Inquiring Minds topic for 11 July 2014

Albert E. Myers, Moderator

Limiting Rights: Imposing Religion on Workers

By the editorial board of The New York Times – June 30, 2014

The Supreme Court's deeply dismaying decision on Monday in the Hobby Lobby case swept aside accepted principles of corporate law and religious liberty to grant owners of closely held, for-profit companies an unprecedented right to impose their religious views on employees.

It was the first time the court has allowed commercial business owners to deny employees a federal benefit to which they are entitled by law based on the owners' religious beliefs, and it was a radical departure from the court's history of resisting claims for religious exemptions from neutral laws of general applicability when the exemptions would hurt other people.

The full implications of the decision, which ruled in favor of employers who do not want to include contraceptive care in their company health plans, as required by the Affordable Care Act, will not be known for some time. But the immediate effect, as Justice Ruth Bader Ginsburg noted in a powerful dissent, was to deny many thousands of women contraceptive coverage vital to their well-being and reproductive freedom. It also invites, she said, other "for-profit entities to seek religion-based exemptions from regulations they deem offensive to their faiths."

The case involved challenges by two companies, Hobby Lobby, a chain of arts and crafts stores, and Conestoga Wood Specialties, a cabinet maker, to the perfectly reasonable requirement that employer health plans cover (without a co-payment) all birth control methods and services approved by the Food and Drug Administration. The main battleground was the Religious Freedom Restoration Act of 1993, which says government may not "substantially burden a person's free exercise of religion" unless the burden is necessary to further a "compelling government interest" and achieves it by "the least restrictive means."

As a threshold matter, Justice Samuel Alito Jr., read the act's religious protections to apply to "the humans who own and control" closely held companies, an interpretation contradicted by the statute's history, context, and wording. He then found that the contraceptive coverage rules put a "substantial burden" on the religious owners, who objected to some of the items on the F.D.A.'s list based on the incorrect claim they induce abortions.

It's hard to see that burden. Nothing in the contraceptive coverage rule prevented the companies' owners from worshiping as they choose or advocating against coverage and use of the contraceptives they don't like.

Nothing compels women to use their insurance on contraceptives. A woman's choice to use or not to use them is a personal one that does not implicate her employer. Such decisions "will be the woman's autonomous choice, informed by the physician she consults," as Justice Ginsburg noted. There also is no requirement that employers offer employee health plans. They could instead pay a tax likely to be less than the cost of providing insurance to help cover government subsidies available to those using an insurance exchange. That did not convince Justice Alito and his colleagues on the court's right flank, who bought the plaintiffs' claim that providing health coverage to employees was part of their religious mission.

The majority's finding that the government's contraception coverage rules were not the "least restrictive" way to carry out the broad and complex health reform was also unpersuasive.

Mr. Alito's ruling and a concurrence by Justice Anthony Kennedy portray the decision as a narrow one without broader application, like denying vaccine coverage or job discrimination. But that is not reassuring coming from justices who missed the point that denying women access to full health benefits is discrimination.

A version of this editorial appears in print on July 1, 2014, on page A20 of the New York edition with the headline: The Justices Endorse Imposing Religion on Employees.

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Read the decision: http://www.supremecourt.gov/opinions/13pdf/13-354_olp1.pdf

And a dissent: http://crooksandliars.com/2014/06/justice-ginsburg-writes-blistering-dissent

For further consideration:

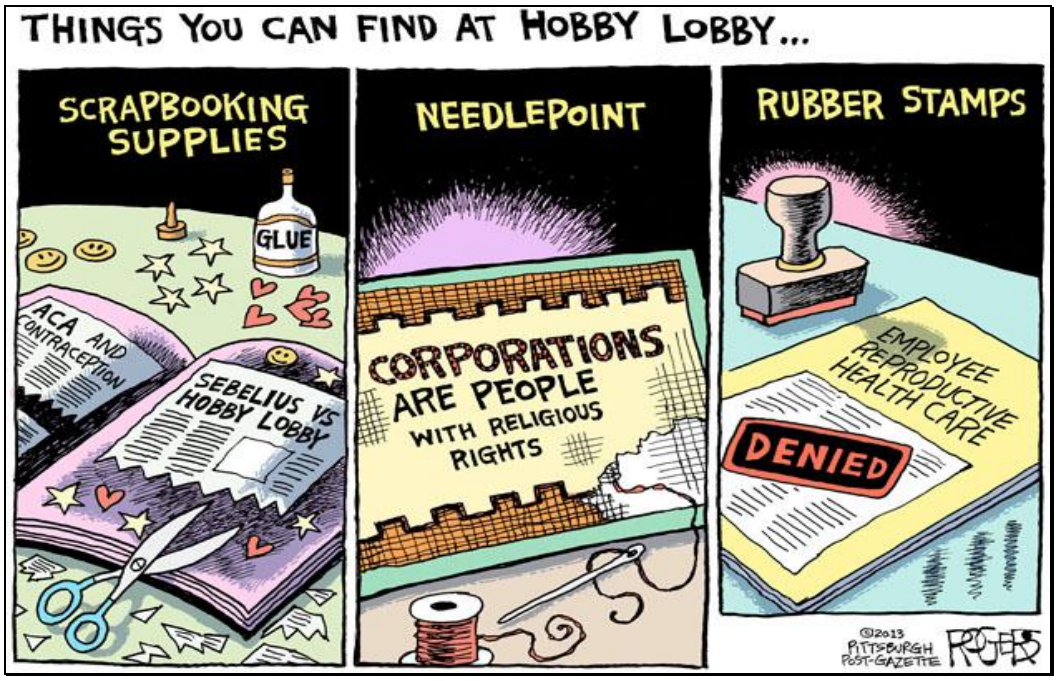
http://www.politifact.com/punditfact/statements/2014/jul/01/sally-kohn/did-hobby-lobby-once-provide-birth-control-coverag

http://online.wsj.com/articles/supreme-courts-hobby-lobby-ruling-ignites-debate-over-religious-freedom-law-1404155510

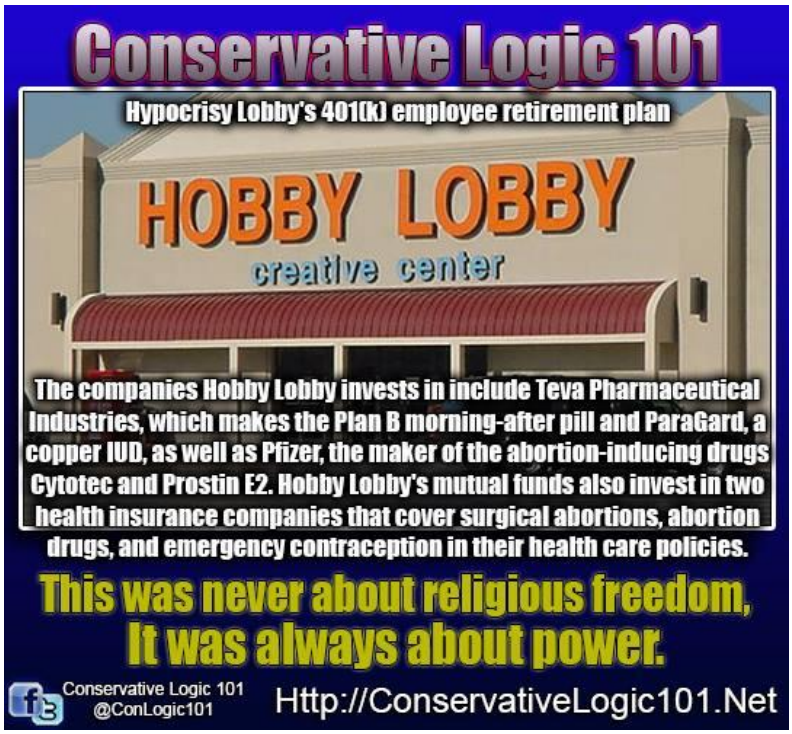
http://www.politico.com/story/2014/06/hobby-lobby-supreme-court-decision-5-takeaways-108467.html

http://www.slate.com/blogs/xx_factor/2014/06/30/hobby_lobby_decision_the_religious_right_won_the_contraception_fight_but.html

One view, courtesy of the Pittsburgh Press:



And from the web:



Also consider: http://www.csmonitor.com/USA/Politics/2014/0630/Hobby-Lobby-Supreme-Court-decision-fans-flames-of-culture-war-video