

# Supreme Court Strikes Down Contraceptive Mandate for Certain Closely-Held Corporations

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The U.S. Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.* was announced on June 30. The Court held that the regulations issued by the U.S. Department of Health and Human Services (HHS) under the Affordable Care Act (the Act), which require the group health plans of applicable large employers (generally 50 or more full-time employees) to provide their female employees with no-cost access to contraceptives, violated the federal Religious Freedom Restoration Act (RFRA) as applied to the plans of closely-held for-profit corporations with sincerely held religious beliefs relating to contraceptives.

**Background** As part of the Act's requirement that group health plans of applicable large employers must provide preventive care and screenings for women without any cost sharing requirements, HHS issued regulations requiring full coverage of the 20 contraceptive methods approved by the U.S. Food and Drug Administration. The plaintiffs in *Hobby Lobby* objected to four of the required contraceptives on the grounds that providing those methods under their group health plans would violate their sincerely held religious beliefs, in violation of RFRA. Under RFRA, the government may not substantially burden a person's exercise of religion unless the burden imposed on the person (1) is due to a compelling government interest and (2) is the least restrictive means of furthering that interest. **The Supreme Court's Decision** The Court first held that RFRA applies to federal regulations that restrict the activities of *for-profit* closely-held corporations (under IRS rules, a closely-held corporation is a corporation that is controlled by five or fewer individuals). HHS and the dissent argued that for-profit corporations are not persons that exercise religion for purposes of RFRA. The Court went on to hold that the HHS contraceptive mandate substantially burdened the plaintiffs' exercise of religion. In particular, the Court noted that providing the challenged contraceptive methods to employees under the employer-provided group health plans would violate the plaintiffs' sincerely held religious beliefs and failing to provide these contraceptives under their group health plans would subject the plaintiffs to significant financial burdens (as a result of the \$100 per employee per day penalty for certain violations of the Act). Finally, the Court assumed that HHS had a compelling government interest in assuring cost-free contraceptive coverage for female employees, but held that HHS's contraceptive mandate was not the least restrictive means of furthering this compelling interest under RFRA. Consequently, the Court held that the contraceptive mandate violated RFRA as applied to the plaintiffs (all of which were for-profit closely-held corporations). **Impact on Employers and the Act** It is important to note that the Court explicitly limited its ruling to the HHS contraceptive mandate as applied to closely-held corporations whose owners hold sincere religious beliefs relating to contraceptives. Following the Court's ruling, HHS must devise a new method for assuring no-cost access to contraceptives for female employees of these corporations that does not run afoul of RFRA. The regulations already include an accommodation for certain nonprofit religious employers that object to the contraceptive mandate, so HHS could choose to revise the existing regulations to extend this accommodation to for-profit employers like the plaintiffs in *Hobby Lobby* (although the regulations for providing this accommodation have been successfully challenged by certain nonprofit religious organizations in another Supreme Court decision). In spite of the Court's emphasis on the limited nature of its holding, it remains to be seen whether other employers (including those that are not closely-held corporations) will be

able to use RFRA to successfully challenge other mandates under the Act that are alleged to contravene the employer's sincerely held religious beliefs.