

In Supreme Court's Hobby Lobby ruling, whose rights are being denied?: Opinion

supreme-court-birth-control-ruling.jpg

The U.S. Supreme Court ruled Monday that a private company can be exempted on religious grounds from a requirement that employer sponsored health insurance policies cover contraception. (Getty Images) (*Getty Images*)

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By Frank Askin

Five male members of the U.S. Supreme Court ruled that the religious freedom of at least some for-profit corporations is **violated by requiring them to provide contraceptive insurance** to women they employ. This is akin to slave-owners complaining that Lincoln violated their civil liberties by denying them the right to keep slaves.

Whose rights are at stake when the Affordable Care Act says employer-supplied insurance must include contraception, including for women who face serious illness if they become pregnant? The law doesn't require employers to use contraceptives themselves, to physically give contraception to employees or even to endorse its use. The rule creates no more infringement on employers' religious exercise than paying an employee's salary, which could be used to purchase contraception.

To the contrary, the decision allows employers to impose their religious beliefs on their employees.

While the views of the court's all-male majority are not a model of clarity and include hints that its sweep might be limited, there is no question that, for the first time, the court has held that at least some businesses can claim a right of religious liberty — their employees and the public be damned.

The impact on the public is illustrated by the majority's suggestion that it's the taxpayers who should pay for women's health.

The absurd claim that the ruling is somehow a victory for personal freedom is devastatingly rebutted in the dissenting opinion of **Justice Ruth Bader Ginsburg**, with a quote from the constitutional giant Zachariah Chafee that "your right to swing your arms ends just where the other man's nose begins."

To be clear, Hobby Lobby is not a constitutional ruling. It does not say that the two family-owned corporations challenging the law had rights of religious liberty under the First Amendment's free-exercise clause. It is a statutory ruling, based on Congress' 1993 Religious Freedom Restoration Act, enacted to

restrain unnecessary government infringement of individuals' religious beliefs. The majority's ruling relied on an ancient federal statute, the **Dictionary Act**, which defined the word "person" in federal statutes to include corporations where "context" did not "indicate otherwise."

Ginsburg responded that RFRA clearly did indicate otherwise, since "the exercise of religion is characteristic of natural persons, not artificial entities."

The majority opinion, written by **Justice Samuel Alito**, responded that Congress itself exempted nonprofit religious corporations from the requirements of the Affordable Care Act. To which Ginsburg noted that, unlike for-profit corporations, religious organizations exist to "serve a community of believers" of the same religious faith. For-profit corporations, on the other hand, are forbidden by law from discriminating in hiring on the basis of religion. Hobby Lobby employs some 13,000 people of varied religious beliefs.

To the dissenters' objection that the ruling would have no logical endpoint, the majority denied that it would extend in the future to include other types of religious objections, such as paying for immunizations or blood transfusions. And to the claim that even public corporations would try to exempt themselves from the law, Alito merely asserted that "it seems unlikely."

In his own concurring opinion, Justice Anthony Kennedy tried to assure readers that the holding in the case would be limited. He also noted that since the decision was not constitutionally based, Congress could easily overrule it by amending RFRA. That point, of course, ignores the fact that nothing of any consequence can be enacted by today's gridlocked, partisan Congress.

While the majority justices desperately attempted to minimize the eventual sweep of the opinion, Ginsburg wasn't buying it: "Where is the stopping point?" she asked. "Suppose an employer's sincerely held religious belief is offended by health coverage of vaccines or paying the minimum wage," she questioned, or paying women equal wages for substantially similar work? It just so happens that lawsuits involving the latter two claims are currently wending their way through the courts.

Stay tuned. And let's at least hope that Kennedy is true to his word.

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