Corporations Are Believers Too - Based on Religious Belief, Supreme Court Exempts Closely Held Corporations From Healthcare Regulation

Client Advisories

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On June 30, 2014, the Supreme Court of the United States provided its long-awaited ruling on whether certain corporations could claim a religious-based exemption from provisions of the Patient Protection and Affordable Care Act of 2010 ("Affordable Care Act"). In a close decision (*Burwell, et al. v. Hobby Lobby Stores, Inc., et al.*), the Supreme Court held that closely held corporations may use religion as a basis to opt out of specific provisions of the Act.

Although publicity about this hot button issue has centered on one employer, Hobby Lobby Stores, the Supreme Court in its ruling also addressed a related case, *Conestoga Wood Specialties Corp., et al. v. Burwell, et al.* The plaintiffs in both cases included corporate entities that, prior to the Supreme Court's decision, were subject to certain regulations of the U.S. Department of Health and Human Services ("HHS"). Pursuant to the Affordable Care Act, certain employer-sponsored group health plans must provide insurance coverage for "preventive care screenings" for women, without "any cost sharing requirements." Per the HHS regulations, the "preventive care" that must be covered includes 20 different contraceptive methods. Citing the Christian religious beliefs of their owners, the corporate plaintiffs objected to being compelled to provide insurance coverage for four of those methods ("morning-after pill," the "week-after pill,"and two types of intrauterine devices), each of which operates after conception (that is, after the corporate plaintiffs' owners believe life begins).

The Supreme Court exempted the corporate plaintiffs from having to provide insurance coverage for the objectionable types of contraception, based on the Religious Freedom Restoration Act of 1993 ("RFRA"). Under RFRA, generally, "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." Exceptions may occur where the burden furthers a "compelling governmental interest" and is the "least restrictive means" of furthering that interest.

In the Supreme Court's decision, which Justice Alito wrote for the 5-4 majority, the Court held that a closely held corporation is a "person" for purposes of RFRA, and that HHS's contraceptive mandate constitutes a substantial burden on religion. Although the Court assumed that HHS had a compelling interest in providing cost-free access to the four objectionable contraceptives, it held that the mandate was not the least restrictive way to further that interest. In so holding, the Court noted, among other things, that HHS previously provided an exemption to the mandate for certain non profit corporations, and suggested that the government could bear the cost of the objectionable contraceptives for employees of religiously opposed closely held corporations.

At first glance, the Supreme Court's decision determined a narrow issue relevant only to a small subset of employers. However, based on the Supreme Court's surprise ruling on July 3, 2014, in *Wheaton College v. Burwell*, it already appears the majority of the Court may be quite willing to entertain legal challenges that significantly expand on the *Hobby Lobby* decision. In *Wheaton College* (a 6-3 decision in which the three female Justices, Justices Sotomayor, Ginsburg, and Kagan, submitted a scathing dissent), the Court granted a temporary injunction relieving the plaintiff, a religious college, from having to file EBSA Form 700 - the form by which a nonprofit organization and, perhaps per *Hobby Lobby*, now a for-profit organization, advises the government that the organization is claiming a religious exemption from the contraceptive mandate.

In so ruling, the Court seemed to side favorably with Wheaton College's argument that merely completing the exemption form constitutes a substantial burden on its exercise of religion, because it would be advising the government as to how its employees would be able to get coverage for contraceptives. Although the Court did not fully resolve the issue, it did grant a temporary injunction, which is an extraordinary remedy and which relieved the College from the requirement to file EBSA Form 700 during the pendency of its case before the lower court. Whether and when the Supreme Court may address the issue on its merits remains uncertain, but until a subsequent decision, employers claiming this exemption appear able to even avoid filling out the exemption paperwork, at least in its current format.

If you have any questions about this advisory or other labor and employment matter, please contact any member of the Labor and Employment Department of Archer in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350.

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