



# Advocacy Update

Sent July 2, 2014

There has been a great deal of interest in the recent Supreme Court ruling in the *Hobby Lobby* case, which pitted the religious liberty interests of owners of closely held for-profit corporations against the right of their female employees to contraception health coverage under the Affordable Care Act. Women of Reform Judaism (WRJ) has a history of advocacy on many of the issues touched by this decision, including religious liberty, reproductive rights, and women's equality. Along with other arms of the Reform Movement, WRJ had submitted *amicus* briefs in the case urging the Court to determine that the rights of a corporation should not trump the religious liberty rights, or health care interests, of employees, even in cases where a corporate employer objects to providing contraception coverage for religious reasons.

## **The Court's Ruling**

In a 5-4 decision on June 30, 2014, the Supreme Court ruled that a closely held for-profit corporation may seek an exemption under the Religious Freedom Restoration Act (RFRA) to the contraception mandate of the Patient Protection and Affordable Care Act (ACA). The combined ruling in *Burwell v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties, Corp. v. Burwell* extended RFRA protections to closely-held corporations, an unprecedented move in the history of religious freedom rights in this country. The Court has never before held that religious liberty should or could extend to for-profit corporations, such as Hobby Lobby.

Writing for the majority, Justice Samuel Alito wrote emphatically that this decision applied only to the contraception mandate of the Affordable Care Act. In fact, Justice Anthony Kennedy authored a concurrence to reinforce this very point. The more conservative wing of the Court (Chief Justice John Roberts, Justice Antonin Scalia, Justice Clarence Thomas, and Justice Alito, often joined by swing vote, Justice Kennedy) attempted to make clear that the *Hobby Lobby* decision will not allow all closely-held corporations to seek exemptions from other requirements under the ACA, such as health coverage for vaccines or blood transfusions, or from civil rights protections.

## **The Dissent**

Justice Ruth Bader Ginsburg warned in her scathing dissent that the majority's opinion was one of "startling breadth," despite their claims to the contrary. Justice Ginsburg argued that RFRA was not intended to extend beyond protections of individuals' religious liberty, and those protections could not go so far as to negatively impact a third party, such as the employees in these cases.

Another important distinction Justice Ginsburg highlighted was the difference between religious non-profits, which already receive accommodation under the contraception mandate, and corporations like Hobby Lobby. She wrote, "[R]eligious organizations exist to foster the interests of persons subscribing to the same religious faith. Not so of for-profit corporations. Workers who sustain the operation of those corporations commonly are not drawn from one religious community... The distinction between a community made up of believers in the same religion and one embracing persons of diverse beliefs, clear as it is, constantly escapes the Court's attention" (dissent, p. 17).

Above all, Justice Ginsburg argued two points that could have far-reaching and longstanding impact that – despite the majority's insistence – open up the *Hobby Lobby* ruling to much broader implications:

*The first:* Justice Ginsburg challenged the majority regarding how narrowly tailored their decision truly is. By stating that there is only a RFRA exemption for closely held corporations regarding contraception, the Court implied that only certain "religious beliefs are worthy of accommodation."

Courts should not question whether or not beliefs are “sincerely held,” but under RFRA, only whether they are substantially burdened. Other religions have sincerely held objections to other elements of health care required by the ACA, but they are not discussed in this decision. Justice Ginsburg warns of the perception of the government favoring some religions over others (p. 34), a serious problem the Establishment Clause seeks to prevent.

*The second:* The majority states that the government should cover Hobby Lobby’s employees for contraception in the place of the employer. This sets a challenging standard for future exemptions – will the government need to step in each time a house of worship, a religious non-profit, or a closely held for-profit seeks an exemption? Not only would this be costly to the taxpayer, but it would also poke holes in the fabric of the ACA, which sought to guarantee universal health care.

### **The Implications of the Case**

The implications of the *Hobby Lobby* decision on our national understanding of religion in public life are quite broad. What cannot be ignored are the implications of this case on women, a woman’s right to choose their own health care, and the role of family planning in ensuring gender equality. The Court found it “unnecessary to adjudicate” whether or not there is a compelling government interest in pursuing public health and gender equality, raising concerns that there is no language or precedent ensuring future protections of these interests. While the Court did acknowledge a compelling government interest in ensuring access to contraception, under RFRA’s ‘least restrictive means’ test the Court found the provision insufficient to override the corporation’s religious liberty claim.

A major impact of the Court’s decision is the expectation that the government will make an accommodation for closely held for-profits similar to what it does for religious non-profits. During the time it takes the Obama Administration and/or Congress to establish an alternative for contraception coverage for these employees, there will be thousands of women who will not have access to affordable contraception.

The *Hobby Lobby* decision has already elicited, and will continue to elicit, much conversation as we assess what the impact will be, and what steps need to be taken to ensure religious freedom and gender equality in the United States. WRJ believes that all women should have access to affordable contraception as a basic element of health care coverage, regardless of the religious perspective of their employers.

### **Additional Information**

- Statement from Rabbi Rick Jacobs, President of the Union for Reform Judaism, Rabbi Steve Fox, CEO of the Central Conference of American Rabbis, Rabbi Marla J. Feldman, Executive Director of Women of Reform Judaism, and Rabbi David Saperstein, Director and Counsel of the Religious Action Center of Reform Judaism on the day of the decision, [“Reform Movement Decries Supreme Court Ruling in Hobby Lobby, Conestoga Wood”](#)
- WRJ Board Statement, May 2014: [“In the Balance: Religious Liberty and Individual Rights”](#)
- [Read the full opinion of the Court](#)
- Amy Howe of *SCOTUSblog*, [“Court rules in favor of for-profit corporations, but how broadly? In Plain English”](#)
- *The New York Times*, [“Room for Debate: Congress, Religion, and the Court”](#)
- Jay Michaelson writing in the *Jewish Daily Forward*, [“A Threat to Jews in Hobby Lobby Decision”](#)
- Eliana Dockterman of *Time*, [“5 Things Women Need to Know About the Hobby Lobby Ruling”](#)