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# 5 things to know about the Supreme Court's Hobby Lobby decision and your business

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The U.S. Supreme Court on Monday ruled against a provision of the 2010 Affordable Care Act requiring many employers to provide female workers with comprehensive insurance coverage for contraception at no extra cost.

The cases were brought by two closely held companies: **Hobby Lobby**, the chain of arts and crafts stores, and furniture maker Conestoga Wood Specialties. They argued that companies should be afforded protection under the Religious Freedom & Restoration Act (RFRA), a 1993 federal Law enacted with broad bipartisan support. The purpose was to ensure that the government meets a high burden before interfering with freedom of religion.

The question for many business owners is how will the court's ruling in Hobby Lobby affect their business?

- Employers who have sincerely held religious objections may deny health insurance coverage to their employees for birth control or comprehensive contraceptive coverage.

The court's decision, written by [Justice Alito](#), reasons that because the employers in question have a sincere belief that life begins at conception, by requiring them to arrange for contraceptive coverage, the Affordable Care Act mandate demands that the employers engage in conduct that seriously violates their religious beliefs .

[Justice Alito](#) points out the Department of Health & Human Services already had allowed nonprofits to opt out of the mandate on religious grounds. He states: "HHS has provided no reason why the same system cannot be made available when the owners of for-profit corporations have similar religious objections." Therefore, the court concludes that the government did not use the least-restrictive means necessary to achieve its goal of providing contraceptive coverage.

- Businesses are potentially protected by the Religious Freedom Restoration Act.

Until now, the Supreme Court has never recognized a for-profit corporation's right to religious freedom under the Constitution or federal Law.

This decision represents a line of thinking at the Supreme Court recognizing and extending legal rights to corporations, where such rights had been non-existent or at least in doubt, much like the Citizens United case, which held that corporations have free speech rights under the First Amendment.

The court reasons that when rights are extended to a corporation, the purpose is to protect individual rights and that the goal of protecting such rights is valid. The court cited extending Fourth Amendment protection to corporations to protect the privacy interests of employees and others associated with the company as an example of protecting such rights.

- The court limited the scope of its holding to closely held businesses and to the contraceptive mandate.

For those companies required to comply with the Affordable Care Act, only those businesses that may be considered closely held will be affected by the court's ruling, and out of those businesses, only those businesses that have a sincerely held religious objection may be excused from the mandates set forth by the Affordable Care Act. The court defined closely held companies as those corporations that are under the control of just a few people in which there is no essential difference between the business and its owners.

This leaves open the question whether or not large, publicly traded businesses must still comply with the birth control mandate of the **ACA**. While the court made no explicit ruling, it did offer some insight:

"These cases, however, do not involve publicly traded corporations, and it seems unlikely that the sort of corporate giants to which HHS refers will often assert RFRA claims."

"For example, the idea that unrelated shareholders – including institutional investors with their own set of stakeholders – would agree to run a corporation under the same religious beliefs seems improbable. In any event, we have no occasion in these cases to consider RFRA's applicability to such companies. The companies in the cases before us are closely held corporations, each owned and controlled by members of a single family, and no one has disputed the sincerity of their religious beliefs."

The court also specified that its holding was limited to the contraceptive coverage mandate, not other medical procedures such as vaccines and blood transfusions, on religious grounds.

- The court limited its decision to ruling based on the Religious Freedom Restoration Act, not the First Amendment. Therefore, the future of the religious exemption recognized by the Court is in the hands of the legislature.

The court said Congress intended for the Religious Freedom Restoration Act to provide broader religious freedom than the Constitution requires. Therefore, the issue could be revisited if the Religious Freedom Restoration Act were repealed or modified:

"As we have seen, RFRA was designed to provide very broad protection for religious liberty. By enacting the RFRA, Congress went far beyond what this Court had held is constitutionally required."

- The court also specified that an employer cannot use religious grounds to get an

## exemption from laws that prohibit discrimination.

Just as the court sought to limit the application of its ruling to closely held businesses and to the contraceptive mandate alone, it also sought to pre-emptively address any attempt at perverting its ruling to facilitate discrimination in the workplace:

“The principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction ... Our decision today provides no such shield. The government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.”

Like all issues related to health care and religion, cases and controversies like this will continue to evolve and to evoke emotion. Attorneys nationwide will continue to study and guide their client companies to stay in compliance with changes in the law. Companies dealing with these issues should engage legal counsel for these complicated and ever-evolving issues.

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