

U.S. SUPREME COURT RULING: CLOSELY HELD FOR-PROFIT CORPORATIONS WITH RELIGIOUS OBJECTIONS EXEMPT FROM ACA CONTRACEPTIVE MANDATE

On Monday, June 30, 2014, the U.S. Supreme Court issued a 5-4 decision in *Burwell v. Hobby Lobby Stores, Inc., et al.*, that extends certain religious freedom protections to closely held for-profit corporations. Specifically, the Supreme Court ruled that the Federal Government cannot impose the contraceptive mandate on closely held for-profit corporations that have religious objections because the mandate violates the religious rights of such corporations under the Religious Freedom Restoration Act of 1993 ("RFRA").

BACKGROUND

The Patient Protection and Affordable Care Act of 2010 ("ACA") requires that employers' group health plans furnish preventive care and screenings for women without any cost sharing requirements. The ACA directed the Department of Health and Human Services ("HHS") to define preventive care, which HHS did through regulations and other departmental guidance. In its definition of preventive care, HHS included twenty contraceptive methods that have been approved for use by the Food and Drug Administration ("FDA"). Religious objectors have contended that some of these contraceptive methods are abortifacient drugs. In partial recognition of these objections, HHS and the FDA exempted churches and certain closely related organizations and provided an accommodation to nonprofit religious organizations. All other types of organizations, unless they maintain a grandfathered plan, have been subject to the contraceptive mandate.

Under the RFRA, the Federal Government is prohibited from substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability unless the government demonstrates that application of the burden to the person:

1. Is in furtherance of a compelling governmental interest; and
2. Is the least restrictive means of furthering that compelling governmental interest.

In the Hobby Lobby case, three closely held for-profit corporations (Conestoga Wood Specialties, owned by the Hahn family, and Hobby Lobby Stores, Inc. and Mardel, owned by the Green family) challenged the application of the contraceptive mandate based on religious objections. With respect to each corporation, the owners had sincere Christian beliefs that life begins at conception and that it would violate their religion to facilitate access to contraceptive drugs or devices that operate after that point.

THE RULING

In the majority's opinion, the Supreme Court reasoned that a closely held for-profit corporation is a "person" for purposes of the RFRA and can share the sincere religious beliefs of a corporation's shareholders, officers and employees. Ultimately, with respect to these corporations, the Supreme Court ruled that the contraceptive mandate violates the RFRA because it substantially burdens the exercise of religion and is not the least restrictive means of furthering a compelling governmental interest. In its reasoning, the Supreme Court indicated that HHS has already established less restrictive means to serve the government's interest, referring to the accommodation established for nonprofit religious organizations. Interestingly, the ruling appears to apply to the contraceptive mandate as a whole and not just the contraceptive methods to which the corporations objected. Finally, because the Supreme Court was able to decide the matter by applying the RFRA, the Supreme Court did not address possible constitutional issues under the Free Exercise Clause.

PRACTICAL TAKEAWAYS

The Supreme Court's decision is clearly limited to closely held for-profit corporations, but it still has several implications, including:

- Similarly situated closely held for-profit corporations with sincere religious objections now have a basis for claiming an exemption from the contraceptive mandate.
- The case does not address other types of entities, such as partnerships and limited liability companies, or ownership structures such as publicly traded corporations. However, the Supreme Court's majority opinion acknowledges the potential for other contexts and indicated that state laws provide sufficient structure for lower courts to ascertain the religious beliefs of all types of entities and resolve such disputes. Thus, other types of entities with similar religious views will need to closely review the decision for potential applicability.

- Organizations wanting to apply this case to their circumstances will also want to consider state insurance laws for possible restrictions and or requirements that may still apply to fully insured plans.
- The case does not affect another group of pending cases that are at various stages of litigation filed by nonprofit religious organizations to challenge the validity and enforceability of the contraceptive mandate and the related accommodation developed for such nonprofit religious organizations.

If you have any questions regarding the implications of this case, please contact:

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