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NOTES

PRAYERS AND PIPELINES: RFRA'S POSSIBLE ROLE IN ENVIRONMENTAL LITIGATION

DIANA STANLEY*

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* J.D., 2020, University of Kansas School of Law; B.A., 2017, Newman University. The author is indebted to many who have reviewed and commented on this piece in its earliest and latest edition including Ariel Rhines and Dean Elizabeth Kronk Warner of the University of Utah School of Law.

INTRODUCTION

"And God said, 'Let . . . them take farmland by eminent domain, and dig a big hole in the earth and install a pipeline. Then, let gas flow through the pipe, disrupting the ecosystem which I so lovingly put in place for people and animals and plants to live and grow in peace and harmony.'"
– Sister Janet McCann, ASC[1]

Sister Therese Marie Smith does not look like an environmental revolutionary. Gray-haired and spry, one would expect to find the eighty-nine-year-old Catholic nun at Mass or, perhaps, relaxing in her favorite rocking chair.[2] And yet, she was a named plaintiff in a federal lawsuit opposing a pipeline installation—*Adorers of the Blood of Christ v. Fed. Energy Regulatory Comm'n*.[3]

Sister Therese Marie was born to a Pennsylvania Catholic family as one of eleven children.[4] She joined the Adorers of the Blood of Christ ("Adorers"), an international Catholic order, at twenty-years-old.[5] Her younger sister, Margaret, joined her at the convent and the two "sister-sisters," worked for the poor.[6] Every summer, the sisters traveled back from their ministries in schools and hospitals to help tend to the convent's farm alongside dozens of other Pennsylvanian Adorers.[7] To farm and be good stewards of the land, they

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[1] Sister Janet McCann, *A "Beautiful Order" Happens When We Respect Creation*, ADORERS OF THE BLOOD OF CHRIST (July 10, 2017), https://adorers.org/a-beautiful-order-happens-when-we-respect-creation/.

[2] Julie Zauzmer, *Catholic Nuns in Pa. Build a Chapel to Block the Path of a Gas Pipeline Planned for Their Property*, WASH. POST (July 16, 2017), https://www.washingtonpost.com/local/social-issues/catholic-nuns-in-pa-build-a-chapel-to-block-the-path-of-a-proposed-gas-pipeline/2017/07/16/0096e7ce-6a3c-11e7-96ab-5f38140b38cc_story.html.

[3] Adorers of the Blood of Christ v. F.E.R.C. (*Adorers II*), 897 F.3d 187, 189 (3d Cir. 2018); Adorers of the Blood of Christ v. F.E.R.C. (*Adorers I*), 283 F. Supp. 3d 342, 343 (E.D. Pa. 2017); *see* Transcon. Gas Pipe Line Co. v. Permanent Easement for 1.02 Acres, No. 17-1725, 2020 U.S. Dist. LEXIS 111442 (E.D. Pa. June 25, 2020); Transcon. Gas Pipe Line Co. v. Permanent Easement for 2.14 Acres, No. 17-715, 2017 U.S. Dist. LEXIS 134851 (E.D. Pa. Aug. 23, 2017).

[4] *Sister Margaret Mary Smith's Obituary*, ADORERS OF THE BLOOD OF CHRIST (Oct. 12, 2017), https://adorers.org/sister-margaret-mary-smiths-obituary/.

[5] Zauzmer, *supra* note 2 (the Adorers' name in Latin is *Adoratrices Sanguinis Christi*, hence the abbreviation after the name of sisters—ASCs).

[6] *Id.* Sister Therese's sister-sister Margaret Mary Smith, ASC (born Emma Smith) went on to become a teacher and a nurse. She died after sixty-five years as an Adorer in the midst of the Adorers' RFRA case in October 2017. ADORERS OF THE BLOOD OF CHRIST, *supra* note 4.

[7] Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope (July 23, 2017) (on file with Adorers of the Blood of Christ Archives); *see also* Zauzmer, *supra* note 2 ("[Sister Therese] Smith remembers the days when the nuns raised chickens, and sisters who tilled the fields all day would come home to the convent sunburned. For decades, the

believed, was not just a worldly task, but a spiritual duty.[8] By 2017, the number of Adorers in Pennsylvania had dwindled to just twenty-three [9] and their large convent was sold off to a Catholic nonprofit.[10] But the Adorers kept the convent's surrounding farmland—and continued to cultivate it as they always had.[11] So, when a natural gas pipeline threatened to go through their property in July 2017, the Adorers—led in part by Sister Therese—took the Federal Energy Regulatory Commission ("FERC") to court on a novel claim: FERC had violated the Religious Freedom Restoration Act ("RFRA") by approving an eminent domain easement because disturbing the land went against their religious beliefs.[12]

Unfortunately for the Adorers, their case ran aground on procedural issues because they failed to exhaust their administrative remedies.[13] But the case's

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Adorers had farmed this land themselves, beginning when they first moved to Columbia to teach Croatian immigrant schoolchildren and open the nursing home in the 1920s.").

[8] *See* Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope, *supra* note 7; Dawn Araujo Hawkins, *Q & A with Srs. Mary Alan Wurth and Janis Yaekel, Caring for Earth*, GLOBAL SISTERS REPORT (Apr. 19, 2016), https://www.globalsistersreport.org/blog/q/environment/q-srs-mary-alan-wurth-and-janis-yaekel-caring-earth-39311 ("[Dawn Araujo Hawkins]: How does environmental stewardship fit into the charism of the Adorers of the Blood of Christ? [Sister Janet] Yaekel: One of the things the Adorers of the Blood of Christ always talk about is the suffering and dying of Christ—and the Resurrection, of course. For me, personally, when I see a piece of land that's being destroyed or bulldozed or whatever, I can hear inside of me, 'This is my body, being given up for you.' And when I see polluted waters, I hear, 'This is my blood, and it's your blood that's being given up here.' So for me, it's very strongly a Precious Blood type of ministry that we do here with the Earth.").

[9] At the Columbia Province's height, there were about 200 sisters working in Pennsylvania and surrounding states. E-mail from Sister Edwina Pope, Archivist, Adorers of the Blood of Christ, to author (Jan. 31, 2019, 03:47 CST) (on file with author) ("[P]resent number for Sisters in the former Columbia Province: 23. Total number on registry for entrance in former Columbia Province: 317. Numbers at any one time around 200 at the peak."). The Columbia Province merged with Adorer communities in Illinois and Kansas to form the "US Region" in 2000. *History*, ADORERS OF THE BLOOD OF CHRIST, https://adorers.org/history/ (last visited July 31, 2020).

[10] Tom Knapp, *Adorers Losing Convent, But Not Leaving St. Anne's*, LANCASTER ONLINE (Mar. 13, 2009), https://lancasteronline.com/news/adorers-losing-convent-but-not-leaving-st-anne/article_4d336abe-a12e-5ec3-861e-0a6557d55105.html.

[11] Petition for Writ of Certiorari at 22, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187, 192 (3d Cir. 2018) (No. 17-3163) ("Another part of the property includes a 24 acre tract used to grow agricultural crop").

[12] *Adorers I*, 283 F. Supp. 3d 342, 344 (E.D. Pa. 2017).

[13] *Adorers II*, 897 F.3d 187, 192 (3d Cir. 2018); *Adorers I*, 283 F. Supp. 3d at 343. Both the District Court and the Third Circuit panel ruled that the District Court lacked subject matter jurisdiction. The Adorers filed directly in federal court rather than exhausting their administrative remedies. *Adorers II*, 897 F.3d at 190. Under the Natural Gas Act, FERC was

substantive issue remains unanswered—could RFRA be an effective tool to prevent an eminent domain taking for the purpose of installing a pipeline?

This Note asserts that while the Adorers would not prevail on the facts of their case, there is a path for another religious institution to oppose pipelines under RFRA. Part I of this Note explores the case facts of *Adorers* and the current precedents for RFRA land use suits. Section II.A analyzes why the Adorers could not prevail on their set of facts. Finally, Section II.B explains under what circumstances a plaintiff could bring a successful RFRA claim.[14]

I. BACKGROUND

Adorers was the coalescence of a thorny natural gas pipeline problem. In February 2017, natural gas company Williams Transco received final FERC approval for a "roughly two-hundred-mile-long" pipeline expansion project.[15] If an energy pipeline crosses state boundary lines, then the project developer needs FERC approval.[16] This particular pipeline's purpose was to connect producers in northeast Pennsylvania to markets in other states.[17] Researchers at Pennsylvania State University estimated the three billion dollar "Atlantic Sunrise" project would have a major positive impact on the state's economy, adding 8,000 new jobs and 870 million dollars in value added economic output.[18]

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the correct body to file a complaint, but the Adorers failed to do so before the agency's deadline. *Id.* at 195. RFRA did not give the Adorers an independent procedural remedy. *Id.* at 196. The Adorers filed a *writ of certiorari* in October 2018. Petition for Writ of Certiorari, *supra* note 11. The Supreme Court declined to accept their case.

[14] There are several areas of law that the Adorers could have relied for this, such as the Free Exercise Clause or Pennsylvania's Green Amendment. *See* PENN. CONST. art. I, § 27; DANIEL DALTON, LITIGATING RELIGIOUS LAND USE CASES 133 (2d ed. 2016). But—since the Adorers alleged RFRA—for the purposes of narrowing the discussion, this Note only covers RFRA.

[15] *Adorers II*, 897 F.3d at 190, 192. Sources refer to the pipeline owner differently. The suit named Transcontinental Gas Pipe Line, LLC. *Id.* at 190. Its parent company is Williams Partners L.P. which in turn is a subsidiary of The Williams Companies, Inc. *In re* Transcon. Gas Pipeline Co., 542 S.W.3d 703, 722 (Tex. App. 2017). Various sources—including Transco's own materials—refer to the company and the project differently, e.g. "Williams' Transco," "William Partners' Transco Pipeline," etc. For the sake of uniformity, this Note uses Williams Transco throughout.

[16] Victoria Mazzola, Note, *Putting the Pieces of the Puzzle Together: The Natural Gas Pipeline Approval Process Is a Procedural Jigsaw*, 64 VILL. L. REV. 459, 464 (2019).

[17] PA. DEP'T OF ENVTL. PROT., ATLANTIC SUNRISE PIPELINE PROJECT (2017), http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/AtlanticSunrise/Information%20Sheet%20ASR%209-11-17.pdf.

[18] Seth Blumsack, *Economic Impacts of the Atlantic Sunrise Pipeline Project*, PENN. ST. U. (Jan. 9, 2015) (unpublished manuscript), http://atlanticsunriseexpansion.com/wp-content/uploads/2015/03/AtlanticSunrise_EconomicImpactStudy.pdf.

Not all local residents shared the researchers' optimism and some opposed the eminent domain taking of their property.[19] In particular, the pipeline went through a cornfield adjacent to a convent belonging to a Catholic order of nuns, the Adorers.[20] Unbeknownst to the pipeline planners at the time, the Adorers have a unique land ethic.[21] A land ethic is a philosophy about how humans should regard and treat the land.[22] In their land ethic, the Adorers promised to "honor the sacredness of all creation" and vowed that the nuns would "seek collaborators to help implement land use policies and practices that are in harmony with [their] bioregions and ecosystems."[23] The cornfield next to their Pennsylvania community was a small part of this mission. For decades the Adorers farmed the land themselves.[24] But in recent years, the aging sisters leased the land to others, with the intent that it should remain farmland.[25] Williams Transco offered to buy an easement through the property several times, but the Adorers refused.[26] They reasoned that their land ethic affirmatively required them to, "nurture creation . . . [and] treasure land as a gift of beauty and sustenance."[27] To their minds, good religious stewardship of the land did not include installing a fossil fuel pipeline.[28]

The Adorers also pointed to other sources of Catholic theology to bolster their sincere beliefs, such as a papal encyclical on the environment, *Laudato Si*.[29] An encyclical is "a letter sent by a bishop or high church official that treats a matter

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[19] *See* Dawn White, *Group Continues Protest, Encampment Against Pipeline in Lancaster*, THE SENTINEL (Mar. 5, 2017), https://cumberlink.com/news/local/capital_region/group-continues-protest-encampment-against-pipeline-in-lancaster/article_bc8ac9aa-e688-5f5abfad-13f803cd32c6.html.

[20] *Adorers II*, 897 F.3d at 192.

[21] *Land Ethic*, ADORERS OF THE BLOOD OF CHRIST, https://adorers.org/asc-land-ethic/ (last visited Aug. 1, 2020).

[22] *See generally* ALDO LEOPOLD, *The Land Ethic*, *in* A SAND COUNTY ALMANAC & OTHER WRITINGS ON ECOLOGY AND CONSERVATION 171 (Curt Meine ed., Literary Classics of the U.S. 2013) (1949).

[23] *Land Ethic*, *supra* note 21.

[24] Zauzmer, *supra* note 2. The Adorers purchased the land in 1925. SISTER JOY JENSEN, THIS PILGRIM HOUSE: THE HISTORY OF THE COLUMBIA PROVINCE OF THE ADORERS OF THE BLOOD OF CHRIST 11–12 (ADORERS OF THE BLOOD OF CHRIST 1984). It was already a farm at that point. *Id.*

[25] Zauzmer, *supra* note 2.

[26] Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope, *supra* note 7.

[27] *Land Ethic*, *supra* note 21.

[28] Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope, *supra* note 7 ("I think of how my parents saved and worked to do so much for the earth . . . . It's the principle of the thing. Money is not the important thing. It's easy to take the money and run. But then we'd be hurting the earth, creation and all future generations.").

[29] *Adorers II*, 897 F.3d 187, 191 (3d Cir. 2018).

of grave or timely importance and is intended for extensive circulation."[30] The Adorers are a "pontifical congregation," meaning that their order is authorized directly from the Vatican and the sisters are under the direct authority of the pope.[31] As such, the Adorers could treat the encyclical like a religious organizational mandate.

Eventually, the company asked FERC for a certificate of approval to file condemnation proceedings for a right of way through the Adorers' property.[32] In July 2017, the Adorers responded by suing FERC for approving the certificate.[33] As a federal agency, FERC is subject to the Religious Freedom Restoration Act of 1993 (RFRA).[34] The Adorers' complaint alleged that FERC violated RFRA because the pipeline's installation would go against the Adorers' land ethic.[35]

In addition to filing the lawsuit, the Adorers announced they were planning an outdoor chapel on the contested land.[36] Williams Transco responded by filing an emergency motion to take "immediate control" over the property.[37] The judge overruled the motion and the Adorers dedicated the chapel.[38] It stood until October 2018 when Williams Transco finally removed the religious symbols in preparation for the pipeline installation.[39]

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[30] *Id.* at 191 n.2 (quoting *Encyclical*, WEBSTER'S THIRD NEW INT'L DICTIONARY (4th ed. 1976)).

[31] Plaintiffs' Memo. of Law in Support of Plaintiffs' Motion for Prelim. Inj. at 11, Adorers of the Blood of Christ v. F.E.R.C., 283 F. Supp. 3d 342 (E.D. Pa. 2017) (No. 17-3163).

[32] This was not the first time Transco Williams' parent company had come into conflict with nuns over a pipeline installation. Jonathan Adams, *Spirited Spat: Pipeline Battle Rages on Kentucky's 'Holy Land'*, NBC NEWS (Mar. 15, 2014, 9:32 AM), https://www.nbcnews.com/business/energy/spirited-spat-pipeline-battle-rages-kentuckys-holy-land-n46581. In 2013, a group of Kentucky nuns, the Sisters of Loretto, protested after the company announced plans to put a natural gas pipeline through their property. *Id.* Like the Adorers, the Sisters of Loretto have a religious land ethic. *Id.* The company eventually rerouted the pipeline around the Sisters of Loretto's property rather than resort to eminent domain proceedings. *Proposed Bluegrass Pipeline Route will Avoid Nuns' Land, Company Vows*, LEXINGTON HERALD LEADER (Sept. 4, 2013, 4:50 PM), https://www.kentucky.com/news/local/article44442396.html.

[33] *Adorers I*, 283 F. Supp. 3d 342, 344 (E.D. Pa. 2017).

[34] *Id.*

[35] Appellant's Brief in Support of Appeal, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5127972, at *2.

[36] Zauzmer, *supra* note 2.

[37] *Id.*

[38] *Id.*

[39] *Religious Symbols Removed by Transco/Williams*, ADORERS OF THE BLOOD OF CHRIST (Oct. 1, 2018), https://adorers.org/religious-symbols-desecrated-by-transco-williams/.

A. *History of the Religious Freedom Restoration Act of 1993*

RFRA sprang from congressional dissatisfaction with two Supreme Court decisions: *Employment Division v. Smith* and *Church of the Lukami Babula Aye, Inc. v. City of Hialeah*.[40] In *Smith*, the Supreme Court "abandon[ed]" its earlier free exercise test to hold that the government could impede on an individual's free exercise right if it was done by a neutral law.[41] *Hialeah* reaffirmed this standard, albeit clarifying the difference between neutral and non-neutral laws.[42] In response, Congress passed RFRA with the goal of protecting religious belief from all government actors—state and federal.[43] The relevant text reads:

> Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability . . . . Government may substantially burden a person's exercise of religion only if . . . in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.[44]

The Supreme Court swiftly struck down much of RFRA in *Flores v. City of Boerne*, holding that the law applied exclusively to federal actions.[45]

Congress had previously relied on the Fourteenth Amendment's enforcement clause to apply RFRA to state actors.[46] The Supreme Court parried the assumption that the Fourteenth Amendment applied with the assertion that the amendment only gave Congress the ability to remedy past abuses and did not give groups new substantive rights.[47] As the legislative history lacked examples of religious discrimination in lawmaking, Congress had overreached by applying it to state actors.[48] The end result of this constitutional discussion is that RFRA remains relevant and applicable in areas where the federal government has wide discretion, such as approvals for interstate pipelines.

In order to make a prima facie case for a RFRA claim, plaintiffs must prove there was some government action which substantially burdened their sincere religious exercise.[49] Religious exercise is broadly defined by the RFRA as "any act of religious exercise" and includes owning real property for a religious

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[40] Alan C. Weinstein, *Land Use Regulation of Religious Institutions: Balancing Planning Concerns with Constitutional and Statutory Safeguards for Religious Freedom*, *in* PROTECTING FREE SPEECH AND EXPRESSION: THE FIRST AMENDMENT AND LAND USE LAW 145, 151 (Daniel R. Mandelker & Rebecca L. Rubin eds., 2001).

[41] *Id.* at 150–51.

[42] *Id.* at 151.

[43] *Id.* at 151–52.

[44] Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1 (2012).

[45] Weinstein, *supra* note 40, at 152–53.

[46] City of Boerne v. Flores, 521 U.S. 507, 516 (1997).

[47] *Id.* at 519–20.

[48] *Id.* at 524.

[49] Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1068 (9th Cir. 2008).

purpose.[50] The three main challenges a RFRA case against a pipeline condemnation faces are: (1) did the government create a substantial burden; (2) even if the government created a burden, was there a corresponding compelling government interest; and (3) were there any available alternative means?

On the first question, the federal circuits are split on what constitutes a substantial burden for land use RFRA claims. The Tenth Circuit uses a broad interpretation for substantial burden, while the Eighth and Ninth Circuits have a narrower approach.[51] On the second question, the government may not merely allege a compelling interest in broad terms—for instance, promotion of the general welfare or "public health"—but instead must demonstrate satisfaction of the inquiry by applying the challenged law or action to the parties alleging the harm.[52] Finally, courts look to whether the agency used the "least restrictive means" in order to accomplish its goals.[53] The Supreme Court's least-restrictive-means "standard is exceptionally demanding."[54] In other words, if religious exercise is substantially burdened, then the agency must consider all other options before concluding that the compelling interest overrides RFRA's protections.

B. *Split Circuits and Substantial Burden Test*

The biggest hurdle for most RFRA cases is whether plaintiffs can meet the substantial burden prong. There are two important land use cases involving RFRA which give rise to different standards for what constitutes a substantial

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[50] Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000cc-5 (2012). "Religious exercise: (A) In general: The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief. (B) Rule: The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id.*

[51] *See* discussion *infra* Section II.B at 96–100.

[52] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 726 (2014).

[53] *Id.* at 728.

[54] *Id.*

burden.[55] The first case, *Thiry v. Carlson*,[56] is from the Court of Appeals for the Tenth Circuit and is one of the only cases involving RFRA and eminent domain. The Thirys practiced Delaware or Lenape Tribal spirituality and Quakerism.[57] When the Thirys' daughter died, they buried her on a rural property near a red boulder where the family often went to pray.[58] That same year, the Kansas Department of Transportation exercised its eminent domain power over the site for a highway project.[59]

Thiry hinged on a single question: would Kansas' taking substantially burden the plaintiffs' religious practice?[60] To decide the question, the Tenth Circuit made a deep factual inquiry into whether the Thirys would still be able to exercise their religion.[61] The court looked at everything from whether the Thirys had ever worshipped in another location to whether or not their Quaker and Native American religions allowed for grave relocation.[62] This inquiry is especially surprising considering that courts do not inquire into the level of sincerity of belief.[63] In other words, the court went digging into the theological

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[55] There is one other notable case which involves RFRA and condemnation proceedings. In Bensenville v. Fed. Aviation Admin., a church opposed relocating its cemetery for an airport expansion. 457 F.3d 52, 57 (D.C. Cir. 2006). The D.C. Circuit dismissed the case because it lacked a federal actor. As the presence of a federal actor is well established in pipeline cases, the case is irrelevant for the purposes of this RFRA discussion. Moving the St. John cemetery actually spawned another case involving religious freedom protection laws. In St. John's United Church of Christ v. City of Chi., 502 F.3d 616, 619 (7th Cir. 2007), the church opposed the eminent domain action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) which governs state zoning actions. *Id.* To prevent any state RFRA claims, the Illinois General Assembly preemptively amended the state's RFRA law months in advance to give the city unlimited authority to relocate any graves in the city in anticipation of the airport expansion. *Id.* In many ways this set of cases is indicative of many land use-religious protections because the plaintiffs were unsuccessful, but they were also able to take multiple bites at the litigation apple and slow down the development process.

[56] Thiry v. Carlson, 78 F.3d 1491, 1493 (10th Cir. 1996). In 2008, the Tenth Circuit seemed to be leaning toward reformulating their substantial burden standard. Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 662 (10th Cir. 2006) (discussing *Thiry* formulation in the context of a RLUIPA case). But as a district court noted after *Grace United*, the Tenth Circuit has not adopted a more restrictive formulation. Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 n.5 (W.D. Okla. Sept. 23, 2008).

[57] *Thiry*, 78 F.3d at 1493.

[58] *Id.* at 1494 ("The area immediately surrounding the red boulder, including the gravesite, is a place which holds special meaning for the Thirys. Diane De Fries Thiry has gone to that area to pray since she was seven years old.").

[59] *Id.* This case was decided before the Supreme Court ruled that there must be a federal actor to implicate RFRA.

[60] *Id.* at 1495.

[61] *Id.* at 1493–94.

[62] *Id.*

[63] *See* Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, (*Standing Rock II)*, 239 F. Supp. 3d 77, 90 (D.D.C. 2017).

weeds to find the substance of religious doctrine and to decide if it would be impaired. Ultimately, the court ruled against the Thirys because both Quakerism and Native American belief systems allowed for grave relocation and the Thirys could otherwise continue to exercise their religious practices.[64]

The most important takeaway from *Thiry* is the standard by which the Court evaluated "substantial burden." The Tenth Circuit utilized a broad standard, holding that in order to substantially burden religious exercise, a regulation:

> [M]ust significantly inhibit or constrain conduct or expression that manifests some central tenet of . . . [an individual's] beliefs; must meaningfully curtail [an individual's] ability to express adherence to his or her faith; or must deny [an individual] reasonable opportunities to engage in those activities that are fundamental to [an individual's] religion.[65]

Distilled down, this standard means that if plaintiffs can prove that government action makes it difficult to "express adherence" to a central tenet of their beliefs—through any form of religious exercise—then plaintiffs satisfy RFRA's substantial burden.[66] The standard is not necessarily easy to prove, but its breadth is significant juxtaposed against a narrower rule from the Ninth Circuit Court of Appeals.

In the second significant RFRA case, *Navajo Nation v. U.S. Forest Service*, the Ninth Circuit took a narrower approach and found that "substantial burden" meant the plaintiff faced a coercive choice.[67] In other words, an individual must be forced to choose between (a) modifying their behavior or (b) being subject to sanctions or the loss of benefits.[68] In *Navajo*, several Native American tribes sued to prevent a ski resort developer from spraying artificial snow made from effluent water on the San Francisco Peaks.[69] The stakes were high—several Native American nations hold the Peaks as the most sacred site in their faith tradition.[70] If the ski resort sprayed the artificial snow, then the mountains would become polluted—making them potentially unusable by the tribes to gather sacred medicinal herbs or for other rituals.[71]

Despite a lengthy dissent by Judge Fletcher, the Ninth Circuit ruled against the tribes en banc.[72] The majority pointed to the legislative history of RFRA to say that Congress intended to reinstate the Free Exercise test from case law prior

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[64] *Thiry*, 78 F.3d at 1496.

[65] *Id.* at 1495 (quoting Werner v. McCotter, 49 F.3d 1476, 1479 n.1, 1480 (10th Cir.), *cert. denied,* 115 S. Ct. 2625 (1995)).

[66] *Id.*; *see* Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008).

[67] Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1071–76 (9th Cir. 2008).

[68] *Id.*

[69] *Id.* at 1062–63.

[70] *Id.*

[71] *Id.* at 1064.

[72] *Id.* at 1074.

to *Employment Division v. Smith*.[73] In that line of cases, the main question was whether the government action created a penalty or prohibited individuals from exercising their religion.[74] In *Navajo*, practitioners were not prevented from accessing the peak or using it in worship.[75] It was only their spiritual qualms about artificial snow that kept them from going to the mountain and the "sole effect [of the action] was on tribe members' subjective spiritual experience."[76]

On the other hand, the Ninth Circuit appeared to recognize in dicta that there could be a small exception to the Free Exercise case law. In pointing to how the artificial snow would not affect the tribes' religious worship, the Court said, "[n]o plants would be destroyed or stunted, no springs polluted, no places of worship made inaccessible, or liturgy modified."[77] The inverse of this dictum is that if all of those facts were true, there may be a RFRA claim.[78] Absent the exception, however, *Navajo* is objectively harder to satisfy than *Thiry*.

While the results of *Thiry* and *Navajo* are the same—the parties seeking RFRA protection lost—their rules can have widely different applications.[79] For example, consider the facts of *Comanche Nation v. United States*.[80] In *Comanche*, the plaintiffs sued over a planned military training center on the south side of the Oklahoma Medicine Bluffs.[81] The Comanche Nation reveres Medicine Bluff as a sacred place and uses the south side as a ritual ground and an access point to ascend the Bluffs in pilgrimage.[82]

Under the *Navajo* rule, the Comanche Nation should lose: the construction did not touch the Bluffs themselves and practitioners could still use the north side of the Bluffs. But the District Court of Oklahoma relied on the *Thiry* rule instead to halt construction.[83] Ascending the southern side of the Bluffs was deemed a fundamental part of Comanche religious practice and any obstruction would "deny [them] reasonable opportunities to engage in" in that practice.[84] Significantly, the defendants in *Comanche* asked the District Court to use *Navajo*'s definition of substantial burden, but the court declined to do so, saying, "[t]he Tenth Circuit has not adopted that definition, and the Court declines to do

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[73] *Id.*

[74] *Id.* at 1086 (Fletcher, J., dissenting); *see* Thomas F. King, *Commentary: What Burdens Religion? Musings on Two Recent Cases Interpreting the Religious Freedom Restoration Act (RFRA)*, 13 GREAT PLAINS NAT. RESOURCES J. 1, 4 (2010).

[75] *Navajo Nation*, 535 F.3d at 1063–64.

[76] *Id.* at 1063.

[77] *Id.*

[78] King, *supra* note 74, at 6.

[79] *Id.* at 3–4.

[80] Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008).

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.* at *7, *17.

so in this case . . . ."[85] *Comanche* is not binding, but it shows *Thiry* is still good law in the Tenth Circuit.

Another significant difference between the two rules is that *Thiry*'s approach acknowledges the subjective spiritual experience that the government action would create. *Navajo*, in contrast, eschews the subjective for the physical practical effects.[86] In the first approach, the court is in the delicate position of deciding if the action affects a central tenet of the plaintiff's beliefs.[87] By necessity, this may require a deep inquiry into the plaintiff's religion—which comes uncomfortably close to an inquiry into the plaintiff's sincerity. As many courts have affirmed, the judiciary is supposed to tread lightly where religious sincerity is concerned and try not to make deep inquiries.[88] But the practical effects approach from *Navajo* is not much better.[89] *Navajo* avoids inquiring into the sincerity of the plaintiffs' beliefs, but instead implies that a purely subjective harm does not qualify as a legal harm.[90] The tribes or other religious groups are simply *mistaken*—the government's actions are not harming their religious exercise after all.[91]

This circuit split was in the background of the most famous contemporary RFRA land use case to date—*Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*.[92] This District of Columbia Court of Appeals case, usually called *Standing Rock II*, is part of ongoing litigation to stop or slow construction on the Dakota Access Pipeline.[93] Currently, *Standing Rock II* and *Adorers* are the only cases to challenge pipeline construction with a RFRA claim.

The Dakota Access Pipeline is an oil pipeline carrying crude oil from North Dakota shale fields to a terminal in Illinois.[94] The conduit crosses underneath the lakebed of Lake Oahe—a sacred site and the main water source for the

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[85] *Id.* at *3 n.5.

[86] King, *supra* note 74, at 6.

[87] *See id.*

[88] *Standing Rock II*, 239 F. Supp. 3d 77, 90 (D.D.C. 2017).

[89] King, *supra* note 74, at 10.

[90] *Id.* at 10–11 ("[B]ut the decisions themselves make it clear: the tribes simply do not understand their own minds or hearts, or they would realize that they are not really burdened by the government's decisions. They may be sincere, but they are misguided; only the Great White Father knows the Truth.").

[91] *Id.*

[92] *Standing Rock II*, 239 F. Supp. 3d at 80. There are several scholarly articles with a more thorough look at each of the Standing Rock Sioux Tribe's claims. *See, e.g.*, Elizabeth Bower, Note, *Standing Together: How the Federal Government Can Protect the Tribal Cultural Resources of the Standing Rock Sioux Tribe*, 42 VT. L. REV. 605 (2018); Daryl Owen, *The Untold Story of the Dakota Access Pipeline: How Politics Almost Undermined the Rule of Law*, 6 LSU J. ENERGY L. & RESOURCES 347 (2018). But *Standing Rock I* and *Standing Rock II* are beyond the scope of this Note.

[93] *Standing Rock II*, 239 F. Supp. 3d at 80.

[94] Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs (*Standing Rock I*), 205 F. Supp. 3d 4, 7 (D.D.C. 2016).

Lakota People.[95] The plaintiffs in *Standing Rock* initially opposed the pipeline installation and made claims under the National Historic Preservation Act, National Environmental Policy Act, Clean Water Act, and the Rivers and Harbors Act (*Standing Rock I*).[96] But following an unsuccessful challenge in *Standing Rock I*, the tribe sued again—this time under RFRA.[97]

Once again, the main question was whether or not the pipeline's route constituted a substantial burden.[98] First, like in *Thiry*, the court made a foray into whether the plaintiffs were relying on a sincere religious belief.[99] To the Lakota People, water used in ceremonies must be "ritually pure."[100] They use Lake Oahe's water in a number of ceremonies and the presence of the pipeline would permanently pollute it.[101] The court noted that there was already an existing pipeline that crossed the water outside of Lakota lands.[102] The real point of this discussion seemed to be similar to *Thiry*'s inquiry—the court focused on how the Lakota actually use Lake Oahe in religious practice.[103]

After taking a *Thiry*-esque look at religious practice, the D.C. Circuit decisively adopted the *Navajo* rule for substantial burden.[104] The District Court ruled that, "[a] substantial burden exists when government action puts 'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'"[105] In other words, the government action must force the individual to act or refrain from acting in some way. The installation of the Dakota Access Pipeline would not force the tribe to stop using Lake Oahe for rituals, but rather created a "spiritual harm."[106] Predictably, the court then ruled against the tribe for lacking an additional harm beyond spiritual.[107]

What does this Circuit split mean for an analysis of the *Adorers* RFRA claim? First, a *Thiry* examination of the plaintiff's sincere belief is useful to ascertain

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[95] *Standing Rock II*, 239 F. Supp. 3d at 80.

[96] *Id.* at 81.

[97] *Id.* at 81–82.

[98] *Id.* at 83, 91.

[99] *Id.* at 89–91.

[100] *Id.* at 88–89.

[101] *Id.* The plaintiffs also pointed to a Lakota prophecy that "a Black Snake that would be coiled in the Tribe's homeland and which would harm . . . [and] devour the people." *Id.* at 90.

[102] *Id.* The other pipeline crossed the Missouri River upstream of Lake Oahe. *Id.* The Defendant's position was that if the other pipeline's presence did not religiously pollute the water source, then Dakota Access Pipeline should not pollute it either. There was also a natural gas pipeline which ran underneath the lakebed. The Lakota's response was that they "were not concerned" about waters beyond Lake Oahe and that the oil pipeline was of special concern because of the Black Snake prophecy. *Id.*

[103] *Id.* at 89–90.

[104] *Id.* at 94.

[105] *Id.* at 91 (quoting Kaemmerling v. Lappin, 553 F.3d 669, 678 (D.C. Cir. 2008)).

[106] *Id.*

[107] *Id.*

what exactly the plaintiff believes and how the government action could burden its expression. Also, while *Navajo* is the favored approach for the Ninth and D.C. Circuits, their interpretation is not settled law.[108] On the one hand, the *Navajo* rule seems likely to prevail because it is easier to apply due to its clear avoidance of the sincerity inquiry and the rule ties in neatly with Supreme Court's Free Exercise caselaw. On the other hand, *Thiry*'s plain language approach is also attractive for much of the same reason—if a government act substantially impacts religious expression, then the act implicates RFRA. Due to this divide, a complete analysis of *Adorers* demands a closer look under both the *Navajo* and the *Thiry* rules.

II. THE ADORERS' UNSUCCESSFUL RFRA CLAIM AND ITS IMPLICATIONS

The Third Circuit did not rule on the substantive issue in *Adorers*: whether RFRA applies to environmental religious claims against interstate pipeline projects.[109] Neither did the Adorers' unsuccessful *writ of certiorari* to the Supreme Court resolve the issue. As a result, a court will never rule on the substance of their RFRA claim. But given the rarity of land use RFRA claims, the substance of their claim is still worth analyzing for two reasons. First, it shows how another plaintiff with similar case facts would fare on the merits. Second, it gives another application of how, despite relying on similar case law, the *Navajo* and *Thiry* rules produce different results.

In Section II.A, this Note analyzes the application of RFRA case law to the facts of *Adorers*.[110] Unfortunately for the order, the sisters do not have a viable claim under either the *Navajo* or *Thiry* rules. Section II.B goes beyond the confines of *Adorers* to analyze the policy implications of RFRA pipeline cases and what facts a future plaintiff might need to bring a successful claim.

A. *Why the Adorers' RFRA Claim Fails*

The Adorers' case would fail because they cannot meet RFRA's requirements for a suit. In particular, the Adorers' claim is not viable because: (1) they would be unable to prove they faced a substantial burden to their religious exercise under either the *Navajo* or the *Thiry* tests; (2) a compelling government interest overrides their claim; and (3) there were no alternative means available.[111]

Before even getting to the *Navajo* and *Thiry* tests, the Adorers face a problem with RFRA's definition of "religious exercise."[112] RFRA's definition for this term contemplates two avenues for religious expression: personal religious

[108] *Id.* ("RFRA does not define 'substantial burden,' and the Supreme Court has not articulated a precise definition.").

[109] *Adorers II*, 897 F.3d 187, 198 (3d Cir. 2018).

[110] *See infra* Section II.A at 102–106.

[111] *See supra* Section I.B at 96–98.

[112] Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000cc-5 (2012).

expression or using real property for a religious purpose.[113] In other RFRA land use cases, practitioners were actively using the contested sites for religious rituals. The Navajo gathered ceremonial herbs from the San Francisco Peaks,[114] the Lakota used Lake Oahe for Inipi ceremonies,[115] and the Thirys converted their property into a burial ground.[116]

The Adorers cannot lay claim to that active worship element. The nuns made headlines by installing an outdoor chapel in the pipeline's path, but did not construct the chapel until after the FERC ruling.[117] Before the condemnation proceeding, the contested land was a cornfield.[118] It did not have a defining religious feature like a burial ground or a rock formation like in the Thirys' case. Rather, the land had always been farmland—even before the nuns bought the property in the 1920s.[119]

Not only was the property farmland, but the Adorers leased the land to third parties.[120] In other words, they received a profit off the land. Federal courts have generally construed RFRA's statutory section as meaning that the religious entity cannot use the land for a secular purpose.[121] Leasing farmland for profit is generally a secular purpose.[122]

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[113] *See id.* ("(7) Religious Exercise. (A) In General. The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief. (B) Rule. The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.").

[114] Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1064 (9th Cir. 2008).

[115] *Standing Rock II*, 239 F. Supp. 3d 77, 82 (D.D.C. 2017).

[116] Thiry v. Carlson, 78 F.3d 1491, 1493 (10th Cir. 1996).

[117] Ironically, the Adorers' outdoor chapel became a place of prayer for the larger Columbia community. *See* Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope, *supra* note 7 ("Folks visit the site periodically to pray and simply soak in the beauty and good vibrations from the earth").

[118] *See* Zauzmer, *supra* note 2.

[119] JENSEN, *supra* note 24, at 11–12.

[120] Zauzmer, *supra* note 2.

[121] Calvary Christian Center v. City of Fredericksburg, 800 F. Supp. 2d 760, 772 (E.D. Va. 2011).

[122] *Cf.* Canada v. Comm'r of Internal Revenue, 82 T.C. 973, 985 (1984) (deciding for-profit farming operation not religious organization for purposes of charitable deductions) ("We simply cannot believe that if the community members were pursuing organic farming and alternative lifestyles for religious reasons, they would have thought of a for-profit pig farming corporation before a church."); Thomas v. Schmidt, 397 F. Supp. 203, 215 (D.R.I. 1975), *aff'd*, 539 F.2d 701 (1st Cir. 1976) (holding that leasing classrooms to public school district was sectarian arrangement).

In contrast to the other RFRA land use cases, the Adorers' religious exercise is fundamentally more passive in nature.[123] Their stewardship role is mostly confined to preventing the land from being developed into a commercial or industrial property.[124] There are a few anecdotal stories about occasionally going to the site to pray, but such stories are scattered across several generations of sisters.[125] The land ethic also mentions land use management, but it is not clear if this was a guiding part of their leasing arrangements or if it otherwise impacted their treatment of the site.[126]

Lacking the active worship aspect of religious expression does not automatically disqualify the Adorers' claim,[127] but it does weaken their case. Compare the potential cultural and spiritual loss among *Adorers*, *Navajo*, and *Thiry*. The latter two were extreme cases with emotional and spiritual harm on the line.[128] And neither plaintiff won in those cases. In other words, the Adorers do not start from a strong analytical position.

Additionally, the Third Circuit declined to decide the RFRA question.[129] The opinion spends time explaining the Adorers' belief in such a way that suggests that the court questioned the sisters' sincerity.[130] This may be because Williams Transco put sincerity at issue, writing, "[T]he Adorers' claim that the presence of a pipeline on their property would substantially burden their religious exercise rings hollow in light of the fact that the Adorers previously granted an easement for a natural gas pipeline to be installed on their property for their retirement community."[131]

The theological discussion in *Adorers* calls to mind *Standing Rock II* where the judge followed a similar line of reasoning.[132] In *Standing Rock II*, the Army

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[123] *Compare* Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058 (9th Cir. 2008) (ritual site), Thiry v. Carlson, 78 F.3d 1491 (10th Cir. 1996) (burial site), *and* Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621 (W.D. Okla. Sept. 23, 2008) (ritual and pilgrimage site), *with supra* note 117.

[124] *See* Zauzmer, *supra* note 2.

[125] *See id.* (discussing Sister Linda Fischer and Sister Therese Smith).

[126] *Land Ethic*, *supra* note 21.

[127] *See* Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000cc-5 (2012) (defining religious exercise).

[128] *Navajo Nation*, 535 F.3d at 1064; *Thiry*, 78 F.3d at 1493.

[129] *Adorers II*, 897 F.3d 187, 195 (3d Cir. 2018) ("By failing to avail themselves of the protections thereunder, the Adorers have foreclosed judicial review of their substantive RFRA claims.").

[130] *Id.* at 191. *Contra id.* at 197 n.10 ("[N]othing in this opinion should be construed to call into question the sincerity of the deeply-held religious beliefs expressed by the Adorers.")

[131] Brief of Appellee, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5664121, at *3.

[132] *Standing Rock II*, 239 F. Supp. 3d 77, 95–96 (D.D.C. 2017).

Corps of Engineers argued that there were other pipelines which crossed the sacred waters in the lake's tributary streams, but did not pollute it.[133]

Together, these cases exemplify the tension that results when courts open the door to inquiry on religious sincerity. Courts can better gauge the effect of the government action on the group, but such inquiries can needlessly cast doubt on the beliefs of religious groups by putting them up for debate.

1. The Adorers Cannot Succeed Under the *Navajo* or *Thiry* Tests.

Turning to the substantial burden requirement, the plaintiffs struggle under both tests. First, the Adorers are ill-equipped to meet the *Navajo* standard. *Navajo* requires that the Adorers face some type of choice.[134] The substantial burden on their religious exercise must be compelling some type of action—the individual must choose between modifying their behavior or being deprived of a benefit or subject to a sanction.[135] Here, the nuns are not being asked to build the pipeline themselves or face a fine.[136] Rather, FERC asked for an easement to go under their land.[137]

While the nuns rejected Williams Transco's easement offer, the convent was still compensated for the land taken by eminent domain.[138] Presumably, the only punishment the convent faced was not getting the premium price some of their neighbors received for acquiescing to an easement offer.[139] In other words, the Adorers were not punished for their religious practice, but for being hold out land owners in an infrastructure project.[140]

On the one hand, this land taking can be interpreted as an inconvenience rather than a sanction.[141] The pipeline condemnation does not prevent the order from practicing a particular religious practice or sacrament. The nuns can move away or administer their land ethic on other parts of their property.[142] The

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[133] *Id.* at 90.

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

[135] Brief of Appellee, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5664121, at *43; *see Standing Rock II*, 239 F. Supp. 3d at 95–96; *Navajo Nation*, 535 F.3d at 1071–76.

[136] *Adorers I*, 283 F. Supp. 3d 342, 344 (E.D. Pa. 2017) (describing the facts of the case).

[137] *Id.*

[138] Transcon. Gas Pipe Line Co. v. Permanent Easement for 2.14 Acres, No. 17-715, 2017 U.S. Dist. LEXIS 134851, at *9 (E.D. Pa. Aug. 23, 2017) (approving the condemnation on the Adorers' property and discussing compensation under the Natural Gas Act).

[139] *See generally* Christopher Serkin & Nelson Tebbe, *Condemning Religion: RLUIPA and the Politics of Eminent Domain*, 85 NOTRE DAME L. REV. 1, 44–46 (discussing the problem of religious holdout property owners in the context of RLUIPA).

[140] *Id.*

[141] *See* Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1071–76 (9th Cir. 2008).

[142] *See* Alex Geli, *Vigil Held at West Hempfield Township Chapel in Opposition to Williams Pipeline*, LANCASTER ONLINE (July 17, 2017), https://lancasteronline.com/news

condemnation proceeding is not punishing the Adorers for what they believe. If the Adorers believe that the land is better without a pipeline, they are free to continue thinking that. The right to free exercise implies that individuals must actually be exercising the right to do something. In short, the eminent domain taking made practicing the Adorers' religious practice inconvenient, but not overly burdensome.

On the other hand, simply having the pipeline on their property means that the Adorers are being deprived of the benefit of that property.[143] This feeds into the *Navajo* dictum exception to its substantial burden standard.[144] The dictum asked if (a) plants would be destroyed or stunted, (b) springs were polluted, (c) places of worship made inaccessible, or (d) "liturgy [was] modified."[145] The Adorers cannot "use" that subterranean soil in their religious practice of conservation because the pipeline would displace it. The amount of soil involved might be *de minimis*, but the place of worship is still inaccessible. Likewise, the laying of the pipe itself disrupts the land's aesthetic—at least for a few months. It also may have a long-term effect in that several nuns mentioned going to the site to pray.[146] It is not unreasonable to imagine that the nuns might be less comfortable praying on top of or in near proximity to a large interstate gas pipeline.

Another option is that this small section of soil is part of a larger liturgy. In its broadest sense, liturgy is a religious "repertoire of ideas, phrases, or observances."[147] In this case, the Adorers' customary observance is to keep the property as farmland.[148] This section of soil contributes towards that liturgy. Removing the soil would modify the practice. Unfortunately, this theory is a bridge too far. Given the background of *Navajo*, by "liturgy modified," the Ninth Circuit was likely referring to an active religious practice such the Catholic liturgical ritual of the Mass.[149] Defining the "liturgy modified" factor

/local/vigil-held-at-west-hempfield-township-chapel-in-opposition-to-williams-pipeline /article_761bf55a-6a93-11e7-9912-8b50dabf51df.html ("[Transco] Spokesman Chris Stockton in an email said . . . 'With the exception of the width of the construction right-of-way, this structure can be placed anywhere else on the property without issue.'").

[143] A perpetual right-of-way is a servitude on the property. *See Easement and Servitude*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("servitude (16c) 1. An encumbrance consisting in a right to the limited use of a piece of land or other immovable property without the possession of it; a charge or burden on an estate for another's benefit . . . Servitudes include easement . . . .").

[144] Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1063 (9th Cir. 2008).

[145] *Id.* The exception prongs (a) and (b) may be limited to the case facts of *Navajo* because the case involved the gathering of ritual herbs. Still, given the potential for a broader interpretation, an application to the case facts of *Adorers* is warranted.

[146] *See* Zauzmer, *supra* note 2.

[147] *Liturgy*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary /liturgy (last visited Nov. 8, 2020).

[148] *See* Zauzmer, *supra* note 2.

[149] *Navajo Nation*, 535 F.3d at 1063.

to allow for property management methods would make it exchangeable for any religious belief.

The facts presented by *Adorers* do not meet the requirements of Navajo's dictum exception. The pipeline is not making places of worship inaccessible. The Adorers were not worshiping underneath the ground or in the field. Their primary liturgy—the liturgy of the Catholic Mass—does not revolve around the cornfield nor is that liturgy's continued existence dependent on it. Turning to the other dictum exception factors, the Adorers cannot meet these either. While a few plants were likely destroyed in the process of installing the pipeline, any harmed plants were a temporary harm. In addition, the Adorers cut plants in the path of construction by building their outdoor chapel,[150] so arguably the amount of plants killed would be negligible. Given the lack of news coverage, presumably the project did not pollute any springs or other water sources.[151] There is always a chance of a pipeline leak, but the purpose and function of the pipeline is not to create waste streams.[152] Also, the Adorers are not using the water in any part of their observance beyond their religious conservation vision.[153]

Nor are the Adorers successful under a court applying *Thiry*'s ruling.[154] Under *Thiry*, the government must have denied the plaintiffs reasonable opportunities to engage in the fundamental activities of their religion.[155] Once again, this circles back to the thorny question of sincerity and religious inquiry. It is not clear how the court should define the fundamental activities of a religion. In *Comanche*, the Medicine Bluffs were not just a part of the tribe's religious practice, but rather the primary place in which the tribe acted out religious

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[150] *See* Dennis Sadowski, *Nuns Welcome Activists to Pray in a New Chapel Blocking Gas Pipeline's Path*, AMERICA: THE JESUIT REV. (July 17, 2020), https://www.americamagazine.org/faith/2017/07/17/nuns-welcome-activists-pray-new-chapel-blocking-gas-pipelines-path (featuring photo showing corn stalks were cut).

[151] PA. DEP'T OF ENVTL. PROT., *supra* note 17 (listing water permitting requirements for the project). Recent events, however, have put this somewhat up for debate. In September 2020, the Pennsylvania Department of Environmental Quality fined Transco for violations of the state Clean Streams Act in the pipeline's construction phase. Assessment of Civil Penalty, In the Matter of Transco. Pipe Line Co., LLC (Sept. 2, 2020), http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/AtlanticSunrise/2020-09-02_CACP2020-8-13Exhibits.pdf.

[152] Natural gas pipelines differ from oil pipelines in that when they leak, they are releasing gas and not a liquid. As a result, a natural gas leak means releasing methane into the air and not the ground. *See generally How Does the Natural Gas Delivery System Work?*, AM. GAS ASS'N, https://www.aga.org/natural-gas/delivery/how-does-the-natural-gas-delivery-system-work-/ (last visited Oct. 21, 2020); DAVID A. KIRCHGESSNER ET. AL, ESTIMATE OF METHANE EMISSIONS FROM THE U.S. NATURAL GAS INDUSTRY, ENVIRONMENTAL PROTECTION AGENCY 6, 11, 16 (2000), https://www3.epa.gov/ttn/chief/old/efdocs/methane_dec2000.pdf.

[153] *See* Knapp, *supra* note 10.

[150] Thiry v. Carlson, 78 F.3d 1491, 1496 (10th Cir. 1996).

[155] *Id.* at 1495.

rituals.[156] By forcing the tribe to go elsewhere to worship, the government denied them reasonable opportunities to do so.[157]

As stated previously, there was a denial of access in *Adorers*. But it is not clear if this denial of access was directed toward a fundamental activity. The Adorers' land ethic does not explicitly ban pipelines or fossil fuels.[158] Neither does their organization's spiritual guiding document—their constitution.[159] Likewise, the land ethic is not a tenant in the wider realm of Catholic thought.[160] From all objective criterion, this conservation belief does not appear to be a fundamental part of the Adorers' religious practice in the same way that Medicine Bluff was to the Comanche. Even if this case was set in the Tenth Circuit, it seems unlikely that a court would extend the *Thiry* rule here because there is not enough evidence to definitively say that Adorers' religious practice would be fundamentally obstructed.[161] But to take that position is to fall into the same trap of *Navajo*; the Court would be telling a religious congregation that its members are wrong to think something is a fundamental part of their religion.[162] On the other hand, to take a more subjective approach could open the door to potentially frivolous religious claims.

2. There is a Compelling Government Interest.

Next, the government interest is sufficiently compelling to offset an environmental religious claim. As evidenced by the passage of the Natural Gas Act, the federal government has a compelling national security interest in ensuring the country has adequate energy transportation systems.[163] The

[156] Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008).

[157] *Id.*

[158] *Land Ethic*, *supra* note 21.

[159] E-mail from Sister Charlotte Rohrbach, ASC, Ph.D., former Provincial of the Wichita Province of the Adorers of the Blood of Christ, to author (Sept. 11, 2020, 6:46 CST) (on file with author).

[160] *Cf.* Rachel Ann Boeckman Myslivy, A Seamless Garment of Eco-Justice: Green Sisters in Kansas 103–06 (June 17, 2013) (unpublished master's thesis, University of Kansas) https://kuscholarworks.ku.edu/bitstream/handle/1808/12948/Myslivy_ku_0099M_13082_DATA_1.pdf;jsessionid=D40C5FF27D489F45380927CB88FDD52A?sequence=1 (discussing the criticism female religious orders have received from other Catholics for their environmental spirituality and activism).

[161] *See* Thiry v. Carlson, 78 F.3d 1491, 1493 (10th Cir. 1996) (finding that moving a burial place did not fundamentally obstruct the plaintiffs' religious practice).

[162] *See* King, *supra* note 74, at 10–11 (commentary on the patronizing implications of the *Navajo* standard).

[163] *See* Transcon. Gas Pipe Line Co., LLC v. Permanent Easement for 2.14 Acres, No. 17-715, 2017 U.S. Dist. LEXIS 134851, at *30–31 (E.D. Pa. Aug. 23, 2017) ("[G]ranting the preliminary injunction is in the public interest, as the project will provide the general public throughout a vast area of the country with access to the Marcellus Shale natural gas supplies

Williams Transco pipeline was designed to aid in the production and distribution of inexpensive natural gas across four states—including the state in which the Adorers live.[164] The Adorers both live and work with access to the electrical grid.[165] The Adorers in turn, have a corresponding compelling interest in living on the electrical grid and using that energy. In fact, the Adorers' operate a nursing home in Columbia that runs on natural gas.[166] Thus, even the Adorers are served by this compelling interest.

3. There were no available alternative means.

Finally, there were no alternative means for the pipeline, but to go through the property.[167] The Adorers argued that FERC or Williams Transco could have done a diversion around their cornfield.[168] The only way to accomplish this would be to go through another landowner's property. RFRA does not give religious entities more rights than other landowners, but protects them when their religion makes them a target for discrimination.[169] Agencies are bound to

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for heating their homes and other purposes . . . . 'Congress passed the Natural Gas Act and gave gas companies condemnation power to insure that consumers would have access to an adequate supply of natural gas at reasonable prices.' Congress and FERC have found that interstate natural gas projects, and this project in particular, are in the public interest. Accordingly, this factor also weighs in favor of Transco.") (citations omitted). *See also* Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1 (2012) (requiring a compelling government interest); Natural Gas Act of 1938, 15 U.S.C.A. § 717 (West) ("[T]he business of transporting and selling natural gas for ultimate distribution to the public is *affected with a public interest*, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." (emphasis added)).

[164] PA. DEP'T OF ENVTL. PROT., *supra* note 17.

[165] *Adorers Commit to Green Energy*, ADORERS OF THE BLOOD OF CHRIST (Sept. 7, 2018) https://adorers.org/adorers-commit-to-green-energy/.

[166] Brief of Appellee, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5664121, at *3.

[167] *See id.* at *40.

[168] *See* Appellants' Brief in Support of Appeal at 12, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5127972, at *13 ("As Transco was planning the route of the Pipeline, it knew locating the Pipeline on the Adorers' Property would violate their religious beliefs, yet Transco took no steps to accommodate the Adorers' religious exercise."). The Adorers' similarly argued that a FERC Certificate allows the holder to seek route modifications and variances. *Id.*

[169] While a slightly different context, this concept appears in RFRA-related LGBT discrimination suits. *See* O'Brien v. U.S. Dep't of Health & Human Servs., 894 F. Supp. 2d 1149, 1159 (E.D. Mo. 2012), *rev'd in part, vacated in part*, 766 F.3d 862 (8th Cir. 2014) ("RFRA is a shield, not a sword. It protects individuals from substantial burdens on religious exercise that occur when the government coerces action one's religion forbids, or forbids action one's religion requires; it is not a means to force one's religious practices upon others.").

avoid religious impact within reason.[170] The Adorers were late to voice their concerns to FERC when the pipeline's route could have been more easily changed.[171] Instead, they waited until the condemnation hearings—when the rest of the pipeline had been planned out and easements negotiated and paid.[172] The courts should not reward such behavior.

Finally, the Adorers' suggestion also contradicts their substantial burden argument.[173] If the Adorers cannot experience the same burden if the pipeline went elsewhere, why can the Adorers not move their observance elsewhere by respecting and nurturing another piece of land? It seems counterintuitive that a religious organization which does not believe in fracking would encourage it to happen somewhere else.

B. *Lessons for Future RFRA Pipeline Cases*

In the wake of *Standing Rock II* and *Adorers*, it might seem like RFRA is a hopeless claim to use against an energy pipeline. There is a path forward, but the relevance and wisdom of such a claim should be discussed first. The potential of a successful RFRA claim is highly relevant. From an industry perspective, pipeline lawsuits can cause considerable delay and expense in an already long process.[174] For example, litigation for *Adorers of the Blood of Christ* lasted over a year.[175] The Dakota Access Pipeline spawned three consecutive lawsuits.[176] Industry experts have highlighted both the great difficulty in developing projects and the cancellation of one three-billion dollar project after a successful outcome in the U.S. Supreme Court.[177]

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[170] Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49668, 49668 (Oct. 6, 2017) ("Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming.").

[171] *See Adorers II*, 897 F.3d 187, 192 (3d Cir. 2018).

[172] *See id.*; Transcon. Gas Pipe Line Co., LLC v. Permanent Easement for 2.14 Acres, No. 17-715, 2017 U.S. Dist. LEXIS 134851, at *30–31 (E.D. Pa. Aug. 23, 2017).

[173] *See* Appellants' Brief in Support of Appeal at 33–35, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187 (3d Cir. 2018) (No. 17-3163), 2017 WL 5127972.

[174] *See, e.g.*, Christopher Earle, *Survey Says . . . ? An Argument for More Frontloaded FERC Public Use Provider Determinations As A Means of Streamlining the Commission's Regulatory Role over Interstate Natural Gas Pipeline Operators*, 41 WM. & MARY ENVTL. L. & POL'Y REV. 711, 739 (2017); Ted Hamilton, *The Virtues of Uncertainty: Lessons from the Legal Battles over the Keystone Xl Pipeline*, 18 VT. J. ENVTL. L. 222, 224 (2016).

[175] *Adorers II*, 897 F.3d at 192.

[176] *Standing Rock II*, 239 F. Supp. 3d 77, 80 (D.D.C. 2017).

[177] *Capitol Crude*, *Dakota Access Shutdown and the Future of US Midstream Projects* (July 13, 2020), https://www.spglobal.com/platts/en/market-insights/podcasts/crude/071320-dakota-access-shutdown-future-us-midstream (interviewing law professor James Coleman at approximately 13:30).

From a public image perspective, no company wants to be portrayed in the media as the big energy company stealing land from nuns.[178] Consider this issue framing in the Adorers' story: Williams Transco destroyed the outdoor chapel the same day the Adorers filed their *writ of certiorari* at the United States Supreme Court.[179] Regardless of whether Williams Transco planned this timing or not, this is one media area where all press is not good press.

Religious institutions also need to know if RFRA is a viable protection against pipelines. Pipeline litigation is expensive and not all religious entities have the resources of the Adorers.[180] They need to know what their legal options are so that they can advocate for themselves if they are affected by a pipeline expansion. Federal agencies will also be implicated in these lawsuits so officials should know in advance the risks associated with pipelines running through church-owned property.

Finally, institutions are going to keep suing. The Adorers are far from the only Catholic order with a land ethic and there are many other religions with environmental principles.[181] Beyond the environmental context, scholar Angela Carmella places *Adorers* as part of a wider—and growing—movement of progressive religious claims.[182] Liberal religious claims are becoming more visible and popular.[183] But current RFRA jurisprudence is maladapted for these types of cases.[184] A decisive opinion on RFRA and pipelines would give companies more certainty about an otherwise murky area of law when negotiating with religious groups for easements.

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[178] Taking a step back from the law, consider the following headlines as a casual reader: Mark Pattison, *Court Rules that Company can Take Nuns' Land to Build Natural Gas Pipeline*, AMERICAN: THE JESUIT REV. (Aug. 29, 2017), https://www.americamagazine.org/politics-society/2017/08/29/court-rules-company-can-take-nuns-land-build-natural-gas-pipeline; Harriet Sherwood, *Pennsylvania Nuns Oppose Fracking Gas Pipeline Through 'Holy' Land*, THE GUARDIAN (Jul. 19, 2017, 12:31 PM), https://www.theguardian.com/environment/2017/jul/19/pennsylvania-nuns-oppose-fracking-gas-atlantic-sunrise-pipeline; James West, *Meet the Singing, Anti-Fracking Nuns*, MOTHER JONES (Aug. 15, 2013), https://www.motherjones.com/environment/2013/08/nuns-bluegrass-pipeline-loretto/.

[179] *Religious Symbols Removed by Transco/Williams*, ADORERS OF THE BLOOD OF CHRIST, (Oct. 1, 2018), https://adorers.org/religious-symbols-desecrated-by-transco-williams/.

[180] *See, e.g.*, BP W. Coast Prods., LLC v. F.E.R.C., 374 F.3d 1263, 1293 (D.C. Cir. 2004) (estimating cumulative litigation expenses for pipeline rate proceeding and related civil litigation to be over $48 million).

[181] *See, e.g.*, *Land Ethic*, SISTERS OF ST. FRANCIS OF DUBUQUE, IOWA, https://www.osfdbq.org/who-we-are/land-ethic/ (last visited Oct. 26, 2020); *Land Ethic*, SISTERS OF PROVIDENCE OF SAINT MARY OF THE WOODS, https://spsmw.org/about/justice/white-violet-center-for-eco-justice/land-ethic/ (last visited Oct. 26, 2020). *See generally* Myslivy, *supra* note 160.

[182] Angela C. Carmella, *Progressive Religion and Free Exercise Exemptions*, 68 KAN. L. REV. 535, 593–94 (2020).

[183] *Id.* at 538.

[184] *Id.* at 539.

The other factor to consider is why or if a successful RFRA claim against a pipeline would comprise a societal benefit. Congress' intent in passing the Religious Freedom Restoration Act was to protect religious freedom.[185] Traditionally, the United States holds religious freedom in the highest regard—especially the rights of minority or unorthodox religions.[186] Larger religions have less to fear from the elected masses.[187] Likewise, beliefs about the sacredness of land are unorthodox[188] and may be held by minority religions like Native Americans.[189] Taking a step back from the law for the big picture, the Adorers are a group of elderly nuns who have deeply and sincerely held moral concerns about interstate pipeline projects. They are going to have live next to a pipeline for the rest of their lives. This is the type of federal overreach that RFRA was intended to address.[190]

On the other hand, pipelines serve a purpose. The Atlantic Sunrise pipeline at stake in *Adorers* delivers low-cost natural gas across four states.[191] It generates jobs and helps the economy.[192] Countries need energy infrastructure development.[193] And one of the side effects of infrastructure development is

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[185] Weinstein, *supra* note 40, at 151.

[186] *See* Gary S. Gildin, *The Sanctity of Religious Liberty of Minority Faiths Under State Constitutions: Three Hypotheses*, 6 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 21, 27–28 (2006). There is of course, a counter narrative to this principle—that judges give mainstream religions more protections than minority ones. *See generally* Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1097 (9th Cir. 2008) (Fletcher, J. dissenting) ("Perhaps the strength of the Indians' argument in this case could be seen more easily by the majority if another religion were at issue. For example, I do not think that the majority would accept that the burden on a Christian's exercise of religion would be insubstantial if the government permitted only treated sewage effluent for use as baptismal water . . . ."); Ronald J. Krotoszynski, Jr., *If Judges Were Angels: Religious Equality, Free Exercise, and the (Underappreciated) Merits of Smith*, 102 NW. U. L. REV. 1189 (2008) (referring to the introduction and Section II.A on "good" and "bad" religions in U.S. Supreme Court jurisprudence).

[187] Thomas C. Berg, *Minority Religions and the Religion Clauses*, 82 WASH. L. REV. 919 (2004).

[188] Whether a belief is "unorthodox" is a matter of perspective. This Note uses the term loosely while recognizing that there are many religions with beliefs about sacred spaces and caring for the environment.

[189] *See, e.g.*, *Navajo Nation*, 535 F.3d 1058; *Standing Rock II*, 239 F. Supp. 3d 77 (D.D.C. 2017); Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621 (W.D. Okla. Sept. 23, 2008).

[190] *See* 42 U.S.C. § 2000bb(b) (2012) (describing purpose of RFRA).

[191] PA. DEP'T OF ENVTL. PROT., *supra* note 17.

[192] *Id.*

[193] David Blackmon, *Modernizing America's Energy Infrastructure Must Become A National Priority*, FORBES (July 12, 2017, 3:04 AM), https://www.forbes.com/sites/davidblackmon/2019/07/12/modernizing-americas-energy-infrastructure-must-become-a-national-priority/?sh=1dbb13c0602f (discussing the U.S.'s aging energy infrastructure system and advocating for infrastructure development).

that there are going to be groups who inevitably lose out under the eminent domain calculus. Also, opposing natural gas pipelines has its own environmental cost because natural gas is replacing coal, a much more harmful fuel.[194]

Another hidden risk of increased pipeline litigation is that the precedents it establishes could be expanded to cases beyond what the plaintiffs intended. Today, it is pipelines, tomorrow, it is the Thirys asking Kansas to change its highway route.[195] More realistically, pipeline precedents could be tools against renewable energy projects.[196] As law professor James Coleman has observed, renewable projects often involve interstate transmissions lines and the same precedents that are applied against pipelines could slow wind and solar expansion.[197] Still federal courts have shown themselves capable and willing to limit RFRA land use claims in *Navajo* and *Thiry*.[198] Such fears are likely unnecessary.

While the perfect RFRA candidate probably does not exist, there are a few guiding principles to glean from existing case law. To bring a successful RFRA claim against a pipeline, some type of religious exercise must occur on the property.[199] This might be a religious structure like the Adorer's outdoor chapel or it could be undeveloped land. For example, if the Adorers had owned a wildlife refuge, then the act of ownership might have been a religious exercise according to their land ethic.[200] Another option would be to regularly pray on a parcel of land in the manner that the Thiry family did.[201] Land used for a secular purpose like farming will likely face more scrutiny because it creates the underlying assumption that the land is not being used as a part of religious practice.

Second, while plaintiffs are unlikely to pass *Navajo*'s narrow rule, they may be successful pursuing an avenue through *Navajo*'s dicta.[202] In order for a chance of success, a religious order like the Adorers needs to be able to point to physical substantive ways that the pipeline will restrict their religious practice.[203]

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[194] *See* Lindsay Aramayo, *More Than 100 Coal-Fired Plants Have Been Replaced or Converted to Natural Gas Since 2011*, U.S. ENERGY INFO. ADMIN. (Aug. 5, 2020), https://www.eia.gov/todayinenergy/detail.php?id=44636; Reid Frazier, *Study: Replacing Coal Plants with Natural Gas Cut Pollution, Saved Lives*, STATE IMPACT PENN. (Jan. 10, 2020, 5:00 AM), https://stateimpact.npr.org/pennsylvania/2020/01/10/study-replacing-coal-plants-with-natural-gas-cut-pollution-saved-lives/.

[195] Thiry v. Carlson, 78 F.3d 1491, 1494 (10th Cir. 1996).

[196] *Capitol Crude*, *supra* note 177 (approximately 20:30).

[197] *Id.*

[198] *Navajo Nation*, 535 F.3d 1058; Thiry v. Carlson, 78 F.3d 1491 (10th Cir. 1996).

[199] *See* Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000cc-5 (2012).

[200] *See* Land Ethic, *supra* note 21.

[201] Thiry v. Carlson, 78 F.3d 1491, 1493–94 (10th Cir. 1996).

[202] *Navajo Nation*, 535 F.3d at 1063.

[203] *See id.* at 1071–76.

For example, a pipeline could cut off access to a particular worship space or the pipeline's route could go through a sacred tree, forcing the practitioners to modify their liturgy. Given the results of *Standing Rock II*,[204] it seems unlikely that an appeal for the pollution of a sacred stream or water source would be successful, but another court might decide differently.

Finally, plaintiffs need to bring the *Thiry* rule back into the conversation—especially plaintiffs in the Tenth Circuit. The *Navajo* rule precludes RFRA for land use cases in all but the most drastic of circumstances.[205] *Thiry* is far more forgiving because the rule allows the Court more flexibility in considering religious beliefs that are not necessarily connected to a particular religious ritual, but that nevertheless have profound religious implications for worshippers.[206] The success of RFRA plaintiffs in *Comanche* indicate that it is a viable—albeit overlooked—alternative rule to *Navajo*.[207] Neither the plaintiffs in *Standing Rock II* nor *Adorers* (*II*) mentioned the *Thiry* rule in their briefs.[208] *Thiry* might be older than *Navajo*, but it is still binding precedent in the Tenth Circuit and persuasive elsewhere.[209] All plaintiffs going forward with a land based RFRA claim should use the *Thiry* rule to its full potential.

CONCLUSION

Adorers of the Blood of Christ is a rare RFRA claim asserting religious freedom as a protection against a pipeline condemnation proceeding. There are many RFRA cases regarding the protections of individuals and businesses, but few rulings focusing on the interaction between RFRA's protections for the individual and their land.[210] As a result, the case law is murky and lacking precedents in many jurisdictions.

Unfortunately for the plaintiffs in *Adorers*, their claim would have been unlikely to succeed because there is no way to prove that FERC's approval of the pipeline placed a substantial burden to the community's religious exercise. On the other hand, the case is useful for future RFRA land-use plaintiffs—and their opponents—to show the strengths and weaknesses of such a litigation strategy.

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[204] Standing Rock II, 239 F. Supp. 3d 77, 100 (D.D.C. 2017).

[205] *See supra* Section I.B.

[206] *See* Thiry v. Carlson, 78 F.3d 1491, 1493 (10th Cir. 1996).

[207] *See* Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008).

[208] *See, e.g.*, Appellants' Brief in Support of Appeal, Adorers of the Blood of Christ v. F.E.R.C., 897 F.3d 187, No. 17-3163 (3d Cir. 2018), 2017 WL 5127972.

[209] Comanche Nation v. United States, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008).

[210] *See, e.g.*, Burwell v. Hobby Lobby Stores, 573 U.S. 682 (2014).

And the Adorers may still have achieved what they set out to do.[211] In an unpublished statement to another nun, Sister Therese Marie Smith wrote about why she cared about pipeline:

> I think of how my parents saved and worked to do so much for the earth. They were not out for the top dollar no matter what. The same is true here. It's the principle of the thing. Money is not the important thing. It's easy to take the money and run. But then we'd be hurting the earth, creation and all future generations. Someone needs to begin. One step at a time is how everything gets started.[212]

Adorers is about balancing the rights of pipelines and prayers. The pipelines won this round, but with a few different facts—prayers might win the next one.

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[211] *See* Memorandum from Sister Therese Marie Smith to Archivist Sister Edwina Pope, *supra* note 7.

[212] *Id.*