HINSHAW

Supreme Court: ACA Contraception Mandate may not be Applied to Objecting Closely-Held, For-Profit Corporations

3 min read
Jun 30, 2014

On June 30, 2014, in a highly-anticipated decision, the U.S. Supreme Court ruled that the contraceptive mandate contained in the Affordable Care Act (ACA) may not be applied to a closely-held, for-profit corporation if the owners of the corporation hold sincere religious beliefs that would be violated by compliance with the mandate. The majority opinion, written by Justice Samuel Alito in a 5-4 decision, rejected a series of arguments made by the Department of Health and Human Services (HHS), including, most significantly, HHS's main argument that for-profit corporations may not seek protection for religious beliefs because they are unable to "practice religion." The Court instead adopted the view of the plaintiff companies, finding that forcing a for-profit, closely-held company to provide contraceptives may offend the religious beliefs of the *individual owners* of the company and thereby violate religious freedom. Because, the Court concluded, there are other practicable methods of providing no-cost contraception to women, it is unnecessary and unlawful to impinge upon individuals' religious beliefs in this way.

The ACA mandates that employers must provide no-cost contraceptive methods to employees as part of their health insurance plan, including IUDs and "morning after" pills (i.e., types of contraception that operate *after* the fertilization of an egg). An exemption was created for churches and other religious organizations, and HHS also extended that exemption to religious-based, not-for-profit corporations. The plaintiffs in this case, *Burwell v. Hobby Lobby Stores, Inc*., were three large, closely-held family businesses. The owners of each company espoused Christian beliefs and expressly incorporated those beliefs into the management and mission of their businesses — famously, for example, Hobby Lobby is closed on Sundays in observance of the Sabbath even though this reportedly costs the company many thousands of dollars in profits each year. Despite the religious beliefs of their owners, however, these were for-profit businesses not falling within the statutory exemptions, and therefore they were required to comply with the ACA's contraception mandate, including by providing IUDs and "morning after" pills (i.e., which, according to the religious beliefs of the owners, ended the life of a embryo). The businesses, facing the choice of either providing the objectionable forms of contraception or paying significant fines, instead filed suit in federal court, seeking an injunction under the federal Religious Freedom Restoration Act (RFRA).

After the federal Courts of Appeals for the Third and Tenth Circuits split on the issue, the cases made their way to the U.S. Supreme Court. Justice Alito began his majority opinion by observing that RFRA prohibits any government practice that burdens the "exercise of religion" unless that burden (a) is in furtherance of a "compelling government interest" and (b) is the least restrictive means of achieving the goal. He then answered the pertinent questions in sequence. First, are closely-held corporations protected by RFRA? Yes, the majority found, because RFRA protects all "persons" (including *corporate* persons) and because "protecting the free-exercise rights of corporations" such as Hobby Lobby "protects the religious liberty of the humans who own and control those companies." Second, does the contraceptive mandate burden the exercise of religion? Yes, the majority found, because the individual owners of the plaintiff companies were forced to either "engage in conduct that seriously violates their religious beliefs" or pay millions of dollars in penalties. Third, is the mandate the least restrictive means of furthering the government's interest in no-cost access to the contraceptive methods at issue? No, the majority concluded — if the government truly desired, it could provide the contraception methods themselves, or extend the existing exemption for non-profit corporations to closely-held for-profit corporations. Both of those options, the Court held, would achieve the ends sought without burdening an individual's religious beliefs.

Therefore, the majority concluded, the mandate is unlawful as applied to closely-held corporations that are owned by individuals with sincere religious objections to contraception, regardless of the for-profit nature of the company. Notably, the majority opinion concluded with a series of caveats clearly intended to limit the scope of the decision — the decision "is concerned solely with the contraceptive mandate" and should not be understood to broadly apply to such things as vaccinations or blood transfusions, nor does the decision "provide a shield for employers who might cloak illegal discrimination as a religious practice."

The impact of the Court's opinion will depend on the response from the Obama Administration. We expect that the U.S. Department of Health and Human Services will now provide some "less intrusive" method for the employees of the objecting employers to receive the mandated coverage, either through the existing accommodation for religiously-affiliated employers or through a new regulatory requirement. Employers should monitor further guidance from the Administration to determine how it will seek to enforce the mandate as to objecting employers.