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U.S. Supreme Court Recognizes that Certain For-Profit Corporations may Exercise Religious Beliefs

Gray Reed & McGraw Legal Alert

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By Pat Souter On June 30, 2014, the U.S. Supreme Court issued its historic 5-4 ruling that a closely-held corporation may refuse to offer its employees insurance coverage for certain contraceptive methods approved by the Food and Drug Administration (FDA).

The Patient Protection and Affordable Care Act (ACA) notwithstanding, the Court held in Burwell v. Hobby Lobby Stores, Inc., et al., that based upon religious beliefs, a privately-owned, for-profit corporation may refuse to offer four of the 20 contraception methods that would effectively prohibit further development of an already fertilized egg. The unprecedented ruling specifically allows a for-profit entity to exercise religious rights just as an individual or a non-profit entity.

The Parties

Hobby Lobby Stores, Inc., Mardel, and Conestoga Wood Specialties Corporation are three privately-owned, for-profit, closely-held corporations that oppose the contraceptive methods required by the ACA.

Hobby Lobby is a nationwide chain of retail arts-and-crafts stores with 13,000 employees in 500 stores. Mardel is a regional Christian bookstore chain with approximately 400 employees in 35 stores. David and Barbara Green and their three children own Hobby Lobby Stores, Inc. and Mardel.

Norman and Elizabeth Hahn and their three sons own Conestoga Wood Specialties Corporation, a wood-working company with 950 employees.

At Issue

The U.S. Department of Health and Human Services (HHS) regulations promulgated under the authority of the ACA requires that employers with 50 or more full-time employees offer a “group health plan or group health insurance coverage” that provides for “minimum essential coverage.” For women, “minimal essential coverage” must include “preventive care and screenings” that do not impose cost-sharing for that coverage.

Guidelines for “preventive care and screenings” issued by the Health Resources and Services Administration (HRSA) include all 20 FDA-approved contraception methods, four of which would effectively inhibit further maturation of an already fertilized egg. Thus, if the employer did not provide employees with such health coverage opportunities, including all 20 contraceptive methods, the employer was subject to substantial financial penalties.

Both the Green family and the Hahn family hold religious beliefs that oppose the termination of life after conception. Since both families control the governance of their respective entities, each entity refused to offer four of the 20 mandated contraceptive methods in their employee health coverage due to their belief that these methods operated to terminate life. The Greens and the Hahns maintained that they were exercising their religious beliefs, and that any attempt by the government to compel them to offer those four contraception methods effectively limited the exercise of their religious beliefs.

The two families, with their business entities, took different avenues in eventually arriving before the U.S. Supreme Court with their respective actions. The Greens, Hobby Lobby, and Mardel sued HHS and other federal agencies and officials, seeking to make the application of the contraceptive mandate unlawful under the Religious Freedom Restoration Act of 1993 (RFRA) and the Free Exercise Clause of the First Amendment to the Constitution. RFRA prohibits the government from substantially burdening a person’s exercise of their religious beliefs, unless the government can demonstrate that the application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering the compelling governmental interest. The Free Exercise Clause prohibits the government from establishing any religion or prohibiting expression of religious beliefs.

Concerning the Green family, Hobby Lobby and Mardel:

The U.S. District Court for the Western District of Oklahoma denied the Green’s request for a preliminary injunction to prohibit the enforcement of the contraceptive mandate. On appeal to the U.S. Tenth Circuit Court of Appeals, the Court reversed the trial court and held that the Greens, Hobby Lobby and Mardel could move forward with their lawsuit. HHS appealed the ruling of the Tenth Circuit Court of Appeals to the Supreme Court.

Concerning the Hahn family and Conestoga:

The Hahns filed a similar action on the same grounds as the Greens but the U.S. District Court for the Eastern District of Pennsylvania denied the Hahn’s preliminary injunction. On appeal, (and contrary to the Tenth Circuit’s decision concerning Hobby Lobby) the U.S. Third Circuit Court of Appeals affirmed the District Court’s ruling prohibiting the Hahns and Conestoga from moving forward with their lawsuit. The Hahns appealed the ruling of the Third Circuit Court of Appeals to the U.S. Supreme Court.

Therefore, both cases and the findings of the Third and Tenth Circuits of Appeal, which were in opposition, were before the Court to determine if a privately-owned, closed corporation may be a "person" under the RFRA and thus exercise religious beliefs.

Before rendering its decision, the U.S. Supreme Court reviewed three issues before it:

1. HHS maintained that for-profit corporations could not exercise religious beliefs as contemplated by RFRA because they are not "persons" as required by the law. The Court noted that "…RFRA was designed to provide very broad protection for religious liberty." Further, RFRA "… provided protection for people like the Hahns and Greens by employing a familiar and often-used legal fiction: it included corporations with RFRA's definition of 'persons'. But it is important to keep in mind that the purpose of the fiction is to provide protection for human beings." Therefore, the Court rejected the position of HHS by holding that for-profit corporations like Hobby Lobby, Mardel and Conestoga were in fact "persons" and could conduct the "exercise of religion" under RFRA.

2. The Court noted that both the Greens and the Hahns have sincere religious beliefs that life begins at conception. By compelling them to provide the HHS contraception mandates, their religious beliefs are violated. If the Greens, Hahns and their companies do not yield to the demands of HHS and provide insurance that does not include these mandates, the economic financial consequences to them may be dire. If they choose not to offer health insurance to their employees, while not as dire a consequence, serious financial repercussions for the entities are created. The Court stated that the Greens, Hahns and their companies have religious reasons for providing health insurance to their employees. Each owner felt a moral obligation to provide such coverage before it was mandated by the ACA. If the companies' relief was to not provide insurance to its employees to escape the financial repercussions, the alternative would be contrary to their religious beliefs as well. Therefore, the Court ruled that the HHS contraceptive mandate "substantially burden[s]" the exercise of religion.

3. Was the HHS contraceptive mandate in furtherance of a compelling governmental interest, and if so, was it the least restrictive means of furthering that compelling governmental interest? The Court assumed that the contraceptive mandate of HHS is in furtherance of a compelling governmental interest. The Court noted, though, that the least restrictive means would be for the government to pay for the four contraceptive methods rather than imposing upon the religious beliefs of the Greens, Hahns and their companies. HHS did not demonstrate that this would not be a viable alternative. Therefore, the Court ruled that there are less restrictive means of furthering the compelling governmental interest.

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The Takeaway

How does the Hobby Lobby ruling affect employers who are subject to the ACA mandates?

The ruling applies only to closely-held companies which may demonstrate that they have real religious beliefs that would be impacted by complying with ACA contraception mandates. The ruling does not provide that the insurance coverage mandate will fail simply because it conflicts with an employer's religious beliefs. There must still be an analysis of the least restrictive means of providing such coverage. Also, the Court's decision may not be used to escape other governmental mandates such as discrimination in hiring. The government has a compelling interest in providing for such liberties as equal opportunity in hiring and regulations precisely tailored to achieve such critical goals.

What if the employer is a publicly-held company or a private company that is not a closely-held family business, and there is a dispute between management and its shareholders?

While this case decision is limited to families and their companies such as Hobby Lobby, Martel and Conestoga, the Court does address business organizations that do not fall into those categories. In such a dispute, the Court notes that the entity's organizational documents and state law address the manner in which disputes should be settled. Whether it is a dispute of this nature or one involving issues outside of religious belief issues, it is important that business entities examine how disputes between management and shareholders are to be settled. The entity's organizational documents should include a specific process by which disputes may be resolved.

If you have questions regarding the Hobby Lobby ruling as it relates to your business, please call your attorney or call Gray Reed & McGraw at 214-954-4135. We are always here to help.

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