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## ABSTRACT

*For numerous years, state and institutional rules have barred individuals from wearing religious clothing. Specifically, this issue has arisen in the military, the workplace, police departments, prisons, and public schools. Clothing communicates information about one's country of origin, religion, and sexual desires. As discussed below, wearing religious clothing is a vital aspect of Judaism, Islam, and Sikhism. For instance, head coverings, including yarmulkes, hijabs, and turbans, are essential in the eyes of some observers. Traditionally, more observant individuals may desire to wear religious clothing everyday. The United States Constitution upholds this religious liberty in the First and Fourteenth Amendments. Additionally, the Religious Freedom and Restoration Act of 1993 (RFRA), Title VII of the Civil Rights Act of 1964, and the Religious Land Use and Institutionalized Persons Act (RLUIPA) statutes also protect religious freedom. Cases are examined that upheld religious freedom by making accommodations as well as others that, unfortunately, denied religious freedom to individuals. Because religious clothing is crucial to observers of Judaism, Islam, and Sikhism, courts should broadly construe the laws to encourage religious accommodations in public environments where a state or institutional law bars an adherent from following his or her religion, unless granting the accommodation would cause harm to other individuals.*

## I. INTRODUCTION

State or institutional rules barring an individual from wearing religious clothing have been a source of controversy for many years. Specifically, this issue arises in the military, the workplace, police departments, prisons, and public schools. Wearing religious clothing is a vital aspect of many religions, specifically, Judaism, Islam, and Sikhism. The United States Constitution does not prohibit religious clothing because it would violate

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the First and Fourteenth Amendments.[1] Additionally, the Religious Freedom and Restoration Act of 1993 (RFRA), Title VII of the Civil Rights Act of 1964, and the Religious Land Use and Institutionalized Persons Act (RLUIPA) also protect religious freedom.[2] Some courts have upheld religious freedom by making accommodations, which is seen in the *Singh v. McHugh*, *EEOC v. Abercrombie & Fitch*, *EEOC v. Autozone*, J.B. Hunt Transport Services, and *Holt v. Hobbs* cases.[3] Unfortunately, some courts have placed limits on religious accommodations, which is analyzed below in *Goldman v. Weinberger*, *Webb v. City of Philadelphia*, *Riback v. L.V. Metro. Police Dept.*, *Khatib v. County of Orange*, *United States v. Bd. of Educ.*, and *Cooper v. Eugene Sch. Dist. No. 4J*.[4] Because religious clothing is crucial to observers of Judaism, Islam, and Sikhism, courts should broadly construe the laws to encourage religious accommodations in public environments where a state or institutional law bars an adherent from following his or her religion, unless granting the accommodation would cause harm to other individuals.

## II. HISTORY OF RELIGIOUS CLOTHING IN JUDAISM, ISLAM, AND SIKHISM

Religious apparel is a part of observing Judaism, Islam, and Sikhism, among other religions. Clothing is used as a form of nonverbal communication in two manners: "clothing as self-definition and clothing as a reflection of societal roles and perceptions."[5] Clothing may "nonverbally communicate information about individuals, the nature of their interpersonal relationships, and the overall context in which interpersonal interactions occur."[6] Before any verbal exchanges, clothing allows individuals [to] project information about their sex, age, country of origin, religion, sexual desires, and socioeconomic class prior to any verbal

1. U.S. CONST. amend. 1.; U.S. CONST. amend. XIV.

2. 42 U.S.C. § 2000cc-1 (2012); Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, § 3, 107 Stat. 1488 (1993) (codified at 42 U.S.C. § 2000bb (2012)). The Civil Rights Act of 1964, Pub. L. No. 102-166, § 107, 105 Stat. 1071, 1075 (1991).

3. *EEOC v. Abercrombie & Fitch Stores*, 135 S. Ct. 2028 (2015); *Holt v. Hobbs*, 135 S. Ct. 853 (2015); *Singh v. McHugh*, 185 F. Supp. 3d 201 (D.D.C. 2016); EEOC v. Autozone, No. 10-11648, slip op. at 1 (D. Mass. Mar. 29, 2013); *J.B. Hunt Transport Settles EEOC Religious Discrimination Charge for $260,000*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Nov. 15, 2016), https://www1.eeoc.gov/eeoc/newsroom/release.

4. *Goldman v. Weinberger*, 106 S. Ct. 1310 (1986); *Khatib v. County of Orange*, 639 F.3d. 898 (9th Cir. 2011); *Webb v. City of Philadelphia*, 562 F.3d 256 (3d Cir. 2009); *United States v. Bd. of Educ. for Sch. Dist*., 911 F.2d 882 (3d Cir. 1990); *Cooper v. Eugene Sch. Dist.* No. 4J, 723 P.2d 298 (Or. 1968); *Riback v. L.V. Met. Pol. Dept.*, No. 2:07-cv-1152-RLH-LRL, 2008 WL 3211279, at *1 (D. Nev. Aug. 6, 2008).

5. Debra Reece, *Covering and Communication: The Symbolism of Dress among Muslim Women*, 7 HOW. J. COMM. 35 (1996) (discussing the meaning and various types of veils Muslim women may wear to uphold the cultural and religious customs in Islam).

6. *Id.* at 36.

exchange.[7] Many religions, including Judaism, Islam, and Sikhism, incorporate headgear, which visibly indicates religious affinity and sometimes national origin.[8] The more important religion is to an individual, the more he or she may want to express religion through dress.[9]

Specifically, in Judaism, the Bible presents a woman's hair as an ornament that enhances her appearance.[10] Because "a woman's hair is considered *ervah*, or erotic stimulus, [it] must therefore be covered."[11] As a way for women to visibly express their observance of the laws of Judaism and the Torah, some women choose to practice veiling "to fulfill [their] obligation to serve as 'redeemer of the Jewish people.'"[12] The Torah specifies that a married woman must "wear a head-covering that hides all her hair from view."[13] Today, "women who obey these laws ascribe various meanings to the act of head-covering: it is a sign of marriage, or of identification with the tribe; a symbol of piety and humility; an act of deference to the Divine Will; [and] a sign of sexual modesty."[14] There are different ways to veil oneself, including wearing a scarf (*tichel)*, a wig (*sheitel)*, a hat, or a net to cover up a woman's natural hair.[15]

Additionally, it is stated in the Bible that men must cover their heads.[16] Rabbi Joseph Karo's sixteenth century Jewish law code, *Shulhan Arukh*, rules that a man may not walk more than four cubits *be-gilui rosh*, with his head uncovered."[17] This is based on the "Talmudic passage in *Tractate Kiddushin* 31a, which state[s]: It is forbidden for a man to walk four *amos* with an upright posture."[18] Covering one's head demonstrates piety and, additionally separates Jews from Gentiles.[19] Christians bare their heads as a sign of respect, but for Jewish people, exposing one's head would violate the *hukkot hagoyim*, or customs of the nations.[20] Therefore, *yarmulkes*, or head coverings, remain a crucial cultural and religious aspect of Judaism.

7. Reece, *supra* note 5 at 68.

8. Michael Newman & Faith Isenhath, *Use Your Head! Title VII Provides for Reasonable Accommodation for Religious Headwear*, 56 FED. L. 14 (2009) (discussing the importance of headwear in religious practice).

9. Reece, *supra* note 5, at 37.

10. Leila Bronner, *From Veil to Wig: Jewish Women's Hair Covering*, 42 JUDAISM: A Q. J. OF JEWISH LIFE & THOUGHT 4 (1993).

11. *Reorienting the Veil*, UNC CENTER FOR EUROPEAN STUDIES, https://veil.unc.edu/religions/judaism.

12. *Reorienting the Veil*, *supra* note 11.

13. *Id.*

14. Susan Weiss, *Demystification of Women's Head Covering in Jewish Law*, 17 NASHIM: A JRN'L JEWISH WOMEN'S STUD. & GENDER ISSUES 89 (2009).

15. Richard Freund, *The Veiling of Women in Judaism, Christianity, and Islam*, UNIV. OF HARTFORD MAURICE GREENBERG CENTER FOR JUDAIC STUDIES (2011).

16. Dan Rabinowitz, Yarmulke: A Historic Cover-Up?, HAKIRAH, THE FLATBRUSH J. OF JEWISH L. AND THOUGHT 221, 223 (2007).

17. *Id.* at 223.

18. *Id*.

19. *Id.* at 224.

20. ALEX BEIN, THE JEWISH QUESTION: BIOGRAPHY OF A WORLD PROBLEM 489 (1990).

Like Judaism, Islam also requires specific clothes for observers. Clothing has been tied to purity or impurity and modesty or immodesty, and serves to differentiate the believers from the nonbelievers.[21] Also, clothing distinguishes the men from the women.[22] Some Muslims believe a woman must cover her body "from a man with whom she is not *mahram* [or cannot marry] and that she should not flaunt herself or put her body on display in society. She is asked not to stimulate the attention of men by any means."[23] As a result, many women wear a veil.[24] A veil varies tremendously, but may include "covering the entire face with a translucent piece of cloth; covering most of the face except for the eyes in a mask-like appearance; and covering the head, concealing the hair and neck." Each of these definitions assumes the covering of the head, neck, and bosom with a loose outer garment.[25]

Wearing a *hijab*, commonly known as a veil, is a manner in which a woman may remain modest under the law of the Quran.[26] The term *hijab* "has a three-dimensional nature, including the visual, hiding something from sight; the spatial, separating and establishing boundaries; and the ethical, stating that something is forbidden."[27] The pivotal event in the Quran to invoke a *hijab* involved "the lowering of a curtain to protect the intimacy of Muhammad and his wife, and to exclude one of Muhammad's male companions."[28] The Quran declares, "Say to the believing women to cast down their glance and guard their private parts (24:31)."[29] The Quran even goes as far as using the word *hijab* in its text, stating, ". . . and when you ask his wives for any object, ask them from behind a curtain (hijab) . . . (33:53)."[30] Clothing serves as a means of nonverbal, symbolic communication both within the Islamic society and outside of it.[31] It plays a large part in defining social roles constructed by Islam and Muslim

21. Reece, *supra* note 5, at 38. "The word 'Islam' means 'submission, surrender, and obedience,' but as a religion, Islam represents the complete submission to G[-]d." Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441, 445 (2008).

22. *Id.*

23. Murtadha Mutahari, *Islamic Hijab Modest Dress* (2007).

24. Reece, *supra* note 5. "The word 'Islam' means 'submission, surrender, and obedience,' but as a religion, Islam represents the complete submission to G[-]d." Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441, 445 (2008).

25. *Id*.

26. Mutahari, *supra* note 23.

27. Reece, *supra* note 5, at 40.

28. *Id*. *See also* Ali Ammoura, *Banning the Hijab in Prisons: Violations of Incarcerated Muslim Women's Right to Free Exercise of Religion*, 88 CHI.-KENT L. REV. 657, 659 (2013).

29. AL-ISLAM.ORG, https://www.al-islam.org (last visited Feb. 13, 2014).

30. *Id.*

31. Reece, *supra* note 5, at 40.

individuals regarding a woman's role in society.[32] Today, many Muslim women have chosen to wear a head covering that covers only the head and neck and does not cover the face.[33] They find this balances upholding their religion and culture with blending into society.[34]

Lastly, Sikhism also mandates that individuals wear head coverings and specific religious clothing. "Sikhs who have made a public commitment to the faith by going through a special baptism, known as the *Amrit* Ceremony, are called members of the *Khalsa* (the community of baptized Sikhs)."[35] After going through the ceremony, they adopt five symbols known as the Five K's, which show Sikh identity as well as powerful religious meaning.[36] "The Five K's are the five items of dress and physical appearance given to the Sikhs by Guru Gobind Singh when he gathered together the first members of the *Khalsa* on Baisakhi Day in 1699."[37] The first of the Five K's is the *kesh*, or uncut hair and beard to sustain him or her in higher consciousness and a turban which is the crown of spirituality.[38] Having uncut hair represents a Sikh's devotion to G-d.[39] Second, the *kangha*, a small wooden comb, represents hygiene and discipline to groom one's hair.[40] *Katchera*, the third K, is specially made cotton underwear to signify purity.[41] Fourth, *Kara* is a steel circle, or bangle, which is "worn on the wrist, signifying bondage to Truth and freedom from every other entanglement."[42] Lastly, *Kirpan* is a sword which is possessed by the *Khalsa* to defend the line of truth.[43]

The Sikh turbans also have specific meanings.[44] There are two main styles including the "'beaked' kind worn by those who trace their origins to the Pothohar area around Rawalpindi and the flatter variety favored by those who belong to the plains of the Punjab."[45] Individuals "from the plains tie their turbans in a variety of fashions, [with] the two most popular being the Patiala Shahi and the Ludhiana styles. The Patiala Shahi has layers of folded cloth (lar) on both sides of the turban."[46] Conversely, the

32. Reece, *supra* note 5, at 40.
33. *Id.*
34. *Id.*
35. The Five K's, http://www.amritsar.com (last visited Mar. 6, 2017).
36. *Id.*
37. *Id.*
38. RELIGION AND THE BODY 296–97 (Sarah Coakley ed., 1st ed. 1997).
39. The Five K's, *supra* note 35.
40. *Id.*
41. *Id.*
42. *Id*.
43. *Id.*
44. Hew McLeod, *The Five Ks of the Khalsa Sikhs*, 128 J. AM. ORIENTAL SOC'Y 325 (2008).
45. *Id.*
46. McLeod, *supra* note 44. "Sikh women do not normally wear a turban, but certain sects require it. Prominent amongst these are members of the Akhand Kirtani Jatha and also the 3HO Sikhs who observe teachings of Yogi Bhajan." *Id.*

Ludhiana style has *lar* on one side while the other side is plain.[47] "The color of the turban is also significant. Dark blue is worn by followers of the *Akali* party or by *Nihangs*. White designates either a Congress supporter or an elderly Sikh."[48] Furthermore, saffron colored turbans are worn by followers of the *Khalistani* movement and patterned turbans are favored by Sikhs from southeast Asian countries.[49] Because clothing is a significant religious attribute of Judaism, Islam, and Sikhism, many individuals choose to uphold these rules.

## III. LEGAL SOURCES ADDRESSING RELIGIOUS GARB RIGHTS

Even though the religious laws of Judaism, Islam, and Sikhism command individuals to wear clothing or style their physical appearance in a particular manner, some public institutions in America and state laws do not permit religious individuals to dress or style their bodies to observe their religion. As discussed below, some argue wearing head coverings or styling one's hair in a particular manner illustrates a statement for a specific religion, conflicting with the First Amendment and Fourteenth Amendment of the United States Constitution.[50] The Free Exercise Clause in the First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[51] Additionally, individuals argue that the Establishment Clause, which prohibits the government from making any law "respecting an establishment of religion," would also be violated if the country permits people to wear religious clothing or alter their physical appearance to match a religious rule because it expresses the observance of a particular religion.[52] However, unless granting religious accommodations would be harmful to others, barring individuals from wearing religious clothing or altering their physical appearance to abide by the religious rules prohibits freedom for individuals to practice their religion.[53] "Where government action interferes with or coerces religious practice, challenges are almost always analyzed under . . . the"[54] First Amendment.

In *Lemon v. Kurtzman*, the Supreme Court used the test known as the "Lemon Test" to establish whether the government had violated the Establishment Clause.[55] To avoid a violation, there must be a significant

47. McLeod, *supra* note 44
48. *Id.*
49. *Id.*
50. U.S. CONST. amend. I.; U.S. CONST. amend. XIV.
51. *Id.*
52. *Id.*
53. *Id.*
54. Susan Gellman & Susan Looper-Friedman, *Thou Shalt Use the Equal Protection Clause for Religious Cases (Not Just the Establishment Clause)*, 10 U. PA. J. CONST. 665 (2008).
55. *Lemon v. Kurtzman*, 91 S. Ct. 2105, 2111 (1971).

secular purpose, the action must not have the primary effect of advancing or inhibiting religion, and it does not foster excessive entanglement between government and religion.[56] This test may be applied to other cases to assess whether a First Amendment violation has occurred. Furthermore, Americans also believe the Equal Protection Clause in the Fourteenth Amendment, which states the Constitution cannot "deny any person within its jurisdiction the equal protection of the laws," and is violated if an individual is not permitted to wear religious apparel.[57] Barring individuals from wearing religious clothing would violate the Fourteenth Amendment because it would deny individuals equal protection for the right to freedom of religion.[58]

In addition to the United States Constitution, the Religious Freedom Restoration Act (RFRA) also protects religious freedom. After the Supreme Court's decision in *Employment Division v. Smith*, religious liberty took a setback.[59] "Before *Smith*, the Supreme Court's free exercise test had prohibited the government from burdening a person's religious exercise unless the government demonstrated that it had a compelling interest, not achievable by other means, that justified trumping the person's religious practice."[60] However, *Smith* "reversed this traditional presumption: the government no longer had to show an important reason for overriding a person's religious convictions no matter how easy it would be for the government to accommodate her religious exercise."[61] RFRA was passed to "restore the 'compelling interest' test by once again placing the burden on the government to demonstrate that a law is compelling and unachievable by less restrictive means."[62] Generally, 42 U.S.C. § 2000bb-1 protects religious freedoms, but provides for a narrow exception by including the compelling interest test.[63] The compelling interest test in section three part (b) declares that the "[g]overnment may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."[64] Even though the statute provides for an exception, the government has a significant standard

56. *Id.*
57. U.S. CONST. amend. XIV.
58. *Id.*
59. Kimberlee Wood Colby, *The 20th Anniversary of the Religious Freedom Restoration Act*, 4 J. CHRISTIAN LEGAL THOUGHT 12 (2014).
60. *Id.*
61. *Id.*
62. *Id.* "Republican Senator Orrin Hatch and Democratic Senator Ted Kennedy together led the effort to pass RFRA in the Senate. The Senate passed RFRA by a vote of 97-3, … followed by a unanimous voice vote in the House." Shortly after, "President Clinton signed RFRA into law on November 16, 1993." *Id.*
63. Religious Freedom Restoration Act, § 3, 107 Stat. 1488 at 1488–89.
64. Religious Freedom Restoration Act, *supra* note 63.

to overcome accommodating an individual's religious needs.[65]

Title VII of the Civil Rights Act of 1964 prohibits prospective employers from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship.[66] Section 703 of the Civil Rights Act of 1964 was amended by Section 107 in 1991 and states, "An unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice."[67] Congress amended Title VII to include beliefs and practices by adding a definition of religion. "Religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[68] Therefore, it is a violation of Title VII of the Civil Rights Act of 1964 to not hire a prospective employee merely because of an employee's desire to wear religious clothing or have a distinct physical appearance displaying his or her religion.[69]

Lastly, the Religious Land Use and Institutionalized Persons Act (RLUIPA) is a law that also protects individuals' religious freedom.[70] The Act was codified into 42 U.S.C. § 2000cc-1(a) which states,

> [n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in [42 U.S.C. § 1997], 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.[71]

42 U.S.C. § 1997 defines institution as any facility or institution which is owned, operated, or managed by, or provides services on behalf of, any State or political subdivision of States, and which is a jail, prison, or other correctional facility or pretrial detention facility.[72] This statute protects the religious freedom of individuals who are incarcerated or held in holding cells in court facilities.[73]

65. *Id.*
66. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2028.
67. The Civil Rights Act of 1964, Pub. L. No. 102-166, § 107, 105 Stat. 1071, 1075 (1991).
68. Steven D. Jamar, *Accommodating Religion at Work: A Principled Approach to Title VII and Religious Freedom*, 40 N.Y.L. SCH. L. REV. 719, 741–42 (1996).
69. *See id.*
70. 42 U.S.C. § 2000cc-1 (2012).
71. *Id.*
72. 42 U.S.C. § 1997 (2012).
73. *See id.*

## IV. COURTS DECIDING WHETHER AN INDIVIDUAL IS ENTITLED TO RELIGIOUS FREEDOM

For many years, the court system has decided whether an individual is entitled to religious liberty when there is a state or institutional rule that would be violated if they did visibly observe their religion. Too often, the courts have ruled to uphold the state or institutional rules, barring an observer from the freedom to practice his or her religion when the accommodation would not harm others. Specifically, using *Singh v. McHugh* and *Goldman v. Weinberger*, this paper will begin with an analysis of the courts' both sympathetic and restrictive rulings in the military.[74] Next, it will discuss the courts' decisions in *EEOC v. Abercrombie & Fitch*, *EEOC v. Autozone*, and the J.B. Hunt Transport Services cases to uphold religious freedom in the workplace.[75] Thirdly, it explores the cases *Webb v. City of Philadelphia* and *Riback v. L.V. Metro. Police Dept.*, which discuss instances where the court ruled too narrowly and upheld the restriction barring an officer from having religious freedom in the police department.[76] Fourthly, courts have also ruled both broadly and narrowly on religious freedom in prisons and holding cells, as we see in *Holt v. Hobbs* and *Khatib v. County of Orange*.[77] Lastly, there has been a great deal of controversy regarding whether a teacher should have religious freedom when it violates a rule in public schools as well. *United States v. Bd. of Educ.*, and *Cooper v. Eugene Sch. Dist.* No. 4J are examples of where the courts have decided to uphold institution or state laws and disregard an individual's right to freedom of religion.[78] Unfortunately, because of the way courts have ruled, there are too many instances where an individual is denied his or her right to observe a religion.

### A. RELIGION IN THE MILITARY

The military has addressed whether it must allow individuals to wear religious head coverings even if it is against the military rules. The *Goldman v. Weinberger* case is about a rabbi, S. Simcha Goldman, who "brought suit against Secretary of Defense and others, claiming that application of an Air Force regulation to prevent him from wearing his yarmulke infringed upon his First Amendment right to free exercise of religion"[79] Goldman contended that the Air Force regulation mandating uniform dress for Air Force personnel violates the law.[80] Goldman

74. *Goldman*, 106 S. Ct. at 1310; *Singh*, 109 F. Supp. 3d at 72.

75. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2028; *Autozone*, slip op. at 1; *J.B. Hunt Transport Settles EEOC Religious Discrimination Charge for $260,000*, *supra* note 3.

76. *Webb*, 562 F.3d at 258; *Riback*, 2008 WL 3211279, at *1.

77. *Holt*, 135 S. Ct. at 853; *Khatib*, 639 F.3d. at 898.

78. *Bd. of Educ. for Sch. Dist*., 911 F.2d at 882; *Cooper*, 723 P.2d at 298.

79. *Goldman*, 106 S. Ct. at 1311.

80. *Id.*

attempted to follow the rules by "wearing a service cap over the yarmulke while he was outdoors."[81] When he testified as a defense witness at a court-martial wearing his yarmulke without the service cap covering it, the opposing counsel put in a complaint arguing that Goldman's "yarmulke was a violation of Air Force Regulation (AFR) 35-10. This regulation states in pertinent part that '[headgear] will not be worn . . . [while] indoors except by armed security police in the performance of their duties."[82]

The United States District Court for the District of Columbia granted an injunction that enjoined the Air Force from enforcing the rule against Goldman and from penalizing him for wearing the yarmulke.[83] After this ruling, the defendants appealed and the Court of Appeals for the District of Columbia Circuit reversed, "on the ground that the Air Force's strong interest in discipline justified the strict enforcement of its uniform dress requirements."[84] The Supreme Court of the United States granted certiorari and held that Free Exercise Clause in "the First Amendment does not prohibit the challenged regulation from being applied to petitioner even though its effect is to restrict the wearing of the headgear required by his religious beliefs. That Amendment does not require the military to accommodate . . . wearing a yarmulke" because it is their view that it would detract from the uniformity of the military.[85]

Even though the Supreme Court held it would not violate the Free Exercise Clause of the First Amendment, according to the "Lemon Test," it is controversial whether all the prongs are fulfilled and no violation exists for the Establishment Clause.[86] To avoid a violation, there must be a significant secular purpose, the action must not have the primary effect of advancing or inhibiting religion, and it does not foster excessive entanglement between government and religion.[87] Here, the court finds significant secular purpose, which is the need to maintain a uniform military and to "foster instinctive obedience, unity, commitment, and esprit de corps."[88] Nevertheless, as discussed in the case, armed security police are permitted to wear hats, so it is difficult to inhibit individuals in Goldman's department from wearing hats.[89] If the military is concerned about uniformity, it could provide matching hats as part of the uniform.[90] Next, the action must not have the primary effect of advancing or inhibiting religion.[91] It can be argued that barring individuals from wearing visible

81. *Id.*
82. *Id.* at 1312.
83. *Id.*
84. *Id.*
85. *Id.* at 1311.
86. *Lemon*, 91 S. Ct. at 2111.
87. *Id.*
88. *Goldman*, 106 S. Ct. at 1313.
89. *See id.*
90. *See Goldman*, 106 S. Ct. at 1313.
91. *Lemon*, 91 S. Ct. at 2111.

religious gear has the primary effect of inhibiting religion.[92] Even though some may argue wearing religious gear creates a divided Air Force, this is not a strong argument because the entire outfit the individual wears is the same and including a matching uniform hat would fulfill the religious head covering obligation.[93] Clearly, the addition of a hat would have no impact on national security. Lastly, an individual may argue it does not foster excessive entanglement between government and religion.[94] Therefore, even though the Supreme Court held that the prohibition of wearing a yarmulke is not a violation of the Free Exercise Clause in the First Amendment,[95] the issue does not clearly satisfy the "Lemon Test" for the Establishment Clause, which causes it to be a point of controversy.[96]

Conversely, unlike *Goldman v. Weinberger* where the Supreme Court ruled narrowly, the United States District Court for the District of Columbia has ruled more broadly to permit religious freedom in the military so there is no violation of RFRA.[97] In *Singh v. McHugh*, a Hofstra University student, Iknoor Singh, sought to enroll in Reserve Officers Training Corps (ROTC), which is run by the army at his university.[98] Singh is a practicing Sikh and wears a beard, does not cut his hair, and wraps it inside a turban, which violates the Army uniform and grooming standards.[99] "Plaintiff maintains the sincere belief that if he cut his hair, shaved his beard, or abandoned his turban, he would be 'dishonoring and offending God.'"[100] He brought an action against the Secretary of the Army and other officials alleging that the Army violated RFRA because it failed to accommodate his religious exercise by banning him from wearing a turban, unshorn hair, and a beard.[101] In relevant part, Singh sought a preliminary injunction requiring the Army to process the accommodation or provide a preliminary enlistment if the request was denied, a declaratory judgment that defendants' refusal to grant plaintiff a religious exemption to the Army's grooming and uniform standards violates RFRA, and a permanent injunction ordering defendants to allow him to join ROTC.[102]

According to Army Regulation A.R. 600-20, soldiers are permitted "to wear religious apparel while in uniform, including religious 'headgear,' if the apparel is 'neat and conservative' and it will not 'interfere with the performance of military duties.'"[103] Soldiers may wear religious headgear if it satisfies the following standards: it is subdued in color; can be covered

92. *See id.*
93. *See Goldman*, 106 S. Ct. at 1312.
94. *Lemon*, 91 S. Ct. at 2111.
95. *Goldman*, 106 S. Ct. at 1311.
96. *Lemon*, 91 S. Ct. at 2111.
97. *Goldman*, 106 S. Ct. at 1312; *Singh*, 109 F. Supp. 3d at 72.
98. *Singh*, 109 F. Supp. 3d at 72.
99. *Id.* at 74.
100. *Id.* at 74.
101. *Id.* at 76.
102. *Id*.
103. *Singh*, 109 F. Supp. 3d at 77.

by standard military headgear; has no writing, symbols, or pictures; and does not interfere with the functioning of protective clothing.[104] "Soldiers are not authorized to wear religious headgear that does not meet these requirements while in uniform unless they have received a religious accommodation."[105] The Army grants religious accommodation requests "unless the accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, good order, discipline, safety, and/or health."[106] Men's hair "'must present a tapered appearance,' and when combed, may 'not fall over the ears or eyebrows, or touch the collar."[107] However, males "may wear wigs 'to cover natural baldness or physical disfiguration'" and women may wear long hair. Also, "men are required to 'keep their face[s] clean-shaven when in uniform, or in civilian clothes on duty.'"[108] Mustaches are accepted "as long as they are 'neatly trimmed, tapered, and tidy.'"[109]

The court used the RFRA test to determine whether Singh's religious liberty had been violated. The "'[g]overnment shall not substantially burden a person's exercise of religion' unless it can 'demonstrate that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'"[110] Here, the court determined that the defendants had not shown how accommodating Singh's religious preferences would do greater damage to the Army's compelling interests in uniformity, discipline, credibility, unit cohesion, and training," because the Army already had thousands of individuals with facial hair.[111] The Army had also previously made exceptions for Sikhs.[112] Lastly, the defendants had not proven that barring Singh from wearing a turban, beard, and growing long hair was the least restrictive means of furthering their interest.[113] Therefore, the student's motion was granted because the Army did not fulfill its obligation in proving that barring Singh from joining the ROTC while wearing a beard, turban, and long hair was in furtherance of a governmental interest and that there was no other less restrictive means to do so.

### B. RELIGIOUS RESTRICTIONS AND ACCOMMODATIONS IN THE WORKPLACE

Many public employment institutions have specific regulations that inhibit what an individual is permitted to wear. In *EEOC v. Abercrombie*

104. *Id.*
105. *Id.* at 72.
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.* at 80.
111. *Id.* at 96.
112. *Id.* at 94.
113. *Id.* at 102.

*& Fitch*, the Equal Employment Opportunity Commission (EEOC) brought a Title VII action on behalf of a Muslim job applicant against Abercrombie & Fitch for religious discrimination.[114] Abercrombie & Fitch refused to hire Samantha Elauf, a practicing Muslim, because the headscarf she wore for religious purposes conflicted with the employee dress policy.[115] EEOC contended that Abercrombie violated Title VII, which "prohibits a prospective employer from refusing to hire an applicant because of the applicant's religious practice when the practice could be accommodated without undue hardship."[116] The potential employee alleged the retailer failed to make accommodations for the applicant to wear her headscarf.[117] The courts examined whether the Title VII of the Civil Rights Act of 1964 prohibition "applies only where an applicant has informed the employer of his need for an accommodation."[118] The United States District Court for the Northern District of Oklahoma granted EEOC's motion for summary judgment as to liability and awarded $20,000 in damages to Elauf.[119] Abercrombie & Fitch appealed to the United States Court of Appeals for the Tenth Circuit, which reversed the decision and remanded the case with instructions on the grounds that "an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with the actual knowledge of his need for an accommodation."[120]

The Supreme Court of the United States granted certiorari and held "that a job applicant seeking to prove a Title VII disparate treatment claim need only show that the need for a religious accommodation was a motivating factor in the prospective employer's adverse decision, and need not show that the employer actually knew that the applicant's practice was a religious practice that required an accommodation."[121] The Title VII "disparate-treatment provision requires Elauf to show that Abercrombie (1) 'fail[ed] . . . to hire' her (2) 'because of' (3) '[her] religion.' The "because of" standard is understood to mean that the protected characteristic cannot be a 'motivating factor' in an employment decision."[122] The Court contends that part (1) of the test is fulfilled because Abercrombie failed to hire Elauf.[123] Part (3) is satisfied because "the parties concede that . . . Elauf's wearing of a headscarf is (3) a 'religious practice.'"[124]

The (2) "because of" prong was the point of controversy.[125] The Court

114. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2028.
115. *Id.* at 2030.
116. *Id.*
117. *Id.* at 2028.
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2030.
123. *Id.* at 2031.
124. *Id.*
125. *Id.*

examined the difference between knowledge and motive to figure out if the "because of" prong was satisfied.[126] "An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive."[127] However, "an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed."[128] Therefore, employment decisions should not be made "because of" applicants' religious practices.[129] An employer may have a no-headwear policy generally, but "Title VII requires otherwise-neutral policies to give way to the need for an accommodation."[130]

In addition to Muslims facing discrimination in the workplace, Sikhs are also discriminated against because of their religious traditions.[131] In *EEOC v. Autozone*, the EEOC brought a civil rights action on behalf of Mahoney Burroughs against Autozone under the Civil Rights Act of 1964.[132] EEOC alleged Autozone managers harassed Burroughs by "disparaging his religion, asking if he had joined Al-Qaeda, and whether he was a terrorist."[133] Autozone "failed to intervene when customers referred to him as 'Bin Laden' and made terrorist jokes."[134] The EEOC alleged that Autozone refused to let Mahoney wear a *turban* and *kara*, which is an obligatory part of Sikhism.[135] Because of Autozone's failure to protect Burrough's religious liberty, Autozone violated the Civil Rights Act of 1964.[136] The United States District Court, for the Eastern District of Massachusetts granted summary judgment regarding the settlement.[137] The parties came to a settlement and "in a consent decree approved by this court, . . . in addition to extensive injunctive relief, Mahoney Burroughs ought to receive $75,000.00 in monetary relief plus reasonable attorney's fees."[138]

Similarly to the Autozone case, four Sikh truckers for J.B. Hunt

126. *Id.* at 2033.
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Autozone*, slip op. at 1.
132. *Id.*
133. AUTOZONE, INC. SETTLES FOR $75,000 IN SIKH DISCRIMINATION CASE, https://americanturban.com (last visited Mar. 10, 2017) (discussing religious discrimination where Burroughs was insulted and taunted merely because he wore a *turban* and *kara* for Sikhism).
134. *Id.*
135. *Id.*
136. *Id.* Beyond the monetary relief, there is a decree that "requires Autozone to adopt a policy prohibiting religious discrimination; train its managers and human resource employees on religious discrimination and the new policy; report to the EEOC …; distribute the new policy; and a notice … to it 65,000 employees."
137. *Autozone*, slip op. at 1.
138. *Id.*

Transport Services were discriminated against in the workplace when J.B. Hunt insisted that the four Sikhs cut their beards and remove their turbans for drug testing.[139] The four Sikh applicants were denied religious accommodations during the hiring process when they requested an alternative to the company's hair sample drug testing policy along with not forcing them to remove their turbans during testing.[140] It is a horrific religious violation in Sikhism for individuals to cut their hair or remove their turbans in public.[141] The EEOC investigated the allegations and found reasonable cause to believe that J.B. Hunt failed to provide a religious accommodation and failed to hire a class of individuals due to their race, national origin, and religion, in violation of Title VII of the Civil Rights Act of 1964.[142] To avoid litigation, J.B. Hunt agreed to pay the four Sikhs $260,000 as well as "revise its drug testing policy and take steps to make its hiring process more inclusive for qualified candidates regardless of race, national origin or religion."[143]

### C. RELIGIOUS RESTRICTIONS IN THE POLICE DEPARTMENT

In addition to the military and the workplace, discrimination occurs in the police force as well. *Webb v. City of Philadelphia* discussed whether permitting Kimberlee Webb, a practicing Muslim, to wear a religious headscarf (*Khimar* or *hijab*), while on duty, would pose an undue burden on the City of Philadelphia.[144] "Webb's headscarf would cover neither her face nor her ears, but would cover her head and the back of her neck."[145] The request to wear the headscarf was denied because of Philadelphia Police Directive 78, which "prescribes the approved Philadelphia police uniforms and equipment. Nothing in Directive 78 authorizes the wearing of religious symbols or garb as part of the uniform."[146] Webb filed a complaint for the violation of Title VII of the 1964 Civil Rights Act with the EEOC and the Pennsylvania Human Relations Commission.[147] During this time, Webb arrived at work and refused to remove the headscarf and was sent home for failing to comply with Directive 78.[148] She was told that her "conduct could lead to disciplinary action," so she reported to work without a headscarf.[149] "Disciplinary charges of insubordination were subsequently brought against Webb, resulting in a temporary thirteen-day

139. Brian Melley, *Sikh Truckers Reach Settlement in Faith Discrimination Case*, ASSOCIATED PRESS (Nov. 15, 2016, 8:59 PM), http://bigstory.ap.org.
140. *Id.*
141. *Id.*
142. *J.B. Hunt Transport Settles EEOC Religious Discrimination Charge for $260,000*, *supra* note 3.
143. *Id.*
144. *Webb*, 562 F.3d at 258.
145. *Id.*
146. *Id.*
147. *Webb*, 562 F.3d at 258.
148. *Id.*
149. *Id.*

suspension."[150]

In relevant part, Webb brought an action for religious discrimination under Title VII.[151] "The District Court found that Directive 78 and [its] 'detailed standards with no accommodation for religious symbols and attire not only promote the needs for uniformity, but also enhance cohesiveness, cooperation, and the esprit de corps of the police force.'"[152] Philadelphia would suffer an undue hardship if it were forced to permit Webb and other individuals to wear religious clothing with their uniforms.[153] The District Court held Webb "failed to raise a genuine issue of material fact for the Title VII religious discrimination" claim.[154] Webb appealed this to the United States Court of Appeals for the Third Circuit. "To establish a prima facie case of religious discrimination, the employee must show: (1) she holds a sincere religious belief that conflicts with a job requirement; (2) she informed her employer of the conflict; and (3) she was disciplined for failing to comply with the conflicting requirement."[155] After establishing these factors, the employer must show either "a good-faith effort to reasonably accommodate the religious belief, or such an accommodation would work an undue hardship upon the employer."[156] There is an "'undue hardship' if it would impose more than a de minimis cost on the employer."[157]

The Third Circuit held that even though Webb established a case of religious discrimination, the police department met the burden of establishing an undue hardship.[158] The court agreed with the police department that it is more important to maintain the "perception of its impartiality by citizens of all races and religions whom the police are charged to serve and protect."[159] If Derivative 78 is not strictly enforced, "the values of impartiality, religious neutrality, uniformity, and the subordination of personal preference would be severely damaged to the detriment of the proper functioning of the police department."[160] Therefore, the Third Circuit decided to follow the Directive 78 and bar individuals from wearing religious clothing while on duty with their police uniforms.

*Riback v. L.V. Met. Pol. Dept.* also discussed alleged discrimination of an individual's religious freedom in the police. An Orthodox Jewish police officer who worked for the Las Vegas Metropolitan Police Department and

150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.* at 158–59.
154. *Id.* at 259.
155. *Id.*
156. *Id.*
157. *Id.* at 260.
158. *Id.* at 261.
159. *Id.*
160. *Webb*, 562 F.3d at 261.

wanted to wear a yarmulke and a beard to observe his Jewish customs.[161] However, "his profession requires that he shave and not wear a hat indoors."[162] Subsequent to transferring to the police's Quality Assurance department, Riback obtained permission to wear a trimmed beard and a yarmulke.[163] "After six weeks, Deputy Chief Ault noticed Riback's beard" and ordered for him to conform to the police guidelines.[164] Riback requested that the police make formal religious accommodations for his beard and yarmulke.[165] The police denied his requests on the grounds that "(1) beards prevent the proper fitting of gas masks, (2) beards provide additional means for a suspect to gain an advantage when engaged in combat with an officer, and (3) beards undermine officer uniformity."[166] They also contended that Riback could not wear his yarmulke because "wearing religious symbols would undermine officer neutrality and erode public trust."[167] Riback brought this action after the U.S. Equal Employment Opportunity Commission granted him the right to sue.[168] The court held a hearing for a preliminary injunction and enjoined the police department from punishing Riback for wearing a quarter-inch beard, but did not permit Riback to wear the yarmulke.[169] Both parties moved for summary judgment.[170]

In relevant part, the court held that the police department violated Riback's First Amendment rights in regard to the beard when they prohibited him from wearing one.[171] To reiterate the validity of the court's First Amendment finding, the "Lemon Test" can be applied to this situation and also find an Establishment Clause breach.[172] To avoid a violation under the "Lemon Test," there must be a significant secular purpose, the action must not have the primary effect of advancing or inhibiting religion, and it does not foster excessive entanglement between government and religion.[173] The significant secular purpose to oppose permitting a beard would be to promote uniformity, neutrality, and create a safer atmosphere in the field.[174] However, the action here does have the primary effect of inhibiting Judaism because the court discusses a case, *Employment Div., Dep't. of Human Res. Of Or. v. Smith*, that allows an exception for medical

161. *Riback v. L.V. Met. Pol. Dept.*, 2008 WL 3211279, at *1.
162. *Id.*
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.* at *2.
169. *Id.*
170. *Id.*
171. *Id.* at *6.
172. *Lemon*, 91 S. Ct. at 2111.
173. *Lemon*, 91 S. Ct. at 2111.
174. *Riback*, 2008 WL 3211279, at *5.

beards.[175] The court explains here how there is no strong distinction between allowing beards for medical purposes and allowing beards for religion.[176] Therefore, barring Riback from wearing a beard and yarmulke would excessively entangle the government and religion because prohibiting Riback from wearing a beard and yarmulke for religious purposes would make it appear that the government is dismissing Judaism and any religion that would need an exception.[177] Therefore, prong two and three of the "Lemon Test" are not satisfied and the court correctly held that Riback's First Amendment right was violated.[178]

Nevertheless, the court followed a previous ruling from the *Smith* case that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."[179] The police department's policy to ban hats applied to all officers, "and there is no evidence that it is motivated by religious animus."[180] Therefore, the court held it was not a violation of the federal Constitution or Title VII of the Civil Rights Act of 1964 for the police department to enforce its no headgear rule.[181]

Even though the court believed the rule was neutral, having a particular rule that bars an individual from expressing his or her religious beliefs shows an inclination against religion. The purpose of Title VII of the Civil Rights Act of 1964 is to avoid discrimination against prospective employees when employers refuse to hire an applicant to avoid accommodating a religious practice that it could accommodate without undue hardship.[182] Here, the police department argued it would be a hardship to accommodate the religious preferences because it would interfere with performance and uniformity of the crew.[183] However, there are ways around yarmulkes affecting performance. For example, many police departments and state troopers require the officers to wear hats.[184] Even though this section of the office did not, the department could allow for officers to choose to wear a hat that matches the uniform.[185]

Riback also demonstrated that "race, color, religion, sex, or national origin was a motivating factor"[186] for Riback's altercation with the police department. This violates the purpose of Title VII because the point of the

175. *Id.*
176. *Id.* at *6.
177. *See id.*
178. *See id.*
179. *Id.*
180. *Id.*
181. *See id.*
182. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2031.
183. *Riback*, 2008 WL 3211279, at *1.
184. *See Riback*, 2008 WL 3211279, at 11.
185. *See id.*
186. The Civil Rights Act of 1964, Pub. L. No. 102-166, § 107, 105 Stat. 1071, 1075 (1991).

act is to avoid religion being a motivating factor regarding hardships at work.[187] Therefore, in addition to the department not making reasonable accommodations that would not greatly interfere with its functioning, the motivating factor for barring the yarmulke was that religion would not be expressed, which is a violation of the Act.[188] The court's holding in *Riback v. L.V. Metro. Police Dept.* unfortunately enforces a law that overlooks an individual's right to religious freedom.[189]

### D. RELIGIOUS ACCOMMODATIONS IN HOLDING CELLS AND PRISONS

The courts have also protected the religious freedom of institutionalized individuals in prisons and holding cells.[190] Congress passed RLUIPA to "protect institutionalized persons who are unable freely to attend their religious needs and are therefore dependent on the government's permission and accommodation for exercise of their religion."[191] The purpose of RLUIPA is to prohibit "state and local governments from imposing 'a substantial burden on the religious exercise of a person residing in or confined to an institution' unless the government demonstrates that imposing that burden 'is the least restrictive means' of furthering a 'compelling governmental interest.'"[192] The term "'institution' includes 'a jail, prison, or other correctional facility' and 'a pretrial detention facility.'"[193]

In *Holt v. Hobbs*, the Supreme Court of the United States broadly ruled to allow religious observance in prisons.[194] A Muslim prisoner brought suit against the Director of Arkansas Department of Correction and other workers, in violation of RLUIPA, for the denial of the right to wear a half-inch beard.[195] Nevertheless, the prison permits inmates with a diagnosed skin condition to grow a one-quarter inch beard.[196] The Magistrate ruled that "beards compromised prison safety because they could be used to hide contraband and because an inmate could quickly shave his beard to disguise his identity."[197] The district court and the Court of Appeals for the Eighth Circuit adopted the Magistrate's ruling because the prison "had satisfied its burden of showing that the grooming policy was the least restrictive means of furthering its compelling security interests," and courts must "defer to prison officials on matters of security."[198]

187. *See id.*
188. *See id.*
189. *See Riback*, 2008 WL 3211279, at *10-11.
190. *See Khatib*, 639 F.3d. at 898.
191. *Id.* at 900.
192. *Id.*
193. *Id.*
194. *Holt v. Hobbs*, 135 S. Ct. 853, 853 (2015).
195. *Id.* at 856.
196. *Holt v. Hobbs*, 135 S. Ct. at 856.
197. *Id*. at 857
198. *Id*. Even though prison officials are experts in running prisons and evaluating the likely effects of altering prison rules, RLUIPA's rigorous standard must still be applied. *Id*.

Subsequently, Holt appealed the case to the Supreme Court.[199] Hobbs had to show that the refusal to allow the petitioner to grow a one-half inch beard "'(1) [was] in furtherance of a compelling governmental interest; and (2) [was] the least restrictive means of furthering that compelling governmental interest.'"[200] First, the Court held that the grooming policy substantially burdened prisoners' exercise of religion while failing to further the Department's compelling interest in preventing prisoners from hiding contraband.[201] Next, the grooming policy was not the least restrictive means of preventing prisoners from hiding contraband or preventing prisoners from distinguishing their identities.[202] Lastly, the grooming policy was underinclusive with respect to security risks.[203] "The Department already searches prisoners' hair and clothing, and it presumably examines the [one-quarter]-inch beards of inmates with dermatological conditions."[204] Hobbs did not offer a reason why the one-half inch beards cannot be searched for contraband, how a one-fourth-inch beard has different effects over a one-eighth-inch beard, or why a less restrictive means is not attainable.[205]

Although it is vital for fast and accurate identification of prisoners and shaving one's beard may interfere with identification, the policy of barring Holt from growing his beard was a violation of RLUIPA.[206] The Department could resolve the issue of accurate identification by photographing all the prisoners without beards and periodically thereafter.[207] "Once that is done, an inmate like petitioner could be allowed to grow a short beard and could be photographed again when the beard reached the [one-half-inch] limit."[208] The prison would then have a bearded and non-bearded photograph.[209] Hobbs failed to show that the "prison system is so different from the many institutions that allow facial hair [and] that the dual photo method cannot be employed."[210] Therefore, in this case, the Department's grooming policy violates RLUIPA and Holt must be permitted to grow a beard for his religious observance.

*Khatib v. County of Orange* in the Ninth Circuit additionally demonstrates a broad interpretation of the meaning of the RLUIPA

at 864.

199. *Id.* at 857.
200. *Id.* at 860.
201. *Id.* at 864.
202. *Id.*
203. *Id.* at 865.
204. *Id.* at 865 (discussing lack of contrast between prison's current rules that permit one-fourth inch beards, head hair, and clothing to be searched).
205. *Id.*
206. *Id.*
207. *Id.*
208. *Holt v. Hobbs*, 135 S. Ct. at 865.
209. *Id.*
210. *Id.*

statute.[211] Souhair Khatib, a former detainee, sued the County of Orange for allegedly violating RLUIPA "by requiring her to remove her headscarf, in public, against her Muslim religious beliefs and practice," when she was held in a county courthouse holding facility.[212] An officer ordered Khatib to remove her headscarf.[213] Having her head uncovered in front of men in public "is a 'serious breach of [Khatib's] faith and a deeply humiliating and defiling experience.'"[214] Even though she explained to the officers that her religious beliefs mandated that she wear a headscarf and begged to keep it on, the officers said either she must take it off or they would.[215] Khatib took it off, but experienced extreme "'discomfort,' 'distress,' and 'humiliat[ion].'"[216] The issue considered was "whether the Orange County Santa Ana Courthouse holding facility, where . . . individuals are detained in connection with court proceedings, is an 'institution' as defined by RLUIPA."[217]

The United States District Court for the Central District of California granted the County of Orange's motion to dismiss for failure to state a claim.[218] The district court believed that since Khatib's stay at the holding facility was temporary, unlimited religious freedom was impractical.[219] RLUIPA applies to longer-term institutions, but not short-term ones.[220] Khatib appealed this ruling to the United States Court of Appeals for the Ninth Circuit, which held that the "holding facility [at the courthouse] was an 'institution' under RLUIPA" and, therefore, was protected under the RLUIPA statute.[221] The court determined that the facility was a pretrial detention facility because it is "a facility where individuals who are not yet convicted are held pending court proceedings."[222] The court in a 2006-2007 Grand Jury Report characterized the Santa Ana facility as "'a secure detention facility located within a court building used for the confinement of persons.'"[223]

Furthermore, even though the facility is a detention facility, it also falls

211. *Khatib v. County of Orange*, 639 F.3d. 898, 898 (2011). *See also Knight v. Thompson*, 797 F.3d 934 (11th Cir. 2015). This case also discusses how the courts rule narrowly and bar religious freedom in prisons. A Native-American man challenged the prison's short-hair policy. He brought a RLUIPA case against the prison for its failure to accommodate his religious observance. The court held that the prison was not violating RLUIPA when it did not permit him to keep his hair long in observance of his religion.

212. *Khatib*, 639 F.3d at 898.

213. *Id.* at 901.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.* at 900.

218. *Id.* at 898.

219. *Id*. at 901.

220. *See id.*

221. *Khatib*, 639 F.3d at 898.

222. *Id.* at 903.

223. *Id.*

under the definition of a jail.[224] "A 'jail' is a 'building for the confinement of persons held in lawful custody.'"[225] It would fulfill this dictionary definition of a jail because the definition of a secure detention facility "falls squarely within the ordinary common definition of a 'jail.'"[226] Because the Santa Ana facility falls within the RLUIPA statute, the court supported the belief that individuals are entitled to religious freedom within public institutions, specifically jails.[227]

### E. RELIGIOUS RESTRICTIONS AND ACCOMMODATIONS FOR TEACHERS IN PUBLIC SCHOOLS

In addition to prisons, the military, and workplaces, public schools have also faced conflicting views regarding whether teachers may wear religious garb under the First Amendment and VII of the Civil Rights Act of 1964. Some courts have ruled very firmly.[228] In *United States v. Bd. of Educ.*, a teacher brought suit alleging she should be allowed to wear religious clothing in the course of her duties.[229] Alima Delores Reardon is Muslim and believes women, when in public, must cover their entire body except her face and hands.[230] "'She wore while teaching . . . a head scarf which covered her head, neck, and bosom leaving her face visible and a long loose dress which covered her arms to her wrists.'"[231] Reardon taught in this attire for many years without any issues.[232] Then, she began to substitute teach at different schools and the principals told her that "pursuant to state law, she could not teach in her religious clothing due to Pennsylvania's Garb Statute."[233] The state statute provided that "no teacher in any public school shall wear in said school or while engaged in performance of his duty as such teacher, any dress, mark, emblem or insignia indicating that fact that such teacher is a member or adherent of any religious order, sect or denomination."[234]

Reardon filed a complaint with the EEOC and the EEOC concluded that the School Board and the Commonwealth had violated Title VII.[235] The Department of Justice filed a complaint in the district court contending that the Board "(1) 'fail[ed] or refus[ed] to employ as public school teachers individuals who wear or who seek to wear garb or dress that is an aspect of their religious observance,' and (2) 'fail[ed] or refus[ed] reasonably to accommodate individuals who wear or who seek to wear garb

224. *Id.* at 904.
225. *Id.*
226. *Id.* at 905.
227. *Id.* at 898.
228. *Bd. of Educ. for Sch. Dist.*, 911 F.2d at 882.
229. *Id.*
230. *Id.* at 884.
231. *See id.* at 884.
232. *See id.* at 885.
233. *Id.*
234. *Bd. of Educ. for Sch. Dist.*, 911 F.2d at 885.
235. *Id.*

or dress . . . that is an aspect of their religious observance in practice.'"[236] However, because the Commonwealth "was not an 'employer' of Reardon within the meaning of Title VII," Title VII could not be enforced.[237] The United States District Court for the Eastern District of Pennsylvania entered judgment against the School Board and ordered the Board not to favor the Garb Statute.[238]

The Court of Appeals for the Third Circuit held, in relevant part, that to allow Ms. Reardon to wear the religious garb would have imposed undue hardship on the school board to allow her to teach in religious garb and, therefore, did not violate the VII of the Civil Rights Act of 1964.[239] "For the Board to have accommodated Ms. Reardon, it would have been required to expose its administrators to a substantial risk of criminal prosecution, fines, and expulsion from the profession."[240] The court agreed with the Board that this would be an undue hardship.[241] The Garb state statute "bans all religious attire and is being enforced by the Commonwealth in a non-discriminatory manner."[242] Therefore, the court ruled in favor of the Board and the Commonwealth and created precedent that teachers may not wear religious garb in public schools.[243]

The court's belief that accommodating Ms. Reardon would cause undue hardship and forgo religious neutrality ignores Title VII of the Civil Rights Act of 1964.[244] The court is overly concerned about the burden that accommodating religious freedom would place on the Board, even though the risks the Board faces are merely possible, and fails to emphasize the federal right individuals possess to practice or not practice a religion.[245] Also, the court discusses that the state statute is neutral toward religion.[246] However, barring individuals from wearing religious clothing is not neutral and illustrates hostile feelings toward those following religions because individuals are not allowed to practice or show any way of following a religion in public school settings.[247] Unfortunately, the Third Circuit is setting precedent to suppress religious beliefs.[248]

Similarly to *United States v. Bd. of Educ.*,[249] *Cooper v. Eugene Sch. Dist.* No. 4J also discusses barring individuals from wearing religious garb

236. *Khatib*, 639 F.3d at 885.
237. *Id.*
238. *Id.* at 886.
239. *Id.*
240. *Id.* at 890–91.
241. *Id.* at 891.
242. *Id.* at 894.
243. *Id.* at 894.
244. *See id.* at 886.
245. *See id.*
246. *Khatib*, 639 F.3d at 886.
247. *See id.*
248. *See id.* at 894.
249. *Bd. of Educ. for Sch. Dist*., 911 F.2d at 882.

in public schools.[250] Janet Cooper, a special education teacher in the Eugene public schools, became a Sikh and wore white clothes and a turban while teaching the sixth and eighth grade classes.[251] Ms. Cooper explained to the staff and students of the school that she would wear the turban and white clothing to follow the Sikhism religion.[252] "She continued to wear her white garb after being warned that she faced suspension if she violated a law against wearing religious dress at her work."[253]

The state law, ORS 342.650 declares: "No teacher in any public school shall wear any religious dress while engaged in the performance of duties as a teacher."[254] ORS 342.655 declares: "Any teacher violating the provisions of ORS 342.650 shall be suspended from employment by the district school board.[255] The board shall report its action to the Superintendent of Public Instruction who shall revoke the teacher's teaching certificate."[256] The school superintendent suspended Ms. Cooper from teaching and the Superintendent of Public Instruction revoked her teaching certificate even though she was tenured.[257] The order was challenged on constitutional grounds and the Court of Appeals "set aside revocation of [the] teaching certificate as excessive sanction under [the] First Amendment of the United States Constitution."[258] The Superintendent appealed the finding to the Supreme Court of Oregon.[259] The Supreme Court of Oregon held that

> (1) [the] religious dress statute, when correctly interpreted, did not violate [the] State's guarantees of religious freedom or [the] . . . First Amendment, and (2) revocation of [the] teaching certificate was disqualification from teaching in public schools based upon one's doing so in manner incompatible with that function, rather than 'sanction' by reason of hostility to religious and political belief.[260]

The court declared that this was a revocation of a license issue and should not be turned into a constitutional law issue.[261] However, if the court only concentrates on revoking a teaching license, it is missing the major issue that caused the revocation of the license.[262] It appears that the court merely wants to take the easy way out and not address the larger

250. *Cooper v. Eugene School Dist.*, 723 P.2d 298, 298 (1986).
251. *Id.* at 300.
252. *Id.*
253. *Id.*
254. *Id.*
255. *Cooper v. Eugene School Dist.*, 723 P.2d at 300.
256. *Id.*
257. *Id.*
258. *Id.* at 300–01.
259. *Id.* at 301.
260. *Cooper v. Eugene School Dist.*, 723 P.2d at 299.
261. *Id.* at 301.
262. *See id.*

matter causing the problem.[263] The Supreme Court of Oregon reasoned that when the state statute of ORS 342.650 can validly be applied, the revocation of a teaching certificate under ORS 342.655 is not a penalty or violation of the First Amendment of the Constitution.[264] Because the revocation "is not a withdrawal of a privilege by reason of hostility to a religious or political belief," and because Ms. Cooper was teaching in a manner incompatible with the rules for public schools, the Superintendent had a right to withdraw the license.[265] However, Ms. Cooper was teaching in a manner incompatible with the state rules because the rules barred her freedom of religion, which is a direct violation of the federal Constitution.[266] Even though the court argued this is not a federal Constitutional issue, when the "Lemon Test" is applied, there is an Establishment Clause violation.[267] To avoid a violation, there must be a significant secular purpose, the action must not have the primary effect of advancing or inhibiting religion, and it does not foster excessive entanglement between government and religion.[268]

Here, there is not a strong secular purpose to bar Ms. Cooper from wearing religious garb.[269] The purpose is to maintain religious neutrality, but by banning an individual from following his or her religion, a negative emphasis is placed on religion and is, therefore, not neutral.[270] The purpose of barring Ms. Cooper from observing Sikhism is to suppress religious beliefs from public schools.[271] By doing so, the ruling excessively entangles the government with religion in public schools.[272] Therefore, the judgment runs contrary to the "Lemon Test."[273] Furthermore, this court missed the reasoning behind why a violation of the state statute occurred and merely looked to see that a violation did occur.[274] The state statute is archaic and should not bar an individual from practicing his religion as long as he does not impose his religious views on others.[275] Consequently, the court in *Cooper v. Eugene Sch. Dist.* No. 4J incorrectly overlooked the violations of the federal Constitution and Title VII of the Civil Rights Act of 1964 because granting the accommodation does not harm others, and also only looked at the surface issues of revocation of a license and the violation of the state statute.[276]

263. *See id.*
264. *Id.* at 313.
265. *Id.*
266. *See* U.S. CONST. amend. I., *supra* note 1.
267. *Lemon v. Kurtzman*, 91 S. Ct. 2105, 2111 (1971).
268. *See* U.S. CONST. amend. I., *supra* note 1.
269. *Cooper v. Eugene School Dist.*, 723 P.2d 298, 313 (1986).
270. *Id.*
271. *See id.*
272. *See id.*
273. *See Lemon*, 91 S. Ct. at 2111.
274. *Cooper*, 723 P.2d at 313.
275. *See Cooper*, 723 P.2d at 313.
276. *See id.* at 313–14.

## CONCLUSION

Unfortunately, far too many individuals experience religious discrimination in the military, workplace, police force, prisons, and public schools. Courts have set narrow precedent when it comes to deciding religious liberty, as we seen in *Goldman v. Weinberger*, *Webb v. City of Philadelphia*, *Riback v. L.V. Metro. Police Dept.*, *Khatib v. County of Orange*, *United States v. Bd. of Educ.*, and *Cooper v. Eugene Sch. Dist. No. 4J*.[277] This has resulted in federal constitutional violations under the First and Fourteenth Amendments, as well as violations under the Title VII of the Civil Rights Act of 1964 and RLUIPA.[278] Even though courts are concerned about neutrality or uniformity, to deny an individual a right to express his or her own religion when there is no definite harm to others indicates a preference against religion.[279] Hopefully, courts will broaden their views, as they did in the *Singh v. McHugh*, *EEOC v. Abercrombie & Fitch*, *EEOC v. Autozone*, J.B. Hunt Transport Services, and the *Holt v. Hobbs* cases, to uphold an American's right to freedom of religion.[280]

277. *Goldman*, 106 S. Ct. at 1310; *Khatib*, 639 F.3d. at 898; *Webb*, 562 F.3d at 258; *Bd. of Educ. for Sch. Dist*., 911 F.2d at 882; *Cooper*, 723 P.2d at 313; *Riback*, 2008 WL 3211279, at *1.

278. *See id.*

279. *See id.*

280. *Abercrombie & Fitch Stores*, 135 S. Ct. at 2028; *Holt v. Hobbs*, 135 S. Ct. 853 (2015); *Singh*, 185 F. Supp. 3d at 201; *Autozone*, slip op. at 1; *J.B. Hunt Transport Settles EEOC Religious Discrimination Charge for $260,000*, *supra* note 3.