

CASE #10: CORPORATIONS' RELIGIOUS BELIEFS VERSUS AMERICANS' ACCESS TO MEDICATION

The Law

The Affordable Care Act (ACA; Obamacare) mandates that health policies written under the act include full coverage for all methods of birth control (20 have been approved by the Food and Drug Administration). Hobby Lobby and Conestoga Wood Specialties object to four methods—two types of IUDs and two types of emergency contraception, Plan B and Ella. These four methods block a fertilized egg from implanting in the uterus.

The Parties Involved

Hobby Lobby. Hobby Lobby is a privately held, for-profit corporation with 13,000 employees in its more than 600 arts and crafts stores. It's owned by a trust managed by the Green family, devout Christians who run the company based on Biblical principles, and based in Oklahoma City. They close their stores on Sundays, start staff meetings with Bible readings, pay above minimum wage, and use a Christian based mediation practice to resolve employee disputes. The Greens contend that the ACA's requirement that health insurance plans cover contraception will force them to choose between violating their religious beliefs or suffer huge financial penalties for violating the law. They don't object to covering of contraception, only the emergency contraceptive pills Plan B and Ella and intrauterine devices (IUDs) which they believe are abortifacients. Penalties would total \$475 million a year. The company is asking the court to find that it has the same religious freedom rights as a church or an individual. (www.motherjones.com/politics/2014/03/hobby-lobby)

Conestoga Wood Specialties Corp. Conestoga Wood is a privately held kitchen cabinetry manufacturer that employs approximately 2,100 workers in seven locations. It is owned by a family of five Mennonites who object as a matter of conscience to facilitating contraception that may prevent the implantation of a human embryo in the womb. Penalties would be \$35 million a year. (www.becketfund.org for religious liberty)

The Case

On March 25th, 2014 the Affordable Care Act, better known as "Obama Care", was brought before the U.S. Supreme Court. The justices heard arguments in *Sebelius v Hobby Lobby Stores, Inc. and Conestoga Wood Specialties Corp. v Sebelius*. These two consolidated cases concern Obamacare's "contraceptive mandate"—the requirement that businesses offering their employees health insurance must provide plans that cover all federally-approved contraception methods at no extra cost to their employees.

Hobby Lobby Stores and Conestoga Wood Specialties are both owned by Christians who believe that some of these contraceptive methods are tantamount to abortion because they

prevent a fertilized egg from implanting in the uterus. The owners seek an exemption to the contraceptive mandate under the Religious Freedom Restoration Act (RFRA), a statute that Congress passed almost unanimously in 1993. This statute, which is at the center of the case, says that the federal government cannot substantially burden someone's exercise of religion without a compelling interest for doing so. (Many states have similar rules). Hobby Lobby and Conestoga Wood both claim that RFRA shields them from the birth control mandate, because providing contraceptives to employees at no cost is not important enough to justify the violation of their owners' religious rights.

The administration has already exempted "religious employers" such as churches from the contraceptive mandate, and it has provided religiously-affiliated nonprofit corporations with an "accommodation" that directs payments for objectionable procedures through their insurance-issuer or administrator. The government argues that the religious beliefs of a for-profit corporation's owners do not justify an exemption. (*The Economist*, "Obama Care and Religious Freedom". www.economist.com/news/united-states/21599789-supreme-court-ponders-contraception. 4/29/14

In a June 30, 2014 decision, the Supreme Court ruled 5-4 in favor of Hobby Lobby, finding that the private business does not have to follow the Affordable Care Act's contraception mandate. It applies to closely held corporations, not necessarily publicly traded ones. It covers contraception but doesn't necessarily endorse exemptions for vaccinations or blood transfusions. And it doesn't shield illegal discrimination cloaked as religious practice. In Ruth Bader Ginsberg's dissent, she said, "Claims will proliferate, for the court's expansive notion of corporate personhood...invites for-profit entities to seek religion-based exemptions from regulations they deem offensive to their faith." (USA Today 7-1-14)

Richard Wolf in USA Today calls this a case full of hot button issues: religious freedom, corporate rights, federal regulation, abortion, and contraception. Putting it another way, the case is about God, money, power, sex, and Obamacare.

At Issue

1. The Constitutional debate shifts from individual rights to employer mandates and whether corporations themselves enjoy the same First Amendment rights as individuals. The case asserts that a for-profit corporation can have the constitutionally protected right to the free exercise of religion.

Pro: Religious Rights for Corporations (assertions made in briefs before the Court)

1. Corporations may have an independent legal existence but are formed and staffed through individuals. The First Amendment protects the rights "of the people," and the 1993 law protects the religious rights of "persons." The owners in this case insist that their individual religious views actually shape the business of their company.

2. When you restrict corporations First Amendment rights, you are restricting a vast amount of speech and other forms of expression we take for granted as being free from government control.
3. If the Supreme Court rules against Hobby Lobby, private enterprise may never be truly “private” again. (www.christianheadlines.com/links/hobby-lobby).

Con: Religious Rights for Corporations (assertions made in briefs before the Court)

1. Such a decision would allow businesses to deny coverage for blood transfusions, immunizations, treatments involving stem cells, and psychiatric care based upon religious beliefs.
2. A win would be a serious setback for gay rights, e.g. refusal from a photography company to take pictures or a bakery to provide cakes for a same-sex couple wedding.
3. Denial of these methods can cause undue hardship upon women employees and their families who don’t necessarily share the religious beliefs of the company, e. g., an IUD can cost close to \$1000. An unintended pregnancy can cost the family economically and emotionally. Medical experts say “morning-after” pills and IUDs are not abortifacients.

Overriding Related Issues

1. Do corporations have a conscience? Corporations have free speech rights but can they practice religion? Do they have a relationship with God? Corporations do act on ethical and philosophical and moral views every day of the week.
2. Does religion trump the law? One could argue that the law does not trump religion in the above case since there really is no “contraception mandate,” given that companies can decline to offer insurance. Even if the contraception rule burdens companies or owners, that must be balanced against the burden they place on women who would have to pay for morning-after pills or IUDs. Critics of religious exemptions warn that challenges to other forms of health care could follow, from vaccines to do-not-resuscitate orders.

Questions

1. What is your ethical position on this case? Discuss the **ethical issues** NOT the legal ones which the Supreme Court justices weighed when they decided the case on the basis of the Constitution and U.S. laws, specifically the Religious Freedom Restoration Act.
2. Are we headed down a slippery slope or a minefield with the possibility of an array of exemptions from the law on the basis of religious freedom trumping individual rights?
3. Given that a large percentage of the products sold by Hobby Lobby are made in China where abortion has been legal for many decades, is the company guilty of applying a double standard?
4. When does religious doctrine or belief supercede established sciences?

