CARLTON FIELDS

# Post-Hobby Lobby Questions Remain About the Scope of Corporate Religious Freedom

September 16, 2014

The U.S. Supreme Court upheld a challenge to regulations mandating that employers provide contraceptive coverage for their employees. In *Burwell v. Hobby Lobby Stores, Inc.*, the Court found the regulations promulgated by the Department of Health and Human Services violated the Religious Freedom Restoration Act, which prohibits laws burdening the free exercise of religion unless they further a compelling governmental interest and are the least restrictive means available. In so doing, the Court for the first time expressly recognized that for-profit corporations have standing to raise free exercise claims. The challenged regulations mandated that employers' health plans include coverage for 20 FDA approved contraceptives. Hobby Lobby, Inc. and two other companies objected to this requirement as it related to four contraceptive methods that function by preventing development of an already fertilized ovum. They argued that this requirement substantially burdened their right to exercise their religion because it conflicted with their moral convictions concerning abortion. The Court agreed. While the Court presumed that the mandate served a compelling governmental interest, it held that it was not the least restrictive means of serving that interest. In reaching this conclusion, the Court relied on regulations making contraceptive coverage available for employees of religious organizations and not-for-profit corporations exempted from the mandate. Practically, the decision may have little impact on the availability of contraceptive coverage. As the Court noted, HHS can ensure availability of contraceptive benefits by expanding regulatory accommodations made for religious organizations and not-for-profits. However, the decision raises questions about the scope of employers' rights to protection of their free exercise rights. These questions are particularly relevant to LGBT interests. **An anticipated executive order prohibiting discrimination by federal contractors against LGBT employees seems certain to face a *Hobby Lobby* challenge.** Likewise, the breadth of *Hobby Lobby* will be tested as courts determine whether employers can be compelled to provide benefits to same sex spouses.

## Authored By

Richard Oliver

## Related Practices

Health Care

## Related Industries

Health Care