



Viewpoint

Religious Freedom

The Hobby Lobby Case

On February 15, 2012, the Department of Health and Human Services (HHS) published regulations requiring organizations employing 50 or more persons to pay for their employees' health insurance, to include coverage for sterilization, contraception and abortifacient pills (such as Plan B and Ella) and devices (IUDs).

Recognizing that some religious groups would have religious and moral objections to these regulations, HHS exempted churches and associations of churches, but not church-related organizations such as hospitals, schools, media, and social service agencies. Nor did they exempt for-profit organizations. The government thus gave the groups having religious and moral objections to any or all of the above procedures, drugs and devices two choices: violate your consciences, or pay bankrupting fines for failure to comply with the Mandate.

As of July 1, 2014, 103 cases have been filed in federal courts challenging the Mandate. Forty-nine cases have been filed by for-profit organizations, 51 by non-profit organizations, and 3 are class-action suits. Persons and groups from various religious backgrounds challenged the Mandate. Each of those challenging the Mandate asked that the court grant them a temporary injunction against implementation of the mandate until their cases could be tried on their merits. Injunctive relief has been granted in some 87% of the 82 cases where judgments have been handed down to date.¹

Because of the threat to religious freedom, guaranteed by the First Amendment to the Constitution and the Religious Freedom Restoration Act (RFRA), passed in 1993 by voice vote in the U.S. House, and a 97-3 vote in the Senate, the U.S. Supreme Court agreed to consider the cases of two non-Catholic for-profit firms and their owners, Hobby Lobby and Conestoga Wood Specialties.

Focusing on applying the wording of RFRA, Justice Samuel Alito wrote the majority (5-4) opinion. It concluded that the law allows corporations like Hobby Lobby to maintain their religious outlook and still do business. In effect, the Court ruled that religious persons do not forfeit their right to religious liberty when they decide to open a business. The Court found that when they decide to open a business. The Court found that, "HHS's mandate substantially burdens the exercise of religion...if the owners comply with the HHS Mandate, they believe they will be facilitating abortions" (Hobby Lobby objected only to paying for abortifacient pills and

devices, not 16 other types of contraceptives)" and if they do not comply, they will pay a very heavy price – as much as \$1.3 million per day, or about \$475 million per year... if these consequences do not amount to a substantial burden, it is hard to see what would."²

The Court also opined that "There are other ways [than coercing religious employers] in which Congress or HHS could equally ensure that every woman has cost-free access to the particular contraceptives [i.e. abortifacients] at issue here." (Unfortunately, this would probably involve tax money, which would not solve the moral/religious dilemma of individual citizens who do not wish to pay for others' sterilization, contraception, or abortions.)

Kristina Arriaga, Executive Director of the Becket Fund, the major organization defending Hobby Lobby, noted that the government has already exempted many organizations and millions of Americans from complying with the Affordable Care Act, under which the Mandate was written, so its insistence on forcing religious objectors to do its will is inconsistent to say the least.

Reaction to the Court's decision among family planning/pro-choice groups and persons has been almost hysterical in some instances. Neither the government nor organizations like Hobby Lobby are "denying women access to contraceptives." Hobby Lobby has in fact provided health insurance to its employees which covers 16 types of contraceptives, and objected only to the four abortifacients on HHS's list.

It is not the objective employers who are "forcing their religion/morality on others." Rather, it is the government which is forcing its religious/moral views on employers by requiring them to pay for medical procedures, drugs and devices which they consider to be immoral and contrary to their consciences.

Is it more coercive to ask individual employees to pay for the sterilization, contraceptives and abortifacients they freely choose, or to force objecting employers to pay for however many chose them? No one is forced to work for an employer who does not wish to pay. Why has "if you don't like an abortion, don't have one" now become, "Even if you don't like abortion, you must pay for mine?"

There are many government programs which already provide free contraceptives for those experiencing financial problems. Moreover, birth control is ubiquitous (there is no access problem) and relatively inexpensive. Kimberly Palmer of *U.S. News and World Report* recently did an analysis of the annual cost of 12 methods of birth control. While 5 methods could cost from \$160 to \$600 per year, 5 cost from \$30 to \$150 per year, and two, fertility awareness (NFP) and abstinence, are both free.

Moreover, fertility awareness and abstinence pose fewer health risks to women than many of the other methods. The International Agency for Research of Cancer of the World Health Organization has stated "artificial [hormonal] contraceptives are carcinogenic on a par with cigarettes and asbestos." They are associated with increases in the risk of breast and cervical cancer, high blood pressure, blood clots, strokes and heart attacks.³ The drug company

Bayer's 2013 Annual Report indicates it has agreed to pay more than \$1.69 billion to resolve an estimated 8,250 lawsuits alleging women suffered heart attacks, strokes, pulmonary embolisms or deep vein thrombosis as a result of their use of the hormonal contraceptives Yaz or Yasmin. Bayer also agreed to additional payments to women who suffered gall bladder damage.⁴

Similarly, in 2014, Merck Pharmaceuticals agreed to pay \$100 million to almost 4,000 women who suffered blood clotting and other incidents from the use of NuvaRing, an intra-vaginal device.⁵ Another Bayer product, the IUD Mirena, has been the subject of over 45,000 Adverse Event Reports filed with the Food and Drug Administration regarding its alleged side effects, including contributing to pelvic inflammatory disease, ectopic pregnancy, sepsis, perforation and ovarian cysts.⁶

Although the HHS contraception Mandate was supposed to enhance women's general and reproductive health, it appears that there is a good deal of wisdom in that Chiffon Margarine commercial stated, "It's not nice to fool Mother Nature."

By Raymond J. Adamek, Ph.D., July 6, 2014

¹ HHS Information Center.com, The Becket Fund, downloaded 7/6/14

² Steven Ertelt, "Supreme Court Rules Obama Admin Can't Make Hobby Lobby Obey Pro-Abortion HHS Mandate," LifeNews.com, 6/30/14

³ Raymond J. Adamek, "Hormonal Contraceptives and 'Emergency Contraceptives'" at RighttoLifeofNortheastOhio.com under "Issues"

⁴ "Yazmin/Yaz Settlement," downloaded from the Internet on 7/2/14.

⁵ Dustin Siggins, "Former Olympic Hopeful Calls Merck's NuvaRing Settlement Offer 'Laughable,'" LifeSiteNews.com 3.13.14

⁶ "Mirena IUD Migration Problems Generate Lawsuits" www.resource4thepeople.com, downloaded 7/2/14