Holt v. Hobbs (2015)

Who Then Can Be Shaved?

Three Big Things

1. The Religious Land Use and Institutionalized Persons Act (RLUIP) passed by Congress in 2000 requires (among other things) that states go a little further than absolutely demanded by the First Amendment to protect inmates' religious expression. Prison officials may still do what's necessary to maintain order, but they must make every effort to accommodate faith while they do.

2. Arkansas didn't allow prisoners to grow beards – even short ones – unless they'd been diagnosed with specific skin disorders making a short beard desirable. Greg Holt, a devout Muslim going by the name Abdul Maalik Muhammed, asked for a religious exemption allowing him to grow a half-inch beard. Prison officials said no.

3. The Supreme Court found in favor of Holt because officials had numerous options to accomplish the same goals (safety and security) without infringing on Holt's sincerely held religious beliefs.

The Situation

The Arkansas Department of Corrections doesn't allow prisoners to grow beards (with some exceptions made for inmates with specific skin conditions). The argument was that inmates could conceivably hide contraband in their beards and that shaving them off would allow them to quickly change their appearance should they escape.

One suspects these were largely rationalizations, but prison isn't primarily intended to be a great place for personal expression, so maybe officials have the right to tweak a few rules for their own purposes.

Greg Holt, aka Abdul Maalik Muhammed, requested an exemption on religious grounds. As a good Muslim, he explained, he shouldn't be trimming his beard at all, but as a compromise with the system, he wished to maintain a modest one-half inch beard as a symbolic gesture of adherence to his faith. Prison officials said no.

Holt filed suit in the nearest district court. (As a civil rights issue, rather than a criminal complaint, the federal courts were the appropriate venue.) The state argued that the system made allowances for Holt to express his faith in other ways – they weren't trying to keep him from practicing his religion within reason. It also pointed out that not all Muslims believed the beard thing was a big deal. Most of all, however, much like with questionable police actions, the courts should defer to those doing the actual job and not second-guess every detail from afar.

They put that last bit more professionally, of course.

Holt appealed to the Eight Circuit Court, which affirmed the decision. The general guideline in such cases is that government at any level should avoid restricting free exercise of religion whenever possible. When religious actions conflict with otherwise neutral, reasonable laws or procedures, the government must seek out the "least restrictive means" of satisfying its goals – in this case, prison security. If the result is that some religious behaviors are curtailed, that's unfortunate, but not necessarily unconstitutional.

Holt and his advocates appealed to the Supreme Court, who agreed to hear the case during its 2014-2015 session. The Court, in a unanimous decision, found in Holt's favor.

The Decision

While the case certainly involved the issue of free exercise as protected by the First Amendment, the specific legislation guiding such things was the Religious Land Use and Institutionalized Persons Act (RLUIPA) passed by Congress in 2000 with the dual goals of making it easier for inmates to bring suits just like this one and protecting local churches from zoning regulations and other rules applicable to other businesses or organizations. The Court had struck down parts of an earlier effort, 1993's Religious Freedom Restoration Act (RFRA), so with RLUIPA Congress focused on two areas it felt were more clearly in its purview – land use and the prison system.

The majority opinion, written by Justice Samuel Alito, begins by acknowledging that the prison system has a right to first consider the issue of "sincerity" when religious claims are made. While the specifics of testing such things could potentially get messy, this has long been one way courts allow institutions to push back against frivolous uses of faux religious claims by prisoners, employees, or the like, to circumvent rules or expectations they simply don't like. In this case, there was no doubt of Holt's sincerity; he was a devout Muslim in word and deed and no one on either side was challenging this.

The lower courts had erred, however, in their assumption that because Holt was allowed to practice his faith in other ways, that somehow offset the beard issue. He was still literally being forced to choose between violating his own religious beliefs (by shaving) or being punished by the system. If the issue were purely a free exercise claim based on the First Amendment, the existing accommodations might have been more of a consideration. Under RLUIPA terms, however, the state is required to bend much further than that.

As to the argument that some Muslims didn't have beards, this seriously missed the point of about a zillion previous Supreme Court decisions. Government entities can consider overt indications that someone is just messing with them ("my religion says I have to get drunk and have sex with beautiful women every Thursday"), but they don't get to parse the validity of individual beliefs beyond that.

Now came the issue of "least restrictive means." The Court was not convinced that a half-inch of beard growth was such a serious threat to prison security that it justified violating free exercise. Even if officials were genuinely concerned about all the items potentially hidden in that half-inch, a quick search here and there wouldn't consume much in terms of time and resources. If they wanted to know what an inmate looked like without the beard, take a picture of him without it, then let him grow it back. Many other prison systems accommodate beards without it leading to a complete breakdown of security – perhaps Arkansas could get a few tips from them.

Perhaps most damning for the state's position was the allowance of one-quarter inch beards for prisoners with specific skin conditions and the lack of additional security measures designed to deal with these furry incubators of subversive behavior. In other words, the system accommodated non-religious beards quite easily and only made an issue of beards grown for religious purposes.

That sort of distinction is usually a deal-breaker with the Court these days. It certainly was here.

Concurring Opinions

Alito's opinion cites several other cases by way of support for various points, but none so often as *Burwell v. Hobby Lobby Stores, Inc.* (2014) from the previous term. In that case, the Court had ruled (in a 5-4 split) that RFRA allowed companies like Hobby Lobby to deny its employees health coverage for stuff like contraceptives based on the organization's religious beliefs. Justice Alito had written the majority opinion for the Hobby

Lobby case as well, and it was no doubt fresh in his mind. The *Holt* opinion references it more than every other case it cites *combined*.

Thus the very brief written opinion of Justice Ruth Bader Ginsburg, who pointed out that while she agreed with the results, this case was different than Hobby Lobby because "accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief."

Justice Sonia Sotomayor joined Ginsburg's concurring opinion but added her own as well. It primarily seeks to clarify that officials still have options for enforcing whatever rules may be necessary, they simply have to do so within the confines of RLUIPA. She also notes that the policies in question were rejected by the Court because they failed to meet the standards required in the legislation – not because the majority (via the words of Justice Alito) thought they were stupid… because let's be honest, he mostly just loves snippy and critical.

OK, she didn't come right out and put it that way – but you read it and tell me that's not what she meant. I dare you.

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Excerpts from the Majority Opinion by Justice Samuel Alito

We conclude in this case that the Department's policy substantially burdens petitioner's religious exercise. Although we do not question the importance of the Department's interests in stopping the flow of contraband and facilitating prisoner identification, we do doubt whether the prohibition against petitioner's beard furthers its compelling interest about contraband. And we conclude that the Department has failed to show that its policy is the least restrictive means of furthering its compelling interests. We thus reverse the decision of the United States Court of Appeals for the Eighth Circuit.

Congress enacted RLUIPA and its sister statute, the Religious Freedom Restoration Act of 1993 (RFRA), "in order to provide very broad protection for religious liberty" (*Burwell v. Hobby Lobby Stores, Inc.*, 2014) RFRA was enacted three years after our decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith* (1990), which held that neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment…

Section 3 {of RLUIPA} provides that "{n}o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution… even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest." … Congress mandated that {these guidelines} "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." And Congress stated that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise" (*Hobby Lobby*).

Petitioner, as noted, is in the custody of the Arkansas Department of Correction and he objects on religious grounds to the Department's grooming policy, which provides that "{n}o inmates will be permitted to wear facial hair other than a neatly trimmed mustache that does not extend beyond the corner of the mouth or over the lip." The policy makes no exception for inmates who object on religious grounds, but it does contain an exemption for prisoners with medical needs…

Under RLUIPA, petitioner bore the initial burden of proving that the Department's grooming policy implicates his religious exercise. RLUIPA protects "any exercise of religion, whether or not compelled by, or central to, a

system of religious belief," but, of course, a prisoner's request for an accommodation must be sincerely based on a religious belief and not some other motivation (see *Hobby Lobby*). Here, the religious exercise at issue is the growing of a beard, which petitioner believes is a dictate of his religious faith, and the Department does not dispute the sincerity of petitioner's belief.

{P}etitioner also bore the burden of proving that the Department's grooming policy substantially burdened that exercise of religion. Petitioner easily satisfied that obligation… If petitioner contravenes {prison} policy and grows his beard, he will face serious disciplinary action. Because the grooming policy puts petitioner to this choice, it substantially burdens his religious exercise. Indeed, the Department does not argue otherwise…

{T}he District Court erred by concluding that the grooming policy did not substantially burden petitioner's religious exercise because "he had been provided a prayer rug and a list of distributors of Islamic material, he was allowed to correspond with a religious advisor, and was allowed to maintain the required diet and observe religious holidays." In taking this approach, the District Court improperly imported a strand of reasoning from cases involving prisoners' First Amendment rights (see *O'Lone v. Estate of Shabazz*, 1987 {and} *Turner v. Safley*, 1987). Under those cases, the availability of alternative means of practicing religion is a relevant consideration, but RLUIPA provides greater protection. RLUIPA's "substantial burden" inquiry asks whether the government has substantially burdened religious exercise… not whether the RLUIPA claimant is able to engage in other forms of religious exercise…

{T}he District Court {also} went astray when it relied on petitioner's testimony that not all Muslims believe that men must grow beards. Petitioner's belief is by no means idiosyncratic… But even if it were, the protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is "not limited to beliefs which are shared by all of the members of a religious sect" (*Thomas v. Review Board of Indiana Employment Security Division*, 1981). …

The Department argues that its grooming policy represents the least restrictive means of furthering a "broadly formulated interest," namely, the Department's compelling interest in prison safety and security. But RLUIPA, like RFRA, contemplates a "more focused" inquiry and "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person' – the particular claimant whose sincere exercise of religion is being substantially burdened." …

The Department contends that enforcing this prohibition is the least restrictive means of furthering prison safety and security in two specific ways.

(A) The Department first claims that the no-beard policy prevents prisoners from hiding contraband. The Department worries that prisoners may use their beards to conceal all manner of prohibited items, including razors, needles, drugs, and cellular phone subscriber identity module (SIM) cards.

We readily agree that the Department has a compelling interest in staunching the flow of contraband into and within its facilities, but the argument that this interest would be seriously compromised by allowing an inmate to grow a half-inch beard is hard to take seriously… An item of contraband would have to be very small indeed to be concealed by a half-inch beard, and a prisoner seeking to hide an item in such a short beard would have to find a way to prevent the item from falling out. Since the Department does not demand that inmates have shaved heads or short crew cuts, it is hard to see why an inmate would seek to hide contraband in a half-inch beard rather than in the longer hair on his head…

Prison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise. But that respect does not justify the abdication of the responsibility,

conferred by Congress, to apply RLUIPA's rigorous standard. And without a degree of deference that is tantamount to unquestioning acceptance, it is hard to swallow the argument that denying petitioner a half-inch beard actually furthers the Department's interest in rooting out contraband.

Even if the Department could make that showing, its contraband argument would still fail because the Department cannot show that forbidding very short beards is the least restrictive means of preventing the concealment of contraband… The Department already searches prisoners' hair and clothing… And the Department has failed to prove that it could not adopt the less restrictive alternative of having the prisoner run a comb through his beard…

(B) The Department contends that its grooming policy is necessary to further an additional compelling interest, i.e., preventing prisoners from disguising their identities… But even if we assume for present purposes that the Department's grooming policy sufficiently furthers its interest in the identification of prisoners, that policy still violates RLUIPA as applied in the circumstances present here…

The Department contends that a prisoner who has a beard when he is photographed for identification purposes might confuse guards by shaving his beard. But as petitioner has argued, the Department could largely solve this problem by requiring that all inmates be photographed without beards when first admitted to the facility and, if necessary, periodically thereafter… In fact, the Department (like many other States) already has a policy of photographing a prisoner both when he enters an institution and when his "appearance changes at any time during {his} incarceration." (*Arkansas Department of Correction, Inmate Handbook*)…

In addition to its failure to prove that petitioner's proposed alternatives would not sufficiently serve its security interests, the Department… has not adequately demonstrated why its grooming policy is substantially underinclusive in at least two respects. Although the Department denied petitioner's request to grow a half-inch beard, it permits prisoners with a dermatological condition to grow quarter-inch beards. The Department does this even though both beards pose similar risks. And the Department permits inmates to grow more than a half-inch of hair on their heads… Hair on the head is a more plausible place to hide contraband than a half-inch beard – and the same is true of an inmate's clothing and shoes. Nevertheless, the Department does not require inmates to go about bald, barefoot, or naked. Although the Department's proclaimed objectives are to stop the flow of contraband and to facilitate prisoner identification, "{t}he proffered objectives are not pursued with respect to analogous nonreligious conduct," which suggests that "those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree" (*Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 1993)…

Second, the Department failed to show, in the face of petitioner's evidence, why the vast majority of States and the Federal Government permit inmates to grow half-inch beards, either for any reason or for religious reasons, but it cannot… That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the Department could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks.

We do not suggest that RLUIPA requires a prison to grant a particular religious exemption as soon as a few other jurisdictions do so. But when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course, and the Department failed to make that showing here…

We emphasize that although RLUIPA provides substantial protection for the religious exercise of institutionalized persons, it also affords prison officials ample ability to maintain security… {For example,} if an

institution suspects that an inmate is using religious activity to cloak illicit conduct, "prison officials may appropriately question whether a prisoner's religiosity, asserted as the basis for a requested accommodation, is authentic" (*Cutter v. Wilkinson*, 2005)… {Also,} even if a claimant's religious belief is sincere, an institution might be entitled to withdraw an accommodation if the claimant abuses the exemption in a manner that undermines the prison's compelling interests.

In sum, we hold that the Department's grooming policy violates RLUIPA insofar as it prevents petitioner from growing a half-inch beard in accordance with his religious beliefs. The judgment of the United States Court of Appeals for the Eighth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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Concurring Opinion by Justice Ruth Bader Ginsburg

Unlike the exemption this Court approved in *Burwell v. Hobby Lobby Stores, Inc*. (2014), accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief. On that understanding, I join the Court's opinion.

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Excerpts of Concurring Opinion by Justice Sonia Sotomayor

I concur in the Court's opinion, which holds that the Department failed to show why the less restrictive alternatives identified by petitioner in the course of this litigation were inadequate to achieve the Department's compelling security-related interests. I write separately to explain my understanding of the applicable legal standard.

Nothing in the Court's opinion calls into question our prior holding in *Cutter v. Wilkinson* (2005) that "context matters" in the application of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). In the dangerous prison environment, "regulations and procedures" are needed to "maintain good order, security and discipline, consistent with consideration of costs and limited resources." … Thus, we recognized "that prison security is a compelling state interest, and that deference is due to institutional officials' expertise in this area" (*Cutter*)…

Here, the Department's failure to demonstrate why the less restrictive policies petitioner identified in the course of the litigation were insufficient to achieve its compelling interests – not the Court's independent judgment concerning the merit of these alternative approaches – is ultimately fatal to the Department's position. The Court is appropriately skeptical of the relationship between the Department's no-beard policy and its alleged compelling interests because the Department offered little more than unsupported assertions in defense of its refusal of petitioner's requested religious accommodation. RLUIPA requires more.