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# Supreme Court Rejects Contraceptives Mandate for Some Corporations

## Justices Rule in Favor of Hobby Lobby

By ADAM LIPTAK JUNE 30, 2014

WASHINGTON — The Supreme Court ruled on Monday that requiring family-owned corporations to pay for insurance coverage for contraception under the Affordable Care Act violated a federal law protecting religious freedom. It was, a dissent said, “a decision of startling breadth.”

The 5-to-4 ruling, which applied to two companies owned by Christian families, opened the door to many challenges from corporations over laws that they claim violate their religious liberty.

The decision, issued on the last day of the term, reflected what appears to be a key characteristic of the court under Chief Justice John G. Roberts Jr. — an inclination toward nominally incremental rulings with vast potential for great change.

Justice Samuel A. Alito Jr., writing for the majority, emphasized the ruling’s limited scope. For starters, he said, the court ruled only that a federal religious-freedom law applied to “closely held” for-profit corporations run on religious principles. Even those corporations, he said, were unlikely to prevail if they objected to complying with other laws on religious grounds.

But Justice Ruth Bader Ginsburg’s dissent sounded an alarm. She attacked the majority opinion as a radical overhaul of corporate rights, one she said could apply to all corporations and to countless laws.

The contraceptive coverage requirement was challenged by two corporations whose owners say they try to run their businesses on Christian principles: Hobby

Lobby, a chain of craft stores, and Conestoga Wood Specialties, which makes wood cabinets. The requirement has also been challenged in 50 other cases, according to the Becket Fund for Religious Liberty, which represented Hobby Lobby.

Justice Alito said the requirement that the two companies provide contraception coverage imposed a substantial burden on their religious liberty. Hobby Lobby, he said, could face annual fines of \$475 million if it failed to comply.

Justice Alito said he accepted for the sake of argument that the government had a compelling interest in making sure women have access to contraception. But he said there were ways of doing that without violating the companies' religious rights.

The government could pay for the coverage, he said. Or it could employ the accommodation already in use for certain nonprofit religious organizations, one requiring insurance companies to provide the coverage. The majority did not go so far as to endorse the accommodation.

Chief Justice Roberts and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas joined the majority opinion.

Justice Ginsburg, joined on this point by Justice Sonia Sotomayor, said the court had for the first time extended religious-freedom protections to "the commercial, profit-making world."

"The court's expansive notion of corporate personhood," Justice Ginsburg wrote, "invites for-profit entities to seek religion-based exemptions from regulations they deem offensive to their faiths."

She added that the contraception coverage requirement was vital to women's health and reproductive freedom. Justices Stephen G. Breyer and Elena Kagan joined almost all of her dissent, but they said there was no need to take a position on whether corporations may bring claims under the religious liberty law.

The two sides differed on the sweep of the ruling.

"Although the court attempts to cabin its language to closely held corporations," Justice Ginsburg wrote, "its logic extends to corporations of any size, public or private." She added that corporations could now object to "health coverage of vaccines, or paying the minimum wage, or according women equal pay for substantially similar work."

But Justice Alito said that "it seems unlikely" that publicly held "corporate giants" would make religious liberty claims. He added that he did not expect to see "a flood of religious objections regarding a wide variety of medical procedures and

drugs, such as vaccinations and blood transfusions.” Racial discrimination, he said, could not “be cloaked as religious practice to escape legal sanction.”

Justice Alito did not mention laws barring discrimination based on sexual orientation. Justice Ginsburg said all sorts of antidiscrimination laws may be at risk.

Josh Earnest, the White House press secretary, said that the court’s decision “jeopardizes the health of women employed by these companies” and added that “women should make personal health care decisions for themselves, rather than their bosses deciding for them.” Mr. Earnest urged Congress to find ways to make all contraceptives available to the companies affected.

Lori Windham, a lawyer for Hobby Lobby, said, “The Supreme Court recognized that Americans do not lose their religious freedom when they run a family business.”

The health care law and related regulations require many employers to provide female workers with comprehensive insurance coverage for a variety of methods of contraception. The companies objected to covering intrauterine devices and so-called morning-after pills, saying they were akin to abortion. Many scientists disagree.

No one has disputed the sincerity of their religious beliefs,” Justice Alito wrote. The dissenters agreed.

The companies said they had no objection to some forms of contraception, including condoms, diaphragms, sponges, several kinds of birth control pills and sterilization surgery. Justice Ginsburg wrote that other companies may object to all contraception, and that the ruling would seem to allow them to opt out of any contraception coverage.

A federal judge has estimated that a third of Americans are not subject to the requirement that their employers provide coverage for contraceptives. Small employers need not offer health coverage at all; religious employers like churches are exempt; religiously affiliated groups may claim an exemption; and some insurance plans that had not previously offered the coverage are grandfathered in.

In its briefs in the two cases, *Burwell v. Hobby Lobby Stores*, No. 13-354, and *Conestoga Wood Specialties v. Burwell*, No. 13-356, the administration said that for-profit corporations like Hobby Lobby and Conestoga Wood must comply with the law or face fines.

The companies challenged the coverage requirement under the Religious Freedom Restoration Act of 1993.

Some scholars said the companies would be better off financially if they dropped insurance coverage entirely, and so could not be said to face a substantial burden on their religious freedom. But Justice Alito said the companies also had religious reasons for providing general health insurance. He added that dropping it could place the companies at “a competitive disadvantage.”

The administration argued that requiring insurance plans to include comprehensive coverage for contraception promotes public health and ensures that “women have equal access to health care services.” The government’s briefs added that doctors, rather than employers, should decide which form of contraception is best.

A supporting brief from the Guttmacher Institute, a research and policy group, said that many women cannot afford the most effective means of birth control and that the coverage requirement will reduce unintended pregnancies and abortions. Justice Ginsburg cited the brief in her dissent.

The decision’s acknowledgment of corporations’ religious liberty rights was reminiscent of *Citizens United v. Federal Election Commission*, a 2010 ruling that affirmed the free speech rights of corporations. Justice Alito explained why corporations should sometimes be regarded as persons. “A corporation is simply a form of organization used by human beings to achieve desired ends,” he wrote. “When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.”

Justice Ginsburg said the commercial nature of for-profit corporations made a difference.

“The court forgets that religious organizations exist to serve a community of believers,” she wrote. “For-profit corporations do not fit that bill.”

Robert Pear and Michael D. Shear contributed reporting.

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