

George Wood: 4 Things Pentecostals Must Do for Religious Freedom

On Monday, June 30, the Supreme Court of the United States handed down its decision in the case of *Burwell v. Hobby Lobby*. The Court held that “[a]s applied to closely held corporations, the [U.S. Department of Health and Human Services] regulations imposing the contraceptive mandate violate [the Religious Freedom Restoration Act].” Consequently, the pro-life Christian owners of Hobby Lobby Stores and Conestoga Wood Specialties—the Green and Hahn families, respectively—will not have to cover in their employee health-care plans drugs and medical devices that can cause abortion.

As a general rule, I do not comment on Supreme Court cases or public policy. Nevertheless, in my role as general superintendent of the Assemblies of God, I sometimes find it necessary to give my best advice to the Fellowship, and in this case, I think there are good reasons for supporting the court’s ruling. Before explaining those reasons, let me describe the case’s logic and significance.

Hobby Lobby’s Logic and Significance

The Court’s logic—expressed in the opinion written by Justice Samuel Alito—was straightforward. The Religious Freedom Restoration Act (RFRA) says, “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless doing so “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” The Dictionary Act (1 U.S. Code § 1) defines the word person to

include “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

Hobby Lobby and Conestoga Wood Specialties are closely held corporations whose owners believe that the HHS contraceptive mandate substantially burdens their exercise of religion. Even assuming that the contraceptive mandate furthers a compelling governmental interest, HHS did not show that it was the least restrictive means of doing so. Therefore, the contraceptive mandate violated RFRA in the cases of Hobby Lobby and Conestoga Wood Specialties.

I should point out that the court decided this case on the basis of RFRA rather than the First Amendment, that is, on statutory rather than constitutional grounds. This is a vital distinction. In *Employment Division v. Smith*, a controversial 1990 case that still governs the court’s jurisprudence on First Amendment Free Exercise Clause cases, the court ruled, “The constitutional guarantee of religious freedom does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the grounds that the law [prohibits] conduct that his religion prescribes.”

In response to this decision, which was decried by religious-freedom advocates, a nearly unanimous Congress—a unanimous House and 97 out of 100 votes in the Senate—passed RFRA in 1993 in order to provide statutory relief to persons whose religious freedom could now be burdened because of the Court’s decision in *Smith*. In all likelihood, Hobby Lobby and Conestoga Wood Specialties would have lost if their cases were decided solely on First Amendment grounds.

The significance of the court’s decision should not be underestimated. For one thing, it was a pro-life victory. Had the court ruled the other way, the government would have had the power to force pro-life business owners to violate their consciences and cover in their employee health-care plans’

drugs and medical devices that can cause abortion.

Indeed, as the court pointed out, “Under HHS’s view, RFRA would permit the Government to require all employers to provide coverage for any medical procedure allowed by law in the jurisdiction in question—for instance, third-trimester abortions or assisted suicide.” For another thing, the decision was a vindication of the idea that religious exercise cannot be limited to individuals, explicitly religious groups, or explicitly religious activities. Rather, a group of persons can exercise religion even in the context of commercial activity.

Considering Popular Objections

Unfortunately, the court’s decision was controversial. I say unfortunately because religious freedom should unite Americans across the lines of religion and political affiliation rather than divide them. We personally might dislike this or that application of the principle of religious freedom, but the principle itself should be left untouched. It is worrisome to me that religious freedom has fallen prey to the pervasive partisanship that characterizes so much of contemporary politics.

In the aftermath of Hobby Lobby, some politicians are now proposing that RFRA be repealed or amended or that exceptions to it be carved out in various pieces of legislation. In my opinion, changing a principle because you don’t like its application suggests that your support for the principle was partisan—that is, designed to give you a political advantage—rather than principled.

Nevertheless, the controversy must be engaged. So, in this section, I’ll examine three popular objections to the Court’s decision. In the next, I’ll examine a line of argument made by Justice Ruth Bader Ginsburg in her dissent.

One popular objection—that corporations do not have rights—can

be dispatched quickly. The Assemblies of God—a nonprofit corporation—has a First Amendment right to the “free exercise” of religion. This right applies to the corporation as such, not merely to its officers or employees. Similarly, our Fellowship shares with for-profit corporations a First Amendment right to “the freedom of speech” and “of the press”; a Fourth Amendment right against “unreasonable searches and seizures,” i.e., those that take place without a warrant supported by “probable cause”; a Fifth Amendment right against “property” being taken “without due process of law”; and in eminent-domain cases, “without just compensation”; a Sixth Amendment and Seventh Amendment right to a jury trial in criminal and civil cases, respectively; and an Eighth Amendment protection against “excessive fines.” In other words, corporations—both nonprofit and for-profit—do have at least some rights, and this is recognized by the Supreme Court.

Another popular objection—that the decision constitutes a “war on women”—is misleading. In two cases—*Griswold v. Connecticut* (1965) and *Eisenstadt v. Baird* (1972)—the Supreme Court ruled that both women and men have a constitutional right to purchase and use contraceptives, whether they are married or unmarried. Those rulings are unaffected by *Burwell v. Hobby Lobby*.

Moreover, neither Hobby Lobby nor Conestoga Wood Specialties had an objection to covering contraceptives per se. Indeed, their employee health-care plans covered 16 of the 20 forms of contraception approved for use by the Food and Drug Administration (FDA). They simply objected to covering the four forms that can cause abortion. Finally, not all women agree that employee health-care plans should pay for medical drugs and devices that can cause abortion, e.g., the women in the Green and Hahn families, among millions of others.

(By the way, the official position of the Assemblies of God, as adopted by the General Presbytery, is that contraception is

permitted but abortion is prohibited. The General Council's employer health-care plans covers all FDA-approved forms of contraception except ones it considers abortifacients. In other words, both the beliefs and health-care plans of the Assemblies of God are similar to those of Hobby Lobby and Conestoga Wood Specialties.)

A final popular objection is that granting for-profit corporations free-exercise rights will lead to a parade of horrible outcomes in which religious employers refuse to cover blood transfusions, vaccinations or other medical procedures they deem inconsistent with their religious beliefs. The problem with this objection is twofold: (1) RFRA has been the law of the land for 21 years, and there has not been a parade of horrors with regard to religious individuals seeking protection from generally applicable laws. Why should we assume that there will be one now that some corporations can claim free-exercise rights? (2) RFRA employs a balancing test between compelling governmental interests and the free exercise of religion. If the government shows that requiring coverage of transfusions, vaccinations or other medical procedures is the least restrictive means of accomplishing a compelling interest, then the government will prevail. In other words, RFRA does not guarantee that religious persons will prevail when they claim that a generally applicable law burdens their free exercise of religion. Sometimes, they will lose.

Justice Ginsburg's Objection

In her dissent, Justice Ginsburg raised a variety of objections to the court's decision. The one I believe most needs a response is this: Ginsburg begins by asserting that "the exercise of religion is characteristic of natural persons, not artificial legal entities." She grants that "[t]he First Amendment's free exercise protections ... shelter churches and other non-profit religion-based organizations."

But, she goes on to point out based on case law, “No such solicitude is traditional for commercial organizations.” Why? Because there is a “distinction between a community made up of believers in the same religion and one embracing persons of diverse belief.” Moreover, quoting Judge Henry T. Edwards, she writes, “for-profit corporations are different from religious non-profits because they use labor to make a profit, rather than to perpetuate [the] religious value[s] [shared by a community of believers].”

Justice Ginsburg’s objection has intuitive plausibility. We know that there are differences between churches and businesses. The former can require employees to profess a specific theological creed, for example, while the latter cannot.

Even with such differences in mind, however, Ginsburg’s objection is problematic. If, as she argues, “the exercise of religion is characteristic of natural persons, not artificial legal entities,” it is not clear why the Supreme Court should show solicitude for “churches and non-profit religion-based organizations,” which, as nonprofit corporations, are also “artificial legal entities.” And yet, it does.

It’s also not clear why perpetuating religious values and engaging in commercial activity should be considered fundamentally opposite. The Assemblies of God does both, after all, through Gospel Publishing House and My Healthy Church.

Finally, it’s not clear that the concerns of religious organizations pertain only to “the community of believers.” Churches and Christian charities are concerned about the spiritual and material well-being of people outside the community of faith. That is why they evangelize and provide help to people who do not share their beliefs or attend their churches. They have an other-directed concern that Justice Ginsburg seems not to consider.

In the end, what worries me about Ginsburg's line of argument is the narrowness of her understanding of the exercise of religion. Essentially, it limits religion to religious individuals engaged in religious activities or participating in religious organizations. This simply doesn't accord with the way that Christians and other religious persons live their lives. For them, religion is the entirety of their lives, not just the religiously explicit portions, such as personal or corporate worship activities. This is because their faith defines who they are, and who they are affects both what they do and how they do it.

Christian business owners, on this understanding, do not leave their values outside when they walk through the front doors of corporate headquarters. Those values shape the way they do business. So, for example, Hobby Lobby closes its stores on Sunday because as Christians the Green family believes that the Sabbath should be a day of worship and rest. The starting wage at Hobby Lobby is nearly twice the federal minimum wage, and its health-care plan is generous, because as Christians the Green family believes it ought to treat its employees well. Notice that these business decisions, based on Christian values, affect the company's bottom line negatively. Closing one day a week and paying higher than required starting wages represent the loss of significant revenue and profit. If Hobby Lobby were simply out to make money, such a loss would make no sense. The Green family's faith puts it in perspective, however: There is more to business than profit.

It seems to me that Justice Ginsburg's dissent, precisely because of its narrow understanding of the exercise of religion, simply cannot make sense of the way that closely held corporations such as Hobby Lobby or Conestoga Wood Specialties actually operate. How they operate reflects the Green and Hahn families' Christian faith. Ginsburg's narrow understanding thus represents a political point of view that would weaken religious freedom in America, rather than

strengthen it.

What Is at Stake

There are three reasons we should support the Court's robust understanding of religious freedom.

First, we live in a society that is characterized by increasing diversity, not only of race, ethnicity and cultural background, but also of religion and ideology. A robust understanding of religious freedom helps promote peacefulness and tolerance by teaching us all to make accommodations for others' differences—not only when we worship but also when we're engaged in mundane activities, not only in the private sphere but also in the public square. Needless to say, if we Christians want others to recognize our religious freedom, we need to recognize theirs—whether they are Jewish, Muslim, Hindu, Buddhist, Sikh or adherents of any other religion. In this, we are simply following the Golden Rule, which states, "So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets." (Matthew 7:12, NIV)

Second, as the government expands its legislative and regulatory reach into every nook and cranny of American citizens' lives, it unwittingly burdens their free exercise of religion. Sometimes, given the ideological cast of those laws and regulations, the burden is—or at least seems—intentional. For example, some pro-choice advocates reject the Court's decision in *Burwell v. Hobby Lobby* precisely because they want government to enshrine their vision of human sexuality in law. Similarly, some pro-gay rights advocates reject the decision because they fear it might lead to exemptions to the Employment Nondiscrimination Act (ENDA) and sexual orientation and gender identity (SOGI) legislation. In other words, those advocates don't mind the intentional burden their favored laws might impose on religious people. Shouldn't we be worried

about this foreseeable and intended erosion of religious liberty? More importantly, shouldn't we take action to stop it? A robust understanding of religious freedom helps limit the size and reach of government on topics where ideologues want to impose their visions of society on religious people who have longstanding, substantive objections to those visions.

This doesn't mean—it needs to be emphasized—that religion is a trump card against generally applicable laws. As noted above, there may be times when the government is using the least restrictive means to accomplish a compelling interest, and this should prevail even if it burdens someone's religious freedom. Nevertheless, shouldn't the government bear the burden of proof to justify its imposition on religious freedom?

Third, promoting a robust understanding of religious freedom is in our own interest. The Supreme Court is a reliable defender of the First Amendment rights of explicitly religious organizations such as churches, synagogues, mosques and temples. But what about charities affiliated with the Assemblies of God, such as Convoy of Hope? What about schools, such as Evangel University or any of our endorsed postsecondary schools? Will the Court reliably defend their free-exercise rights? I am encouraged to think it will in the wake of *Burwell v. Hobby Lobby*. Had the Court ruled the other way, however, I would be discouraged that its decision would narrow the scope and weaken the force of religious freedom in our land.

What is at stake in the Court's *Hobby Lobby* decision, then, is the kind of society we want America to be. Is it one that respects the rights of religious persons in all their diversity, fostering tolerance rather than promoting antagonism? Is it one that resists the ideological temptation to impose—through legislation and regulation—a one-size-fits-all vision on people who object to that vision, thus burdening

their consciences? Does it allow religious persons to lead a faith-integrated life—not merely in their churches but also in their charities, schools and businesses? Or does it impose a false disjunction between people’s faith and the rest of their lives?

What Needs to Be Done

I close with some practical suggestions about what is to be done for religious freedom after *Burwell v. Hobby Lobby*.

First, I want to remind us all that our Fellowship’s reasons for being are evangelism, worship, discipleship and compassion—not politics. As the tide of post-Christian secularism rises throughout our nation, it is tempting for Christians on both sides of the pulpit to turn to political activism to stem the tide. This is shortsighted and therefore ineffective. Politics reflects culture, and culture reflects values, which are religious in nature. Our government ultimately reflects our gods, in other words. Long-lasting, effective change therefore requires a change of heart. This heart change—made possible by the Spirit-empowered proclamation of the gospel—is where we pastors, evangelists and missionaries should expend our best efforts.

Second, this doesn’t mean that political engagement is unimportant. As American Christians, we have both the opportunity and the right to participate in the political process by informing ourselves about candidates and issues, voting, advocating specific policies, making reasonable arguments for our positions, petitioning government officials for their support, running for office, etc. We should do such things with what Richard J. Mouw calls “convicted civility.” Our political engagement, in other words, should reflect our deepest moral convictions, but they should be communicated with civility, knowing that those who disagree with us also are made in God’s image, loved because of Jesus Christ, and called and empowered by the Holy Spirit to live lives of

greater holiness.

It is out of this sense of convicted civility that I signed a letter along with other faith leaders imploring congressional leaders not to repeal or amend RFRA. I encourage you, if you agree with the Court's ruling, similarly to write a letter to congressional leaders, including your senators and representatives. RFRA represents the best tradition of American religious liberty and aligns with the interests of the Assemblies of God. It is worth supporting and defending. Moreover, as religious-freedom issues arise in your state, I encourage you to prayerfully consider advocating religious freedom to your family, friends, representatives and governors.

Moreover, we should encourage voting because elections have consequences. One of those consequences is that the president nominates judges who serve on district and appellate courts and on the Supreme Court. The U.S. Senate must then approve those nominees. It is a sad fact that no evangelical sits on the Supreme Court—even though evangelicals constitute a very large faith community in America. I suspect that at present no evangelicals could even be nominated or confirmed to a federal bench because they hold views that are pro-life and pro-traditional marriage. People in our Fellowship need to remember that when they cast a ballot, they effectively decide who will sit as a federal judge. Indirectly, they are casting a vote for or against a robust understanding of the free exercise of religion.

Third, we ought to pray for government officials in all branches (executive, legislative, judicial) at all levels (federal, state, county, municipal) that they may govern with justice so that we and our nation, states and communities experience peace. This is a biblical command (1 Timothy 2:1–2). Notice in these verses that Paul enjoins both intercession and thanksgiving. As Christians in the United States, I'm sure we've presented our list of changes we

would like God to make to our government. But have we thanked God lately for our government?

Fourth and finally, we should remember that the purpose of religious freedom is positive, not negative. "Live as free people," Peter writes, "but do not use your freedom as a cover-up for evil; live as God's slaves." (1 Peter 2:16, NIV) Before religious freedom is freedom from government interference, it is freedom to do God's will. As sons and daughters of God, we have the ability to do God's will regardless of what the government does. God has not guaranteed that doing the right thing will be politically popular in this lifetime, but we should do it nonetheless. "Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God on the day he visits us." (1 Peter 2:12, NIV)

I pray that God would bless you and the ministry you lead. I ask for the same from you. And I hope that you receive my advice on this topic in the spirit with which it has been given.

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