Closely Held Corporations May Not Have to Provide Employees Contraceptive Coverage Due to Religious Objections

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In a 5-4 decision, the United State Supreme Court ruled yesterday in *Burwell v. Hobby Lobby Stores, Inc.*, that closely held, for-profit corporations may invoke the religious objections of their owners in order to exclude contraceptive coverage from the health insurance they purchase for their employees. The Affordable Care Act ("ACA") requires employers with 50 or more employees to offer a group health plan or group health insurance that provides " minimum essential coverage." Among other provisions, the ACA requires coverage to include preventive care and screenings for women at no cost, and regulatory guidance explains that this includes all FDA-approved contraceptive methods. Because some of these methods prevent an already fertilized egg from developing any further, the regulations exempted churches from this mandate and created a process by which religious non-profit organizations could seek an exemption. *Hobby Lobby* opens the door for closely held, for-profit companies whose owners have sincere religious beliefs against contraceptive methods to object to including coverage for such methods in their health plans.

Road to the High Court

The case involved two family-owned, for-profit corporations — Conestoga Wood Specialties and Hobby Lobby — both of whom objected to covering four contraceptive methods based on the religious beliefs of their owners. The companies and their owners separately brought suit against the Department of Health and Human Services ("HHS") under the Religious Freedom Restoration Act ("RFRA") for an injunction against the ACA's contraceptive mandate insofar as it would require them to provide health insurance coverage for the four contraceptive methods that operate after the fertilization of an egg. The RFRA prohibits the government from taking any action that substantially burdens the exercise of religion, unless that action constitutes the least restrictive means of serving a compelling state interest. In the **Conestoga** case, the district court denied their request for an injunction, and the court of appeals affirmed. In the *Hobby Lobby* case, the district court denied the requested injunction, but the court of appeals reversed. The Supreme Court agreed to hear both cases together.

The Ruling

Justice Alito, writing for the majority, held that the regulations requiring contraceptive coverage violated the sincerely held religious beliefs of the companies' owners. HHS contended that for-profit corporations could not sue under the RFRA and that the owners also could not bring suit because the regulations only applied to companies. The Court rejected these arguments, explaining that they were contrary to the text of the RFRA. HHS also argued that for-profit corporations were not protected by the RFRA because they did not "exercise religion." However, HHS conceded that some non-profit companies could exercise religion within the meaning of the statute, and the Court explained that there was nothing in the RFRA to support a distinction between for-profit and non-profit companies. It thus explained that a for-profit company could further religious objectives based upon the religious beliefs of its owners. Finally, the majority found that the contraceptive mandate substantially burdened those beliefs. The Court acknowledged that the regulations served a compelling governmental interest — ensuring that female employees had access to contraceptive coverage. However, the majority concluded that requiring contraceptive coverage was not the least burdensome way for the government to accomplish that goal. In particular, the Court pointed to the exemption for churches and the process for religious non-profits to seek an exemption.

Uncertainty Remains, Scope Criticized

The scope of the decision is unclear. The majority explained that its opinion did not mean that any for-profit corporation could opt out of any law it deems incompatible with the religious beliefs of its owners. Further, the decision suggests that its rationale is limited to closely held corporations where a small group of owners share a common religious belief. Justice Ginsburg filed a dissenting opinion, in which she strongly criticized the scope of the majority opinion and predicted that it would allow all for-profit corporations — not just those closely

held — to assert religious beliefs as a way to exempt themselves from compliance with a variety of federal laws.

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