A LAY PERSON'S GUIDE TO THE *HOBBY LOBBY* DECISION

Kimberly K. Egan
SALTBOX CONSULTING

This guide is to help non-lawyers understand the *Hobby Lobby* decision, which the Supreme Court released on June 30, 2014. It explains in plain English what the issues were, how the Court decided them and why, and why the dissent disagreed.

This guide is not designed to persuade anyone whether the Court got it right, or whether the Court got it wrong.

This guide provides some "topics for further discussion" at the end. When a case involves controversial issues, thoughtful jurists can find it helpful to apply their conclusions to analogous, less incendiary fact patterns. Doing so can help a lawyer get through the haze of political activism to see the legal issues for what they are. It is also a basic principle of argument – if your logic is sound, it should hold up when taken to its logical extreme.

THE QUESTIONS

The first step of any legal analysis is to understand what legal questions we are trying to answer. Here are the legal questions in the *Hobby Lobby* case:

QUESTION 1: Does a law that Congress passed in 1993 called the Right to Religious Freedom Act (RFRA), which protects "a person's exercise of religion," apply to for-profit corporations as opposed to human beings only?

QUESTION 2: Does the contraception mandate in the Affordable Care Act violate Hobby Lobby's right to exercise religion under RFRA? The Court gets to this question only if it decides that the answer to the first question is yes.

THE ANSWERS

Question 1:

Does RFRA's protection of a "person's right to exercise religion" cover for-profit corporations or does it cover human beings only?

To answer that, the Court must decide whether a for-profit corporation qualifies as a "person" under RFRA and if so, whether that corporation-person "exercises religion."

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If the Court decides a corporation is not a person under RFRA, then the inquiry stops and Hobby Lobby loses.

If the Court decides that a for-profit corporation is a person but that a for-profit corporation cannot exercise religion, then the inquiry stops and Hobby Lobby loses.

Is a for-profit corporation a "person?"

Majority – Yes, a for-profit corporation is a "person" under RFRA because the definition of "person" includes corporations.

- The majority relies on the Dictionary Act, which defines "person" to "include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals," unless "the context indicates otherwise."[1]

- The majority says that "[n]o known understanding of the term 'person' includes *some* but not all corporations."

Dissent – No, for-profit corporations are not "persons" under RFRA because per the Dictionary Act, "the context indicates otherwise."

- The dissent relies on the legislative history of the RFRA statute which, it argues, gives no indication that Congress intended to extend religious protections to for-profit corporations.

Can a for-profit corporation "exercise religion?"

Majority – Yes, a for-profit corporation can exercise religion because a corporation is comprised of people and people exercise religion. The majority said a "corporation is simply a form of organization used by human beings to achieve desired ends."

Dissent – No, a for-profit corporation cannot exercise religion because a corporation is an artificial legal entity and has no beliefs or opinions.

- The dissent quotes a 1819 opinion by Chief Justice Marshall that a corporation is "an artificial being, invisible, intangible, and existing only in contemplation of law."[2]

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1 The Dictionary Act of 1947, 1 U.S.C. § 1.

2 *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 636 (1819).

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- The dissent quotes Justice Stevens in the *Citizens United* case that corporations "have no consciences, no beliefs, no feelings, no thoughts, no desires."[3]

- The dissent said that "in a sole proprietorship, the business and its owner are one and the same. By incorporating a business, however, an individual separates herself from the entity and escapes personal responsibility for the entity's obligations."

- The dissent quotes a lower federal court that "for-profit corporations are different from religious non-profits in that they use labor to make a profit, rather than to perpetuate [the] religious value[s] [shared by a community of believers]."[4]

[3] *Citizens United v. Federal Election Comm'n*, 558 U. S. 310, 466 (2010).

[4] *Gilardi*, *v. United States Dept. of Health and Human Servs.*, 733 F. 3d 1208, 1242 (C.D. Cal. 2013).

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QUESTION 2

Does the ACA's "contraception mandate" violate Hobby Lobby's rights under RFRA. The Court only reaches this question if it concludes that Hobby Lobby has rights under RFRA to begin with.

The "contraception mandate" requires all health insurance plans, including group plans offered by employers, to cover all FDA-approved forms of birth control.

To answer this, the Court must first decide whether the contraception mandate places a "substantial burden" on Hobby Lobby's exercise of religion.

If the Court decides the burden is not "substantial," then the inquiry stops and Hobby Lobby loses.

If the Court decides that the burden is substantial, then the Court must then decide whether the mandate furthers a "compelling governmental interest" and if so, whether it does so in the "least restrictive manner."

If the Court decides the burden is the least restrictive available, then the inquiry ends and Hobby Lobby loses.

<u>Does the contraception mandate pose a "substantial burden" on Hobby Lobby's exercise of religion?</u>

Majority – Yes, the burden is substantial because the alternatives available to Hobby Lobby would be expensive.

- The majority says the burden is substantial because while Hobby Lobby could stop offering a group health care plan, if it did so it would be subject to the associated fine under the ACA.

- The majority says the burden is substantial because while Hobby Lobby could stop offering a group health plan, if it did so it would be at a competitive disadvantage in hiring because employees wouldn't want to work for a company that did not offer health care insurance.

- The majority said that while the company could make up for this competitive disadvantage by raising wages, doing so would (i) cost the company money, (ii) deprive the company of a tax deduction for providing health insurance, and (iii) expose

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employees to the risk of higher income taxes based in higher income.

Dissent – No, there is no burden on Hobby Lobby, substantial or otherwise, because the mandate does not require the owners of Hobby Lobby to buy or use the contraceptives they find objectionable.

- The dissent says there is no burden on Hobby Lobby because the personal medical decision of some Hobby Lobby employees to use FDA-approved contraception for purposes that the owners of Hobby Lobby find objectionable is "merely the incidental effect of a generally applicable and otherwise valid provision."

- The dissent says there is no burden on Hobby Lobby because "[s]hould an employee of Hobby Lobby . . . share the religious beliefs [of the company]. . . she is of course under no compulsion to use the contraceptives in question."

- The dissent says there is no burden on Hobby Lobby because "[a]ny decision to use contraceptives made by a woman covered under Hobby Lobby's . . . plan will not be propelled by the Government, it will be the woman's autonomous choice, informed by the physician she consults."

<u>Does the contraception mandate further a "compelling governmental interest"?</u>

Majority – Yes.

Dissent – Yes.

This is the only issue on which the Court agrees unanimously.

<u>Does the contraception mandate use the least restrictive means to further its compelling interest?</u>

Majority – No, the contraception mandate does not use the least restrictive means because there are alternatives that would allow women access to contraception even if Hobby Lobby were to drop coverage.

- The majority says the first alternative is that the Government

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could pay the cost of birth control for the Hobby Lobby employees directly.

- The majority says the second alternative is that the Hobby Lobby employees could pay for contraceptive services themselves out of pocket.

- The majority says that it has not examined whether either alternative is legal.

Dissent – Yes, the contraception mandate uses the least restrictive means because the proposed alternatives are illegal and would bar access to legal forms of contraception for many women.

- The dissent says that the first proposed alternative is illegal because Congress already rejected proposals to have government pay for women's health care services, and because existing federal family planning funds are to help the indigent, not "to absorb the unmet needs of . . . insured individuals."[5]

- The dissent says the second alternative is illegal because an alternative is not the "least restrictive" if it "require[s] employees to relinquish benefits accorded them by federal law in order to ensure that their commercial employers can adhere unreservedly to their religious tenets."

- The dissent presents data on how financial burdens such as those that Hobby Lobby proposes as alternatives would impact a woman's access to contraception.[6]

- The dissent says that "no prior decision under RFRA, allows a religion-based exemption when the accommodation would be harmful to others—here, the very persons the contraceptive coverage requirement was designed to protect."

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[5] *See* Brief for National Health Law Program et al. as Amici Curiae 23 (citing Title X of the Public Health Service Act, 42 U. S. C. §300 et seq.).

[6] The "cost of an IUD is nearly equivalent to a month's full-time pay for workers earning the minimum wage, Brief for Guttmacher Institute et al. as Amici Curiae 16; that almost one-third of women would change their contraceptive method if costs were not a factor, Frost & Darroch, Factors Associated With Contraceptive Choice and Inconsistent Method Use, United States, 2004, 40 Perspectives on Sexual & Repro- ductive Health 94, 98 (2008); and that only one-fourth of women who request an IUD actually have one inserted after finding out how expensive it would be, Gariepy, Simon, Patel, Creinin, & Schwarz, The Impact of Out-of- Pocket Expense on IUD Utilization Among Women With Private Insurance, 84 Contraception e39, e40 (2011)." Dissent at 25.

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- The dissent quotes an earlier Supreme Court decision that "some religious practices [must] yield to the common good."[7]

[7] *United States v. Lee*, 455 U. S. 252, 259 (1982).

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TOPICS FOR DISCUSSION

1. The majority says that "[n]o known understanding of the word 'person' includes *some* but not all corporations."

   Do you think that means this decision applies to all corporations, or to privately held companies such as Hobby Lobby only?

2. The majority agrees with the lower court that "corporations do not, separate and apart from the actions or belief systems of their individual owners or employees, exercise religion. They do not pray, worship, observe sacraments or take other religiously-motivated actions separate and apart from the intention and direction of their individual actors."[8] The majority says that is "quite beside the point" of whether a for-profit corporation can exercise religion.

   Do you agree?

3. The majority says that "the federal courts have no business addressing . . . whether the religious belief asserted in a RFRA case is reasonable . . . ."

   Does that mean the government is not allowed to reject outrageous claims if the government thinks the claims are not part of a "real" religion? Why or why not? What standard should the government use to define "religion?"

4. The majority concludes there is a substantial burden on Hobby Lobby because the options it has to comply with the ACA while simultaneously following its religious beliefs would cost it money. The majority says that the company employees' alternatives include spending their own money to buy contraception coverage themselves or paying the costs of the health care services in question of pocket, and that the financial burden of those alternatives is permissible.

   Do you agree that Hobby Lobby's financial burden outweighs the financial burden on the employees? Does it matter which party has more money?

5. The dissent cites other cases in which commercial businesses tried to get religious exemptions from generally applicable laws. They include:

   - The owner of restaurant chain who refused to serve black patrons based on his religious beliefs opposing racial

[8] 724 F. 3d, at 385.

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integration.[9]

- Born-again Christians who refused to hire people "living with but not married to a person of the opposite sex," or women working without the consent of their father or husband, or anyone "antagonistic to the Bible," including "fornicators and homosexuals."[10]

- A for-profit photography business that refused to photograph a lesbian couple's commitment ceremony based on the religious beliefs of the company's owners.[11]

- An employer's assertion that both vaccines and the minimum wage are inimical to the employer's religious beliefs.[12]

- An employer's similar claim regarding women equal pay for substantially similar work.[13]

What do you think the Court's conclusion here means, if anything, for those other fact patterns?

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[9] *See, e.g.*, *Newman v. Piggie Park Enter., Inc.*, 256 F. Supp. 941, 945 (D.S.C. 1966), *aff'd in relevant part and rev'd in part on other grounds*, 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U. S. 400 (1968).

[10] *In re Minnesota ex rel. McClure*, 370 N. W. 2d 844, 847 (Minn. 1985) ((internal quotation marks omitted)), *appeal dismissed*, 478 U. S. 1015 (1986).

[11] *Elane Photography, LLC v. Willock*, 309 P. 3d 53, *cert. denied*, 572 U. S. ___ (2014).

[12] *See Tony and Susan Alamo Found. v. Secretary of Labor*, 471 U. S. 290, 303 (1985).

[13] *See Dole v. Shenandoah Baptist Church*, 899 F. 2d 1389, 1392 (Cal. Ct. App. 1990).

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