ALABAMA POLICY INSTITUTE

GUIDE TO THE ISSUES

PPACA Birth Control Mandate Lawsuit

Background

The Religious Freedom Restoration Act of 1993 (RFRA) provides that the government "shall not substantially burden a person's exercise of religion" unless that burden is the least restrictive means to further a compelling governmental interest.[1] As part of the Affordable Care Act's passage, also known as Obamacare, businesses that employ 50 or more people must provide birth control and contraceptive coverage to all women with productive capacity, or else face a substantial financial penalty.[2] The insurance must include FDA approved contraceptives at no extra cost to the employee.

In response to vigorous opposition, the Obama Administration exempted churches and religious-based organizations from the mandate.[3] However, the Obama Administration declined to extend the exemption to for-profit companies and their owners who have religious objections. As a result, a flurry of lawsuits were filed by for-profit companies attacking the mandate as unconstitutional due to the burden it places on the business owner's freedom to exercise their religion.[4] Ultimately the case with the most exposure and brought by the owners of Hobby Lobby was taken up by the Supreme Court and argued on March 25, 2014. Their decision was issued on June 30, 2014.

Policy Consideration

By a 5-4 vote, the Supreme Court issued a narrow ruling in favor of Hobby Lobby and the plaintiffs suing the government.[5] The decision centered on the choice afforded to for-profit companies under the ACA – choose to provide coverage and violate their religious beliefs, or, in Hobby Lobby's case, pay a fine of nearly $475 million a year. The Supreme Court found that the choice the mandate imposed was a substantial burden on the companies' free exercise of religion and struck it down as applied to closely held companies like Hobby Lobby.

Throughout the opinion, the majority, written by Justice Samuel Alito, found that Congress intended RFRA to provide "very broad protection for religious liberty." The majority wrote that the federal government includes corporations under the definition of a person, and that the RFRA does nothing to depart from that definition. Moreover, the Court determined that there existed "no conceivable definition of 'person' [that] includes natural persons and non-profit corporations, but not for-profit corporations."[6]

ISSUE SNAPSHOT

The Supreme Court struck down a portion of the ACA which mandated for-profit companies must provide contraceptive services to employees over their religious objections.

The Court held the federal government has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion.

Closely held corporations with over 50 employees are now no longer required by law to comply with the mandate.

The end goal of the federal government under the mandate is to increase access to contraception. The majority held that under the RFRA, the mandate was not the least restrictive means to meet that goal. In other words, there were ways to increase access that did not violate religious freedom, such as the government distributing contraceptives and shouldering the cost itself.

The dissent challenged the majority's definition of a person, arguing that a corporation cannot itself "exercise" religion but rather acts through its owners' will and the majority decision will create "havoc."[7] Justice Ginsburg, who penned the dissent, also wrote that the connection between owners' religious objections and the contraceptive coverage mandate was too "attenuated" to rank it as a substantial burden.

Recommendation

A closely held corporation is generally one that has more than 50% of its outstanding stock owned by five or fewer people.[8] Closely held corporations make up about 80-90% of businesses in America.[9] The ruling applies to any closely held corporation with 50 or more employees whose owners have a sincere religious belief that life begins at conception. Those companies are now not required to comply with the ACA's contraception mandate.

The case could have significant ramifications moving forward as the Supreme Court under Chief Justice Roberts has continually granted corporations more rights under the First Amendment. It is likely that the jurisprudence along similar lines continue to work through way through the courts.

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[1] 42 U.S.C. §§ 2000bb *et seq.*
[2] 42 U.S.C. § 300gg-13(a)(4); Group Health Plans & Health Insurance Issuers Relating to Coverage of Preventative Services Under the Patient Protection Affordable Care Act, 77 Fed. Reg. 8725 (Feb. 15, 2012).
[3] Dan Merica & Kevin Bohn, *Finalized Rules Let Religious Groups Opt Out of Contraception Mandate*, CNN.COM (June 28, 2013), http://www.cnn.com/2013/06/28/politics/obama-contraceptives/
[4] *FAQ: Becket Fund's Lawsuits against HHS*, THE BECKET FUND FOR RELIGIOUS LIBERTY, (2014), *available at* http://www.becketfund.org/faq/
[5] Burwell v. Hobby Lobby Stores, Inc. et al., 573 U.S. _____, No. 13-354, (June 30, 2014), *available at* http://www.supremecourt.gov/opinions/13pdf/13-354_olp1.pdf
[6] Id. at 3.
[7] Id. at 2 (Ginsburg, J., dissenting).
[8] FAQS FOR INDIVIDUALS, INTERNAL REVENUE SERVICE, (2014) *available at* http://www.irs.gov/Help-&-Resources/Tools-&-FAQs/FAQs-for-Individuals/Frequently-Asked-Tax-Questions-&-Answers/Small-Business,-Self-Employed,-Other-Business/Entities/Entities-5
[9] Dennis Belcher & William Sanderson, *Estate Planning for the Closely Held Business*, WILLIAM & MARY LAW TAX CONFERENCE, (2010), *available at* http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1021&context=tax