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Dawinder S. Sidhu
University of New Mexico - School of Law

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(AP Photo/J. Scott Applewhite) Attorney Douglas Laycock, center, speaks with reporters after his argument before the Supreme Court in Holt v. Hobbs. At left is Hannah Smith, a senior counsel with the Becket Fund for Religious Liberty.

Last Tuesday, the Supreme Court ruled unanimously in favor of an Arkansas inmate who had been barred from growing, for religious reasons, a half-inch beard by the state prison system. The case, however, is not merely about inmates and prisons. It confirms that we are in an era of robust judicial protection for religious freedom, and it informs the Supreme Court's jurisprudence in other contentious areas of individual rights.

The case, Holt v. Hobbs, was set in motion by Gregory Holt, who also goes by Abdul Maalik Muhammad. Holt, an inmate housed by the Arkansas Department of Correction, sought to grow a beard in accordance with his Muslim faith. The Department prohibits inmates from growing beards, although inmates with a

dermatological condition may grow a beard no longer than a fourth of an inch. Holt proposed a compromise: he would grow a half-inch beard. The Department did not budge. Accordingly, Holt proceeded to federal court.

Inmates shed many of the rights they otherwise enjoyed in civilian life. Holt's religious rights ordinarily would be among those rights that he would cede to prison authorities. But, Holt filed his lawsuit under a federal statute, the Religious Land Use and Institutionalized Persons Act (RLUIPA), which was enacted by Congress in 2000 to accord special protection to inmates' religious freedom.

Traditionally, the Free Exercise Clause of the First Amendment was read to protect religious freedom only to the extent that the challenged law itself carved out a religious exception. In 1963, however, the Supreme Court interpreted the Free Exercise Clause to require a religious exemption to any generally applicable law that imposed a substantial burden on the individual's religious exercise, unless the government could prove that the law was necessary to further a compelling governmental purpose. A "substantial burden" generally occurs when the law either compels an individual to do that which violates the individual's religious beliefs, or prohibits an individual from doing that which is mandated by the individual's religious beliefs.

In a 1990 case, the Court effectively reverted back to the pre-1963 understanding of the Free Exercise Clause. In response, Congress passed the Religious Freedom Restoration Act of 1993 (RFRA), which expanded religious protections to levels established by the Court in 1963. Under RFRA, a law that substantially burdens an individual's sincere religious beliefs must give way, unless the government can demonstrate that its action furthers a compelling purpose in a way that is the least restrictive of religious freedom. With the ball back in its court, the Supreme Court determined that that Congress did not have the constitutional power to enact RFRA, thereby striking it down insofar as it applied to the states and leaving it binding only on the federal government.

The back-and-forth continued until Congress passed RLUIPA. RLUIPA contains the same standards as RFRA, but it applies only to land use and prison contexts and rests on a different source of constitutional authority. Under RLUIPA, Holt had to prove that the Department of Correction substantially burdened his sincerely held religious beliefs. Holt asserted, and the Department did not dispute, that Holt's interest in growing a beard was based on a sincerely held religious belief. Further, it was undisputed that the grooming policy substantially burdened Holt's religious beliefs, as the policy placed him in a bind: grow his beard and face discipline for violating the Department's policy, or shave completely and violate his sincere religious beliefs.

With Holt having met this threshold, RLUIPA required the Department to establish that its policy furthers a compelling purpose in a way that is least restrictive of religious freedom. The Department defended its grooming policy on two principal grounds: first, that an inmate would be able to conceal contraband in a half-inch beard; and second, that an inmate would be able to frustrate or evade quick detection in the event of a prison emergency or prisoner escape.

The Supreme Court agreed that both of these purposes were compelling. But the Court ruled that the policy was not the least restrictive ways to advance these purposes. First, the Court doubted that contraband could get lost in a half-inch beard. It was "almost preposterous," a U.S. Magistrate Judge said, that contraband could be hidden in Holt's beard. Rather than impose a ban on such beards, the Court noted that the Department could search prisoners' beards or require prisoners to run a comb through their beards. Contraband, such as a "revolver," Justice Samuel Alito quipped, would fall out from such combing. Second, the Court noted that the Department could facilitate the quick and reliable identification of prisoners by having two photographs of each prisoner on hand: one clean-shaven, and one bearded. These twin photographs could then be referenced in the event of an incident.

Further, the Court stated that the Department's security and identification arguments were tough to square with the fact that the Department permits prisoners to grow a fourth-inch beard for medical reasons and permits prisoners to grow hair on their head beyond the half-inch limit. The Department's arguments also were undermined by the fact that a vast majority of state prison systems, and the federal Bureau of Prisons, allow inmates to grow their hair, either for any reason or for religious reasons, despite having the same or concerns about safety and identification. The Department fell short in its effort to explain that it has unique circumstances necessitating special rules. Indeed, the Department did not give any examples of situations in which beards hindered the Department's safety interests. The closest the Department came was its mentions of incidents in which a prisoner killed a guard with a "shank" and in which Holt placed a knife against the neck of another inmate. But these two situations say nothing about the relationship between security and identification, on one hand, and beards on the other. All told, the Court had little trouble ruling that the Department's refusal to allow Holt to grow a religious beard constituted a violation of RLUIPA.

The decision has wide-ranging implications. The current Supreme Court has made clear that it intends to give full effect to Congress's intent to afford broad protections to incarcerated individuals' religious freedom. The extent to which RLUIPA meaningfully shielded prisoners' religious freedom was unclear. Indeed, the two lower federal courts sided with the Department, and federal courts had ruled for prison systems in similar RLUIPA cases. These courts did so primarily because courts routinely have deferred to the expertise of prison officials. In Holt, the Supreme Court clarified that deference must be predicated upon specific information related to the desired religious practice, not speculative statements or generalized concerns about prison safety and security. In the absence of those details, deference is not owed and any judicial deference still given would be tantamount to judicial abdication.

In terms of balancing government interests and religious freedom, Holt further suggests that the Court's pendulum has swung towards the protective end of the religious freedom spectrum. Eric Rassbach of the Becket Fund, the public interest law firm that was part of Holt's legal team, notes that the case "heralds a new period of rigorous enforcement of federal civil rights statutes concerning religious practices." This recognition of religious freedom extends and includes both

majoritarian and non-majoritarian faiths. The Court repeatedly has vindicated the rights of non-Christians. But context matters. The Supreme Court's polarizing opinion in Burwell v. Hobby Lobby—a RFRA ruling for Christian owners of closely held corporations—fueled the impression that the Court gave special solicitude to religious rights claims brought by Christians. In her Hobby Lobby dissent, Justice Ruth Bader Ginsburg asked whether the Court was truly inclined to recognize the religious rights of religious minorities. Holt therefore represented, as The New York Times' Linda Greenhouse wrote, an opportunity for the Court to "allay suspicions that they are only interested in the free-exercise rights of Christians." The Court seized this opportunity, confirming that it confers religious protection upon Christians and non-Christians alike.

A plausible claim can also be made that Holt foreshadows the end of affirmative action in the United States. The connection between religious rights and affirmative action may not be obvious, but race-based affirmative action is subject to a demanding standard—whether the admissions policies are "narrowly tailored" to further a "compelling" governmental objective—that is similar to the standard in RLUIPA. Accordingly, the Court's response to the grooming policies at issue in Holt may inform its potential reaction to affirmative action.

As in Holt, the Supreme Court has determined that the reason why colleges and universities adopt affirmative action—to achieve the educational benefits of a diverse student body—is compelling. Accordingly, as in Holt, the permissibility of affirmative action boils down to the courts' assessment of how colleges and universities attempt to achieve that objective. Holt sends a strong signal that the Court will closely scrutinize the government's selected approach and the government's claims as to the insufficiency of alternatives that don't implicate protected rights. An ongoing issue in the affirmative action context, however, is that courts have not been given meaningful information by which to evaluate whether race-neutral alternatives may yield a sufficiently diverse student body, in which case the schools' current use of race would be gratuitous. If the Court reviews the means used by colleges and universities with the same vigor it did in Holt, affirmative action policies could be in danger.

Holt is important in its own right because it eliminates outlier grooming policies to the benefit of prisoners nationwide. Beyond this, Holt helps to restore the expansive bounds of religious freedom in this country—and it hints at future Court shifts on religion and race.

Dawinder Sidhu is a law professor at the University of New Mexico, where he teaches and writes in the areas of constitutional law and criminal law, and is a former Supreme Court Fellow. Follow him on Twitter: @profsidhu