

## Split court rules in favor of Hobby Lobby

By **DOUG SHERWIN**, The Daily Transcript  
Monday, June 30, 2014

The U.S. Supreme Court ruled Monday that closely held companies with religious objections don't have to pay contraceptive coverage for its employees, opening up the possibility of future exemptions, according to some analysts.

In a 5-4 decision, the high court sided with the nationwide craft store **Hobby Lobby**, which sued the Obama administration over a requirement under the Affordable Care Act that company health plans cover all U.S.-approved contraceptive drugs and devices without requiring cost-sharing by workers.

"The court has set into motion a new set of legal questions that may or may not go as badly as critics worry, but it certainly has changed the rules of the Religious Freedom Restoration Act," said Glenn Smith, a constitutional law professor at California Western School of Law.

"To a certain extent, both the majority and concurring opinions tried to limit the reach of this decision, but whether those limits will stick or hold in subsequent litigation is anybody's guess."

Justice Samuel Alito, in an opinion for the majority of the court, said the government's requirements to cover birth control violate the Religious Freedom Restoration Act, passed in 1993. The court ruled that the law applies to corporations as well as individual citizens.

"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," Alito wrote. "Nor does it provide a shield for employers who might cloak illegal discrimination as a religious practice."

University of San Diego School of Law professor Steven Smith said the ruling is significant but doesn't think it will be used by publically held corporations to discriminate against certain types of employees as some have predicted.

"It's generally not in a business' best interests to do that," said Smith, who is co-executive director of USD's Institute for Law & Religion and its Institute for Law & Philosophy. "It's in their interest to offer the most attractive employment benefits they can to hire as many qualified employees as they can."

In the Affordable Care Act, the Obama administration previously made an accommodation to the birth-control requirement for churches and organizations closely tied to them, such as Catholic hospitals and colleges. Those groups don't have to pay for birth-control directly; the benefit instead is provided by companies that administer their insurance claims.

Alito suggested the same accommodation could be provided to for-profit companies with religious objections.

California Western professor Susan A. Channick, co-director of the school's Institute of Health Law Studies, said it's not clear how the accommodation would work.

"Kennedy, in his concurrence, basically suggested the government is going to pick up the cost," she said. "How? And does the Health & Human Services have the authority to do that?"

"Even though, theoretically, every woman who wants coverage not covered by Hobby Lobby should get it free of charge, it's not clear they are going to."

Justice Ruth Bader Ginsburg, who wrote a dissenting opinion, also questioned how far such an accommodation may have to extend.

"Where is the stopping point to the 'let the government pay' alternative?" she wrote. "Suppose an employer's sincerely held religious belief is offended by health coverage of vaccines, or paying the minimum wage?"

The exemption Alito laid out for birth-control under the religious freedom law, Ginsburg wrote, may extend to businesses controlled by Jehovah's Witnesses who object to blood transfusions; Scientologists, who object to antidepressants; or even Muslims, Jews and Hindus who oppose medications derived from pigs such as anesthesia or pills coated with gelatin.

Any new case may have to be evaluated on its own: "Not much help there for the lower courts bound by today's decision," she wrote.

California Western's Smith said in its majority opinion, the court crossed a line.

"(Before Monday) almost everybody thought a for-profit corporation couldn't assert religious freedom rights," he said.

*Bloomberg News contributed to this report.*