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Aftermath of the Hobby Lobby Decision: Implications for Women in the Workforce

Hirsh Shah, Professor Boyes, HONR 200

Abstract

Burwell v. Hobby Lobby Stores, Inc. is a landmark Supreme Court case in which it was ruled that the contraceptive mandate from the Affordable Care Act was an unnecessary and substantial burden on Hobby Lobby's corporate exercise of religious freedom. This is the latest of many court cases that have expanded corporation's rights to equal those of humans, giving them individual status without the responsibilities that come along with it. By citing religious liberty rights, closely held corporations such as Hobby Lobby can impose their religious viewpoints on their employees, specifically by not providing certain contraceptive care coverage. Other corporations are forcing women to choose between careers and families by imposing certain preventative care guidelines, such as egg-freezing methods among others. In order to determine the future implications of this case, I researched the history of corporate personhood, women and usage of contraceptive care, and gender-based workplace discrimination. My research shows that by not supporting female employees who have different health needs, Hobby Lobby sets up a model for corporations to be discriminatory towards women by portraying the idea of an anti-family and unsupportive workforce environment. In addition, the Hobby Lobby case has broader implications, with increasing corporate power causing economic and political ripples. Solutions can be found outside the US, by looking at European guidelines concerning women preventative services as a template. On the home front, the US Government should stand its ground on the Affordable Care Act mandate concerning women care, by requiring all corporations to adhere to those rules through mandatory legislation, and the American Medical Community should properly inform physicians and patients of all contraceptive options, including Long-acting reversible contraception. This will allow women to be rightfully given access to the full range of preventative care services and a supportive and nurturing environment, and will also keep corporate power in check, preventing future possible cases of workplace discrimination.

Introduction

Hobby Lobby is a chain of 640 arts and crafts stores owned by the Green family, based in Oklahoma City. It is required to follow the Affordable Care Act, which mandates that larger employers (those with more than 50 employees) have to include coverage for the full range of preventative care, including contraceptives, in their female employees' health insurance plans. However, the Green family holds deeply religious views and did not want to include four of the twenty contraceptives covered by the ACA, including long acting reversible contraception and emergency contraception, in their female employee coverage. The family believed that providing those contraceptives would go against their Christian values by making them complicit with abortion. Therefore, the Green Family challenged the contraceptive mandate in the landmark Supreme Court case *Burwell v. Hobby Lobby Stores, Inc.* by citing the Religious Freedom Restoration Act (RFRA) of 1993. This act prohibits the federal government from enacting laws that substantially burden a person's free exercise of religion. A corporation like Hobby Lobby can be considered a person as well, due to a series of Supreme Court rulings from the past 200 years that have granted corporate personhood and rights.

In consideration of the RFRA, the Supreme Court, in a highly controversial 5-4 decision, sided with Hobby Lobby, and declared that the contraceptive mandate was an unnecessary and substantial burden on Hobby Lobby's exercise of religious freedom. All three female Supreme Court justices voted against the ruling, but were unable to change the outcome. The majority claimed that the ruling only applied to "closely-held" for-profit corporations run on religious principles; however, Justice Ruth Bader Ginsburg, writing for the dissent, attacked the majority opinion as a careless decision that could apply to all corporations and numerous laws (Charo 1538).

Subclaim #1: My Best Friend the Corporation

Since 1950, the treatment of corporations as people has expanded beyond its original economic logic. The court has since ruled that corporations can participate in political advertising and are entitled to religious liberty rights. Corporations have the same rights as people, but do not have the same restrictions upon them (death, feeling pain, etc.). This has led to unchecked corporate power, where corporations are acting to maximize profits without concern for employee well being.

Subclaim #2: Complicity Complicated

After winning *Burwell v. Hobby Lobby Stores, Inc.*, Hobby Lobby will not be required to cover certain kinds of birth control - intrauterine devices and emergency contraception—in its health insurance coverage, which they believed would have made them complicit in abortion. Hobby Lobby won the case by citing the Religious Freedom Restoration Act of 1993, which prohibits the federal government from imposing a "substantial burden" on the ability of a person, and now corporation, to practice his or her religion. By not providing contraceptive coverage, Hobby Lobby is putting women at a disadvantage in the workforce, and may very well be driving its female employees towards less-effective methods of contraception, leading to more unintended pregnancies and pregnancy terminations.

Subclaim #3: Egg Freezing – A Temporary Fix

Other companies, like Apple and Facebook, are offering to pay women to freeze their egg cells, allowing women to hypothetically work further into their childbearing years with less fear of reduced fertility. This places women in a tough position, where they are being pressured to choose between career and family.

Subclaim #4: Beyond Contraceptive Coverage

Hobby Lobby sets a precedent for future cases, where employers can discriminate based on personal religious beliefs. Jehovah's witnesses, for example, don't believe in blood transfusions; employers who do follow this religion have a legitimate case to not provide this type of medical service. This could lead to workplace discrimination in the future, where people must interview potential employees about their religious and political views. Employees may also feel compelled to accept a work environment increasingly shaped by their employers' beliefs.

Solutions

In Europe, government mandated guidelines regarding maternity leave, contraceptive coverage, and preventive care, all essential for women health, have proven effective in reducing the number of unintended pregnancies and providing a supportive work place environment. Countries such as Sweden provide up to 480 paid days for both parents to take off and spend with the child; techniques like these have improved the satisfaction and happiness of the female employees, leading to greater work production and long-term success. The US would be wise to adopt such measures to change the current women care system in place, in order to allow women success while maintaining a family. Within the US itself, the government can issue new legislation forcing corporations to obey the contraceptive mandate, regardless of their religious views. The contraceptive mandate, and in general the new preventive service mandate outlined in the ACA, are based on years of scientific research and experience. All the contraceptives listed are essential to provide the best forms of birth control to all the various female populations in the US. Accordingly, providing long-acting reversible and emergency contraception allows female's access to the highest quality of birth control for free, keeping them focused on the workplace without worry about personal reproductive care issues.

By overriding the Supreme Court's decision in the Hobby Lobby case, the government can take the first step in reducing the unchecked power of corporate personhood. The Supreme Court was responsible for corporate power spiraling out of control, and now the government has an opportunity to step in and put a lid on it, so to speak. By taking a stand against Hobby Lobby, the government can stop workplace discriminatory problems before they arise, and can ensure female employees have free access to all types of contraceptives covered by the ACA. This is the beginning of a solution to creating a less hostile workplace environment for female employees. Additionally, this brings the problem and the solution to a full circle; unchecked corporate personhood is the reason for why women are being discriminated against in the corporate world, and limiting corporate power is the initial solution towards fixing this problem.

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