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Knight v. Thompson: The Eleventh Circuit's Perpetuation of Historical Practices of Colonization

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KNIGHT V. THOMPSON: THE ELEVENTH CIRCUIT'S PERPETUATION OF HISTORICAL PRACTICES OF COLONIZATION

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I. Introduction

In the case *Knight v. Thompson*, Ricky Knight and several other plaintiffs sued the Alabama Department of Corrections (ADOC) over its severely restrictive grooming policy, asserting that the policy impermissibly violated the Religious Exercise in Land Use and by Institutionalized Persons Act (RLUIPA) and infringed upon the plaintiffs' rights to wear their hair in accordance with their religious beliefs. The ADOC instituted a policy to promote health and safety within its prison system that "requires all male prison inmates to wear a regular hair cut . . . off the neck and ears."[1] The ADOC does not allow any exceptions to this policy for any reason.[2] However, many people follow religions that dictate they maintain long hair, including Ricky Knight—a Native American who believes that "wearing long hair is a central tenant of [his] religious faith."[3]

Many states impose hygiene standards for inmates, but few refuse to allow inmates the ability to groom themselves as mandated by their religion.[4] Congress enacted the RLUIPA in order to protect inmates from arbitrary policies that prevent the exercise of their religious beliefs. In an attempt to secure his rights to wear his hair in accordance with his religion, Knight sued the ADOC on the basis that their strict grooming policy violated the RLUIPA.

The Eleventh Circuit reviewed the policies of the ADOC, and ruled that even though there was a substantial burden upon Knight's right to practice his religion, the ADOC's policies were permissible and did not violate the RLUIPA. In doing so, the Eleventh Circuit ignored the requirements of the RLUIPA in order to uphold the policy of the ADOC.

Part II of this paper discusses the law prior to this case, including the First Amendment, the RLUIPA, and how courts have interpreted the

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1. Knight v. Thompson, 723 F.3d 1275, 1277 (11th Cir. 2013).
2. *Id*.
3. *Id*.
4. Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. MIAMI L. REV. 923, 927 (2012).

RLUIPA. Part III describes the facts of this case, the primary issues, and the Eleventh Circuit's holding that the ADOC did not violate the RLUIPA. Part IV discusses how the court reached its decision. Part V analyzes how the court erred by giving excessive deference to the ADOC and imposing the ADOC's burden of proof on Knight; the negative implications that will result due to the continued allowance of policies which infringe upon the religious exercise of inmates; and how the Eleventh Circuit's ruling further perpetuates the United States' historical practices of colonization to the detriment of Native Americans.

II. Law Before Knight v. Thompson

The idea of "freedom of religion" is one of the founding principles of the United States. The Founding Fathers of our country codified this belief within the U.S. Constitution, further solidifying this standard within American culture and law. This country's strong policy of permitting unfettered religious practice continues today, and the U.S. Supreme Court has upheld this tenet numerous times. The Supreme Court has stated, "no liberty is more essential . . . than is the religious liberty protected by the Free Exercise Clause."[5] However, the U.S. government and its courts have, at times, violated this sacred principle by allowing unchecked violations of religious freedoms to stand uncorrected. When the courts allow degradations of private citizens' religious rights to continue in direct contradiction to the Constitution, they impermissibly endanger the rights of all U.S. citizens, and fail to uphold the philosophy upon which this country was established.

A. Federal Constitutional Protections for Religious Beliefs

The First Amendment's Free Exercise Clause states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[6] The First Amendment works to protect against undue governmental regulation of religious beliefs. "Government may neither compel affirmation of a repugnant belief . . . nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities."[7] The government must refrain from regulating religious acts which do not "pose[] some substantial threat to public safety, peace or

5. Sherbert v. Verner, 374 U.S. 398, 413 (1963) (Stewart, J., concurring).
6. U.S. CONST. amend. I.
7. *Sherbert*, 374 U.S. at 402 (citations omitted).

order."[8] When a law puts a person in a position where they have to choose between complying with the law and complying with the principles of their faith, it violates the Free Exercise Clause.[9]

The hallmark of modern First Amendment interpretation comes from *Sherbert v. Verner*, where the Supreme Court stated that only a compelling government interest would justify a law that substantially infringes on an individual's religious rights.[10] The Court held that the state of South Carolina violated the Free Exercise Clause by denying unemployment benefits to the Plaintiff.[11] The Plaintiff refused to take employment requiring Saturday work in accordance with her religious beliefs, and although South Carolina gave unemployment benefits to people who refused to work on Sundays for religious reasons, it did not afford the same exception for those who observed the Sabbath on other days.[12] The Court adopted a balancing test akin to strict scrutiny, weighing the burden of imposition on the Plaintiff's beliefs against the interests of the government, and found that South Carolina could not deny unemployment benefits to the Plaintiff as this made her choose between adhering to her faith and receiving a government benefit.[13]

Later, in *Employment Division, Department of Human Resources of Oregon v. Smith*, the Supreme Court deviated from this high standard and severely limited the application of the Free Exercise Clause.[14] The Court declared that Oregon could deny unemployment benefits to the Plaintiffs after they were fired for ingesting peyote—a Schedule I narcotic[15]—in accordance with their beliefs and practices as members of the Native American Church.[16] The Court held that laws which prohibit conduct may enjoin an individual's right to practice their religion so long as the law itself is not unconstitutional on other grounds, and "that the right of free exercise does not relieve an individual of the obligation to comply with . . . valid and neutral" laws "of general applicability" conflicting with the individual's religious beliefs.[17]

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8. *Id*. at 403 (citations omitted).
9. *Id*. at 406.
10. *Id*. at 406, 407.
11. *Id*. at 410.
12. *Id*. at 401-02.
13. *Id*. at 403.
14. Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872 (1990).
15. 21 U.S.C. § 812 (2012).
16. *Smith*, 494 U.S. at 874, 890.
17. *Id*. at 879, 890.

B. Congressional Response to Smith and Subsequent Statutory Law

In response to the Court's decision in *Smith*, Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA),[18] which reinstated the *Sherbert* test requiring strict scrutiny. Under the RFRA, the "Government shall not substantially burden a person's exercise of religion" unless the law in question "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."[19] The RFRA initially applied to the states under the Fourteenth Amendment, but the Court later held that the RFRA could not be imposed upon states under the Fourteenth Amendment alone.[20]

Congress then enacted the Religious Exercise in Land Use and by Institutionalized Persons Act (RLUIPA) after the Supreme Court held that the RFRA was unconstitutional as applied to states.[21] Congress passed the RLUIPA in order to protect individual's religious rights from burdens imposed by governmental policies, especially for inmates, who depend on the government to accommodate their religious beliefs and practices.[22] It states,

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even . . . from a rule of general applicability, unless . . .
>
> (1) [it] is in furtherance of a compelling government interest; and
>
> (2) is the least restrictive means of furthering that compelling government interest.[23]

Congress meant for the RLUIPA to break down the "'frivolous or arbitrary' barriers imped[ing] institutionalized persons' religious exercise."[24]

The standards of review are the same for the RLUIPA as they were for the RFRA, but the RLUIPA's scope is much more limited, applying only to land use regulations and religious exercise of inmates.[25] The RLUIPA is a valid exercise of Congress' powers under the Spending Clause, which

18. 42 U.S.C. § 2000bb (2012).
19. *Id.* § 2000bb-1(a)-(b).
20. City of Boerne v. Flores, 521 U.S. 507, 519 (1997).
21. Sidhu, *supra* note 4, at 933.
22. Cutter v. Wilkinson, 544 U.S. 709, 721 (2005).
23. 42 U.S.C. § 2000cc-1(a) (2012).
24. *Cutter*, 544 U.S. at 716.
25. *Id.* at 714.

permits Congress to place limitations when it offers federal funds to states to promote the general welfare of citizens.[26] The RLUIPA falls under the Spending Clause authority by working to protect "prisoners' religious rights and to promote the rehabilitation of prisoners."[27] Congress has the authority to condition the receipt of federal funds by states by allowing the states to either (1) choose to receive the money and comply with federal law, or (2) choose to refuse the federal funds and refrain from instituting the federal law.[28] In the case at hand, Alabama chose to accept federal funding for its prisons; therefore, Alabama is bound to follow the RLUIPA.[29]

The RLUIPA balances the substantial burden certain policies place on the exercise of religious rights by prisoners with the need of correctional facilities to maintain order. In doing so, it imposes strict scrutiny upon laws that burden religious practice.[30] Under the RLUIPA, the plaintiff must first prove "(1) that an institutionalized person's religious exercise has been burdened and (2) that the burden is substantial . . ."[31] Once the plaintiff proves these two elements, the burden shifts "to the government to show (3) that the burden furthers a compelling governmental interest and (4) that the burden is the least restrictive means of achieving that compelling interest."[32] A court should defer to the expertise of prison officials as they are more aware of the particular requirements to maintain order and safety within correctional facilities,[33] but this level of deference does not allow the government to make mere conclusory statements to justify its regulations.[34] Empty references to safety and security will not suffice to fulfill the high standard that the RLUIPA sets.[35] Instead, the government's policy must

26. Charles v. Verhagen, 348 F.3d 601, 606, 608 (7th Cir. 2003).

27. *Id.* at 607.

28. *Id.* at 608.

29. For comparison as to why the RLUIPA binds the state to adopt the least restrictive means test, see *id.* at 608 ("If the DOC objected to the imposition of the least restrictive means test, it certainly could have refused federal funding.").

30. Fegans v. Norris, 537 F.3d 897, 908 (8th Cir. 2008) (Melloy, J., concurring in part and dissenting in part) (citing 42 U.S.C. § 2000cc 1(a) (2012)).

31. Spratt v. R.I. Dep't of Corr., 482 F.3d 33, 38 (1st Cir. 2007).

32. *Id.*

33. *See* Cutter v. Wilkinson, 544 U.S. 709, 723 (2005) (citing 146 CONG. REC. 16698, 16699 (2000) (joint statement of Sen. Hatch and Sen. Kennedy on RLUIPA)).

34. *See id.* at 722-23; *see also* Warsoldier v. Woodford, 418 F.3d 989, 998 (9th Cir. 2005).

35. *See* Couch v. Jabe, 679 F.3d 197, 204 (4th Cir. 2012); Smith v. Ozmint, 578 F.3d 246, 253 (4th Cir. 2009); *Spratt*, 482 F.3d at 42, 43; Washington v. Klem, 497 F.3d 272, 283 (3d Cir. 2007); *Warsoldier*, 418 F.3d at 998.

actually be the least restrictive means of achieving their compelling interest as applied to the case at hand.[36]

Most jurisdictions have recognized that inmates have the right to groom themselves in accordance with their religious mandates.[37] Only eleven states have restrictive hair policies preventing male inmates from maintaining hair in accordance with their beliefs, whereas thirty-nine states, the District of Columbia, and the Federal Bureau of Prisons all have grooming policies that either do not mandate the length of male inmates' hair or allow for religious exemptions.[38] The eleven states that restrict an inmate's ability to control his or her own hair cite reasons including identification, health, and order in explaining why they must maintain strict grooming standards.[39]

Although substantive statutory law exists concerning both Native American religious rights and inmate religious rights, the law in this area inadequately protects the rights of Native American prisoners to engage in religious practices. Likewise, case law in this area fails to fully afford nationwide protections for Native American prisoners. "Native religious traditions . . . are religions . . . of ritual practice" and because the Free Exercise Clause focuses on religious beliefs and not necessarily religious practices, "the First Amendment and the concept of religion it embodies can never afford full protection to Native religious traditions."[40] The RLUIPA aims to protect religious exercise of inmates, and therefore better conforms to Native American religious viewpoints. However, courts have interpreted the RLUIPA differently in jurisdictions across the nation, and while most correctional institutions subject to the RLUIPA accommodate the religious grooming needs of their inmates, the Eleventh Circuit has systematically and repeatedly failed to live up to its obligations under the RLUIPA.

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36. Fegans v. Norris, 537 F.3d 897, 908-09 (8th Cir. 2008).

37. See Sidhu, *supra* note 4, at 927, 964-70 (noting the following jurisdictions without grooming restrictions or allowing religious exemptions to grooming policies: The Federal Bureau of Prisons, District of Columbia, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming).

38. *Id*.

39. *Id.* at 926.

40. JACE WEAVER, OTHER WORDS: AMERICAN INDIAN LITERATURE, LAW, AND CULTURE 179-80 (2001).

C. The Eleventh Circuit's Application of the RLUIPA

The Eleventh Circuit has routinely ruled in favor of correctional facilities grooming policies and against prisoner rights, both under the RFRA and under the RLUIPA. For example, in *Harris v. Chapman*[41] the Plaintiff, an inmate at the Martin Correctional Institution (MCI), sued MCI under the RFRA for violating his rights to exercise his religious beliefs.[42] The Plaintiff was a Rastafarian and believed that he must keep his hair and beard unshorn; he refused to comply with MCI's strict grooming policy requiring male inmates to keep their hair above the collar line and remain clean-shaven.[43] In return, the correctional officers at MCI held the Plaintiff down against his will while another inmate cut off his dreadlocks.[44] The court assumed the policy was a substantial burden on the Plaintiff's religious exercise, and likewise, summarily stated that MCI had a compelling interest in upholding the grooming policy.[45] In regards to whether the policy was the least restrictive means of furthering that interest, the court shifted the burden from MCI to the Plaintiff.[46] The court stated that because it could not imagine less restrictive means, and because the Plaintiff had not proposed any less restrictive means, the regulation passed that prong of the RFRA test.[47] This same standard was later applied to claims arising under the RLUIPA, as the Eleventh Circuit later recognized the two statutes impose the same standard upon governmental policies that burden religious exercise.[48]

The Eleventh Circuit has not always consistently contradicted the standards set under the RFRA and the RLUIPA and has, at least on one occasion, recognized that the RLUIPA imposes a higher burden upon governmental policies burdening prisoner's religious exercise.[49] Two months before the Eleventh Circuit decided *Knight*, it held that the Florida Department of Corrections (FDC) had the burden to demonstrate its policy

41. Harris v. Chapman, 97 F.3d 499 (11th Cir. 1996).
42. *Id.* at 502.
43. *Id.*
44. *Id.*
45. *Id.* at 503-04.
46. *Id.* at 504.
47. *Id.*
48. Muhammad v. Sapp, 494 F. App'x 953, 956 (11th Cir. 2012).
49. Rich v. Sec'y, Fla. Dep't of Corr., 716 F.3d 525, 532 (11th Cir. 2013) (finding that the Florida Department of Corrections bears the burden to prove its policy furthers a compelling governmental interest with the least restrictive means; refusing to find conclusory statements alone sufficient to fulfill this burden).

of denying kosher meals to Jewish inmates was the least restrictive means of furthering its interests in security and cost control.[50] The court stated that because the FDC could not explain why other institutions were able to provide kosher meals without having security concerns, its policy failed the least restrictive means test. It adopted the standard found in *Warsoldier* in regards to evidence from other penal institutions, and stated that, "[w]hile the practices at other institutions are not controlling, they are relevant to an inquiry about whether a particular restriction is the least restrictive means by which to further a shared interest."[51]

D. Interpretation of the RLUIPA by Other Federal Circuit Courts

Other jurisdictions have found restrictive hair grooming policies violate the RLUIPA, including the Ninth Circuit, where the court held that the California Department of Correction's (CDC) strict grooming policies were impermissibly restrictive.[52] In *Warsoldier*, the Plaintiff—a Native American inmate—sued the CDC for infringing on his religious exercise after he was punished for violating the CDC's grooming policy.[53] The court found first that the CDC's policy was a substantial burden on the Plaintiff's religious beliefs, and then looked to whether the CDC could show that its policy was "*both* 'in furtherance of a compelling governmental interest' *and* the 'least restrictive means of furthering that compelling governmental interest.'"[54] To be upheld, the CDC's policy had to clear both hurdles set by the RLUIPA.

The court focused the majority of its analysis on whether the CDC had fulfilled its obligations to show the policy was the least restrictive means of achieving its goals, and found that the CDC had failed to do so.[55] The CDC's evidence included statements that all other regulations would be unworkable, but did "not elaborate why this is the case or what other modes of regulation it considered and rejected."[56] The court stated that the "CDC cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."[57] Further,

50. *Id.* at 528-29, 534.
51. *Id.* at 534.
52. Warsoldier v. Woodford, 418 F.3d 989, 1002 (9th Cir. 2005).
53. *Id.* at 992.
54. *Id.* at 995.
55. *Id.* at 1001.
56. *Id.*
57. *Id.* at 999.

evidence showing that other penal institutions with similar interests had implemented less restrictive policies gave credence to the argument that the CDC's policy was not the least restrictive means of furthering its interests.

> We have found comparisons between institutions analytically useful when considering whether the government is employing the least restrictive means. Indeed, the failure of a defendant to explain why another institution with the same compelling interests was able to accommodate the same religious practices may constitute a failure to establish that the defendant was using the least restrictive means . . . 'prison officials *must* set forth detailed evidence, tailored to the situation before the court, that identifies the failings in the alternatives advanced by the prisoner.'[58]

Because the CDC failed to meet its burden under the RLUIPA, the court overturned the policy as an undue burden on the Plaintiff's religious rights. Other circuits—including the First, Second, Third, and Fourth Circuits—have also adopted this same standard.[59]

III. Statement of the Case

In the case *Knight v. Thompson*, the Eleventh Circuit analyzed whether the ADOC's grooming policy, which requires male inmates to keep short hair, violated the RLUIPA by impermissibly infringing upon the religious exercise of Native American inmates whose faith dictated keeping long hair.

A. Facts

Ricky Knight,[60] an inmate in custody of the ADOC, sought a religious exemption to the ADOC's strict grooming policy, which "requires all male prison inmates to wear a regular hair cut, defined as off the neck and ears" without "any exemptions . . . religious or otherwise."[61] The ADOC cited several reasons for instituting the strict grooming standards, including "security, safety, control, order, uniformity, discipline, health, hygiene,

58. *Id.* at 1000 (quoting May v. Baldwin, 109 F.3d 557, 564-65 (9th Cir. 1997)).

59. Couch v. Jabe, 679 F.3d 197, 203 (4th Cir. 2012); Jova v. Smith, 582 F.3d 410, 416 (2d Cir. 2009); Spratt v. R.I. Dep't of Corr., 482 F.3d 33, 41 (1st Cir. 2007); Washington v. Klem, 497 F.3d 272, 284 (3d Cir. 2007).

60. Mr. Knight is the named plaintiff, although other inmates were also plaintiffs in the case.

61. Knight v. Thompson, 723 F.3d 1275, 1277 (11th Cir. 2013).

sanitation, cost-containment, and reducing health care costs."[62] Knight, a Native American, fought for an exemption to the male grooming policy for ten years, stating that it unduly burdened his religious practice "because wearing long hair is a central tenant of [his] religious faith."[63] He filed his first claim in 1993 under the RFRA, along with several other similarly situated male inmates.[64]

B. Procedural History

In addition to challenging the grooming policy, Knight and the other plaintiffs also challenged the ADOC's policy prohibiting sweat lodges as violating their religious exercise rights.[65] After the Supreme Court held that the RFRA was unconstitutional as it applied to states and after Congress enacted the RLUIPA, Knight amended his claim to reflect the change.[66] The district court ruled for summary judgment in favor of the ADOC, and Knight appealed to the Eleventh Circuit.[67] The Eleventh Circuit upheld the ruling in favor of the ADOC for all causes of action except the challenge to the grooming policy, and remanded that claim to the district court.[68] After the district court again ruled in favor of the ADOC, Knight again appealed to the Eleventh Circuit.[69]

C. Holding

In line with its prior decisions, the Eleventh Circuit held that although the ADOC's policy undoubtedly significantly burdened Knight's religious beliefs and practices, it was nevertheless permissible for the ADOC to maintain such strict grooming policies with no religious exemption under the RLUIPA.[70] The court found that Knight had offered "extensive, undisputed testimony that long hair has great religious significance" which equated cutting his hair with "an assault on [his] sacredness."[71] The court summarily found that Knight had fulfilled his burdens under RLUIPA and, likewise, the ADOC had shown that it has a compelling interest in

62. *Id.* at 1280.
63. *Id.* at 1277.
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 1287.
71. *Id.* at 1283.

maintaining the safety and security of its facilities.[72] "The crux of this appeal, then, is simply whether the ADOC's blanket short-hair policy furthers those goals and is the least restrictive means of doing so."[73]

The court focused primarily on whether the testimony of the ADOC's expert witnesses justified the continuation of the grooming policy. A court should give "due deference" to correctional facilities as noted in *Cutter*, but this deference is limited. Unlike in *Warsoldier*, where the Ninth Circuit stated that the correctional facility had to actually consider and reject alternatives in order for the policy to be found to be the least restrictive,[74] this court said "the RLUIPA . . . does not give courts carte blanche to second-guess the reasoned judgments of prison officials" and took the testimony of ADOC's experts at face value.[75] The RLUIPA imposes strict scrutiny on governmental policies that substantially burden inmate's religious practices; therefore, these practices should only be upheld if there is no feasible alternative.[76] The government bears the burden of proving that its questioned policy is necessary, and that it has no way of furthering its interest without the policy.[77] However, in this case the Eleventh Circuit shifted this burden to Knight.

IV. Decision of the Court

In this case, because the ADOC testified that the alternatives to the grooming policy *offered by Knight* would not alleviate their concerns, the court found that the ADOC's policy was the least restrictive means of furthering its interests.[78] The court placed the burden upon Knight to prove that less restrictive alternatives existed, and dismissed the Ninth Circuit's holding in *Warsoldier* requiring the government to bear the burden of proving no less restrictive alternatives exist.[79] Here, because the ADOC did *not* show that less restrictive means existed, and because the ADOC testified that Knight's alternatives did not further the ADOC's interests, the court ruled that the ADOC's substantially burdensome policy was permissible.[80]

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72. *Id.*
73. *Id.*
74. Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005).
75. *Knight*, 723 F.3d at 1282-83.
76. 42 U.S.C. § 2000cc(a)(1) (2012).
77. *Id.*
78. *Knight*, 723 F.3d at 1284-85.
79. *Id.* at 1284-86.
80. *Id.* at 1287.

The Eleventh Circuit justified its decision despite the overwhelming evidence presented by Knight showing that the majority of other jurisdictions maintain permissive grooming policies, which allow inmates to accommodate their religious beliefs. The court noted that although many other jurisdictions permit men to keep their hair in accordance with their religious beliefs, these jurisdictions have simply "elected to absorb [the] risks" associated with having a more permissive grooming policy.[81] The evidence showing other jurisdictions have implemented permissive grooming policies was "some evidence" but not "dispositive evidence."[82] Further, the court found the ADOC's evidence concerning the severe overcrowding of its facilities combined with its lack of adequate staffing and funding as further proof that the ADOC had justifiable reasons for adopting policies incongruous with other jurisdictions.

V. Analysis

The Eleventh Circuit's decision to uphold the restrictive policies of the ADOC strikes against the very nature of the RLUIPA. The court cited several reasons for upholding the policy, notably that it afforded due deference to the decisions of correctional officers and its prior precedence supported allowing the policy. The court further opined that, because Knight had not proven less restrictive means existed which would advance the ADOC's purported goals, and because the ADOC had shown that each of Knight's proposed alternatives was not feasible to pursue its goals, the ADOC had met its burden under the RLUIPA of showing no less restrictive means were available.

A. Problems with the Eleventh Circuit's Decision

The court's decision is flawed for a number of reasons. First and foremost, the court here misconstrues the RLUIPA's requirement of affording due deference to correctional officers. The RLUIPA requires that no governmental entity impose burdens on a prisoner's religious beliefs unless it is in furtherance of a compelling government interest, and is the least restrictive means of furthering that compelling government interest.[83] Further, although courts do owe deference to correctional officers, the RLUIPA must be construed broadly in favor of protecting religious rights

81. *Id.* at 1286.
82. *Id.* at 1281.
83. 42 U.S.C. §§ 2000cc(a)(1), 2000cc-2(b) (2012).

of inmates.[84] The court here acknowledged that the ADOC bears the burden of proving that least restrictive means to achieving its interest do not exist. Yet, the court found that because Knight failed to show any viable less restrictive means existed, the ADOC had fulfilled its burden under the RLUIPA.

The RLUIPA imposes a high burden on governmental policies seeking to infringe upon the religious rights of prisoners. The language "compelling government interest" and "least restrictive means" is indicative of Congress' intent to apply strict scrutiny to governmental policies that inhibit prisoners' religious rights.[85] Thus, the RLUIPA requires the government to actually show that no alternatives exist to achieving their compelling interest. In order to fulfill its substantial burden, the court in *Warsoldier* stated the correctional facility "cannot meet its burden . . . unless it demonstrates that it has *actually* considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."[86] As the Eleventh Circuit acknowledged, the First and Third Circuits, in addition to the Ninth Circuit, have also recently found this to be the proper standard for evaluating whether the government has met its burden of proving least restrictive means under the RLUIPA.[87] The Second and Fourth Circuits have also held that prison officials must actually consider other alternatives prior to deciding a policy is the least restrictive means of achieving its goals.[88] Yet the Eleventh Circuit dismissed the persuasive precedence of other circuits by implying this requirement is set higher than the standard set under the RLUIPA.[89] The court said "[t]he RLUIPA asks only whether efficacious less restrictive measures actually exist, not whether the defendant considered alternatives to its policy," despite the fact that it is "relatively less common" for corrections officers to

84. *Id.* § 2000cc-3(g).

85. *See* Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1292 (2007) ("[T]he strict scrutiny formula—forbidding infringements of fundamental rights unless those infringements were necessary to promote a compelling governmental interest.").

86. Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005) (emphasis added).

87. *See Knight*, 723 F.3d at 1285 (quoting Spratt v. R.I. Dep't of Corr., 482 F.3d 33, 41 (1st Cir. 2007) (finding for heightened scrutiny)); *see also* Washington v. Klem, 497 F.3d 272, 284 (3d Cir. 2007) (finding for heightened scrutiny); *see also Warsoldier*, 418 F.3d at 999 (finding for heightened scrutiny).

88. Couch v. Jabe, 679 F.3d 197, 203 (4th Cir. 2012); Jova v. Smith, 582 F.3d 410, 416 (2d Cir. 2009).

89. *Knight*, 723 F.3d at 1285-86.

make "an appropriately tailored policy without first considering and rejecting the efficacy of less restrictive measures."[90]

In the case at hand, it was undisputed that "the ADOC never considered any less restrictive alternatives to its short-hair policy before adopting it," and the ADOC witnesses "had never worked in—or reviewed the policies of—prison systems that allow long hair."[91] Yet the court ignored this evidence, and instead held that the ADOC had met its burden under the RLUIPA because it refuted Knight's proffered alternatives and had not provided any evidence of the existence of alternatives itself.[92] As shown by the language of the statute, the RLUIPA requires the court to utilize strict scrutiny when reviewing policies that significantly inhibit inmate's religious practices.[93] The Eleventh Circuit simply failed to do this, and instead engaged in an analysis that gave near absolute deference to the government at the expense of Knight's religious rights.

The Eleventh Circuit, in justifying its utilization of a lesser standard of scrutiny, stated that it was obligated under *Cutter* to give due deference to the extensive knowledge of the prison administrators, but that "[t]his deference is not . . . unlimited, and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice."[94] Yet, the court found persuasive testimony that inmates with long hair pose a threat to health and hygiene based on the recollection of a prison administrator describing "an incident in which a black widow spider wove a nest in an inmate's dreadlocks."[95] Several of the ADOC's witnesses also cited concerns that long hair posed a safety risk because "non-exempt inmates might attack exempted inmates out of jealousy" and "inmates can grab each other by the hair during fights"; however, "none of the ADOC's witnesses could point to any instances where an inmate had attacked an exempted long-hair inmate out of jealousy or grabbed long hair during a fight."[96] The court here seems to be utilizing unlimited deference, and justifying policies based solely on "speculation and exaggerated fears."[97]

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90. *Id.* at 1286.
91. *Id.* at 1279, 1285.
92. *Id.* at 1280.
93. *Id.* at 1286.
94. *Id.* at 1283, 1285.
95. *Id.* at 1279.
96. *Id.* at 1278-80.
97. Rich v. Sec'y, Fla. Dep't of Corr., 716 F.3d 525, 533 (11th Cir. 2013) (quoting Lawson v. Singletary, 85 F.3d 502, 509 (11th Cir. 1996)).

The Eleventh Circuit also ignored Congress' purpose in enacting the RLUIPA—to provide "a broad protection of religious exercise" for prisoners.[98] Prisoners are a vulnerable class as they are under the care and control of the correctional facilities that house them. Prisoners must conform their behavior to follow whatever policies these correctional facilities impose upon them, or face consequences. Further, prisoners lack the capacity to opt-out of the rules set by correctional facilities. A prisoner cannot simply move to a facility with a more lenient grooming policy or decide not to conform to the policy by the very nature of their status as incarcerated people. In enacting the RLUIPA, Congress acknowledged the broad control prison officials have over inmates' lives, and provided a means to curb abuses of power that infringe upon inmates' rights to engage in religious practices.

B. The Eleventh Circuit's Burden Shifting: How the Court Should Have Ruled

The Eleventh Circuit made a crucial error in interpreting the requirements of the RLUIPA. It shifted the ADOC's burden of proving that the grooming policy was the least restrictive means of furthering its interest to Knight, and in doing so failed to utilize strict scrutiny in analyzing governmental policies infringing on prisoners religious rights as mandated under the RLUIPA. Instead, the Eleventh Circuit should have interpreted the RLUIPA as Congress intended, and applied strict scrutiny to the ADOC's practices. By shifting the burden of proving least restrictive means from the ADOC to Knight, the Eleventh Circuit failed to interpret the RLUIPA in accordance with congressional intent in passing the law.

Congress intended the RLUIPA to impose a high burden upon the policies of correctional facilities that restrict a prisoner's rights to religious exercise. Because the purpose of correctional facilities should be rehabilitation, and because frustration of religious exercise frustrates the rehabilitation of inmates, Congress enacted this law in order to remove barriers impeding prisoner's rehabilitation caused by the near absolute control over inmates exercised by corrections officers. For that reason, the RLUIPA is supposed to be interpreted broadly, and courts may only allow those policies that are necessary to be upheld under the expansive protections for religious exercise under this statute.

The Eleventh Circuit should have taken this opportunity to adopt the standards set forth by the Ninth Circuit in *Warsoldier* as other jurisdictions

98. 42 U.S.C. § 2000cc-3(g) (2012).

have done. If the court had done so, it would have found that the ADOC failed to meet its burden of least restrictive means. Under the proper standards for determining least restrictive means, the ADOC would have to show that it actually considered and rejected alternatives before adopting its restrictive grooming policy. Because the ADOC admitted it did not consider any alternatives to its policy before adopting it, the Eleventh Circuit should have overturned the policy as an impermissible restriction on Knight's religious exercise. Further, the Eleventh Circuit should have considered the permissive grooming policies of other jurisdictions as persuasive evidence that corrections facilities can and do maintain order and control within their facilities, even with less restrictive policies.

C. Implications of the Eleventh Circuit's Decision

The decision handed down in this case has immediate negative implications for Knight. The court here justified the ADOC's imposition of its will to the detriment of Knight's religious tenants. For Knight, the Eleventh Circuit's ruling forces him to cut his hair. At first glance, a hair cut in and of itself does not seem to implicate dire consequences. However, for Knight—and many other Native Americans—hair length is intimately tied with spirituality, and one's hair may only be shorn when in grieving.[99] By forcing Knight to cut his hair, the Eleventh Circuit is effectively endorsing "an assault on [his] sacredness" that impermissibly restricts Knight's religious rights.

This case and the restrictive grooming policies permitted in the Eleventh Circuit cause widespread harm throughout prison systems within its jurisdictional bounds. This case further reaffirms the Eleventh Circuit's unilaterally permissive policies allowing prison officials to infringe upon the rights of inmates solely on the basis that they are inmates. Prisoners within these facilities are prohibited from engaging in all aspects of their religion. A person's religious beliefs often correlate to their moralistic beliefs. The ultimate goal of correctional facilities should be the rehabilitation of inmates—if an inmate is prevented from fully practicing their religious beliefs, how is he to rehabilitate himself? In fact, in some instances the Eleventh Circuit has further hampered the rehabilitation of inmates by permitting the forced restraint and hair cutting of inmates in direct contradiction with their religious beliefs, as seen in *Harris*.[100]

99. Diaz v. Collins, 114 F.3d 69, 72-73 n.18 (5th Cir. 1997).
100. Harris v. Chapman, 97 F.3d 499, 502 (11th Cir. 1996).

By permitting the ADOC unfettered deference in setting restrictive grooming policies, the Eleventh Circuit continues to perpetuate two historical practices to the detriment of its citizenry: further inhibition of inmate rehabilitation and perpetuation of historical practices of colonization. The Eleventh Circuit approvingly consented to a policy that causes both direct and indirect social harm by permitting this seemingly innocuous grooming policy to go unchecked. This decision: (1) immediately hurts inmates by preventing them from engaging fully in their religion; (2) furthers continual practices of violations of prisoners' rights; (3) harms the larger society by impeding inmate rehabilitation, thus potentially leading to higher incarceration rates as unrehabilitated prisoners engage in further offenses once released; (4) fails to fully uphold the RLUIPA in accordance with congressional intent; and (5) perpetuates continued practices of colonization and suppression of religious exercise against Native Americans.

D. The Eleventh Circuit's Ruling in a Broader Context: Native Americans and the Continued Judicial Approval of Colonization

The Eleventh Circuit's decision imposes additional harm upon Native American prisoners in particular by perpetuating historical colonization practices against Native American prisoners. Many Native Americans associate the keeping of long hair with their spiritual beliefs.[101] Further, history shows that Native Americans in particular have faced undue pressure from outsiders to conform their religious beliefs to more closely match those of mainstream society. The United States has utilized missionaries to convert and assimilate Native Americans throughout history.[102] They aimed to eradicate Native American religious beliefs and instead impose Christianity upon Native Americans through colonization.[103] The United States has imposed several restrictive laws banning the practice of certain Native American religious activities, including outlawing ceremonies such as the Ghost Dance and Sun Dance seen throughout Plains tribal cultures.[104] Further, the United States has historically used boarding schools as a means of "civilizing" Native Americans by forcibly removing

101. *See Diaz*, 114 F.3d at 72-73 n.18 (recognizing that some Native Americans keep long hair for spiritual reasons).

102. Steve Talbot, *Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934*, WICAZO SA REV., Autumn 2006, at 7, 19.

103. *Id.* at 33.

104. Monique Fordham, *Within the Iron Houses: The Struggle for Native American Religious Freedom In American Prisons*, SOC. JUST., Spring-Summer 1993, at 165.

Native American children from their homes, refusing to allow them to speak any language except English, and compelling them to engage in Christianity.[105] These boarding schools stripped Native American children of their families, their language, their culture, and their religion.[106] A major tenant of this practice was the required cutting of Native American children's long hair.[107] The boarding school staff ceremoniously sheared the hair of each child to provide for uniformity, order, and civility.[108] Much like the restrictive policies the United States has repeatedly enforced throughout history, the policy of the ADOC further compels this legacy of religious intolerance, backed by the force of the Eleventh Circuit judiciary.

Outside of the context of the RLUIPA, Congress has enacted laws particularly addressing Native American religious rights and the special considerations the government must afford to Native American religious beliefs due to its prior history of suppression and assimilation. In 1978, Congress passed the American Indian Religious Freedom Act (AIRFA).[109] The AIRFA intended to address the historical practices of the United States government that repeatedly infringed upon the rights of Native Americans to engage in their religious practices. It states, "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions."[110] On its face, the AIRFA appears to provide for the accommodation of Native American religious practices, such as the wearing of long hair. It recognizes that the American government has not always provided due protections to Native Americans' religious practices, and that particular attention must be afforded to ensure that prior practices do not continue to infringe upon the rights of Native Americans to engage in their traditional religious practices. In theory, it should compel governmental actors into promoting the accommodation of these religious beliefs.

The AIRFA should work alongside laws like the RLUIPA to ensure that the government does not impose undue burdens upon Native American religious practices. However, "[t]he suppression of [Native American religious] practices has been pervasive to such a degree that AIRFA has

105. Andrea Smith, *Boarding School Abuses, Human Rights, and Reparations*, SOC. JUST., vol. 31, no. 4, 2004, at 89, 91; Talbot, *supra* note 102, at 15.

106. Smith, *supra* note 105, at 89, 91; Talbot, *supra* note 102, at 15.

107. Julie Davis, *American Indian Boarding School Experiences: Recent Studies from Native Perspectives*, OAH MAG. HIST., Winter 2001, at 20.

108. *Id.*

109. 42 U.S.C. § 1996 (2012).

110. *Id.*

proven to be insufficient to grant the freedom that many Native Americans feel is necessary for the complete affirmation of their respective religious identities."[111] Cases interpreting the AIRFA have systematically extinguished any chance of utilizing this law to afford protection to Native American religious rights, and have reduced the AIRFA to a mere policy statement, affording no additional protections than that conferred to Native Americans by the First Amendment.[112] It provides for no cause of action or redressability of infringement upon these rights.[113] In the context of prisoners, the AIRFA has been held to not create any additional obligations upon prison officials to accommodate Native American religious beliefs.[114] In interpreting the AIRFA, the judiciary has systematically annihilated any additional protections for Native American religious practices that do not already exist under the First Amendment, and has effectively nullified this act of Congress. The AIRFA exists now as mere lip service to the protection of Native American religions, and provides no statutory protections to the continued abuses Native Americans face in practicing their religious beliefs.

VI. Conclusion

The decision handed down in *Knight* is troubling in that it (1) ignores federal policy upholding religious liberties for all citizens, (2) contradicts precedent set by other circuits correctly applying the strict scrutiny test found in the RLUIPA, (3) places a vulnerable (if not well-liked) class of citizens—prisoners—at risk for violations of their religious beliefs, (4) inhibits the rehabilitation of prisoners, and (5) continues the legacy of suppression of Native American religious exercise. Prisoners are especially vulnerable to oppressive policies inhibiting their right to exercise their religious beliefs. The purpose of the American penal system is punishment for violations of law and rehabilitation to prevent future infractions. Restricting religious practice is directly contradictory to this important policy.

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111. Lee Irwin, *Freedom, Law, and Prophecy: A Brief History of Native American Religious Resistance*, *in* NATIVE AMERICAN SPIRITUALITY: A CRITICAL READER 295, 295 (Lee Irwin ed., 2000).

112. Lyng v. Nw. Indian Cemetery Protective Ass'n, 485 U.S. 439, 455 (1988); United States v. Mitchell, 502 F.3d 931, 949 (9th Cir. 2007).

113. *Mitchell*, 502 F.3d at 949 (quoting Henderson v. Terhune, 379 F.3d 709, 711 (9th Cir. 2004)).

114. Standing Deer v. Carlson, 831 F.2d 1525, 1530 (9th Cir. 1987).

In ruling in favor of the ADOC, the Eleventh Circuit further perpetuates a cycle of harm to freedom for Native American religious exercise. Native Americans have been especially targeted throughout the history of this country for violations of their religious rights. Here, the Eleventh Circuit upheld colonizing policies that cause further harm to Native American inmates, and further inhibits the ability of inmates (like Ricky Knight) to rehabilitate themselves and heal themselves from the damages imposed by a colonizing government. In doing so, the Eleventh Circuit continues historical practices preventing religious freedom in direct contradiction with one of the founding principles of this nation.