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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

SABIN GREGORY BARENDT,)	
)	3:08-cv-00161-LRH-WGC
Plaintiff,)	
v.)	ORDER
JIM GIBBONS, <i>et al.</i> ,)	
)	
Defendants.)	

Before the Court is Plaintiff Sabin Gregory Barendt’s (“Barendt”) Motion to Reconsider pursuant to a recent United States Supreme Court decision. Doc. #111.¹ Defendants did not file a response.

This case involved a religious accommodation claim on behalf of Barendt, an inmate with the Nevada Department of Corrections (“NDOC”) at Lovelock Correctional Center (“Lovelock”). Barendt argued that his rights had been violated under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) because he was not permitted to conduct Friday evening Shabbat candle-lighting services with a group of other Jewish inmates due to Lovelock’s policy of conducting a count of inmates on Friday evenings. Lovelock’s Chaplain authorized Barendt to participate in a candle-lighting service by himself, but this apparently did not enable Barendt to participate in Shabbat candle-lighting services with a group. Doc. #43 at 17; Doc. #49 at 8.

Both parties filed motions for summary judgment, and on February 11, 2010, the Magistrate Judge recommended that the Court grant Defendants’ motion and deny Barendt’s

¹ Refers to the Court’s docket number.

1 motion. Doc. #80.² The Court adopted the Magistrate Judge’s recommendation on March 30,
2 2010. Doc. #84. Barendt filed a Notice of Appeal, and the Ninth Circuit Court of Appeals
3 affirmed the Court’s judgment on January 25, 2012. Doc. #95. The United States Supreme
4 Court decided *Holt v. Hobbs*, 135 S. Ct. 853 (2015), on January 20, 2015. Barendt argues that
5 this case warrants reconsideration of the Court’s order granting summary judgment in favor of
6 Defendants. *See* Fed. R. Civ. P. 60(b) (permitting a court to grant relief from a final judgment);
7 *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)
8 (“Reconsideration is appropriate if . . . there is an intervening change in controlling law.”).

9 RLUIPA provides that no government entity can “impose a substantial burden on the
10 religious exercise of a person residing in or confined to an institution . . . unless the government
11 demonstrates that imposition of the burden on that person . . . (A) is in furtherance of a
12 compelling government interest; and (B) is the least restrictive means of furthering that
13 compelling interest.” 42 U.S.C. § 2000cc(a)(1). “Religious exercise” is defined as “any exercise
14 of religion, whether or not compelled by, or central to, a system of religious belief.” *Id.* §
15 2000cc-5(7)(A). *Holt* held that the Arkansas Department of Correction’s policy forbidding
16 inmates from growing a half-inch beard in observance of their Muslim beliefs violated RLUIPA
17 because the state failed to show that the policy was the least restrictive means of furthering the
18 state’s compelling interest. 135 S. Ct. at 859. The Court emphasized that the state permitted
19 prisoners to grow mustaches and allowed quarter-inch beards for medical reasons but made no
20 such exceptions for observant Muslims. *Id.* at 865-66.

21 Barendt argues that Lovelock’s policy forbidding him from participating in Friday night
22 Shabbat candle-lighting services with other Jewish inmates violates RLUIPA and *Holt* because
23 Lovelock could have imposed a less-restrictive alternative, such as counting inmates at another
24 time of the day rather than Friday night near sundown. Barendt also argues that Lovelock
25 granted exceptions to mandatory attendance for the Friday night counts in other situations.

26
27 ² Although the Magistrate Judge granted Defendants’ motion on the merits, he noted as an initial
28 matter that summary judgment in Defendants favor would also be appropriate for lack of standing
because the remedy sought by Barendt’s Complaint was not an order permitting inmates to attend Friday
night Shabbat services, but rather an injunction preventing NDOC from receiving federal funding. Doc.
#80 at 4. Thus, Barendt offered no proof that the Lovelock would change its counting procedure if
Barendt was awarded his requested remedy. *Id.*

