D. Heugel, et al., United States District Court, Southern District, Brownsville Division. Offender Williams, a Muslim, complains that he was not allowed to attend Ramadan services.

Trends

The differing sects of the Islamic faith and their requests for services apart from those already provided will be highly problematic if the courts decide against TDCJ. It would open the door to sects and sub-sects of every religion requesting separate services, Bible study, volunteers etc., as in the recently-filed Church of Christ case (*Williams*). At a minimum, every such instance that requires additional staffing or other resources will be very difficult to satisfy.

Although a formal offender request has yet to be presented to the RPC (the *White aka Firedancer* and *Orozco* lawsuits predate the RPC), the American Indian Religious Rights Foundation has made inquiries into the provision of sweat lodges for offenders. The current Agency position is to deny sweat lodge ceremonies due to security considerations. There is also case law supporting the proposition that under a RFRA scheme, prison officials have legitimate penological interests in denying access to sweat lodges. See *Hamilton v. Schriro*, 74 F.3d 1545 (C.A.8 [Mo.] 1996).

It appears to be premature to make a wholly informed assessment of the impact of TRFRA on the correctional environment in Texas. We believe that our procedure for considering accommodations is appropriately sensitive to the competing concerns that must be weighed, and that it, and the decisions it yields, will validate the presumption the legislature created in favor of correctional policies. In other words, although we still fear unmanageable edicts as a result of TRFRA litigation, we believe that our decisions denying accommodations are the right decisions and will withstand court challenges. Inmates have so far failed to invoke the statute in litigation, but they inevitably will, and in the meantime the respective courts may decide to visit the issue of TRFRA within the correctional context *sua sponte*. TDCJ will continue to keep the Senate State Affairs Committee apprised of meaningful developments.



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Wayne Scott
Executive Director

Carl Reynolds
General Counsel

May 5, 2000

The Honorable Florence Shapiro
Chair, Senate State Affairs Committee
Room 380, Sam Houston Building
Austin, Texas

via Hand Delivery

RE: Interim Charge to Monitor S.B. 138

Dear Senator Shapiro:

This is in response to your request that TDCJ respond to Professor Laycock's criticism of the tone of the report submitted to the committee on April 5, and apparently of TDCJ's accommodation of religion in general. We believe that we are doing an excellent job on the latter front, so his critique was particularly disturbing and, I would argue, misses the mark. In any case, we appreciate the opportunity to clear up any concerns that the report may have left with the committee. Following are more specific responses to his comments.

"[T]hey report only five claims in the whole prison system...[T]hey do not report having granted a single request for religious accommodation." What was actually reported was the recent activity at the level of the Religious Practice Committee, the pinnacle of the process of considering inmate requests for religious accommodation, which I thought would be of most interest to your committee because it involves issues requiring resolution. The great majority of individual requests for accommodation are granted on the unit level and never come to the attention of the Religious Practice Committee. We do not track this unit-level activity numerically.

"TDCJ reports that it is preparing to offer pork-free and vegetarian diets...This has been done for decades in many prison systems." What was actually reported, *verbatim*, was that "Such diets have been offered in the past, but the new system of choices will allow offenders to choose their preferred diet without any necessity to explain a religious rationale." In other words, the report informed you that the diets are not a woefully out-of-date new development, as Professor Laycock suggests.

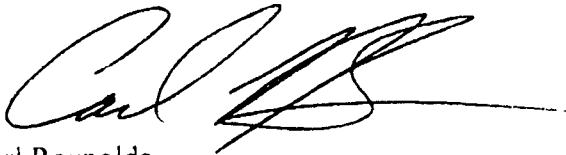
"It is one thing to say that the state cannot provide paid staff for every denomination or subgroup of Christianity or Islam; it is quite another to suggest that the state is reluctant to accept volunteers who would meet some of these religious needs." If such reluctance were the case, then Professor Laycock would be correct to be concerned. To the contrary, TDCJ reported the use of over 26,000 volunteers and 165,000 volunteer hours in FY 1999, and the vast majority of those people are religious volunteers. Typically, religious volunteers provide Bible/Koran/sacred text studies for inmates who are Catholic, Muslim, Church of Christ, and Jehovah's Witness faiths, just to name a few. (We currently have over 90 distinct religions claimed by offenders, with varying degrees of membership, from a low of 1 for several claimed religions to a high of 33,000 for "Baptist.") TDCJ has no reluctance to use such a positive and low-cost resource.

"Has TDCJ consulted the experience of [other] states with respect to cost, safety, and security [of sweat lodges for Native American prisoners]?" We have informally, and the suggestion has been, in effect, "if you can legally avoid providing sweat lodges, don't provide them, because there such major security concerns." TDCJ has also (successfully) litigated this issue, so we have had the opportunity to examine the security issues, particularly the visual isolation inherent in sweat lodge use, and the high potential for weapon availability inherent in the construction and use of a sweat lodge. TDCJ's sincere efforts to accommodate religious requests cannot extend, in our view, to compromising custody and control so profoundly.

"TDCJ's report suggests compliance in form and across-the-board resistance in substance." Again, this is certainly not the attitude of TDCJ, and I regret that my client appeared that way, at least to Professor Laycock, in a report that I prepared. I would add, however, that Professor Laycock's conclusion is based on misperceptions that I hope have been addressed above.

Again, thank you for the opportunity to respond. We will continue to keep the committee informed of any major developments under S.B. 138.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl Reynolds', with a long horizontal flourish extending to the right.

Carl Reynolds

c: Professor Douglas Laycock, The University of Texas School of Law
Wayne Scott, TDCJ
Carl Jeffries, TDCJ
Debbie Roberts, TDCJ
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Douglas Laycock
Alice McKean Young Regents Chair in Law

July 14, 2000

Hon. Florence Shapiro, Chair
Senate State Affairs Committee
P.O. Box 12068
Austin, TX 78711-2068

Dear Senator Shapiro:

Your staff has asked that I update my April testimony on the implementation of the Texas Religious Freedom Restoration Act.

As of July 14, there are still no reported cases. No new pending or unreported cases have come to my attention, although as I said in April, there is no systematic way to find out about such cases.

In my April statement I reported what appeared to be a mutually satisfactory settlement in the Castle Hills First Baptist Church case. Unfortunately, the Castle Hills City Council recently rejected or repudiated that settlement. That reopens the case, with a primary issue under the zoning code and a Texas RFRA issue at least in the background.

I received a copy of TDCJ's letter complaining that I had misunderstood its report submitted for the April hearing. I claimed no first hand knowledge of what was going on in prisons, and no access to information about the requests for accommodation that were not mentioned in their initial report. I could only react to the limited information TDCJ provided. They have now helpfully supplemented that information, and the supplemental letter is indeed more encouraging. If the Committee wants an independent report on Texas RFRA in the prison system, the place to inquire is probably Prison Fellowship.

There is not much new here, but the statute is still less than a year old. From the very sketchy early reports, Texas RFRA seems to be working reasonably well and about as expected.

Very truly yours,



Douglas Laycock