

The Balance of a Corporation's Rights and Responsibilities:

The Impact of *Burwell v. Hobby Lobby*

The 5-4 Supreme Court decision in *Burwell v. Hobby Lobby* polarized the legal community. Many supported the decision for its protection of religious freedom while others worried that it endangered women's reproductive rights and granted special exemptions for corporations. Both sides of the controversy acknowledged the Supreme Court's tricky teeter-totter balance of rights.

Hobby Lobby is a national arts and crafts store founded in 1970 in Oklahoma by David and Barbra Green.¹ The Greens state that they "operate the company in a manner consistent with biblical principles."² The owners of Hobby Lobby objected to the inclusion of two FDA contraceptives in the Hobby Lobby employee health care plan, which were required by the Affordable Care Act (ACA).³ The Greens believe the particular contraceptives are a form of abortion, which as Christians they do not condone.⁴

Therefore the tension in this case was between governmental established health care benefits under the ACA and the protection of religious practices under the Religious Freedom Restoration Act (RFRA).⁵ According to the RFRA the

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability ... [unless] it demonstrates that application of the burden to the person - (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.⁶

The ACA requires corporations to provide health care coverage to employees including about

¹ Denise M. Champagne, "Good, bad and ugly of 'Hobby Lobby' discussed," *The Daily Record of Rochester (Rochester, NY)*, 22 November 2014.

² Denise M. Champagne, "Good, bad and ugly of 'Hobby Lobby' discussed."

³ George J. Annas, "Money, Sex, and Religion — The Supreme Court's ACA Sequel," *The New England Journal of Medicine* 371 (August 2014): 862-866.

⁴ Denise M. Champagne, "Good, bad and ugly of 'Hobby Lobby' discussed."

⁵ Brittany Limes, "Peering into the Corporate Soul: Hobby Lobby Stores, Inc. v. Sebelius and How For-Profit Corporations Exercise Religion," *Denver University Law Review* 91(2014).

⁶ Paul Horwitz, "The Hobby Lobby Moment," *The Harvard Law Review* 154 (November 2014).

twenty FDA-approved contraceptives for female employees.⁷

In a 5-4 decision, the Supreme Court ruled that under the RFRA “persons” can include closely held corporations with genuine religious beliefs.⁸ As a result, Hobby Lobby stores operated by the religious Green family do not have to provide certain contraceptive options for their female employees since it contradicts their religious convictions. The decision was accompanied by a scathing dissent written by Justice Ginsburg in which she discussed the necessity of protecting women’s rights.⁹ Ginsburg has not been the only dissenter to the majority decision in the *Hobby Lobby* decision. Many articles both in the general media as well as in law reviews have been written about the implications and impact of the decision.

In his law review article “Appearances Can be Deceiving,” constitutional law professor Erwin Chemerinsky painted a dismal landscape in the post-*Hobby Lobby* world. The two most detrimental aspects of the decision in Chemerinsky’s opinion were: aligning corporation rights with individual rights and contraceptive coverage as antithetical to religious practices.¹⁰ Chemerinsky asserted that the Court made an error because Hobby Lobby is not a small closely held corporation but rather one that employs thousands of people.¹¹ Chemerinsky argued that a corporation cannot have the same privileges and rights as an individual because “by creating a corporation, the owners ...[should] accept the burdens of not being able to claim that the business is an extension of their religious view.”¹² For Chemerinsky this issue was that under the Supreme Court’s *Burwell v. Hobby Lobby*

⁷ Brittany Limes, “Peering into the Corporate Soul: Hobby Lobby Stores, Inc. v. Sebelius and How For-Profit Corporations Exercise Religion.”

⁸ *Burwell v. Hobby Lobby*, 537 U.S. Supreme Court 2-3 (2014).

⁹ *Burwell v. Hobby Lobby*, 537 U.S. Supreme Court (2014).

¹⁰ Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

¹¹ Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

¹² Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

ruling, corporations could claim many things would violate their religious rights including discriminatory practices.¹³ Chemerinsky argued that the decision could lead to a slippery slope of legal cases in which corporations try to argue for special sanctions or privileges due to their status as a religious “person” under the RFRA. While Erwin Chemerinsky’s argument raised strong counterpoints to the Supreme Court ruling in *Burwell v. Hobby Lobby*, on closer examination the decision is actually a careful defining of corporation’s rights and obligations. The impact of *Burwell v. Hobby Lobby* is about defining the rights of a corporation but that does not mean that courts are allowing corporations to have freedom in the legal system to do whatever they want.

While corporations have always possessed some legal rights and benefits, historically courts began to shift away from granting corporations protection. The courts realized that corporations were infringing upon the rights of individuals. In many worker’s compensation cases, such as *Saunders v. Southern Railway Company* decided in 1914, the railway was compelled to accept liability and provide some form of compensation for the injured worker.¹⁴ Legislation around the obligations of corporations boomed. The New York Worker’s Compensation Act of 1910 was passed to protect the rights of the workers¹⁵ For many years now, the focus of the legal system in the United States has been to reinforce the obligations which a corporation has towards its employees.

So how does the *Hobby Lobby* decision fit into the changing priorities of the courts in regards to corporations? Chemerinsky, argued that the decision is a dangerous slide back towards the Supreme Court shielding corporations.¹⁶ But this is not the case for two

¹³ Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

¹⁴ *Saunders v. Southern Railway Co.*, 203 United States Court of Appeals Sixth Circuit (1914).

¹⁵ Kermit L. Hall, *American Legal History*, 375.

¹⁶ Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

important reasons. First, corporations have always had rights and obligations in the United States so the idea that *Hobby Lobby* is a regression is not taking into account the historical rights of corporations. The *Burwell v. Hobby Lobby* decision actually acts as a not a slide backwards but rather a caveat in the grand scheme of corporate obligations. Second, the *Burwell v. Hobby Lobby* decision reflects a recent attempt by the Supreme Court to balance both the obligations but also the rights of a corporation. The case *Citizens United v. Federal Elections Commission* reaffirmed a right that groups of individuals (corporations) have had for years: the freedom of speech.¹⁷ The *Burwell v. Hobby Lobby* decision provides a narrow but an “important vindication of religious liberty” for corporations but doesn’t not impede upon the “pluralistic constitutional republic.”¹⁸

Unlike the early historical Supreme Court decisions, which favored the rights of the corporations strongly over the rights of the individuals, *Burwell v. Hobby Lobby* provides a compromise. While Hobby Lobby is not obligated to provide their female employees access to Ella or Plan-B, there are still a variety of other contraceptive options that are covered. As a result, Hobby Lobby female employees can still purchase contraceptive options for as low as \$9 a month.¹⁹ This is a low price especially considering a single Plan-B pill costs almost \$50 at a local drug store.²⁰ *Burwell v. Hobby Lobby* is not a slippery slope ruling, which denies female employees medical care options, but rather the court’s delicate attempt to balance health care rights with religious rights.

Chemerinsky’s fear of an avalanche of new courts cases discriminating against employees based on the precedent of *Burwell v. Hobby Lobby* therefore begins to unravel. For example, his claim that a corporation could refuse to grant any health care to workers

¹⁷ John Dunbar, “The ‘Citizens United’ decision and why it matters,” *The Center for Public Integrity*, 12 November 2014.

¹⁸ George J. Annas, “Money, Sex, and Religion — The Supreme Court's ACA Sequel,” 862.

¹⁹ George J. Annas, “Money, Sex, and Religion — The Supreme Court's ACA Sequel,” 862.

²⁰ George J. Annas, “Money, Sex, and Religion — The Supreme Court's ACA Sequel,” 862.

because the owners are Christian Scientists is neither logically nor legally sound.²¹ The Supreme Court is well aware of the delicate balance that upholds the legal system in the United States and they are not seeking to overturn that. The idea that employers would not be obligated to provide any health care for employees would not maintain a logical balance between health and religious rights. Since corporations are run by individuals who may feel “the sting of the religious burden” the Supreme Court ruled that these corporations must be treated as “people” under the RFRA.²² However, that does not mean that the court will allow a corporation to infringe upon the rights of an individual employee.

By defining corporations as individuals, the Supreme Court removes many of the “special treatments” which are still sometimes present in the court system. Post *Hobby Lobby*, corporations now defined as “peoples” may have more rights but they also have more obligations under the law. Therefore Chemerinsky’s assessment about the danger of defining a corporation as a person under the law is misguided because he actually misses a large portion of what this new categorization will mean in the future.

The recent Supreme Court ruling in *Burwell v. Hobby Lobby* sparked a lot of controversy. Many critics of the decision stand with Chemerinsky and fear that this will grant corporations power and the means to abuse this power. In actuality, the Supreme Court’s 5-4 ruling in the case *Burwell v. Hobby Lobby* is an attempt to maintain the historical balance between the rights and also the obligations of a corporation. The post-*Hobby Lobby* legal scene will not regress to a monopoly laden economy with employers stripping their workers of rights. Rather in *Burwell v. Hobby Lobby* the Supreme Court balanced the rights and the obligations of a corporation under the law. Therefore, the future of corporations in the legal system will be much what it has always been--a continuation of the historical pattern already

²¹ Erwin Chemerinsky, “Appearances can be Deceiving: October Term 2013 Moved the Law to the Right.”

²² Paul Horwitz, “The Hobby Lobby Moment.”

ingrained in the legal system: the necessity of balance.

On my honor I have neither given nor received unauthorized information regarding this work, I have followed and will continue to observe all regulations regarding it, and I am unaware of any violation of the Honor Code by others.

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