

IN THE CIRCUIT COURT OF WISCONSIN

DANE COUNTY

PEOPLE OF THE STATE OF)
WISCONSIN,)
)
)
v.)
)
WAYNE HSIUNG,)
)
Defendant.)

Case No. 21CF1838

DEFENDANT’S MOTION IN LIMINE FOR A RELIGIOUS JUSTIFICATION
SUPPORTING RESCUE OF ANIMALS IN HARM

Defendant Wayne Hsiung respectfully requests the Court to allow him to introduce a religious freedom defense based on his deeply-held Buddhist beliefs and practices, which necessitate giving aid to human beings or animals who are found to be experiencing extreme suffering. That is precisely what Mr. Hsiung found after entering Ridglan Farms – three dogs in distress, including Julie, a blind beagle puppy spinning in a cage. The state’s prosecution burdens his deeply-held religious beliefs and duties, and there is no compelling state interest that justifies the state’s prohibition on his conduct. Accordingly, pursuant to his rights under the Wisconsin Constitution, Mr. Hsiung is entitled to present this evidence and argument to the jury.

I. Introduction.

Mr. Hsiung is a practicing Buddhist. His spiritual beliefs center on the interconnectedness of all sentient life and the duty to redress the suffering of living beings. Because of those beliefs, Mr. Hsiung has dedicated his life to aiding human beings and animals who are suffering, and he has personally given aid to, or helped others give aid to, hundreds of animals in distress, including

dogs and human beings. The State of Wisconsin protects Mr. Hsiung’s beliefs and practices more strongly than *any other* state in the country. The government’s attempt to criminalize Mr. Hsiung’s peaceful, compassionate rescue of suffering beagles from Ridglan Farms infringes on those protected beliefs and practices, and Mr. Hsiung should be allowed to argue the same to the jury.

II. Animal Rescue is a central precept of Buddhist belief and practice.

The first and most important precept of the five precepts (Skt. *pañcaśīla*) for lay followers of Buddhism is a commitment to refraining from harming all sentient beings. This commitment stems from the Buddhist values of nonharming (*ahiṃsā*), lovingkindness (*metta*), and compassion (*karuṇā*). Those values encompass all beings, not merely humans. Importantly, moreover, this first precept of Buddhism extends beyond mere restraint and requires *active* intervention.

Mr. Hsiung practices what is known worldwide as “Engaged Buddhism,” a tradition initiated by Vietnamese monk Thich Nhat Hanh in the 1960s. In *Interbeing: Fourteen Guidelines for Engaged Buddhism*, an active “reverence of life” is listed among the key principles of the tradition. Hanh, Thich Nhat. *Interbeing: Fourteen Guidelines for Engaged Buddhism*. Berkeley: Parallax Press, 1987. The Plum Village Tradition website, a localized Engaged Buddhist tradition and community founded by Hanh, describes “reverence for life”:

[W]e are determined to cultivate nonviolence, compassion, and the insight of interbeing in our daily lives and promote peace education, mindful meditation, and reconciliation within families, communities, ethnic and religious groups, nations, and in the world. We are committed not to kill *and not to let others kill*. *We will not support any act of killing in the world, in our thinking, or in our way of life.*

The Fourteen Mindfulness Trainings, PLUM VILLAGE, <https://plumvillage.org/mindfulness/the-14-mindfulness-trainings> (last accessed Feb. 29, 2024) (emphasis added).

Similarly, the *Dhammika Sutta*, part of the Pāli Canon, written more than two thousand years previously, states, “Let him not kill, nor cause to be killed any living being, *nor let him*

approve of others killing.” The Dhammikasutta, <https://obo.genaud.net/dhamma-vinaya/sbe/kd/snp/kd.snp.faus.sbe.htm> (last accessed Feb. 29, 2024) (emphasis added). The notion that compassion sometimes requires intervention thus extends across thousands of years of Buddhist tradition.

In addition, Mr. Hsiung is Chinese-American and a follower of the distinct Chinese Buddhist tradition that require intervention to aid suffering beings. Chinese Buddhism in particular has a longstanding tradition of “live release” (*fangsheng*) of captive animals, a practice now observed by numerous Buddhist schools globally. This tradition, which is practiced by millions of Chinese Buddhists across the globe, involves acquiring captive animals with the explicit goal of saving them from impending slaughter or other forms of suffering. Shiu, Henry and Leah Stokes. “Buddhist Animal Release Practices: Historic, Environmental, Public Health And Economic Concerns.” *Contemporary Buddhism*. 9, no. 2(2010): 181–196. And while *fangsheng* typically involves purchase or donation, Buddhist tradition also makes clear that genuine regard for the welfare of others may require the performance of acts that are otherwise undesirable. Śāntideva, an 8th century CE Indian Mahāyāna Buddhist monk and philosopher whose authority reaches virtually all Buddhist traditions, writes:

If a bodhisattva does not make a sincere, unwavering effort in thought, word, and deed to stop all the present and future pain and suffering of all sentient beings, and to bring about all present and future pleasure and happiness, or does not seek the collection of conditions for that, or does not strive to prevent what is opposed to that, *or does not bring about small pain and suffering as a way of preventing great pain and suffering, or does not abandon a small benefit in order to accomplish a greater benefit*, if he neglects to do these things even for a moment, he undergoes a downfall.

Goodman, Charles. *The Training Anthology of Śāntideva: A Translation of the Śikṣā-Samuccaya*. Oxford, New York: Oxford University Press, 2016 (emphasis added).

Śāntideva specifically writes that theft, which is normally unethical, is in fact a duty in certain circumstances, stating, “If you consume what you believe to be the property of others for

your own benefit, you undergo the downfall of stealing . . . *But if, as a servant of sentient beings, you simply protect your body with the property of your masters, sentient beings, there is no problem.*” *Id.* (emphasis added).

These Buddhist scriptures and traditions highlight the moral imperative to not only refrain from harming other sentient beings, but to engage in behaviors that, while less than ideal under typical circumstances, are religiously mandated when sentient beings are found in a state of suffering.

III. Wisconsin broadly protects religious freedom and uses the compelling interest/least restrictive alternative analysis for religious freedom claims.

Wisconsin protects the beliefs and practices discussed in Section II above more strongly than any other state in the country. The Wisconsin Constitution’s religious freedom, or “freedom of conscience” provision, reads,

“The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.”

W.S.A. Const. Art. 1, § 18.

Wisconsin’s Supreme Court has held that the foregoing provision is stronger than any other state’s religious freedom law, stating, “We reiterate our previous observation: Wisconsin, as one of the later states admitted into the Union, having before it the experience of others, and probably in view of its heterogeneous population . . . has, in her organic law, probably furnished a more-complete bar to any preference for, or discrimination against, any religious sect, organization or society than any other state in the Union.” *State v. Miller*, 202 Wis.2d 56, 65 (Wisc. 1996) (citations omitted). In addition, that provision goes further in protecting religious expression than the First

Amendment. *Coulee Catholic Schools v. Labor and Industry Review Com'n, Dept. of Workforce Development*, 320 Wis.2d 275, 314 (Wisc. 2009) (“The Wisconsin Constitution, with its specific and expansive language, provides much broader protections for religious liberty than the First Amendment”) (citations omitted).

Importantly, while Wisconsin has not adopted a state-level religious freedom restoration act, Wisconsin courts evaluate religious freedom claims according to a strict scrutiny standard, which is the standard that the Religious Freedom Restoration Act of 1993 (RFRA) imposes on federal laws that burden the exercise of religion. *Miller* at 69 (“We conclude that the guarantees of our state constitution will best be furthered through continued use of the compelling interest/least restrictive alternative analysis of free conscience claims and see no need to depart from this time-tested standard”); *see also* 42 U.S.C. § 2000bb–1. Under the RFRA standard, a person who challenges a government action as violating their religious freedom under Wisconsin’s constitution “carries the burden to prove (1) that he or she has a sincerely held religious belief, (2) that is burdened by application of the state law at issue. Upon such proof, the burden shifts to the State to prove: (3) that the law is based on a compelling state interest, (4) which cannot be served by a less restrictive alternative.” *Miller* at 66.

IV. The government’s attempt to criminalize Mr. Hsiung’s actions violates the compelling interest/least restrictive standard.

Mr. Hsiung meets the four-factor test noted above. First, Mr. Hsiung’s Buddhist beliefs and practices surrounding animal rescue are deeply held. Mr. Hsiung has spoken about these beliefs publicly for years. Indeed, in the months prior to the Ridgland rescue, he lectured at Yale University, New York University, and the University of Colorado, Boulder, regarding *fangsheng* and the duty of Buddhists to intervene when an animal faces suffering or violence. He has continued to show this sincere religious belief in the years since; for example, in a Facebook

Live video recorded on September 6, 2018, Mr. Hsiung states, “I do see it as the duty as a Buddhist: that whenever you see any suffering individual, whether it’s a human or a nonhuman animal, we have a duty to try and help them.” Facebook Live, <https://www.facebook.com/directactioneverywhere/videos/1830124257063216> at 26:00-26:10.

Mr. Hsiung recently lectured on May 28, 2023 at the Unitarian Universalist Society of San Francisco, of which he is a member, regarding the Buddhist duty to intervene when an animal is suffering.

Second, the government’s prosecution burdens Mr. Hsiung’s religious beliefs and practices. By attempting to criminalize Mr. Hsiung’s rescue through the threat of imprisonment and other serious consequences, the government is directly contradicting Mr. Hsiung’s sincerely-held belief in his duty to give aid. The government’s actions here are similar to the United States’ actions in *United States v. Warren*. There, the court dismissed an Abandonment of Property charge against the defendant, Scott Warren, for leaving water jugs for migrants in the desert on the basis of RFRA. *U.S. v. Warren*, No. 17-00341MJ-001-TUC-RCC (D. Ariz. Nov. 20, 2019), available at <https://casetext.com/case/united-states-v-warren-207>. The court found that “Defendant was obliged to leave water jugs because of his religious beliefs, and the Government’s regulation imposes a substantial burden on this exercise of his religion.” *Id.* Just as the United States criminalized Mr. Warren’s religious beliefs and practices around helping migrants through an Abandonment of Property charge, the government here has criminalized Mr. Hsiung’s religious beliefs and practices around helping suffering beagles.

On the other hand, this case is unlike *State v. Horn*, where the court found that defendants who entered an abortion clinic to communicate with patients did not have their exercise of religion infringed by the government’s prosecution for trespass. *State v. Horn*, 126 Wis.2d 447,

454 (Wisc. Ct. App. 1985). The court there reasoned, “Wisconsin’s criminal trespass statute does not impose a burden upon appellants’ religious freedom. The trespass statute does not make unlawful any of appellants’ religious practices or beliefs nor does it force them to adopt any religious beliefs or conduct that conflict with their own religious tenets.” *Id.* The defendants in *Horn* apparently cited no specific text or belief that required their trespass. Here, however, the government’s prosecution *does* directly conflict with Mr. Hsiung’s beliefs, as demonstrated by the numerous Buddhist edicts cited above. Buddhism in general, and Chinese Buddhism in particular, impose an explicit and affirmative duty to aid suffering animals; indeed, this duty is the first and most important precept of the Engaged Buddhist faith. Leaving an animal to suffer would force Mr. Hsiung to ignore his duties as a Buddhist. Moreover, *State v. Horn* was decided in 1985, prior to Congress’s passage of RFRA in 1993, and prior to the Wisconsin Supreme Court’s 1996 decision, *State v. Miller*, which strongly affirmed the State’s compelling interest/least restrictive alternative analysis for religious freedom claims, similar to the RFRA analysis on which Mr. Warren’s trespass claim was dismissed.

Therefore, the burden should shift to the government to show that the law is based on a compelling state interest that cannot be served by a less restrictive alternative. The government cannot meet this burden. The government is not furthering any compelling state interest by criminalizing the peaceful removal of sick, suffering, and injured beagles from a commercial facility. No human beings were ever at risk of any bodily injury, and the economic impacts to the facility were negligible, if not entirely absent. To the contrary, both the facility and the broader community benefit from appropriate care for distressed and injured animals. Mr. Hsiung performed a task that should have been performed by the facility or government under Wisconsin law: removing a distressed animal to give them care. Moreover, even if the government has a


compelling interest, less restrictive means would be available. For example, the government could respond to concerns regarding suffering animals – including those raised by its own inspectors – by giving aid to the animals, thus eliminating the need for Mr. Hsiung’s actions.

V. Conclusion.

For the foregoing reasons, Mr. Hsiung respectfully requests the Court permit him to argue an affirmative defense based on his exercise of religion, and to provide a jury instruction based on the compelling interest/least restrictive means standard set out in *State v. Miller*.

Dated: March 1, 2024

Respectfully submitted,



Wayne Hsiung