

# ISSUES IN PERSPECTIVE

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## *Religious Liberty and the Affordable Care Act*

Since America was founded as a nation, religious liberty and freedom of conscience have been cherished values. In many ways, the Affordable Care Act (ACA) is testing those cherished values. For that reason, Hobby Lobby Stores, Inc. is challenging one of the key parts of the ACA on the basis of religious liberty. The Supreme Court recently heard the case and will hand down its decision no doubt sometime in June. What is behind the Hobby Lobby challenge of the ACA?

- First of all, several key propositions are important in understanding the significance of the Hobby Lobby case: (1) The separation of church and state is a foundational premise central to the United States. (2) Religious liberty includes granting exemptions to certain people who need them so that they can remain true to their religious convictions. As Robert P. George and Hamza Yusuf argue, “religious exemptions protect people in situations where legislative or executive acts might otherwise unnecessarily force them to violate their consciences.” Throughout American history, Quakers have been protected when it comes to war, and Catholics and Jews during the Prohibition era were permitted to use wine during their religious rituals. (3) Corporations are “people” and people are corporations. Thus, on that basis, Hobby Lobby should be granted an exemption from some elements of the ACA’s contraceptive mandate. Therefore, Hobby Lobby contends that it should not be forced to participate in life-terminating contraception, including four drugs and devices (e.g., IUDs, morning-after-pills). The company also argues that its business is protected by the Religious Freedom Restoration Act (RFRA), signed by President Clinton in 1993, which requires the government to prove “compelling interest” when someone’s religious rights are “substantially burdened” by what the state wishes to do. Up to this point in time, it has not been clear whether RFRA covers corporations. The 10<sup>th</sup> Circuit Court of Appeals sided with the Green family, which owns Hobby Lobby. The Supreme Court will now make the final determination.
- Second, why should the Court exempt Hobby Lobby from this requirement of the ACA? As George and Yusuf demonstrate, supporters of the ACA (e.g., Freedom from Religion Foundation) contend that the practice of religious exemptions constitutes an unconstitutional “establishment of religion.” Their brief to the Court stated: “The intense passions about religious freedom and women’s reproductive health in this case have obscured the issue that should be decided before this Court reaches the merits: RFRA is unconstitutional.” However, the Supreme Court has repeatedly (indeed unanimously) rejected the claim that policies enacted to vindicate free-exercise rights by accommodating religious beliefs and practices violate the Establishment Clause (e.g., *Presiding Bishop v. Amos* [1987] and *Cutter v. Wilkinson* [2005]). It is also imperative to remember that the other phrase in the First Amendment dealing with religion states “or prohibit the free exercise thereof.” It is illogical

to argue that protecting the free exercise of someone's religion also establishes someone's religions. Further, at the heart of the RFRA is a civil rights issue that protects all people of all faiths. As George and Yusuf contend, "Exemptions are not automatic, because the government is always permitted to show that it has compelling reasons to deny the exemption." But the United States government has so many other ways to distribute these [contraceptive] drugs and devices (e.g., "on its own exchanges, through the Title X family-planning program and by cooperating with willing distributors"). Thus, it is spurious to argue that the government must force Hobby Lobby to participate in this aspect of the ACA. As Alan Dershowitz argues, the Hobby Lobby case is not about birth control, women's rights or the ACA; it is about "whether or not the statutes in the penumbra of the Constitution require a religious exemption."

The columnist Kathleen Parker cogently points out that "the Green family did not pick this battle. The federal government did when it imposed what could be considered a secular belief system on people who happen to be business owners with strong religious convictions about abortion and abortifacients." She continues, "In a brief sidebar: Don't you find it curious that the biological fact of life at conception is characterized as an article of faith (religious), while denial of that life vis-à-vis its involuntary termination is viewed as ultimately sacred?" The conclusion of George and Yusuf is thereby compelling: "[The Court should] accommodat[e] the free exercise of religion by protecting people whose religious beliefs or practices are not shared by the majority from being compelled . . . to violate their consciences."

- One final note: At the National Prayer Breakfast earlier this year, President Obama delivered a speech that is relevant to the Hobby Lobby case. In that speech, the president lamented the erosion of religious liberty throughout the world. He of course did not mention the Hobby Lobby case, the Little Sisters of the Poor case or the myriad of protests from the Roman Catholic Church or other evangelical Christian groups all based on the freedom of religion. Obama's administration is seeking not to protect religious freedom in all these cases; it is seeking to challenge and undermine religious liberty! Indeed, in that speech, the president argued that there is a strong correlation between religious freedom and a nation's stability: "History shows that nations that uphold the rights of their people—including the freedom of religion—are ultimately more just and more peaceful and more successful." Thus, as columnist Kathleen Parker points out, "one wonders why the Obama administration is so dedicated to forcing people to act against their own conscience. By requiring through the contraceptive mandate that some religious-affiliated groups provide health plans covering what they consider abortifacient contraceptives, isn't the Obama administration effectively imposing its own religious rules? *Thou shalt not protect unborn life.*" The only words that naturally come to mind here are inconsistency and hypocrisy. The ACA is not an ethically neutral law. It is a profound challenge to religious liberty and freedom of conscience in America. Let us pray that the Supreme Court will uphold the Hobby Lobby challenge.

See Kathleen Parker in [www.washingtonpost.com](http://www.washingtonpost.com) (10 February 2014 and 26 March 2014) and Robert P. George and Hamza Yusuf in the *Wall Street Journal* (24 March 2014).