



Supreme Court Rules In Favor Of Religious Beliefs Of Business Owner

Insights

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Today, a divided U.S. Supreme Court held in a 5-4 decision that closely-held for-profit corporations providing group healthcare to their employees could, on religious grounds, be exempted from providing contraception coverage to employees required under the Patient Protection & Affordable Care Act.

Background

Hobby Lobby Stores, Inc. is an arts and crafts chain with over 500 stores and about 13,000 full-time employees. Hobby Lobby is a closely-held family business organized as an S-Corp. Mardel, Inc. is an affiliated chain of 35 Christian bookstores with approximately 400 employees, also run on a for-profit basis. The Green family owns and operates Hobby Lobby and Mardel.

The Green family is deeply religious and operate their companies in accordance with their beliefs. For example, Hobby Lobby and Mardel stores are not open on Sundays; the companies buy hundreds of full-page newspaper ads promoting Christian messages; and Hobby Lobby refuses to engage in business activities which they feel may facilitate or promote alcohol use.

Both companies offer health coverage to their employees through a self-insured group health plan.

Issues Under The Affordable Care Act

Beginning in 2015, the Patient Protection and Affordable Care Act (ACA) generally requires large employers to offer their full-time employees (and their dependents) the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored health plan or face a tax penalty. This is referred to as the Employer Mandate. The ACA also imposes a number of standards and requirements on group health plans, including those that are employer sponsored, such as requiring non-grandfathered plans to cover certain preventive-health services without requiring co-pays or deductible payments from plan participants or beneficiaries.

Under regulations developed by the Department of Health & Human Services (HHS), this requirement is interpreted to include all FDA-approved contraceptive methods. Currently, there are 20 such methods approved by the FDA, ranging from oral contraceptives to surgical sterilization. Four of those methods – two types of intrauterine devices (IUDs) and emergency contraceptives commonly known as Plan B and Ella – can function by preventing the implantation of a fertilized egg

in the womb.

HHS' contraception regulations allow exemptions for "religious employers" and other related accommodations. Such exemptions and accommodations did not extend to for-profit businesses such as Mardel and Hobby Lobby.

Complying with the HHS contraception requirements (at least with regard to the four contraception methods discussed above) was unacceptable to the Green family because one aspect of their religious beliefs is that human life begins when sperm fertilizes an egg and that it would be immoral for them to facilitate any act that causes the death of a human embryo.

Dropping health coverage for their employees or refusing to comply with the HHS' contraception requirements would subject the companies to large penalties under the ACA. The Greens asserted that they could be subject to nearly \$475 million in penalties each year for failure to provide all FDA-approved contraception methods. But if health coverage was dropped altogether, they calculated that Hobby Lobby and Mardel could face Employer Mandate penalties up to \$26 million per year.

The Respondents filed suit claiming that the contraceptive mandate violated both the Religious Freedom Restoration Act of 1993 (RFRA) and their Free Exercise rights under the First Amendment to the U.S. Constitution. The RFRA bars the government from substantially burdening a "person's" exercise of religion unless that burden is the least restrictive means to further a compelling governmental interest.

Specifically, the Greens contended that the RFRA entitles their Plan to an exemption from HHS' contraception requirement because the Greens objected on religious grounds. A similar group of plaintiffs (the Hahn family and Conestoga Wood Specialties ("Conestoga")) also challenged the law on the same grounds in the U.S. Court of Appeals for the 3rd Circuit and did not prevail. The cases were consolidated into *HHS v. Hobby Lobby, et al.* for oral arguments and the Court's decision today.

Decision Of The Court

The Supreme Court held that closely-held corporations should be provided the same accommodations under the RFRA as those provided to nonprofit organizations. In other words, the RFRA's protections could extend to for-profit corporations such as Hobby Lobby, Mardel, and Conestoga.

Accordingly, in order for the contraceptive mandate to survive (at least as applied to the Respondents), the burden was on the government to show that the contraception regulations 1) served a "compelling government interest" and 2) were the "least restrictive means" of achieving its interest in guaranteeing cost-free access to birth control. The Court assumed the first prong had been met.

As to the second prong, however, the Court found that the Government failed to carry its burden to

As to the second prong, however, the Court found that the Government failed to carry its burden to show that the contraception requirements were the “least restrictive means” of achieving its interest in guaranteeing cost-free access to birth control. For example, the Court noted that HHS had already devised and implemented a system for providing all FDA-approved contraceptives to employees of religious nonprofit organizations that object to HHS’ contraception made, and the government did not provide a sufficient reason why this system could not be extended to employees of closely-held for-profit companies whose owners also have religious objections.

Implications For Employers

It is not clear how far-reaching today’s decision will be. Supporters of the government’s position have argued that the Court’s decision could go far beyond contraception, and allow corporations to lodge objections on religious grounds to a host of health, employment, safety, and civil rights laws (the dissenting justices also voiced similar concerns).

But the Court’s opinion today seemed to limit itself to the contraceptive mandate only, likely quelling the concerns of many who argued a broader decision may put in jeopardy other items typically covered under group plans, such as vaccinations and blood transfusions. In addition, the Court warned that its decision should not be interpreted to provide a shield to employers to cloak illegal discrimination under the guise of claimed religious beliefs (for example, companies claiming to object, on religious grounds, to same-sex marriage).

In addition, even as to the ACA’s contraception requirements, this decision likely will not seem to extend to larger corporations with diverse ownership interests. The Court noted the difficulty of determining the religious beliefs of, for example, a large publicly-traded corporation, and pointed out that the corporations in this case were all closely-held corporations, each owned and controlled by a single family, with undisputed sincere religious beliefs.

Accordingly, there may be relatively few employers that fit the exemption created by the Court’s decision today (and the contraceptive requirements otherwise still stand). HHS will likely draft new regulations to comply with today’s decision, and it remains to be seen whether new plaintiffs will challenge the contraception requirements or other requirements under the ACA on similar grounds.

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