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Supreme Court Clerk's Office

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

John Thomas Entler,

Petitioner,

NO. 101392-2

MOTION TO LIMIT SCOPE OF ARGUMENT BY W-DOC RAP 8.3 AND SUBJOINED PROOF OF SERVICE

vs.

Eric Jackson et. al.,

Respondents.

I. IDENTITY OF MOVING PARTY.

1.1 COMES NOW Gathen Melchizedek (aka John T. Entler) and asks this court to limit the scope of W-DOC's arguments under RAP 8.3 (orders needed For effective and equitable review).

II. STATEMENT OF RELIEF SOUGHT.

2.1 mr. melchizedek requests under RAP 8.3 seeks the court's order to limit the scope of arguments made by W-DOC, as to the

"substantial burden" inquiry in the RLUIPA [analysis]. Mr. Melchededek request that the Court's order specifically specify that if W-DOC pre--sents arguments that is "prohibited" under the "substantial burden" analysis, that they (Respondent W-DOC and there Counsel) will be sanc--tioned and referred for disciplinary action for filing frivolous arguments.

III. STATMENT OF RELEVANT FACTS.

3.1 Through-out the trial court proceedings and the proceedings in the Court of Appeals W-DOC "frivolously" included in the "substan--tial burden" analysis issues regarding "compelling governmental interest" and "least restrictive means" arguments. These two sub--jects have nothing to do with the "substantial burden" inquiry and are in fact irrelevant to the analysis. These tactics are designed solely for the purposes of (1) misguiding the Court; (2) confusing the Court about the proper inquiry at issue; and (3) to influence the Court into issuing erroneous decisions. Mr. Melchizedek now moves the Court for an order to exclude these arguments.

IV. GROUNDS FOR RELIEF AND ARGUMENT.

4.1 RAP 8.3 states in relevant part: "Except when prohibited by statute, the ... Court has authority to issue orders, before or

after acceptance of review ... to ensure effective and equitabe review, including authority to grant ... relief to a party." RAP 8.3. Mr. Melchize-edek submits that an order in this matter is necessary before this court decides to accept review because W-DOC and their Counsel have ingaged in the 3 acts of misconduct in the trial court, and the Court of Appeals.

4.2 As the Court of Appeals recognized, as stated in Yellowbear, a burden on religious exercise rises to the level of substantial when the government "(1) requires the plaintiff to participate in an activity prohibited by a sincerely held religious belief, (2) prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief, or (3) places considerable pre-ssure on the plaintiff to violate a sincerely held religious belief." Opinion, at 9 (citing Yellowbear, 741 F.3d at 55).

4.3 The Court of Appeals in Fox v. Washington, 949 F.3d 270, 279 (6th cir. 2020) found that including the government's "compelling governmental interests" in the "substantial burden" inquiry was committing legal error. It said as to the government's interests that: "This consideration is relevant at step three, not step two. It's inclusion in the district court's analysis indicates that the court committed legal error by applying the wrong standard." Fox v. Washington, 949 F.3d at 279.

4.4 W-DOC and their Counsel's arguments regarding the "Substantial burden" analysis are "[infested]" with "Compelling governmental in-terests" arguments regarding their Policies and prison Securtity. See Brief of Respondent, at 28-50; Opinion, at 9-15. These arguments are [relevant] at [step-three], not [step-two] of the RLUIPA an-alysis. Additionally, in order to reach [step-three] the Court has to first find that mr. melchizedek's religious exercise [has been] Substantially burdened. Instead of applying the correct analysis, W-DOC and there Counsel present their "Compelling governmental interest" arguments, and then conclude that they have not sub-stantially burdened mr. melchizedek's religious exercise. See Brief of Respondent at 28-50; Opinion, at 9-15.

4.5 W-DOC and their Counsel do the exact thing with their ar-guments regarding the "least restrictive means" arguments. They present their "least restrictive means" argument and then conclude that mr. melchizedek's religious exercise has not been Substan-tially burdened. See Brief of Respondent, at 28-50. W-DOC and their counsel then ask the Court of Appeals to "[affirm]" the trial Courts ruling that mr. melchizedek's religious exercise has not been Substantially burdened. Brief of Respondent, at 28-50. These "[Frivolous]" arguments by W-DOC and there Counsel has caused the Court of Appeals to reach their "frivolous" conclusions. See Opinion, at 9-15.

4.6 By conflating RLUIPA's [step-two] with [step-three] and [step-Four] W-DOC and their counsel thus "[completely avoid]" having to address "[their]" burdens of proof under [step-three] and [step-Four]. Under the First Amendment's "rational relationship" analysis, W-DOC officials [can] rely on "broadly formulated governmental interests." See Turner v. Safley, 482 U.S 76, 89-90 (1987). But RLUIPA's "strict-scrutiny" "compelling governmental interest" analysis [demands more], it demands that the court look [beyond] broadly formulated governmental interests, and to look at (1) the harm of granting specific exemptions to mr. Melchizedek -- an individualin inquiry -- and (2) the court looks at the "marginal interests" in enforcing the interests put forth by W-DOC. Holt v. Hobbs, 574 U.S. 352, 362-63 (2015); Tucker v. Collier, 906 F.3d 295, 301-303 (5th cir. 2018); Haight v. Thompson, 763 F.3d 554, 562-63 (6th cir. 2014); Yellowbear v. Lampert, 741 F.3d 48, 59-60 (10th cir. 2014).

4.7 Additionally, the United States Supreme Court said in Burwell v. Hobby Lobby, Stores Inc., 573 U.S. 682, 729-30 (2014) that costs/economics of accommodating religious exercises is relevant at [step-Four] in the "least restrictive means" analysis. See Cf Shakur v. Schriro, 514 F.3d 878, 890 (9th cir. 2008) (Denying summary judgment to prison officials because the record contained no competent evidence as to the additional cost of accommodating religious exercise). Without this evidence, or the evidence in §4.6 above, W-DOC

"[cannot]" meet either of it's burdens in the "compelling governmental interest" or "least restrictive means" analysis's.

V. CONCLUSION.

5.1 Thus, it is clear that unless this Court enters an order under RAP 8.3 limiting the arguments by W-DOC and their Counsel, they will continue to make "frivolous" arguments by conflating RLUIPA's [step-two] with [step-three] and [step-four]. And as shown, these "frivolous" arguments have already caused the trial court and the Court of Appeals to issue "clearly erroneous" rulings. This Court should not condone these "frivolous" arguments in these proceedings.

I declare under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Signed this 16th day of December, 2022

Signed: Galhen Melchizedek

Galhen Melchizedek, #964471
(aka John T. Entler) Pro-se
Monroe Correctional Complex
P.O. Box 888
Monroe, WA. 98272

VI. SUBJOINED PROOF OF SERVICE.

I declare under the penalty of perjury under the laws of the State of Washington that on the 16th day of December, 2022 that a copy of this motion was sent to:

Katherine Joy Faber
Vanessa James
Office of the Attorney General
P.O. Box 40116
Olympia, WA. 98504

by electronic Filing at the Monroe Correctional Complex through the Prisoner electronic Filing System.

Signed this 16th day of December, 2022

Signed: Galhen Melchizedek

Galhen melchizedek, #964471
(aka John T. Entler) Pro-se
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Monroe, WA 98272

/ / /

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