

**Handout 5**  
*Applying the RFRA test*

Step 1: Below is a summary of the court’s analysis of the RFRA/RLUIPA test in *Holt v. Hobbs* using excerpts from the case. Annotate the following passages, focusing on how the court analyzes each prong test. What reasoning does the Court use to make its decisions?

*Holt v. Hobbs*, 135 S. Ct. 853 (2015)

Justice ALITO delivered the opinion of the Court.

Under RLUIPA, [plaintiff] bore the initial burden of proving that the Department’s grooming policy substantially burdened the exercise of religion. [Plaintiff] easily satisfied that obligation. The Department’s grooming policy requires [plaintiff] to shave his beard and thus to engage in conduct that seriously violates [his] religious beliefs. If he [does not], he will face serious disciplinary action. Because the grooming policy puts [plaintiff] to this choice, it substantially burdens his religious exercise.

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. Secondly, the Department contends that its grooming policy is necessary to further an additional compelling interest, *i.e.*, preventing prisoners from disguising their identities. The Department tells us that the no-beard policy allows security officers to identify prisoners quickly and accurately.

First, we agree that the Department has a compelling interest in staunching the flow of contraband into and within its facilities . . . . [But] its contraband argument [fails] because the Department cannot show that forbidding very short beards is the least restrictive means of preventing the concealment of contraband. The Department failed to establish that it could not satisfy its security concerns by simply searching petitioner’s beard. The Department . . . presumably examines the 1/4-inch beards of inmates with [skin] conditions. It has offered no sound reason why hair, clothing, and 1/4-inch beards can be searched but 1/2-inch beards cannot.

Secondly, we agree that prisons have a compelling interest in the quick and reliable identification of prisoners, and we acknowledge that shaving a beard might have at least some effect on the ability of guards or others to make a quick identification. 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. An inmate like [plaintiff] could be allowed to grow a short beard and could be photographed again when the beard reached the 1/2-inch limit. Prison guards would then have a bearded and clean-shaven photo to use in making identifications. 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.”