Supreme Court Allows Closely Held Corporations to Invoke Religious Objections Against Providing Employee Contraceptive Coverage

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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 religious objections to exclude contraceptive coverage from the health insurance they purchase for their employees. The Court's *Hobby Lobby* decision, authored by Justice Alito, has important implications for both closely held for-profit corporations and their employees.

Keys to the Hobby Lobby Ruling

Under the ruling, if owners of closely held corporations hold "sincerely held" religious beliefs, the corporation is exempt from its obligation to comply with at least certain portions of the Affordable Care Act ("ACA") and its regulations if those ACA obligations conflict substantially with the owners' religious beliefs. In the longer term, it is possible that the Court's legal reasoning in *Hobby Lobby* could permit closely held corporations to assert faith-based exemptions from their obligations to comply with other federal laws. Notably, however, the Court's ruling was limited to closely held corporations, and took no position on whether publicly-traded corporations are entitled to assert such claims.

Notwithstanding the Court's decision, employees of closely held corporations whose owners have religious objections to contraceptives may ultimately retain access to these ACA-authorized health care benefits. The Court's decision in *Hobby Lobby* — coupled with an important concurring opinion filed by Justice Kennedy — suggests that if closely held corporations have religious objections to paying for contraceptive coverage, it is permissible for the government, insurers, or health plan administrators to pay those costs instead. The federal government has already authorized such an approach to provide contraceptive access to employees of certain religious-based non-profit organizations.

The ruling was the latest in a series of high-profile cases involving disputes over the implementation of the ACA, commonly known as Obamacare. In *Hobby Lobby*, the federal Department of Health & Human Services ("HHS") issued regulations requiring all employer-funded health plans to cover FDA-approved contraceptives. The owners of Hobby Lobby, a closely held for-profit craft store chain with over 13,000 employees, objected as a matter of religious principle to being required to fund employee health insurance that provided coverage for four specific contraceptive methods (out of the twenty approved by the FDA).

The Court's Reasoning in Hobby Lobby

The Court's decision required it to interpret a federal statute known as the Religious Freedom Restoration Act ("RFRA"). This statute places limits on the extent to which government actions can burden religious exercise. After concluding that RFRA covers both closely held corporations and individuals, the Court needed to decide two legal questions. The first RFRA question was whether the HHS regulation served a "compelling governmental interest" — here, ensuring that female employees had access to contraceptive coverage. The Court agreed that this interest was sufficiently "compelling".

The second RFRA question was whether the HHS regulation — mandating that all employer health plans cover contraceptives — was the "least burdensome" way for HHS to accomplish that goal. Crucially, the Court concluded that it was not. The Court held that the HHS regulation constituted a significant burden on the religious beliefs of the Hobby Lobby owners (in the form of financial penalties if they did not comply), and noted that closely held corporations should not be forced to make "a difficult choice: either give up the right to seek judicial protection of their religious liberty or forgo the benefits, available to other competitors, of operating as a corporation."

Importantly, the Court also concluded that HHS had alternative (and less burdensome) option for achieving its goal of ensuring access to contraceptive coverage. In specific, the Court noted that HHS has already established an "accommodation" process for certain religious non-profit employers who object to having their employer-based health plans pay for contraceptives. When a religious non-profit employer files the accommodation with HHS, its employees remains entitled to contraceptive coverage — but the coverage itself is paid for separately by the insurer.

Justice Kennedy, often the swing vote between the ideological wings of the Court, filed an important concurring opinion to clarify that the majority ruling did not have the "breadth and sweep" that the dissent suggested. The Kennedy concurrence focused specifically on the HHS non-profit accommodation option, and implied that it could (and should) be expanded to closely held for-profit corporations.

Justice Ginsburg filed a dissenting opinion (joined by Justices Breyer, Sotomayor, and Kagan in whole or in part), in which she strongly criticized the scope of the majority opinion. The dissent predicted that the Court's reasoning 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. "Although the Court attempts to cabin its language to closely held corporations," Justice Ginsburg wrote, "its logic extends to corporations of any size, public or private." Justice Breyer also filed a dissenting opinion, in which Justice Kagan joined.

Potential Implications of *Hobby Lobby* for Corporations and Employees

In the short term, HHS may respond to the Court's decision by extending the religious non-profit accommodation option to closely-held corporations like Hobby Lobby, in an effort to ensure that any employees affected by the Court's ruling will continue to receive ACA contraceptive benefits. Congressional action is also a possibility. Those impacted by this ruling should monitor whether HHS issues additional guidance to assist affected employers in meeting their now-modified ACA compliance obligations.

The *Hobby Lobby* decision may also have broader implications beyond the specific issue of who is required to provide ACA-compliant contraceptive coverage. Justice Alito sought to limit the opinion's scope— warning that it did not constitute a blank check for-profit corporations to "opt out of any law . . . they judge incompatible with their sincerely held religious belief," and cautioning that its reasoning may not even extend to other insurance mandates (such as immunization coverage). However, it will be worth watching whether any corporations successfully deploy *Hobby Lobby* as a precedent in future cases where the religious beliefs of a closely held corporation conflict with its statutory or regulatory obligations.

Finally, this will not be the last major case on ACA implementation. As noted above, *Hobby Lobby* promotes the HHS "accommodation" process as a preferred alternative (in these circumstances) to a regulatory mandate. Yet there is pending federal litigation — including the closely-watched case *Little Sisters of the Poor Home for the Aged v. Sebelius* — over whether the HHS accommodation process itself is legal. The range and number of pending ACA-related lawsuits make it imperative for health insurers, human resources professionals, and benefits managers alike to continue monitoring these cases closely, as their outcomes will have an impact on both plan design and implementation.

Summer associate Nathan B. Campbell assisted with the research and drafting of this Alert.

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