

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4365

ALABAMA & COUSHATTA TRIBES OF TEXAS,
a sovereign Indian Nation, ET AL.,

Plaintiffs-Appellees,

v.

TRUSTEES OF THE
BIG SANDY INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Texas
(9:92CV170)

(March 31, 1994)

Before POLITZ, Chief Judge, JONES, Circuit Judge, and FULLAM*,
District Judge:**

PER CURIAM:

This case is on appeal from the grant of a preliminary injunction against trustees and officials of the Big Sandy Independent School District, an injunction that prevented their enforcement against Native American students of provisions of the school dress code prohibiting the wearing of long hair.

* Senior District Judge of the Eastern District of Pennsylvania, sitting by designation.

** Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court grounded its action on the First Amendment protection for free exercise of religion as a hybrid claim with appellees' exercise of free speech, the right of parents to control their children's education, and procedural due process. The district court believed this approach was justified in the wake of Employment Division v. Smith, 494 U.S. 872, ____ S.Ct. ____ (1990).

Between the date of the district court's order and the oral argument of this case, Congress passed and the President signed into law the Religious Freedom Restoration Act of 1993 ("RFRA"), P.L. 103-141, 107 Stat. 1488, 42 U.S.C. § 2000bb (Nov. 16, 1993). The purpose of the RFRA was to restore the compelling interest test for free exercise cases to the status it held before the Supreme Court decided Smith.

The RFRA will plainly affect the district court's analysis of ultimate relief in this case. But we, too, cannot ignore the significance of RFRA to a just resolution of this appeal. First, RFRA took effect only one school semester after the preliminary injunction had been issued. Second, RFRA now guides analysis of what had been, after Smith, a very tricky area of constitutional law. It would be a misuse of our judicial resources to review the district court's interpretation of Smith, which applies at most to a brief time span. It is further appropriate to defer ruling on appellees' claim for relief under the Constitution when a statute has been enacted that may well afford them relief.

A preliminary injunction is an equitable remedy that may be granted upon a demonstration of four criteria:

- (1) there is a substantial likelihood of success on the merits;
- (2) the injuries threatened if the conduct is not enjoined will be irreparable and irrevocable;
- (3) the threatened injuries far outweigh any real harm to defendants; and
- (4) the granting of preliminary injunctive relief is in the public interest.

Mississippi Power & Light v. United Gas Pipeline Company, 760 F.2d 618, 621 (5th Cir. 1985). Passage of RFRA has considerably modified in appellees' favor an otherwise difficult constitutional hurdle on the first prong of this test that had been imposed by the Smith decision. Thus, whether or not injunctive relief should have been initially awarded by the district court, appellees' opportunity to justify it has markedly improved during the course of this appeal. Neither the parties nor the district court, however, has had an opportunity carefully to brief the RFRA.

Based on this background, for two reasons -- to forestall our ruling on a difficult constitutional question when that course of action has become unnecessary, and to permit the district court initially to construe appellees' rights in light of RFRA -- the court will remand this case for reconsideration. The preliminary injunction will remain in place pending reconsideration. The court may choose to hear additional evidence and to consolidate its final

ruling with a reconsideration of preliminary injunctive relief based on RFRA. While this result may appear to be unusual, we believe it is dictated by considerations of judicial restraint and by the unlikelihood that appellees' position has worsened in light of the passage of RFRA.

For the foregoing reasons, the case is **REMANDED** for reconsideration in light of the Religious Freedom Restoration Act of 1993. **REMANDED** with instructions.