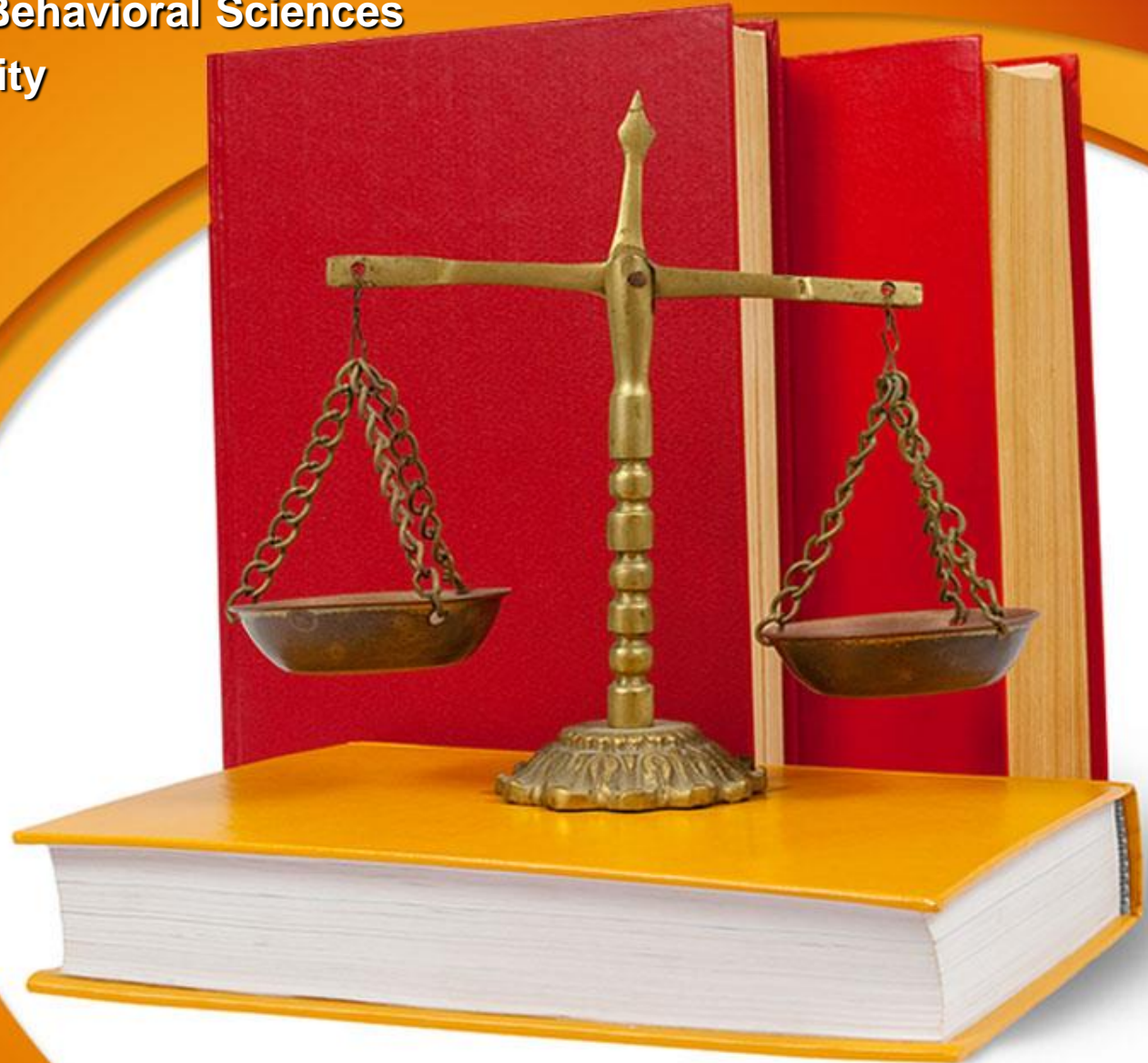


Legal Rights of Inmates to Practice Veganism

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Introduction

- This presentation explores the case law in which inmates have sought relief under provisions such as the Eighth Amendment, First Amendment, Religious Land Use and Institutionalized Persons Act (RLUIPA), and Idaho state law (Free Exercise of Religion Protected Act) for the right to vegan meals.
- We will examine the core belief of ethical vegans to eschew the violence of slaughtering and eating animals and will show how encouraging this belief by providing vegan food to inmates fosters an environment of nonviolence.

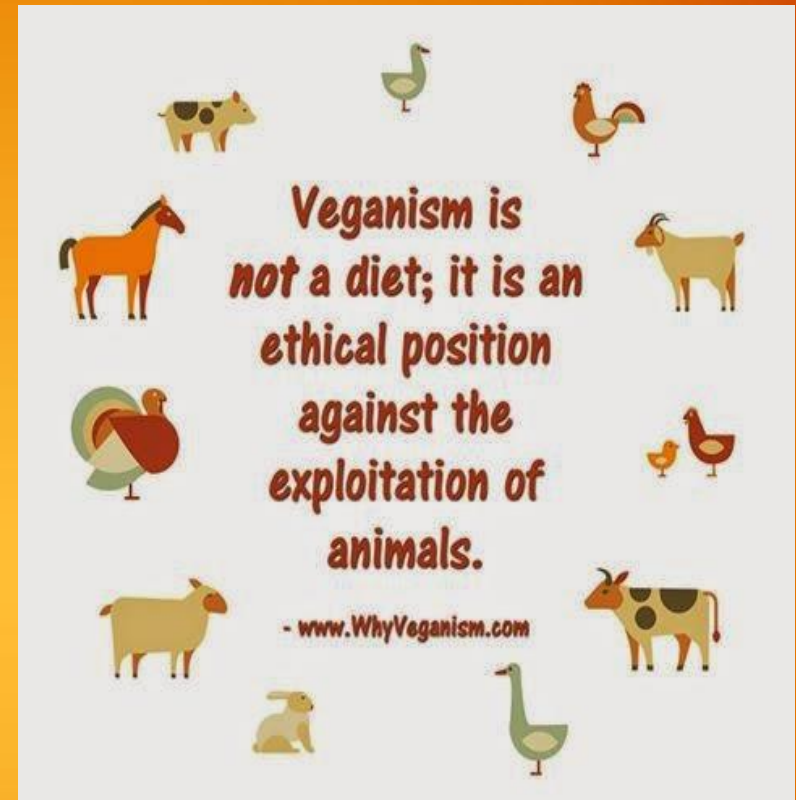


Ethical Veganism

Ethical veganism results in a profound revolution within the individual; a complete rejection of the paradigm of oppression and violence that she has been taught from childhood to accept as the natural order. It changes her life and the lives of those with whom she shares this vision of nonviolence. Ethical veganism is anything but passive; on the contrary, it is the active refusal to cooperate with injustice

Gary L Francione

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Introduction

- In 2018, California passed a law to ensure that vegan inmates may follow their ethical beliefs by being provided plant-based meals. Since 2009, the UK has provided inmates with the right to vegan meals, but in our country, except for California, ethical vegans in most correctional institutions are left with no alternative but to eat meat, something that is completely contrary to the credo of ethical vegans.
- The right to vegan meals is especially pressing for inmates who have been convicted under the Animal Enterprise Terrorism Act and similar laws as “ecoterrorists.”



UK Equality Act of 2010

- ▶ The Equality Act of 2010 imposes a duty on prison officials in the UK “to ensure that they do not interfere with a vegan’s right to freedom of conscience” and therefore, “avoid any discrimination on the grounds of veganism.” (Vegan Prisoners Support Group, n.d.).
- ▶ The Vegan Prisoners Support Group published a [Guide for Vegan Prisoners](#), which sets forth rights regarding vegan meals, clothing and footwear from non-animal sources, and toiletries that do not contain animal product and were not tested on animals.



UK Equality Act of 2010

- Vegan inmates in the UK also have the right to opt out of working prison farms, the butchery, or other activity that results in harm to animals.
- As of December 2018, 10% of the 85,000 UK inmates are vegan (Gilliver, 2018).



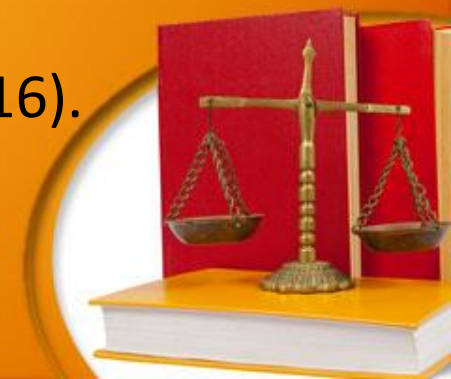
California

- Senate Bill 1138, passed in September 2018 requires “licensed California health care facilities and state prisons to make available plant-based meal options containing no animal products or by-products, including meat, poultry, fish, dairy, or eggs.” (“Governor Jerry Brown Makes Plant-Based Meals the Law,” 2018).
- SB1138 recognizes that “access to nutritious food that meets health or cultural needs is a basic human right.” (“California Passes Law Requiring Vegan Meals in Prisons and Hospitals,” 2018).



Federal Prisons

- ▶ In October 2016, the Federal Bureau of prisons rolled out a new menu offering a vegan entrée for each meal (breakfast, lunch, and dinner) in its 102 federal prisons (Hawthorne, 2016).
- ▶ This is significant given that animal rights activists convicted under the Animal Enterprise Terrorism Act and other federal laws now have access to vegan meals while serving time in federal prison.
- ▶ However, this still leaves “inmates serving time in the 1,719 state prisons, where veg options vary by location” to fend for themselves (Hawthorne, 2016).



Peter Young's Strict Vegan Prisoner Playbook

- Prior to the 2016 federal prison vegan menu, Peter Young, an animal rights activist and member of the Animal Liberation Front was convicted under the Animal Enterprise Terrorism Act and for “Extortion for interfering with interstate Commerce” for his role in “releasing thousands of minks from fur farms” and sentenced to two years in federal prison (Young, 2013).
- Having maintained his veganism even while on the run from the FBI for seven years, he was suddenly faced with meals of meat in prison, as he served time in seven different prisons.



Peter Young's Strict Vegan Prisoner Playbook

“Three times a day, the slot on my cell door opened, delivering trays piled with every variety of animal flesh and byproduct. The trace amounts of iceberg lettuce barely pushed my caloric intake into the double digits. I launched a nightly letter-writing campaign, targeting anyone with influence. Everyone from the prison captain, to the kitchen manager, to Congressperson Barbara Boxer received my letters. My demands were simple: No meat, dairy, or eggs. In this one-sided negotiation process, leverage was in short supply.” ~ Peter Young



Peter Young's Strict Vegan Prisoner Playbook

Young's Playbook for "imprisoned vegans who refuse to comprise" consists of the following 6 "moves":

- 1) The Phone Assault: Get friends and family to call the prison relentlessly to express "outrage over a legally actionable denial of edible food";
- 2) Find God: "Convert" into a Buddhist, Krishna, Seventh Day Adventist, etc. that aligns with veganism;
- 3) Hunger Strike Equation: "Hunger striking prisoner = dead prisoner = legal consequences x public outcry and media attention" and wrongful death claim/settlement, which prison officials want to avoid;



Peter Young's Strict Vegan Prisoner Playbook

4) Commissary: Inmates with funds can buy cookies, chips, peanuts, ramen, and trail mix that pass as vegan (just not too healthy);

5) Trade with Inmates: Bargain with other inmates to trade non-vegan food for vegan food. Yelling “I have cake for apples!” would yield 4 apples for 1 piece of cake;

6) Black Market: Stamps are the currency of the prison system and food is the “largest segment is food” and can be stolen from the kitchen for the right price (10 stamps would nab a 5-pound bag of stolen oatmeal).

(Young, 2013).



Legal Rights for Vegan Inmates

If the Vegan Prisoner Playbook doesn't cut it for inmates in prisons without vegan options, what legislation and case law might a vegan inmate rely upon?

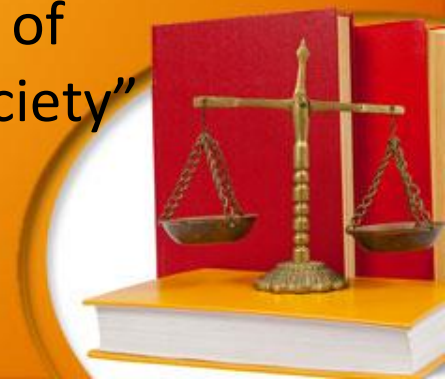
Potential legal tools for uncompromising imprisoned vegans:

- Eighth Amendment
- Fourteenth Amendment DPC and EPC
- First Amendment Free Exercise Clause
- Religious Freedom Restoration Act (federal prisons only)
- Religious Land Use and Institutionalized Persons Act
- State Constitution, Statutes (State RFRAs), Admin Regs



Eighth Amendment

- The 8th Amendment prohibition of “cruel and unusual punishment” bars correctional institutions from depriving inmates of the “basic necessities of life” (the 14th Amendment Due Process Clause provides such protection for pre-trial detainees). (“Prisoner Diet Legal Issues,” 2007).
- In *Rhodes v. Chapman*, 452 U.S. 337 (1981), SCOTUS explained that while inmates “are not entitled to luxury or comfort in prisons and jails,” the operation of correctional facilities “must be conducted in a manner “compatible with the evolving standards of decency that mark the progress of a maturing society” (“Prisoner Diet Legal Issues,” 2007).



Eighth Amendment

In *Wilson v. Seiter*, 504 U.S. 294 (1991), SCOTUS placed an extremely difficult hurdle on Eighth Amendment claims by holding that “prison officials and employees cannot be held liable for inadequate prison conditions in the absence of a showing of “*deliberate indifference*” to prisoners’ rights as a *subjective mental state*. (Prisoner Diet Legal Issues, 2007).

The Court in *Wilson* held that “deliberate indifference” would be the standard whenever an inmate challenges a “condition of his confinement,” whether it is medical care, “the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell” (Prisoner Diet Legal Issues, 2007).



Eighth Amendment

- Inmates relying on the Eighth Amendment to challenge the inadequate “quality, quantity, or frequency of the food they have provided” face a strong unlikelihood of success due to the “deliberate indifference” standard (Prisoner Diet Legal Issues, 2007).
- Likewise, the “Eighth Amendment *alone* is unlikely to be successfully invoked by prisoners seeking vegan diets” (Rosengard, 2017). However, combining an Eighth Amendment “cruel and unusual punishment” allegation with a First Amendment Free Exercise Clause claim may be a strong approach in certain cases.



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Sidebar on Nutraloaf

- Nutraloaf (punishment loaf) is a mix of a bunch of leftover ingredients, blended and baked into an awful, tasteless loaf and served as punishment. Idaho has a breakfast, lunch, and dinner version. The breakfast version is a “combination of cereal, milk, toast and orange juice in a single bite” (Coppock, 2015).
- When inmates challenge the loaf as “cruel and unusual punishment” under the 8th amendment, courts generally uphold its validity, providing it has “adequate nutrition” and calories, despite its awfulness.



First Amendment Free Exercise Clause

“Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof...*” (U.S. Const. amend. 1).

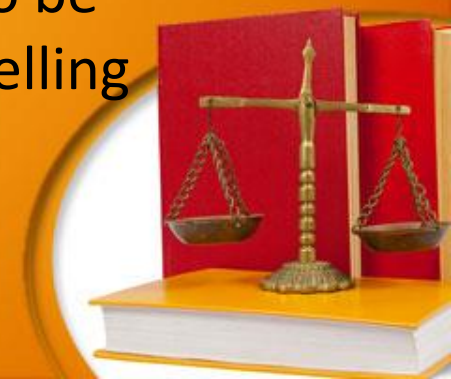
To succeed in a claim for vegan meals based on the free exercise clause, the inmate must establish his or her belief “is both religious and sincere” (“Jailhouse Lawyer’s Handbook,” 2010).

While the courts have defined “religion” in different ways, there is a general consensus that one’s beliefs “do not have to be “associated with a traditional or even an established religion to be “religious.” (“Jailhouse Lawyer’s Handbook,” 2010).



RFRA and RLUIPA

- The Religious Freedom Restoration Act (RFRA) (for federal inmates) and the Religious Land Use and Institutionalized Persons Act (RLUIPA) “provide prisoners with more protection of religious freedom than the First Amendment” than under the traditional *Turner* standard (legitimate penological interest) (“Jailhouse Lawyer’s Handbook,” 2010).
- Under RFRA and RLUIPA, if a prison denies an inmate relying on religious freedom the right to vegan meals, the denial “must be justified by a “*compelling*” *government interest* and the denial must shown to be the “*least restrictive means*” of serving that compelling interest” (“Prisoner Legal Diet Issues,” 2007).



RLUIPA

- In the words of RLUIPA, "No government shall impose a substantial burden on the **religious exercise** of a person residing in or confined to an institution ... 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."
- RLUIPA broadly defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." ("Religious Freedom in Correctional Facilities – Legal Standard," 2007).



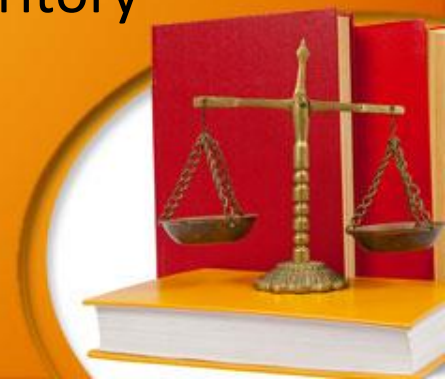
RLUIPA

- The broad definition of “religious exercise” under RLUIPA removed “a requirement, previously imposed by many courts, that plaintiff prisoners show that the restricted practice they complained about had to be one compulsory or “central,” according to the established tenets of a religion.” (“Religious Freedom in Correctional Facilities – Legal Standard,” 2007).
- **Example:** In *Spies v. Voinovich*, 173 F.3d 398 (6th Cir. 1999), the court upheld the prison’s denial of vegan food to an inmate practicing Zen Buddhism on the basis that vegan food was not *compulsory* for this religion (vegetarian food was deemed sufficient). If this case had been decided under RLUIPA passed in 2000, the inmate likely would have prevailed.



1st & 8th Amendment Combo

- While the Eighth Amendment prohibition on cruel and unusual punishment may not be a winning claim on its own, it gains power when combined with a free exercise of religion claim when... the “religiously vegan prisoner is not receiving the calories or nutrients necessary to maintain health” and “will eventually begin to suffer “physical deprivation deserving of attention” (Rosengard, 2017).
- If the prison ignores the deterioration of health in the prisoner or attempts to force-feed the prisoner, this gets into potential “cruel and unusual” punishment territory (Rosengard, 2017).



14th Amendment EPC

- The Fourteenth Amendment Equal Protection Clause can come into play as a legal tool for vegan inmates in certain cases.
- **Example:** The California Department of Corrections entered a settlement following a claim by Muslim inmates alleging a violation of the EPC given that the prison provided “Jewish prisoners with Kosher meals but denied Muslim prisoners access to Halal meals.” The denial of a religious accommodation to one class of inmates but not to another could be determined a violation of the EPC and RLUIPA (“Muslim prisoner succeeds in obtaining access to religiously acceptable meals,” 2010).



Sidebar on Festivus



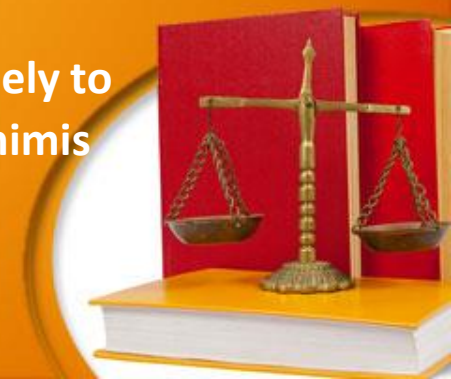
An inmate in California requested kosher meals in place of the “heavy on processed salami” meals served by the prison. His religious justification was that he adhered to “healthism,” which didn’t cut it. The persistent inmate insisted on kosher meals when he went before a judge for a hearing; when the judge demanded a religious justification, the inmate pointed to Festivus. The court granted his request based on “Festivism.” (“When Festivus was recognized as a religion for several months,” 2018).



Idaho State Law: Free Exercise of Religion Protected Act

Idaho Code Section 73–402 of FERPA provides:

- (1) Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.
- (2) Except as provided in subsection (3) of this section, government shall not substantially burden a person's exercise of the religion even if the burden results from a rule of general applicability.
- (3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:
 - (a) Essential to further a compelling governmental interest;
 - (b) The least restrictive means of furthering that compelling governmental interest.
- (4) A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. A party who prevails in any action to enforce this chapter against a government shall recover attorney's fees and costs.
- (5) In this section, the term “substantially burden” is intended solely to ensure that this chapter is not triggered by trivial, technical or de minimis infractions.



Idaho Prisons Reach Settlement to Provide Kosher Meals to Jewish Inmates

- In May 2017, IDOC entered a settlement agreeing to offer a kosher diet to Jewish inmates in all Idaho state prison facilities following a lawsuit brought on behalf of four Jewish prisoners who could only eat fruit from the meals provided during the eight days of Passover, following IDOC's refusal to grant the inmates' request for kosher meals.
- An attorney representing the inmates stated, "For years, Jewish inmates in Idaho prisons have to choose between going hungry or violating the tenets of their faith ... it is because the prisoners in this case took a stand for equal justice under the law that IDOC has changed its policy of denying kosher meals to the observant" (Russell, 2017).



Working the Prison Farm and Slaughterhouse

In prisons across the country, some inmates are “forced to work in slaughterhouses, perpetuating state-sanctioned violence while they serve time (and often suffering the same traumatic consequences as those paid to kill animals). Healthy prisoners who refuse to work face solitary confinement, loss of earned good time, and revocation of family visitation” (Hawthorne, 2016).



Working the Prison Farm and Slaughterhouse

The Southern Poverty Law Center (SPLC) investigated the use of prisoners at poultry plants (“among the nation’s most dangerous workplaces”) in Alabama, Georgia, North Carolina and other states in the “chicken belt” that “benefit from what is perhaps the most vulnerable workforce in the country – prisoners. Poultry processors employ them by the hundreds. Records reviewed by the SPLC show dozens of poultry companies employed more than 600 prisoners in at least seven states in 2016.” (Graunke, 2018).

Could this happen in Idaho? The state is well on its way to a “beef belt” scenario for inmates ...



CS (Caviness) Beef Packers

CS (Caviness) Beef Packing Plant, which does “Beef Harvesting, Fabrication, Beef Rendering, and Hide Procurement,” opened in 2017, conveniently located just down the road from prison row in Kuna.



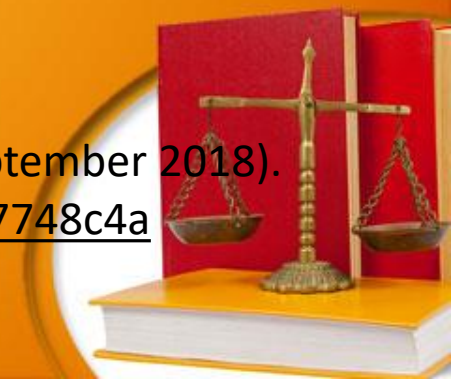
Under 2014 legislation in Idaho, minimum security inmates work in the “production, harvesting, and processing of perishable foods” (Simmons, 2019). 40 inmates currently work at the plant.

Legislation proposed in 2019 would allow inmates to work in *any* area of the agricultural industry.



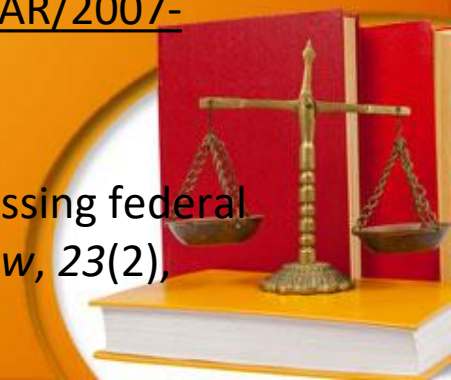
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There is no
sincerer love
than the
love of
food.
-GEORGE
BERNARD
SHAW

