Supreme Court Rules in Favor of Hobby Lobby – What Does it Mean for Employers?

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A few weeks ago, the Supreme Court issued its much-anticipated decision in two recent cases brought by companies challenging provisions of the 2010 Patient Protection and Affordable Care Act (the "ACA"). The regulations in question require employers with 50 or more employees to provide medical insurance coverage for 20 specific methods of birth control approved of by the Food and Drug Administration.

Backdrop

Conestoga Wood Specialties Corporation (a Pennsylvania company) and Hobby Lobby Stores, Inc. (an Oklahoma Company) sought relief from the requirements of the ACA in the District Courts of their respective states and reached differing results through the appellate process. The 3rd Circuit Court of Appeals denied Conestoga's request for relief, while the 10th Circuit Court of Appeals sided with Hobby Lobby in its request for relief. The Supreme Court addressed the differing opinions of the lower courts to resolve the question and issued an opinion which was in itself divided.

The Court's 50-plus page majority opinion (written by Justice Alito) provides a background of the ACA (Patient Protection and Affordable Care Act of 2010), the RFRA (Religious Freedom Restoration Act of 1993), and the RLUIPA (Religious Land Use and Institutionalized Persons Act of 2000), as well as instructing the reader on the workings of the HHS (Department of Health and Human Services), the HRSA (Health Resources and Services Administration), and the FDA (Food and Drug Administration). The 35-plus page dissenting opinion also is instructive on the history of the law and regulations leading up to the present day, but its writer (Justice Ginsburg) reaches a differing conclusion as to its interpretation and the meaning of "the exercise of religion."

As a comparison, remember that employees are protected under Title VII of the Civil Rights Act in the exercise of their religion, and an employer must accommodate an employee's sincerely held religious beliefs, as long as the accommodation would not cause an undue hardship to the operation of the employer's business. In the Hobby Lobby case, the employers sought protection under the Religious Freedom Restoration Act, which prevents the *government* from "substantially burden[ing] a person's exercise of religion." In essence, the Supreme Court was asked to decide whether a for-profit employer should be allowed an accommodation for *its* sincerely held religious belief, if it can have one, and whether such an accommodation would cause an undue hardship to other parties.

The primary issue in the Hobby Lobby opinion is whether or not a closely-held, for-profit corporation should be entitled to the same exemption from the ACA regulations as other organizations who are exempt. Currently, religious employers (such as Churches) are exempt, and so are certain other religious nonprofit organizations who object to providing coverage for contraceptive services on religious grounds. In order to obtain the exemption, the employer must certify that it is a nonprofit organization that "holds itself out as a religious organization" and "opposes providing coverage for some or all of any contraceptive services required to be covered… on account of religious objections." Hobby Lobby and Conestoga requested to be exempt as well.

Exercise of Religion

The reasoning behind Hobby Lobby and Conestoga's request to be exempt from the particular requirement relating to contraceptives was that the company owners believe that it violates their religious beliefs for them to pay for, or otherwise facilitate the use of, 4 of the methods of birth control approved of under the ACA. The 4 objectionable methods are classified as "abortifacients," meaning that they operate after the fertilization of an egg and could result in the destruction of an embryo; specifically, they include "morning-after" pills and IUDs. Hobby Lobby and Conestoga do not object to providing coverage for the other 16 methods.

Conestoga's mission statement includes its vision of making a "reasonable profit in [a] manner that reflects [the owners'] Christian heritage." Hobby Lobby' s statement of purpose commits its owners to "operating the company in a manner consistent with Biblical principals." None of the parties disputed that the company owners hold a sincere belief that compliance with the regulations at issue would compromise their religious beliefs. All of the Court agreed that it is not the Court's position to determine whether a belief, sincerely held, is reasonable; it is only necessary to determine that the belief is honestly held. The Court did not agree, however, as to whether requiring the companies to comply with the ACA mandates would substantially burden the companies' exercise of their religious beliefs.

Who is a Person

Before discussing the relative burdens on the parties and the available solutions to the conflict, the Court first had to decide that Hobby Lobby and Conestoga were "persons" within the meaning of the law. The dissenting justices opined that for-profit corporations are legal fictions and are not the type of "persons" the law was designed to protect. The majority of the Court found, however, that the plain language of the Religious Freedom Restoration Act makes it "perfectly clear that Congress did not discriminate … against men and women who wish to run their businesses as for-profit corporations in the manner required by their religious beliefs," and, therefore, "a federal regulation's restriction on the activities of a for-profit closely held corporation must comply with RFRA."

The Solution

The majority opinion states that a closely-held profit-making corporation should be allowed the same accommodation as a religious nonprofit corporation under these particular circumstances, finding that making a profit and "perpetuat[ing] religious values" shared by a company's owners are

not mutually exclusive activities. Since the Court found that the "perpetuation of its religious values" constitutes the exercise of religion by an entity the RFRA was designed to protect, the Court then addressed the question of whether the regulation in question is the least restrictive means of furthering the compelling interest of women's health. The opinion states that it is not.

The Court points to system already put in place by the government for religious nonprofit corporations as a reasonable alternative to the ACA mandates. This alternative does not require employees to give up their right to choose their preferred method of birth control. Under this system, employees would still have access to all forms of contraception approved by the FDA, at no cost to the employee; the costs would be covered by third-party insurers, who would, arguably, suffer no net economic burden. The Court also suggests that the government could cover the costs, which would be minimal as compared to the cost to employers who would have to pay substantial fines if they chose not to comply with the ACA mandates. The ultimate issue is not whether employees will have access to their preferred methods of contraception; the real issue is who will foot the bill.

On the Horizon

In the wake of the Supreme Court's decision of these two cases, lawmakers are busy at work proposing legislation that would close the "coverage gap" and require for-profit corporations to provide and pay for all approved forms of contraceptive and other preventative health care services. The proposed legislation is called the "Protect Women's Health from Corporate Interference Act." In the meantime, corporations are happy with less government interference. In the eyes of some, this singular decision has opened the floodgates for discriminatory practices by employers. Several gay and transgender rights organizations are reportedly withdrawing their support for other laws currently pending in the legislature (i.e., the Employment Non-Discrimination Act) that contain exemptions for religiously affiliated employers, citing public confusion about interpretation of the Hobby Lobby decision as the reason. There is undoubtedly confusion about the opinion and the scope of its application.

For now, the Supreme Court has stated that its decision applies only to closely-held companies, which are defined as corporations in which 5 or fewer individuals own more than 50% of the stock. Interestingly, there are studies indicating that most companies in the U.S. are closely held. The opinion applies only to the specific mandates of the ACA that were addressed by the Court, however, and it should not be read to exempt employers in general from any other requirements.

The opinion has, certainly, churned the waters of public opinion, and it will be interesting to see what remains afloat.

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