

ISSUES IN PERSPECTIVE

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A Victory for Religious Liberty

The recent Supreme Court decision in the Hobby Lobby case is a momentous and welcomed decision upholding religious liberty in America. But in many ways, the media and many politicians have distorted the case itself and the implications of this Supreme Court decision.

- First, a review of the case itself and the substantive aspects of the Court's decision. [The case was brought by the Hobby Lobby Corporation and the Conestoga Woods Specialties company, a small Pennsylvania company that makes wood products, owned by deeply committed Mennonites.] The Hobby Lobby Corporation, a privately owned company centered in Oklahoma City and owned by the David Green family, believed that the Affordable Care Act (ACA) violated the 1993 Religious Freedom Restoration Act (RFRA). Specifically, the Green family objected to the ACA mandate (supplemented by subsequent regulations articulated by the Obama administration) that it provide health care coverage for four of the Food and Drug approved birth control methods that prevent a fertilized egg from being implanted in the uterus. For them, this mandate was in effect an abortion (i.e., an abortifacient) and was contrary to their convictions as Christians. It is important to note that Hobby Lobby was willing to provide free health care coverage for its female employees for 16 of the 20 FDA approved birth control methods, but objected to these 4 abortifacients. [It is therefore wrong and intellectually dishonest to say that Hobby Lobby or the Supreme Court's decision gave privately held companies the right to end free health care for all birth control methods for women. It did not!!!] The RFRA prohibits any government action that substantially burdens religious practices of its citizens and subjects such actions to judicial scrutiny to determine if it is necessary to achieve a compelling government interest. Therefore, through the ACA, by mandating that corporations provide all forms of contraception for all female employees at no cost, the Obama administration burdened the consciences of Christian owners of Hobby Lobby and Conestoga Woods. The Court agreed with this contention by applying its decision to "closely held" private corporations such as Hobby Lobby and Conestoga Woods Specialties.
- Second, this decision establishes three important aspects of the state of religious liberty in America. **(1)** This decision affirms the importance of the RFRA and its two tests: The state cannot violate the religious liberties of its citizens without a compelling state interest and it must do so by "the least restrictive means of furthering that compelling state interest." Justice Alito, who wrote the majority opinion, made clear that Hobby Lobby and Conestoga Woods were not protesting against the compelling state interest of contraceptive coverage; they protested against the mandated four contraceptives that are in effect abortifacients. The ACA therefore violates this second test of the RFRA and is therefore unconstitutional. **(2)** Justice Alito wrote that a "corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of people (including shareholders, officers, and employees) who are associated with a corporation in one way or

another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.” Thus, the Court ruled, American corporate law protects the rights and liberties of people associated with Hobby Lobby and Conestoga Woods. (3) As theologian Albert Mohler observes, “The lead dissent from Justice Ruth Bader Ginsburg reveals a massive ideological divide on the Court that mirrors the divide within the nation at large.” She dismisses the religious convictions of the Green and Hahn (owners of Conestoga Woods) families as “too attenuated to rank as substantial.” In writing this, Ginsburg ignores that fact the Obama administration was mandating that these families do something that they believed to be ethically wrong. Alito anticipated the Ginsburg dissent when he wrote: “The Hahns and Greens believe that providing the coverage demanded by the HHS regulation is connected to the destruction of an embryo in a way that is sufficient to make it immoral for them to provide the coverage. This belief implicates a difficult and important question of religious and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act that is innocent in itself but has the effect of enabling or facilitating the commission of an immoral act of another. Arrogating the authority to provide a binding national answer to this religious and philosophical question, HHS and the principle dissent in effect tell the plaintiffs that their beliefs are flawed.” Alito is affirming that religious liberty is just as important as sexual liberty and it is the obligation of the state to protect religious liberty when the two are in conflict.

- Finally, consider the bizarre actions of the Obama administration in another case involving religious liberty. This fall the Supreme Court will hear the case of Gregory Houston Holt, who is serving a life sentence for nearly killing his ex-girlfriend in the 2009 slashing of her throat. He is a Muslim and now calls himself Abdul Maalik Muhammad, and, as a Salafi Muslim, believes that he should grow a beard. The Arkansas prison system, where he is imprisoned, prohibits the growing of beards for all its inmates. Holt is suing Arkansas under the Religious Land Use and Institutionalized Persons Act (RLUIPA), in which Congress in 2000 applied the 1993 RFRA to prisoners. The Solicitor General, Donald Verrilli, who argued before the Supreme Court that the Green and Hahn families are not protected under RFRA, is now arguing that Arkansas is depriving Holt (Muhammad) of his religious rights because he cannot grow a beard. This action points out the double standard of the Obama administration. As the *Wall Street Journal* editorially observed: “Religious freedom in America doesn’t depend on the content of the belief, thank Allah. But an Administration that protects a violent prisoner from shaving but not the Green family from having to finance abortifacients has strange religious liberty priorities.”

Religious liberty is a precious right in America. The Obama administration has a skewed and absurd view of this liberty and its obligation to protect and guard this precious right as it applies to US citizens. I am very thankful for the Supreme Court’s ruling in the Hobby Lobby case. The surge against religious liberty is growing in the US and the Supreme Court has often been the cause of this surge, but not in this case. The Court is upholding this precious right, for which I am most thankful to God. May the Court continue to be bulwark of protection against this increasingly hostile administration when it comes to religious liberty.

See the *Wall Street Journal* (12-13 July 2014); George Will in www.washingtonpost.com (14 July 2014); and Albert Mohler, “The Hobby Lobby Decision,” www.albertmohler.com (14 July 2014).