

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

SEP 29

CLERK  
U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA.

JAMES LIMBAUGH, et al., )  
)  
Plaintiffs, )

vs. )

LESLIE THOMPSON, et al., )  
)  
Defendants. )

CIVIL ACTION NO. 93-A-1404-N

NATIVE AMERICAN PRISONERS )  
OF ALABAMA - TURTLE WIND CLAN, )  
et al., )  
)  
Plaintiffs, )

vs. )

STATE OF ALABAMA DEPARTMENT )  
OF CORRECTIONS, et al., )  
)  
Defendants. )

CIVIL ACTION NO. 96-A-554-N

**ORDER**

This case is before the court on the Recommendation of the Magistrate Judge entered on March 14, 2003, and objections filed by both the Plaintiffs and the Defendants on March 27, 2003. Upon an independent evaluation and *de novo* review of this matter, the court finds the objections to be without merit, and they are hereby overruled.

The Plaintiffs object to that portion of the Recommendation regarding restricting inmate hair length as applied to Native American inmates, contending that the Defendants failed to meet their burden to articulate legitimate reasons why male but not female inmates are required to

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have short hair. This issue was addressed in an earlier recommendation of the Magistrate Judge entered on September 10, 1999, in the context of finding that the differential application of hair length policies is constitutionally permissible, as noted on page 21, fn. 33, of the current Recommendation. The court continues to agree with that finding, and further agrees with the Magistrate Judge's conclusion that the ADOC's regulations restricting inmate hair length do not violate RLUIPA. The court further notes that the Plaintiffs' argument that all female inmates are allowed to wear long hair "but a handful of Native American inmates are denied the same accommodation for an unstated reason," misstates the issue before the court. The hair length policy at issue is neutral, and applies to all male inmates. It is that policy for which the Defendants must articulate legitimate reasons based on compelling interest in prison safety and security, and they have done so.


The Defendants object to the Magistrate Judge's Recommendation that their Motion for Summary Judgment on the sweat lodge issue be denied. The Magistrate Judge concluded that the Defendants failed to demonstrate that the absolute ban on the sweat lodge ceremony was the least restrictive means of achieving the Alabama Department of Corrections' compelling interest in security. The Defendants argued in essence that they could ban the sweat lodge ceremony because it is a purification right, and inmates have available to them other means of purification. In other words, the Defendants argue that the proper question is whether the ban on the sweat lodge substantially burdens the Plaintiffs' ability to comprehensively practice their religion. This argument was rejected by the Magistrate Judge for the reasons expressed at pages 18-19 of the Recommendation. The Defendants' argument is incompatible with Justice Jackson's words describing what is often characterized as one of our society's defining constitutional principles:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The essence of the ADOC’s argument is that prison officials have the right to determine which among several religious practices are permissible so long as the practices they allow “serve the same purpose” as a prohibited practice. *See* Defendant’s Objections at 6. Adoption of this argument would permit prison officials to determine what is orthodox without the requisite demonstration that a ban on a religious practice is the least restrictive means to achieve a compelling state interest. The court rejects this argument.

The court adopts the Recommendation of the Magistrate Judge, and it is hereby ORDERED as follows:

1. The Defendants’ Motion for Summary Judgment is GRANTED on the Plaintiffs’ claim that the Alabama Department of Corrections’ policy restricting inmate hair length violates the Religious Land Use and Institutionalized Persons Act of 2000.
2. The Defendants’ Motion for Summary Judgment is DENIED on the Plaintiffs’ claim that the Alabama Department of Corrections’ policy prohibiting inmate participation in sweat lodge ceremonies violates the Religious Land Use and Institutionalized Persons Act of 2000.
3. The court reserves ruling on the constitutionality of the Religious Land Use and Institutionalized Persons Act of 2000 until after a determination of the RLUIPA’s applicability.
4. This case is returned to the Magistrate Judge for further proceedings.

DONE this 29<sup>th</sup> day of September, 2003.

  
W. HAROLD ALBRITTON  
CHIEF UNITED STATES DISTRICT JUDGE