Constitutional Law—First Circuit Questions Correctional Facility's Blanket Ban on Inmate Preaching—*Spratt v. Rhode Island Department of Corrections*, 482 F.3d 33 (1st Cir. 2007)

The Religious Land Use and Institutionalized Persons Act (RLUIPA) protects the religious freedom of individuals confined to government institutions.[1] Enacted in 2000, RLUIPA prohibits mental and correctional facilities from imposing substantial burdens on the religious exercise of persons residing therein, unless the facility can show a compelling interest effectuated in a narrowly tailored manner.[2] In *Spratt v. Rhode Island Department of Corrections*,[3] the United States Court of Appeals for the First Circuit considered whether the blanket ban on inmate preaching by the Rhode Island Department of Corrections (RIDOC) constituted a permissible restriction on religious exercise within the purview of RLUIPA.[4] The First Circuit held that under RLUIPA, RIDOC must affirmatively demonstrate that the regulation is the least restrictive means of achieving a compelling interest, rather than merely asserting it.[5]

On December 20, 1995, Wesley Spratt was involved in a robbery in

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1. *See* 42 U.S.C. § 2000cc-1 (2006) (codifying Religious Land Use and Institutionalized Persons Act). RLUIPA provides that

> No government shall impose a substantial burden on the religious exercise of a person . . . confined to an institution . . . 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.

Id. § 2000cc-1(a) (establishing standard of review under RLUIPA). For the purposes of RLUIPA, an institution is "owned, operated, or managed by, or provides services on behalf of any State . . . which is . . . a jail, prison, or other correctional facility." *Id.* § 1997(1) (defining institution).

2. *See id.* § 2000cc-1 (requiring strict scrutiny analysis); *see also* City of Boerne v. Flores, 521 U.S. 507, 534 (1997) (identifying strict scrutiny analysis as most demanding test under constitutional law). When imposing a substantial burden on religious exercise, an institution must show the burden furthers a compelling interest and does so by the least restrictive means possible. 16A AM JUR. 2D *Constitutional Law* § 427 (2007) (interpreting RLUIPA). Previously, the Supreme Court applied a rational basis test to inmates' constitutional claims. *See* Turner v. Safley, 482 U.S. 78, 89 (1987) (establishing reasonable-relation test).

3. 482 F.3d 33 (1st Cir. 2007).

4. *Id.* at 38 (discussing burden on RIDOC to show ban on inmate preaching survives strict scrutiny review). RIDOC qualifies as an institution that provides correctional facility services on behalf of the state and therefore is subject to RLUIPA. *See* 42 U.S.C. § 1997 (defining institutions). RIDOC bore the burden of demonstrating that the ban furthered the compelling government interest of maintaining prison security and that it accomplished this interest by the least restrictive means. 482 F.3d at 38.

5. 482 F.3d at 41-42 (requiring detailed explanation for RIDOC's reasoning that ban constitutes least restrictive means). While RIDOC asserted a compelling government interest, it failed to provide an adequate basis for its assertion that the blanket ban was the least restrictive means possible. *Id.* at 39-40.

downtown Providence that resulted in a parking lot attendant's death.[6] The state tried Spratt before a jury on five charges and he was convicted of three, including murder.[7] Spratt received a life sentence, which he is currently serving in the maximum security unit of the Adult Correctional Institute (ACI) in Rhode Island.[8]

While incarcerated at ACI, an institution that receives federal funding, Spratt began preaching to other inmates during weekly religious services under the supervision of an ordained minister.[9] Spratt preached for a period of seven years without incident or interference by prison officials.[10] In 2003, however, officials informed Spratt that RIDOC policy prohibited inmate preaching, and he would be disciplined if he continued to preach.[11] Spratt objected to the policy both verbally and in writing.[12]

After exhausting his internal remedies without relief, as required by the Prison Litigation Reform Act, Spratt filed a complaint against RIDOC in the United States Court for the District of Rhode Island, asserting that the facility's policy violated his rights under the First Amendment, the Fourteenth Amendment, and RLUIPA.[13] The district court granted summary judgment to RIDOC on all claims, including the RLUIPA claim, finding that RIDOC had met its burden of proof on each required element.[14] On appeal, the First Circuit

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6. State v. Spratt, 742 A.2d 1194, 1196-97 (R.I. 1999) (outlining circumstances of robbery leading Spratt to shoot parking lot attendant).

7. State v. Spratt, 742 A.2d 1194, 1197 (R.I. 1999) (detailing grand jury indictment).

8. 482 F.3d at 35 (noting Spratt currently serving life at ACI). While Spratt preached in a maximum security facility, at ACI, the maximum security facility is not the highest security area; rather, the High Security Center is. Brief of Plaintiff-Appellant at 10, Spratt v. R.I. Dep't of Corr., 482 F.3d 33 (1st Cir. 2007) (No. 06-2038), available at 2006 WL 3892401.

9. 482 F.3d at 35 (detailing Spratt's religious awakening followed by commitment and devotion to preaching). Although Spratt became an ordained minister in 2000 through the Universal Life Church, he continued to preach under the direction of prison clergy. *See id.* at 35, 39.

10. *Id. at 35* (noting Spratt expressed his religious devotion through preaching to other inmates).

11. *Id.* (stating policy enforced following change in wardens). RIDOC policy states that prison clergy must schedule, supervise, and direct all religious services within the facility. *Id.*

12. *Id.* at 35 (detailing Spratt's attempts to seek redress within facility). At first, Spratt informally complained to the warden in person, but later followed up with a written complaint to the facility director. *Id.* The director of RIDOC initially responded to Spratt's written complaint and denied Spratt's request for intervention because Spratt was not an acknowledged clergy member. *Id.* However, Spratt was ordained in 2000. *Id.* RIDOC later conceded that its initial explanation was incomplete and the correct reason was that inmates were not permitted to preach at all. *Id.* at 40.

13. *See* 42 U.S.C. § 1997(e) (2006) (requiring prisoners to exhaust administrative remedies before bringing suit); 482 F.3d at 35 (stating claims originally proceeded under by Spratt). Spratt's original complaint asserted claims arising under the First Amendment, the Fourteenth Amendment, and the Religious Freedom Restoration Act (RFRA). *Id.* In 1997, the Supreme Court held RFRA unconstitutional as applied to states because it exceeded Congress's power to abrogate the state's sovereign immunity through section 5 of the Fourteenth Amendment. *See* City of Boerne v. Flores, 521 U.S. 507, 529, 534-35 (1997). Noting that Spratt would likely refile his complaint under RLUIPA, the court and parties elected to treat his claim as arising out of RLUIPA. 482 F.3d at 36.

14. 482 F.3d at 36-37 (reiterating decision of district court). The district court granted summary judgment in favor of RIDOC under the First and Fourteenth Amendment claims initially, but stayed the RLUIPA claim

reversed the decision of the district court and remanded it for further proceedings to allow RIDOC an opportunity to demonstrate, rather than merely assert, that Spratt's preaching raised security concerns sufficient to outweigh the statutory presumption against restricting religious exercise.[15]

The First Amendment to the United States Constitution protects, among other things, the free exercise of religion, including the right to preach.[16] Congress has attempted to supplement this constitutional protection with statutes prohibiting the creation and enforcement of laws that substantially burden the free exercise of religious practices.[17] In September 2000, Congress passed RLUIPA to protect inmates who are dependent on correctional facilities to provide accommodation for their religious exercises.[18]

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pending resolution of a Supreme Court case currently on the docket regarding the constitutionality of RLUIPA. *Id.* at 36. Following the Supreme Court's decision in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), the district court subsequently granted summary judgment to RIDOC on the RLUIPA claim as well. 482 F.3d at 36. The district court found that Spratt met his burden of proof in showing that preaching is a form of religious exercise that would be substantially burdened if banned by RIDOC. *Id.* at 38-39. The court also found, in response, RIDOC met its burden of proof showing such regulation was necessary to achieve a compelling government interest and was accomplished by the least restrictive means possible. *Id.*

15. 482 F.3d at 42-43 (recognizing where clear factual dispute present, summary judgment not appropriate disposition in district court). The First Circuit held that RIDOC's mere statement that its ban was the least restrictive means possible was insufficient, and that it needed to actually show that it was. *Id.* at 43. The First Circuit remanded the case to allow both parties to provide further evidence and arguments on whether the blanket ban on inmate preaching is the least restrictive means possible to further the compelling interest. *Id.*

16. U.S. CONST. amend. I (providing freedom of religion to individuals); *see* McDaniel v. Paty, 435 U.S. 618, 626 (1978) (asserting preaching as form of religious exercise). Inmates in correctional facilities are afforded the same protections under the First Amendment as ordinary citizens. *See* Cruz v. Beto, 405 U.S. 319, 322 (1972) (affirming prisoners' First Amendment right to freedom of religion); DAVID RUDOVSKY, AN AMERICAN CIVIL LIBERTIES HANDBOOK: THE RIGHTS OF PRISONERS, THE BASIC ACLU GUIDE TO A PRISONER'S RIGHTS 61 (1973) (reiterating prisoners do not shed First Amendment rights at prison door).

17. *See Religious Freedom Restoration Act of 1993,* Pub. L. No. 103-141, 107 Stat. 1488, *invalidated by*, City of Boerne v. Flores, 521 U.S. 507 (1997) (establishing RFRA, later declared unconstitutional); *see also* 42 U.S.C. § 2000cc-1 (2006) (establishing RLUIPA); *supra* note 1 (outlining RLUIPA); *supra* note 13 (providing explanation and basis for RFRA's unconstitutionality). In 1993, responding to the Supreme Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), Congress passed RFRA in an attempt to restore a heightened standard of strict scrutiny in claims against regulations that substantially burden religious exercise. *See* Kevin M. Powers, Note, *The Sword and the Shield: RLUIPA and the New Battle Ground of Religious Freedom*, 22 BUFF. PUB. INT. L.J. 145, 154 (2004) (noting RFRA's strict scrutiny test applies when determining if government's regulation substantially burdens religious exercise); *see also* Cutter v. Wilkinson, 544 U.S. 709, 714 (2005) (examining congressional efforts to mandate heightened scrutiny for acts burdening religious exercise); MARCI A. HAMILTON, GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW 216 (2005) (noting Supreme Court applied strict scrutiny to laws affecting religious exercise, even facially neutral and generally applicable ones); *Developments in the Law—In the Belly of the Whale: Religious Practice in Prison*, 115 HARV. L. REV. 1891, 1893-95 (2002) (summarizing substantial congressional interventions relating to religious exercise claims). The essential difference between RFRA and RLUIPA is how the statutes define religious exercise. *See* Navajo Nation v. U.S. Forest Serv., 479 F.3d 1024, 1032 (9th Cir. 2007) (holding religious exercise under RLUIPA includes any form of religious exercise even if not specifically compelled by religion).

18. *See* Cutter v. Wilkinson, 544 U.S. 709, 721 (2005) (summarizing basis for RLUIPA's protection of prisoners); *see also* Roman P. Storzer & Anthony R. Picarello, Jr., *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON. L. REV. 929, 929-30 (2001) (noting President Clinton signed RLUIPA on September 22, 2000).

Under RLUIPA, correctional facilities may not impose a substantial burden on the religious exercise of their inmates, unless the restriction survives a strict scrutiny review.[19] If an inmate can show that his religious freedom is substantially hindered by the restriction, the correctional facility must prove that the burden, although substantial, furthers a compelling government interest and is carried out in the least restrictive means possible.[20] In passing RLUIPA, Congress noted that due deference should be afforded to prison officials when reviewing their policies, and subsequently, the Supreme Court declared prison security a compelling government interest.[21] When determining whether a prison has furthered its interest by using the least restrictive means, however, courts have not yet aligned their approaches.[22]

RLUIPA sets forth the standard of review for religious exercise claims brought by inmates in correctional facilities. *See* Cutter v. Wilkinson, 544 U.S. 709, 715-16 (2005). Congress created RLUIPA in response to the Supreme Court's holding in *City of Boerne v. Flores*, which held RFRA was unconstitutional as applied to the states. *See* Cutter v. Wilkinson, 544 U.S. 709, 714-15 (2005); Navajo Nation v. U.S. Forest Serv., 479 F.3d 1024, 1032 (9th Cir. 2007) (noting RLUIPA passed in response to Supreme Court finding RFRA unconstitutional as applied to states); 16A AM JUR. 2D *Constitutional Law* § 427 (2007) (summarizing basis for RLUIPA); Sarah E. Vallely, Comment, *Criminals Are All the Same: Why Courts Need to Hold Prison Officials Accountable for Religious Discrimination Under the Religious Land Use and Institutionalized Persons Act*, 30 HAMLINE L. REV. 191, 196-97 (2007) (describing Congress's intent to protect inmates as suspect class). Following the enactment of RLUIPA, circuit courts split over whether the act unconstitutionally violated the First Amendment's Establishment Clause. *See* Cutter v. Wilkinson, 544 U.S. 709, 718 (2005) (noting split in circuit courts following enactment of RLUIPA). The Supreme Court later declared the provision of RLUIPA applicable to institutionalized persons compatible with the Establishment Clause of the First Amendment. *See* Cutter v. Wilkinson, 544 U.S. 709, 720 (2005) (acknowledging RLUIPA not barred by Establishment Clause).

19. 42 U.S.C. § 2000cc-1 (requiring courts apply strict scrutiny standard in religious exercise claims brought by inmates). RLUIPA applies when a program that receives federal financial assistance imposes a burden on the free exercise of religion. Cutter v. Wilkinson, 544 U.S. 709, 715-16 (2005). RIDOC accepts federal funding and is therefore subject to RLUIPA. *See id.* at 716 (noting every state accepts federal funding for its prisons). Historically, the Supreme Court applied a minimum rationality test to constitutional law claims. *See* Carolene Products Co. v. United States, 323 U.S. 18, 31-32 (1944) (refusing to strike down legislation so long as rational basis found); Pierce v. Soc'y of Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 535 (1925) (requiring constitutional rights abridged by legislature have reasonable relationship to legitimate government interest). Between 1963 and 1990, the Supreme Court issued a series of decisions that strayed from the minimum rationality test in a few cases. *See* Thomas v. Review Bd. Of Ind. Employment Sec. Div., 450 U.S. 707, 718 (1981) (articulating least restrictive means analysis); Wisconsin v. Yoder, 406 U.S. 205, 228 (1972) (asserting state's interest in compelling attendance valuable but insufficient to meet burden); Sherbert v. Verner, 374 U.S. 398, 403 (1963) (articulating need for compelling state interest); *see also* HAMILTON, *supra* note 17, at 216 (noting cases where strict scrutiny standard applied).

20. 482 F.3d at 38 (illustrating elements of claim under RLUIPA).

21. Cutter v. Wilkinson, 544 U.S. 709, 717 (2005) (stating congressional intent when passing RLUIPA). Prisoner safety is a compelling state interest. *Id.* at 722-23; *see also* Anderson v. Angelone, 123 F.3d 1197, 1199 (9th Cir. 1997) (determining who leads religious activity amongst prisoners affects safety); Hans Toch & James R. Acker, *Accommodation, Sponsorship, and Religious Activities in Prison*, 42 No. 3 CRIM. L. BULL. 1 (2006) (suggesting prison administrators need not accommodate religious exercises where safety concerns prevail).

22. *Compare* Warsoldier v. Woodford, 418 F.3d 989, 999 (9th Cir. 2005) (requiring institution demonstrate consideration of less restrictive means before adopting questioned restriction), *and* O'Bryan v. Bureau of Prisons, 349 F.3d 399, 401 (7th Cir. 2003) (requiring officials demonstrate means used are least restrictive), *with* Hamilton v. Schriro, 74 F.3d 1545, 1554 (8th Cir. 1996) (noting correctional facilities need not explore every possible alternative but some alternatives must be considered).

The Supreme Court recognized prisoner safety as a compelling government interest in *Cutter v. Wilkinson*,[23] but failed to address the standard of proof necessary to meet the least restrictive means element of RLUIPA.[24] Some circuit courts have held that before burdening an inmate's religious exercise, prison officials must actually demonstrate, not just assert, that less restrictive measures would be ineffective.[25] In *Lovelace v. Lee*,[26] the Fourth Circuit adopted a balancing test after declining to automatically accept prison administrators' justifications of prison policies.[27] The court still recognized, however, the need to give deference to prison officials' explanations of why a particular regulation is the least restrictive means of satisfying the compelling interest.[28] Likewise, in *Navajo Nation v. United States Forest Service*,[29] the Ninth Circuit concluded that even when the regulation aims to remedy safety concerns, it does not automatically justify burdening inmates' rights when analyzed under the least restrictive means test.[30]

In *Spratt v. Rhode Island Department of Corrections*, the First Circuit refused to recognize a mere assertion as sufficient evidence that a prison's policy was the least restrictive means of effectuating a compelling interest under RLUIPA.[31] The court assessed the basic elements of a RLUIPA claim and the proper burden of proof in light of the Supreme Court's analysis in *Cutter*.[32] While the First Circuit agreed that RIDOC established prison security as a compelling interest, the court was not satisfied that RIDOC's mere assertion meant the regulation was the least restrictive means.[33] The First Circuit followed the reasoning articulated by its sister circuits in concluding that RIDOC failed to present sufficient evidence to satisfy its burden under the

23. 544 U.S. 709 (2005).

24. *See* Cutter v. Wilkinson, 544 U.S. 709, 725 (2005) (failing to articulate standard of evidence for demonstrating least restrictive means element). The Court concluded only that prisoner security is a compelling interest and that courts should give deference to prison officials in this regard. *Id.*

25. 482 F.3d at 40-41 (acknowledging other circuits' approaches to evidentiary burden under least restrictive means analysis).

26. 472 F.3d 174 (4th Cir. 2006).

27. *See* Lovelace v. Lee, 472 F.3d 174, 190 (4th Cir. 2006) (balancing need for deference to prison administrators with court's obligation to not automatically accept judgments); *see also* Murphy v. Mo. Dep't of Corr., 372 F.3d 979, 988-89 (8th Cir. 2004) (remanding case for failure of facility to show least restrictive means); Weaver v. Jago, 675 F.2d 116, 119 (6th Cir. 1982) (recognizing conclusory statements of State's interest in safety inadequate to outweigh inmates' First Amendment rights). *But see* Casey v. Lewis, 4 F.3d 1516, 1521 (9th Cir. 1993) (discussing broad deference given to prison administrator's security and safety concerns).

28. *See* Lovelace v. Lee, 472 F.3d 174, 192 (4th Cir. 2006) (rejecting dissent's assertion that least restrictive means test allows courts to second guess prison officials).

29. 479 F.3d 1024 (9th Cir. 2007).

30. Navajo Nation v. U.S. Forest Serv., 479 F.3d 1024, 1045 (9th Cir. 2007) (emphasizing safety concern alone insufficient to warrant regulation without further evidence of least restrictive means).

31. 482 F.3d at 40-41 (rejecting RIDOC's assertion as sufficient to meet burden).

32. *See id.* at 38 (illustrating elements of RLUIPA claim and burden of proof set forth in *Cutter*).

33. *Id.* at 39 (requiring affirmative showing that prison security be furthered by religious regulation).

least restrictive means element of RLUIPA.[34] Accordingly, the First Circuit reversed summary judgment and remanded the case to allow RIDOC the opportunity to present sufficient evidence that the regulation in question was the least restrictive means.[35]

The First Circuit appropriately recognized that Congress's intent in enacting RLUIPA was to give due deference to prison officials in formulating prison policy.[36] The court's decision to balance the need to give deference to penological interests with the need for a sufficient demonstration of evidence is consistent with the holdings of several other circuit courts addressing this issue.[37] While the First Circuit recognized it was bound by the Supreme Court's decision in *Cutter*, recognizing prisoner safety as a compelling government interest, the court ultimately avoided articulating the standard of proof necessary to prove the least restrictive means element of RLUIPA.[38]

The First Circuit did not explicitly outline what it would require to demonstrate that a regulation is the least restrictive means, but it hinted that prison officials must explore some alternatives and explain why those alternatives would not work.[39] By requiring more than a mere assertion of least restrictive means to meet RLUIPA's burden of proof, the First Circuit indicated that the correctional facility must produce demonstrative evidence to meet its burden of proof without binding itself to a specific and potentially problematic standard.[40] Although the court's holding is not explicit in how RIDOC may meet the burden of proof on remand, the decision alluded to other circuits' assessments, implying that the First Circuit may rely on similar factors in the future.[41]

34. *Id.* at 42-43 (holding mere assertion amounts to insufficient evidence of least restrictive means). *See also supra* notes 22, 27-30 and accompanying text (discussing approach of various circuit courts to least restrictive means element); *supra* note 24 (noting Supreme Court's failure to articulate complete standard of proof for least restrictive means element).

35. 482 F.3d at 42-43 (outlining basis for court's holding).

36. *See id.* at 38-39 (asserting Congress's intent when enacting RLUIPA); *see also supra* notes 27-28 and accompanying text (discussing deference given to prison officials to determine prison policy).

37. 482 F.3d at 40 (noting deference does not result in automatic approval of regulation); *see supra* notes 22-24, 27-30 (summarizing decisions of courts on burden of proof under RLUIPA).

38. 482 F.3d at 40 (acknowledging some deference, though not absolute, should be given to prison officials); *see* Cutter v. Wilkinson, 544 U.S. 709, 725 (2005) (reiterating security in prisons compelling government interest). The Supreme Court recognized that deference should be given to prison officials, but neglected to articulate burden of proof necessary to meet least restrictive means test. *See* Cutter v. Wilkinson, 544 U.S. 709, 725 (2005).

39. *See* 482 F.3d at 41-43 (raising certain questions unanswered by RIDOC's policy). The First Circuit laid out several probative questions that suggested RIDOC did not fully consider possible alternatives to the blanket ban, holding RIDOC's actions under the circumstances insufficient. *Id.*

40. *See id.* at 40-41 (rejecting RIDOC's mere assertion as sufficient to meet burden of proof under RLUIPA). Rather than attempting to establish strict guidelines in order for a defendant to meet the least restrictive means element of its burden of proof under RLUIPA, the First Circuit instead illustrated what was unacceptable given the circumstances before the court. *Id.* at 42-43.

41. *See id.* at 39-43 (noting related decisions of Fourth, Sixth, Seventh, Eighth, and Ninth Circuits). The First Circuit's recognition of these decisions as persuasive authority indicates that the First Circuit may view

The First Circuit's unwillingness to address the Supreme Court's failure to articulate RLUIPA's burden of proof provides little guidance to future litigants.[42] By simply characterizing RIDOC's mere assertion of least restrictive means as insufficient to sustain the burden of proof, the First Circuit merely reaffirmed the basic principles of strict scrutiny analysis without providing further guidance to litigants seeking to show whether a particular prison policy is the least restrictive of the available alternatives.[43] The court's failure to articulate a standard virtually ensures that it will have to address the issue in future cases and will likely be forced to articulate more precise guidelines regarding the requisite level of proof.[44] The First Circuit's holding may have temporarily solved the problem in the present case, but such a vague opinion creates needless uncertainty until either the Supreme Court or the First Circuit provide some clarity.[45]

In *Spratt v. Rhode Island Department of Corrections*, the First Circuit considered the burden of proof placed on correctional facilities in order to show a regulation of religious practice satisfies the strict scrutiny standard under RLUIPA. The court's conclusion that a facility must do more than merely assert a restriction effectuates the interest by the least restrictive means, and instead actually demonstrate some alternatives and why they fail, remains consistent with factually similar circuit court decisions. Accordingly, if the Supreme Court addresses this issue, it will likely follow the recent trend among the circuits recognizing that although deference should be given to prison officials, courts have a duty to balance all interests involved and require a demonstration of least restrictive means, rather than a mere assertion.

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the specific evidentiary standards permissible in other courts as persuasive in the future. *See id.*

42. *See id.* at 40-41 (dismissing mere assertion as sufficient evidence); Cutter v. Wilkinson, 544 U.S. 709, 725 (2005) (failing to articulate burden of proof under least restrictive means element of RLUIPA); *see also supra* notes 24, 38 and accompanying text (describing Supreme Court and First Circuit decisions failing to address burden of proof).

43. *See* 482 F.3d at 42 (stating RIDOC must actually demonstrate least restrictive alternative); *see also supra* note 2 and accompanying text (reaffirming heightened level of scrutiny under RLUIPA and burden placed on defendant).

44. *See* 482 F.3d at 43 (remanding for presentation of additional evidence but not clearly stating requisite level of evidence needed to meet burden).

45. *See id.* (reversing and remanding to settle genuine issues of material fact). The First Circuit's decision allows each side an opportunity to provide additional evidence on the disputed matter: whether the ban on inmate preaching furthers the interest claimed, and whether RIDOC has used the least restrictive means to effectuate that interest. *See id.*