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January 21, 2015: We're On a Crash Course

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Title: We're On a Crash Course

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1/21/2015—The U.S. Supreme Court reached practically the only result it could yesterday in *Holt v. Hobbs*, the case of the Muslim prisoner who wanted to grow a full beard in an Arkansas prison and compromised by proposing a ½ inch beard. Prison authorities still said no and the Court held unanimously that this refusal violated the Religious Land Use and Institutionalized Persons Act. (RLUIPA). The case was ably handled by the dean of law and religion, Douglas Laycock. The main takeaway from the unanimous opinion is that even “idiosyncratic” religious beliefs are protected by the statute (although this instance was clearly not such, Justice Alito went out of his way to state that agreement by others is not the test) and the heightened scrutiny of the Act means just what it says. Most states now have statutes like RLUIPA and the Religious Freedom Restoration Act (RFRA). In many contexts, religious believers are going to be able to challenge government policies on the basis of their own perceived religious needs. Under the standards of *Holt*, many should win. And, if the “spiritual but not religious” crowd decides to get in on this action, how will the courts make any judgments about what is and is not a religion? Years ago, in limiting the reach of the Free Exercise Clause, Justice Scalia warned that this would happen. Most people, including me, thought that he was insufficiently protecting religious liberty. History may prove him right. On the other hand, these are statutes. They were passed and they can be repealed or modified. Undoubtedly, one day they will be.