RELIGIOUS FREEDOM RESTORATION ACT — SUBSTANTIAL BURDEN — NINTH CIRCUIT HOLDS THAT FEDERAL CANNABIS PROHIBITION IS NOT A SUBSTANTIAL BURDEN. — *Oklevueha Native American Church of Hawaii, Inc. v. Lynch*, 828 F.3d 1012 (9th Cir. 2016).

In response to the Supreme Court's interpretation of the Free Exercise Clause in *Employment Division v. Smith*,[1] Congress enacted the Religious Freedom Restoration Act[2] (RFRA),[3] which requires judges to impose strict scrutiny on federal government action that substantially burdens the exercise of religion.[4] Because the substantial burden inquiry precedes any strict scrutiny of government action, an important question in RFRA jurisprudence is what counts as a substantial burden.[5] In *Oklevueha Native American Church of Hawaii, Inc. v. Lynch*,[6] the Ninth Circuit held that the Controlled Substances Act[7] (CSA) did not impose a substantial burden on Oklevueha's use of cannabis in its religious ceremonies.[8] In so holding, the court introduced two doctrinal uncertainties into the Ninth Circuit's substantial burden inquiry. First, the court created ambiguity as to whether "substantial" refers to the weight of the potential sanction or the importance of the restricted practice, or both. Second, to the extent the court considered "substantial" to refer to the importance of the restricted practice, it used inconsistent language as to *how* important the restricted practice must be.

Michael Rex "Raging Bear" Mooney founded the Oklevueha Native American Church of Hawaii.[9] The church's ceremonies involve

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[1] 494 U.S. 872 (1990). The Court held that the Free Exercise Clause does not give religious adherents recourse against neutral and generally applicable laws that burden their religious exercise. *See id.* at 878–79.

[2] 42 U.S.C. §§ 2000bb to 2000bb-4 (2012).

[3] Paul Horwitz, *The* Hobby Lobby *Moment*, 128 HARV. L. REV. 154, 161 (2014).

[4] *See* Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2761 & n.3 (2014) (finding that RFRA requires the government to demonstrate that the substantial burden serves a compelling interest and is the least restrictive means of serving that interest (citing 42 U.S.C. § 2000bb-1(b))). Though RFRA no longer applies to state action, *see* City of Boerne v. Flores, 521 U.S. 507 (1997), it still applies to federal government action, *see* Gonzales v. O Centro Espírita Beneficiente União do Vegetal, 546 U.S. 418 (2006).

[5] *See* Zackeree S. Kelin & Kimberly Younce Schooley, *Dramatically Narrowing RFRA's Definition of "Substantial Burden" in the Ninth Circuit — The Vestiges of* Lyng v. Northwest Indian Cemetery Protective Association *in* Navajo Nation et al. v. United States Forest Service et al., 55 S.D. L. REV. 426, 455–58 (2010) (surveying the circuits' different standards for what counts as a substantial burden).

[6] 828 F.3d 1012 (9th Cir. 2016).

[7] 21 U.S.C. §§ 801–904 (2012).

[8] *Oklevueha*, 828 F.3d at 1015–16.

[9] *Id.* at 1014. The Native American Church (NAC) filed an amicus brief *against* the Oklevueha church, disavowing the church's claimed affiliation with the NAC and making it clear

consuming peyote, cannabis, and other drugs to experience a connection with the divine.[10] Oklevueha considers this drug consumption to be a sacrament.[11] In June of 2009, federal agents seized $7000 worth of cannabis addressed to Oklevueha.[12] To preempt any prosecution under the CSA, Oklevueha filed a complaint against federal officials, seeking declaratory and injunctive relief under RFRA and other provisions.[13] Oklevueha's complaint stipulated that regular consumption of cannabis was "an essential and necessary component" of its religion.[14] The district court dismissed the complaint for lack of ripeness, as no member of the church faced any genuine threat of prosecution.[15] Plaintiffs filed an amended complaint, which the court again dismissed, as it offered little additional detail to support ripeness.[16]

The Ninth Circuit reversed, holding that plaintiffs' claims were ripe for judicial review,[17] since the June 2009 seizure was an enforcement action.[18] On remand, the district court dismissed all claims except the RFRA claim,[19] finding that plaintiffs had sufficiently pleaded a substantial burden because of the threat of criminal sanctions coupled with the claim that their religion "required" use of cannabis.[20] One year later, however, the court granted summary judgment in favor of defendants on the RFRA claim,[21] finding that Oklevueha had not presented sufficient evidence to show either that consumption of cannabis was an "exercise of religion" or that the CSA imposed a substantial burden.[22] A substantial burden was lacking because the CSA did not force plaintiffs to choose between violating their beliefs and facing

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that the NAC's Peyote Religion does *not* condone the use of cannabis. *See* Brief of Amici Curiae the National Council of Native American Churches et al. in Support of Appellees at 8–9, *Oklevueha*, 828 F.3d 1012 (No. 14-15143).

10 *Oklevueha*, 828 F.3d at 1014.

11 *Id.* at 1016.

12 Oklevueha Native Am. Church of Haw., Inc. v. Holder, 676 F.3d 829, 834 (9th Cir. 2012).

13 *Oklevueha*, 828 F.3d at 1014.

14 Oklevueha Native Am. Church of Haw., Inc. v. Holder, No. 09-00336, 2010 WL 649753, at *1 (D. Haw. Feb. 23, 2010) (quoting Complaint for Declaratory Relief & for Preliminary & Permanent Injunctive Relief at 7, *Oklevueha*, 2010 WL 649753 (No. 09-00336)).

15 *Id.* at *5–8.

16 Oklevueha Native Am. Church of Haw., Inc. v. Holder, 719 F. Supp. 2d 1217, 1219–20 (D. Haw. 2010).

17 *Oklevueha*, 676 F.3d at 839.

18 *Id.* at 836–37.

19 Oklevueha Native Am. Church of Haw., Inc. v. Holder, No. 09-00336, 2012 WL 6738532, at *1 (D. Haw. Dec. 31, 2012).

20 *Id.* at *5 (quoting First Amended Complaint for Declaratory Relief & for Preliminary & Permanent Injunctive Relief at 11, *Oklevueha*, 719 F. Supp. 2d 1217 (No. 09-00336) [hereinafter First Amended Complaint]).

21 Oklevueha Native Am. Church of Haw., Inc. v. Holder, No. 09-00336, 2013 WL 6892914, at *1 (D. Haw. Dec. 31, 2013).

22 *Id.* at *6 (quoting Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1068 (9th Cir. 2008)).

criminal sanctions: peyote, not cannabis, was their primary sacrament, and they could substitute other drugs for cannabis.[23]

The Ninth Circuit affirmed.[24] Writing for a unanimous panel, Judge O'Scannlain[25] held that plaintiffs had failed to show that the CSA imposed a substantial burden,[26] obviating the need to decide whether the use of cannabis was an "exercise of religion" at all.[27] Noting that RFRA leaves "substantial burden" undefined, the court turned to *Navajo Nation v. U.S. Forest Service*,[28] in which various Native American tribes contended that the use of recycled wastewater snow at the Snowbowl, a mountaintop resort, would desecrate lands they considered sacred.[29] *Navajo Nation* defined "substantial burden" as "when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit . . . or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions."[30] By this rule, the Native Americans' "diminishment of spiritual fulfillment" did not amount to a substantial burden because they would not be "fined or penalized in any way for practicing their religion on the [mountain lands]."[31] Applying *Navajo Nation*'s "act contrary" prong, the *Oklevueha* court found a substantial burden lacking because plaintiffs had "expressly told [the court] that foregoing cannabis [was] not contrary to their religious beliefs."[32] Plaintiffs had

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[23] *Id.* at *12. With respect to the "exercise of religion" element, the court determined that no reasonable juror would find that the church's "strongly held belief in the importance or benefits of marijuana" was "religious in nature." *Id.* at *11.

[24] *Oklevueha*, 828 F.3d at 1018.

[25] Judge O'Scannlain was joined by Judges Tallman and Milan Smith, Jr.

[26] *Oklevueha*, 828 F.3d at 1017.

[27] *Id.* at 1015–16. The court did, however, suggest agreement with the district court's conclusion that smoking cannabis was not an exercise of religion. *See id.*; *see also* Noah Feldman, *Read the Law, Judge. Pot Is a Sacrament*, BLOOMBERG VIEW (Apr. 7, 2016, 11:56 AM), https://www.bloomberg.com/view/articles/2016-04-07/read-the-law-judge-pot-is-a-sacrament [https://perma.cc/ET9A-YN5G] (warning that the court's "expression of skepticism" over whether cannabis use was an exercise of religion "signaled a bad result to come"). A finding of no substantial burden also obviated the need for the court to decide whether the government had a compelling interest in prohibiting Oklevueha's use of cannabis in its ceremonies. *Cf.* Gonzales v. O Centro Espírita Beneficiente União do Vegetal, 546 U.S. 418, 423, 426, 439 (2006) (finding, upon the government's concession that the CSA imposed a substantial burden, that the government failed to demonstrate a compelling interest for banning a sect's use of a hallucinogenic tea in its religious ceremonies). Given the factual similarities, *Gonzales* suggests that Oklevueha might have won at the compelling interest stage, *but see* United States v. Christie, 825 F.3d 1048, 1057 (9th Cir. 2016) (finding that the government did have a compelling interest in prohibiting religious use of cannabis because of the risk of diversion to nonreligious users), which highlights the significance of RFRA claimants losing at the substantial burden stage: when this happens, the government does not even have to justify its actions under the compelling interest test.

[28] 535 F.3d 1058 (9th Cir. 2008).

[29] *Id.* at 1063.

[30] *Id.* at 1070.

[31] *Id.*

[32] *Oklevueha*, 828 F.3d at 1016.

told the court that cannabis was an optional, substitute drug they used in addition to or in place of peyote, their primary sacramental drug. Moreover, they had failed to allege that "peyote [was] unavailable or that cannabis serve[d] a unique religious function."[33]

The court then sought to reconcile its holding with *Burwell v. Hobby Lobby Stores, Inc.*,[34] and *Holt v. Hobbs*,[35] where, in both instances, the Supreme Court had found a substantial burden readily present.[36] In *Hobby Lobby*, Christian owners of a closely held business successfully sought a RFRA exemption from the Department of Health and Human Services contraceptive mandate.[37] In finding that the mandate imposed a substantial burden on the religious owners by forcing them to choose between providing abortifacients and facing significant financial penalties,[38] the Court warned that the substantial burden inquiry should not become an inquiry into the plausibility of a claimant's religious beliefs.[39] The *Oklevueha* court insisted that it was heeding *Hobby Lobby*'s warning because it merely found that plaintiffs' religious beliefs, by their own admission, held cannabis out only as a substitute drug, not as a required substance.[40] In *Holt*, a Muslim inmate successfully sought an exemption from an Arkansas prison's beard-grooming policy.[41] The *Oklevueha* court found *Holt* distinguishable because growing a beard was a "dictate of [the inmate's] religious faith,"[42] whereas using cannabis was not a matter of "religious obedience" for Oklevueha's members, since other substances served the same religious function.[43]

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[33] *Id.* As to where plaintiffs made these fatal statements, the court only noted that "their counsel at oral argument admitted on multiple occasions that no religious ceremonies . . . actually *require* the use of cannabis, and that cannabis is simply a substitute for peyote." *Id.* at 1017 (emphasis added). The court made no mention of the amended complaint, which had stated that use of cannabis was "required," Oklevueha Native Am. Church of Haw., Inc. v. Holder, No. 09-00336, 2012 WL 6738532, at *5 (D. Haw. Dec. 31, 2012) (quoting First Amended Complaint, *supra* note 20, at 11), but perhaps the admissions at oral argument negated this earlier statement.

[34] 134 S. Ct. 2751 (2014).

[35] 135 S. Ct. 853 (2015).

[36] *See id.* at 862 (finding that the plaintiff "easily" showed a substantial burden); *Hobby Lobby*, 134 S. Ct. at 2775 (stating that the Court had "little trouble" finding that the contraceptive mandate substantially burdened the plaintiffs' exercise of religion).

[37] *Hobby Lobby*, 134 S. Ct. at 2759, 2764–66.

[38] *Id.* at 2775.

[39] *Id.* at 2778.

[40] *Oklevueha*, 828 F.3d at 1016–17.

[41] *Holt*, 135 S. Ct. at 859. *Holt* actually involved the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5 (2012), but RLUIPA allows plaintiffs "to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Holt*, 135 S. Ct. at 860 (quoting Gonzales v. O Centro Espírita Beneficiente União do Vegetal, 546 U.S. 418, 436 (2006)).

[42] *Holt*, 135 S. Ct. at 862.

[43] *Oklevueha*, 828 F.3d at 1017. The court concluded its opinion by rejecting plaintiffs' challenge to the dismissal of their claim under the American Indian Religious Freedom Act (AIRFA),

Despite the court's seemingly straightforward application of *Navajo Nation*, *Oklevueha* nonetheless left in its wake two doctrinal uncertainties surrounding the Ninth Circuit's substantial burden inquiry. First, the court arguably diverged from *Navajo Nation* by suggesting that "substantial" refers to the importance of the underlying religious practice, instead of (or in addition to) the weight of the potential sanction. *Oklevueha* also sowed confusion as to *how* important the restricted practice must be, since it linked the concept of substantial burden to restrictions on both obligatory practices *and* practices serving unique religious functions.

The first way in which *Oklevueha* contributed to doctrinal uncertainty was by offering an interpretation of the word "substantial" distinct from the sense in which *Navajo Nation* used the term, at least on the surface. Professor Chad Flanders recently illuminated the dual connotation of "substantial":

> There are at least two things that "substantial" could modify. First, it could be that the government has to put substantial or heavy pressure on you to violate your religious beliefs [such as the large fine in *Hobby Lobby*]. But it could also be that the government has to pressure you to violate your religious beliefs in some substantial or serious way. For example, maybe the government is asking you to violate a particularly important tenet of your religion, not just some discretionary one.[44]

Oklevueha interpreted "substantial" in the second way, in terms of the importance of the restricted practice. There was no question that the CSA threatened criminal penalties for anyone using cannabis, but plaintiffs explicitly admitted that cannabis use was discretionary, as opposed to a matter of "religious obedience."[45] Under this view, the government can impose whatever otherwise-valid penalties it wants, so long as these penalties do not restrict *obligatory* practices.[46]

Oklevueha's use of "substantial" in this second sense is significant because *Navajo Nation* — the controlling Ninth Circuit precedent — used "substantial" in the *first* sense that Flanders describes, that is, in terms of the weight of the potential sanction. This usage is evident from *Navajo Nation*'s statement that the plaintiffs in that case did not face a substantial burden because they would not be "fined or penalized in any way for practicing their religion on the [mountain lands]."[47]

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42 U.S.C. § 1996; the court agreed with the district court that AIRFA did not create an enforceable cause of action. *Oklevueha*, 828 F.3d at 1017 (citing United States v. Mitchell, 502 F.3d 931, 949 (9th Cir. 2007)).

44 Chad Flanders, *Substantial Confusion About "Substantial Burdens"*, 2016 U. ILL. L. REV. ONLINE 27, 28–29.

45 *Oklevueha*, 828 F.3d at 1017.

46 Or, as discussed below, so long as these penalties do not restrict religious practices that serve a unique religious function. *See id.* at 1016.

47 Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1070 (9th Cir. 2008).

There was no substantial burden because "[t]he action of the government was not of the form, 'do this, or else pay a price.'"[48] Thus, *Navajo Nation* was focused on the lack of any potential sanction; it was not explicitly concerned, as would later be the case in *Oklevueha*, with whether the plaintiffs' religious practices were obligatory. This distinction between *Oklevueha* and *Navajo Nation* finds support in Professor Noah Feldman's critique of *Oklevueha*. He argues that *Oklevueha*'s reference to religious obligation imposed a new, heightened, and erroneous substantial burden standard.[49]

However, *Oklevueha* did not necessarily misread *Navajo Nation*, since, as Flanders himself recognizes, the two potential connotations of "substantial" need not be mutually exclusive.[50] That is, a substantial burden could encompass "*substantial* pressure to *substantially* violate [one's] religion — that the pressure is strong *and* affects a really important or vital part of [one's] beliefs."[51] On this theory, *Navajo Nation* did not have to consider the relative importance of the plaintiffs' religious practices because there was no substantial *pressure* at issue — the upgrade imposed no criminal or civil penalties on the plaintiffs, who were still guaranteed access to the mountain for religious purposes.[52] Additionally, as *Oklevueha* itself suggested, the concept of religious obligation may have already been implicit in *Navajo Nation*'s rule that a substantial burden exists when individuals are coerced to *act contrary* to their religious beliefs.[53] On this reading, then, *Oklevueha* enshrined the Ninth Circuit's substantial burden standard as among the most demanding in the nation[54] by linking *Navajo Na-*

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[48] Flanders, *supra* note 44, at 28.

[49] *See Bloomberg Law: Native Americans Denied Pot Use* (Bloomberg Radio Apr. 8, 2016) [hereinafter Interview with Noah Feldman], http://www.bloomberg.com/news/audio/2016-04-08/bloomberg-law-native-americans-denied-pot-use-audio [https://perma.cc/4DFJ-YWYX] (interviewing Feldman, who argues that *Oklevueha* "rais[ed] the burden on religious groups" by establishing "requirements that the court has not previously put on [them]"); *see also* Feldman, *supra* note 27 ("[R]eligious-freedom law contains no principle that a substantial burden exists only when acting or refraining from action would be contrary to religious belief. A substantial burden exists whenever the government interferes with the performance of a religiously meaningful act.").

[50] *See* Flanders, *supra* note 44, at 29.

[51] *Id.* (third emphasis added).

[52] *Navajo Nation*, 535 F.3d at 1070.

[53] *See Oklevueha*, 828 F.3d at 1016 ("[N]othing in the record demonstrates that a prohibition on cannabis forces Mooney and Oklevueha to choose between obedience to their religion and criminal sanction, such that they are being 'coerced to act contrary to their religious beliefs.'" (quoting *Navajo Nation*, 535 F.3d at 1070)).

[54] *See* Kelin & Schooley, *supra* note 5, at 455 (arguing that with its decision in *Navajo Nation*, the Ninth Circuit "joined the Fourth Circuit and the D.C. Circuit in embracing the most limited approach" to the substantial burden inquiry). Zackeree Kelin and Kimberly Schooley's assertion is further evidence that the concept of religious obligation was implicit in *Navajo Nation*'s "act contrary" rule, since the Fourth and D.C. Circuits had explicitly deployed the language of religious obligation when defining a substantial burden. *See id.* at 455–56.

tion's "act contrary" rule to the language of religious *obligation*, which previous Ninth Circuit cases had not explicitly done.[55] Still, it remains to be seen whether religious obligation will now be the dispositive factor in the substantial burden analysis, or whether the weight of the potential sanction will also be a factor in cases like *Navajo Nation* where no criminal or civil penalties are in play.

In any event, the court used more than just the language of religious obligation, creating doctrinal confusion *within* the second sense of "substantial" as well. At two points in the opinion, the court stated that one defect in Oklevueha's evidence was that it had failed to show "that peyote is unavailable or that cannabis serves a unique religious function," as distinct from the function of peyote and other available drugs.[56] By using this language of "uniqueness" in addition to the language of "religious obedience," the court elided two distinct concepts, since a practice that serves a unique religious function is not necessarily religiously obligatory.[57] For example, even if cannabis elicited a distinct type of transcendental experience, it would not follow that the Oklevueha church necessarily required members to smoke cannabis in addition to peyote during their ceremonies — peyote could still be the primary, and the only required, sacramental drug.[58] Indeed, having to forgo the unique type of experience that cannabis may induce sounds

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[55] *See* Ruiz-Diaz v. United States, 703 F.3d 483, 486 (9th Cir. 2012) ("[T]he challenged regulation . . . does not prevent [the plaintiffs] from practicing their religion."); Snoqualmie Indian Tribe v. FERC, 545 F.3d 1207, 1214 (9th Cir. 2008) ("The Tribe's arguments that the dam interferes with the ability of tribal members to practice religion are irrelevant to whether the . . . project . . . coerces them into a Catch-22 situation: exercise of their religion under fear of civil or criminal sanction.").

[56] *Oklevueha*, 828 F.3d at 1016; *see also id.* at 1017 ("[Plaintiffs] have stated in no uncertain terms that many other substances including peyote are capable of serving *the exact same religious function* as cannabis." (emphasis added)).

[57] To be sure, *Oklevueha* presented a situation in which cannabis use was not obligatory *because* it served no unique religious function — it was readily substitutable. *See id.* at 1017. Thus, it makes sense that the court would offer the two concepts as rough proxies for one another. But this situational equivalency belies a logical distinction between the two.

[58] Another example is that of wine in Catholic Mass. It serves a unique religious function by becoming the Blood of Christ. *See* CATECHISM OF THE CATHOLIC CHURCH 299 (Geoffrey Chapman rev. ed. 1999). Nonetheless, consumption of the wine is not obligatory. *See id.* at 314 ("[C]ommunion under the species of bread alone makes it possible to receive all the fruit of Eucharistic grace."); *cf.* Feldman, *supra* note 27 (providing the example of marriage, a sacrament with a unique function but which "is not an obligation of all Catholics"). Perhaps it could be said that the wine does *not* serve a unique religious function, *see* CATECHISM OF THE CATHOLIC CHURCH, *supra*, at 314 ("Christ is sacramentally present under each of the species [of bread and wine] . . . ."), but if so, then prohibition of wine, as applied to Catholics, would be permissible under *either* reading of *Oklevueha*. *Cf.* Feldman, *supra* note 27 ("[C]onsider the rule in Jewish law that one should sanctify the Sabbath with wine, but may use grape juice if no wine is available. It cannot be that the state may ban wine because alternatives are allowed in a pinch.").

very much like the sort of diminishment of spiritual fulfillment that *Navajo Nation* explicitly said did not amount to a substantial burden.[59]

Parsing the inconsistent language of *Oklevueha*, then, we see that a substantial burden might encompass restrictions either on religiously obligatory practices or on optional religious practices serving unique functions. Adding further complexity, Feldman argues that the underlying religious practice need not even serve a unique function, since "[a] substantial burden exists whenever the government interferes with the performance of a religiously meaningful act."[60] The variance among these concepts — obligatory as distinct from unique, unique as distinct from meaningful — points to an open doctrinal question internal to the second sense of how Flanders describes "substantial": how "important"[61] must a restricted religious practice be for there to be a "substantial" burden? By mentioning both uniqueness and obligation, and by seemingly conflating the two concepts, *Oklevueha* serves as a prime example of the doctrinal confusion circulating in the lower courts on this question.[62]

In sum, *Oklevueha* added uncertainty to the substantial burden inquiry, an already uneven doctrine among the circuits. What's more, lurking behind the unresolved doctrinal questions is *Oklevueha*'s acknowledgement of *Hobby Lobby*'s warning that courts must not make the substantial burden analysis an inquisition into a plaintiff's religious beliefs and their plausibility.[63] Even before *Hobby Lobby*, courts had expressed concern that a high substantial burden threshold could elicit impermissible judicial inquiries into religious doctrine.[64] These lingering challenges — doctrinal and otherwise — indicate that cases like *Oklevueha*, in which a substantial burden is not obviously present, will continue to complicate RFRA jurisprudence in the shadow of decisions like *Hobby Lobby*.

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[59] *See* Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1070 (9th Cir. 2008) ("[T]he diminishment of spiritual fulfillment — serious though it may be — is not a 'substantial burden' on the free exercise of religion.").

[60] Feldman, *supra* note 27. Indeed, Feldman contends that the Supreme Court, in *Holt*, interpreted "substantial burden" as something encompassing more than just restrictions on obligatory practices. Interview with Noah Feldman, *supra* note 49.

[61] Flanders, *supra* note 44, at 29.

[62] *See* Kelin & Schooley, *supra* note 5, at 455–58 (describing a three-way circuit split on the proper substantial burden standard).

[63] *See Oklevueha*, 828 F.3d at 1016.

[64] *See* Ford v. McGinnis, 352 F.3d 582, 593 (2d Cir. 2003) (Sotomayor, J.) ("To confine the protection of the First Amendment to only those religious practices that are mandatory would necessarily lead us down the unnavigable road of attempting to resolve intra-faith disputes over religious law and doctrine." (citing Thomas v. Review Bd., 450 U.S. 707, 716 (1981))). A parallel problem may exist at the compelling interest stage — for example, one sect was forced to defend its religious practices against allegations that they were unsafe. *See* Gonzales v. O Centro Espírita Beneficiente União do Vegetal, 546 U.S. 418, 426 (2006) ("The UDV [sect] countered by citing studies documenting the safety of its sacramental use of *hoasca* . . . .").