

Highlights from US Supreme Court opinion in *Burwell v. Hobby Lobby Stores, Inc.*

Key points and principles held by the Court:

1. The Obama administration **violated federal law**--the Religious Freedom Restoration Act (RFRA)--by substantially **burdening the free exercise of religion** without taking the least restrictive means of accomplishing its purpose of distributing free contraceptives. The Government easily could have assumed the cost of contraceptives to employees of objecting employers.
2. The substantial burden on faith-based family businesses included **heavy fines** (over half a *billion* dollars imposed on three companies alone) and forcing a choice between conscience or **dropping healthcare** for employees.
3. The decision is **narrow**, applying to the contraceptive mandate and to closely held companies (not to publicly traded corporations), and should not be seen as a license for discrimination.
4. The job of the court is **not to assess the reasonableness of a religious objection**, but simply to determine whether or not it is sincere.
5. The administration's position reveals that it views **religious freedom as less important** than Congress considers it.
6. The Obama administration's position would allow forcing religious objectors to participate in any medical procedure allowed by law—including third-trimester **abortions** or **assisted suicide**.
7. The job of the Court is not to assess the wisdom of Congress but to **enforce the law** (RFRA) as written.

Page	Text
Syllabus (S)2	Held: As applied to closely held corporations, the HHS regulations imposing the contraceptive mandate violate RFRA [Religious Freedom Restoration Act] . Pp. 16–49.
S4	HHS's contraceptive mandate substantially burdens the exercise of religion . Pp. 31–38. It requires the Hahns and Greens to engage in conduct that seriously violates their sincere religious belief that life begins at conception. If they and their companies refuse to provide contraceptive coverage, they face severe economic consequences : about \$475 million per year for Hobby Lobby, \$33 million per year for Conestoga, and \$15 million per year for Mardel. And if they drop coverage altogether, they could face penalties of roughly \$26 million for Hobby Lobby, \$1.8 million for Conestoga, and \$800,000 for Mardel. P. 32.

S5	The Government has failed to satisfy RFRA’s least restrictive-means standard . HHS has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion. The Government could, e.g., assume the cost of providing the four contraceptives to women unable to obtain coverage due to their employers’ religious objections. Or it could extend the accommodation that HHS has already established for religious nonprofit organizations to non-profit employers with religious objections to the contraceptive mandate.
S5-6	(This decision concerns only the contraceptive mandate and should not be understood to hold that all insurance-coverage mandates, e.g., for vaccinations or blood transfusions, must necessarily fall if they conflict with an employer’s religious beliefs. Nor does it provide a shield for employers who might cloak illegal discrimination as a religious practice. <i>United States v. Lee</i> , 455 U. S. 252, which upheld the payment of Social Security taxes despite an employer’s religious objection, is not analogous.
3	Although HHS has made this system available to religious nonprofits that have religious objections to the contraceptive mandate, HHS has provided no reason why the same system cannot be made available when the owners of for-profit corporations have similar religious objections. We therefore conclude that this system constitutes an alternative that achieves all of the Government’s aims while providing greater respect for religious liberty.
8	Although many of the required, FDA-approved methods of contraception work by preventing the fertilization of an egg, four of those methods (those specifically at issue in these cases) may have the effect of preventing an already fertilized egg from developing any further by inhibiting its attachment to the uterus.
11	Norman and Elizabeth Hahn and their three sons are devout members of the Mennonite Church, a Christian denomination. The Mennonite Church opposes abortion and believes that “[t]he fetus in its earliest stages . . . shares humanity with those who conceived it.”
16	RFRA prohibits the “Government [from] substantially burden[ing] a person’s exercise of religion even if the burden results from a rule of general applicability” unless the Government “demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest ; and (2) is the least restrictive means of furthering that compelling governmental interest.”
29	These cases, however, do not involve publicly traded corporations , and it seems unlikely that the sort of corporate giants to which HHS refers will often assert RFRA claims.

32	<p>If the Hahns and Greens and their companies do not yield to this demand, the economic consequences will be severe. If the companies continue to offer group health plans that do not cover the contraceptives at issue, they will be taxed \$100 per day for each affected individual. 26 U. S. C. §4980D. For Hobby Lobby, the bill could amount to \$1.3 million per day or about \$475 million per year; for Conestoga, the assessment could be \$90,000 per day or \$33 million per year; and for Mardel, it could be \$40,000 per day or about \$15 million per year. These sums are surely substantial.</p>
34	<p>Putting aside the religious dimension of the decision to provide insurance, moreover, it is far from clear that the net cost to the companies of providing insurance is more than the cost of dropping their insurance plans and paying the ACA penalty. Health insurance is a benefit that employees value. If the companies simply eliminated that benefit and forced employees to purchase their own insurance on the exchanges, without offering additional compensation, it is predictable that the companies would face a competitive disadvantage in retaining and attracting skilled workers.</p>
35	<p>We doubt that the Congress that enacted RFRA—or, for that matter, ACA—would have believed it a tolerable result to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans.</p>
36	<p>This argument dodges the question that RFRA presents (whether the HHS mandate imposes a substantial burden on the ability of the objecting parties to conduct business in accordance with their religious beliefs) and instead addresses a very different question that the federal courts have no business addressing (whether the religious belief asserted in a RFRA case is reasonable).</p>
37	<p>we have warned that courts must not presume to determine . . . the plausibility of a religious claim”);</p>
37-38	<p>the Hahns and Greens and their companies sincerely believe that providing the insurance coverage demanded by the HHS regulations lies on the forbidden side of the line, and it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our “narrow function . . . in this context is to determine” whether the line drawn reflects “an honest conviction,” id., at 716, and there is no dispute that it does.</p>
40	<p>We find it unnecessary to adjudicate this [compelling interest] issue. We will assume that the interest in guaranteeing cost-free access to the four challenged contraceptive methods is compelling within the meaning of RFRA, and we will proceed to consider the final prong of the RFRA test, i.e., whether HHS has shown that the contraceptive mandate is “the least restrictive means of furthering that compelling governmental interest.”</p>

40-41	<p>HHS has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases. See §§2000bb–1(a), (b) (requiring the Government to “demonstrat[e] that application of [a substantial] burden to the person . . . is the least restrictive means of furthering [a] compelling governmental interest” (emphasis added)).</p> <p>The most straightforward way of doing this would be for the Government to assume the cost of providing the four contraceptives at issue to any women who are unable to obtain them under their health-insurance policies due to their employers’ religious objections. This would certainly be less restrictive of the plaintiffs’ religious liberty, and HHS has not shown, see §2000bb–1(b)(2), that this is not a viable alternative.</p>
43	<p>HHS’s view that RFRA can never require the Government to spend even a small amount reflects a judgment about the importance of religious liberty that was not shared by the Congress that enacted that law.</p>
45	<p>HHS and the principal dissent argue that a ruling in favor of the objecting parties in these cases will lead to a flood of religious objections regarding a wide variety of medical procedures and drugs, such as vaccinations and blood transfusions, but HHS has made no effort to substantiate this prediction. HHS points to no evidence that insurance plans in existence prior to the enactment of ACA excluded coverage for such items. Nor has HHS provided evidence that any significant number of employers sought exemption, on religious grounds, from any of ACA’s coverage requirements other than the contraceptive mandate.</p>
45-46	<p>It is HHS’s apparent belief that no insurance-coverage mandate would violate RFRA—no matter how significantly it impinges on the religious liberties of employers—that would lead to intolerable consequences. Under HHS’s view, RFRA would permit the Government to require all employers to provide coverage for any medical procedure allowed by law in the jurisdiction in question—for instance, third-trimester abortions or assisted suicide.</p>
48	<p>In its final pages, the principal dissent reveals that its fundamental objection to the claims of the plaintiffs is an objection to RFRA itself. The dissent worries about forcing the federal courts to apply RFRA to a host of claims made by litigants seeking a religious exemption from generally applicable laws, and the dissent expresses a desire to keep the courts out of this business.</p>
48-49	<p>The wisdom of Congress’s judgment on this matter is not our concern. Our responsibility is to enforce RFRA as written, and under the standard that RFRA prescribes, the HHS contraceptive mandate is unlawful. The contraceptive mandate, as applied to closely held corporations, violates RFRA. Our decision on that statutory question makes it unnecessary to reach the First Amendment claim raised by Conestoga and the Hahns.</p>

49	The judgment of the Tenth Circuit in No. 13–354 is affirmed; the judgment of the Third Circuit in No. 13–356 is reversed, and that case is remanded for further proceedings consistent with this opinion.
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