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Supreme Court holds that the "Contraception Mandate" of the Affordable Care Act violates the Religious Freedom Restoration Act

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On June 30, 2014, the Supreme Court issued its highly-anticipated decision in the matters of *Burwell v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties Corp. v. Burell*. In each of these cases, for-profit corporations owned and operated by Christian families argued that the "Contraception Mandate" of the Patient Protection and Affordable Care Act ("PPACA") violated the Religious Freedom Restoration Act of 1993 ("RFRA") in that the Mandate requires employers of more than 50 individuals to offer health insurance plans which provide coverage for a number of contraceptive methods, or face monetary penalties. Both Hobby Lobby and Conestoga Wood objected to covering Plan B and Ella (commonly called "morning after pills") and Hobby Lobby additionally objected to coverage for certain types of intra-uterine devices ("IUDs"), as the individuals running these companies believe that these contraceptives induce abortions by preventing a fertilized egg from implanting in the uterus.

Justice Samuel Alito, writing for the majority, agreed with Hobby Lobby and Conestoga Wood. The RFRA prohibits the Government from "substantial[ly] burdening a person's exercise of religion" even if this burden results from a law that applies to everyone—of any religion—generally. 42 U.S.C. § 2000bb(a)(2). However, if the government has passed a law or policy which places such a burden on a person, that person is entitled to an exemption, unless the government can demonstrate that the application of the burden (1) furthers a compelling government interest (that is, an interest of high importance); and (2) it is the least restrictive means of furthering that interest (in other words, there is no other way for the government to accomplish its goal that would create a lesser burden).

A central issue in the decision was whether the term "person" within the RFRA could be applied to a for-profit corporation. The Court held that "person" does indeed include for-profit corporations, citing to case law that permitted small unincorporated businesses to seek protection under the RFRA. The choice to incorporate a business, the Court wrote, could not mean that its owners were giving up rights under the RFRA.

However, the government's principal argument was that a corporation cannot "exercise religion" under the RFRA, which defines the term as "any exercise of religion, whether or not compelled by, or central to a system of religious belief." The Court disagreed, however, noting that the government has acknowledged non-profit corporations' rights to exercise religion, and that, simply because a company exists to make profit, it should not be exempt from the protections of the RFRA. The Court also disregarded the government's argument that it could be difficult to ascertain a corporation's—especially a large corporation's—religious beliefs, by simply stating that

it seems “unlikely” that a large company “such as IBM or General Electric” would ever object to the PPACA on grounds similar to Hobby Lobby or Conestoga Wood.

Based upon this analysis, the Court concluded that the RFRA does apply to corporations, and that the Contraception Mandate does indeed place a “substantial burden” on the owners of Hobby Lobby and Conestoga Wood’s exercise of religion, as it requires that these corporations offer insurance that covers contraceptive methods they believe to cause abortions or face potentially millions in penalties for failing to offer adequate insurance under the PPACA.

The Court did hold that providing women with cost-free access to FDA-approved methods is a “compelling interest” although the Court questioned why such a “compelling interest” could be avoided by corporations that had “grandfathered” health plans (plans in existence since before March 23, 2010, without specified changes).

Nonetheless, the Court held that the “Conception Mandate” was not the “least restrictive means” of accomplishing this compelling interest. The Court suggested that it was possible that the government could just set up a program to fund these methods of contraception itself, but its holding rested on the provision of the PPACA which allows non-profit organizations to claim an exemption to the Mandate by notifying an insurance carrier of an objection to such coverage due to religious beliefs. The insurer must then provide separate payments for those services without imposing “any cost-sharing requirements . . . on the eligible organization” or group health plan. 45 CFR § 147.131(c)(2); 26 CFR § 54.9815-2713(c)(2). This method of exemption, the Court argued, was a “less restrictive” means that can potentially be applied to for-profit corporations.

In a 35-page dissent, Justice Ruth Bader Ginsburg stated that she believes the Court’s decision could cause “havoc”, arguing that it could potentially be used to provide a basis to deny coverage based upon a corporation’s religious objections to vaccinations, blood transfusions, anti-depressants, and medicines derived from pigs. She further asserted that the RFRA was not intended to provide such sweeping protection, and that it did not permit the infringement upon a third party’s (i.e. an employee) rights. Moreover, Justice Ginsburg disagreed with the contention that a corporation can “exercise religion” as a corporation is an “artificial being” and the “exercise of religion is characteristic of natural persons.” She further distinguished for-profit corporations from non-profit religious organizations which “exist to foster the interests of persons subscribing to the same religious faith” while workers “who sustain the operations of [for-profit] corporations commonly are not drawn from one religious community.”

While the majority argued there will not be the widespread impact that Justice Ginsburg feared, because the decision was (according to the Court) only limited to the Contraception Mandate, the full impact of the holding remains to be seen. In the days since the decision, one religious organization has used the holding to request an exemption from an upcoming executive order that will ban federal contractors from discriminating on the basis of sexual orientation. Accordingly, the holding may resonate throughout many areas of the law.

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