

A broad decision or a narrow one?

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July 1, 2014



Is there any case to be made that liberals should *support* [the Supreme Court's Hobby Lobby decision yesterday](#)?

After all, some who are left of center maintain that we should be broadly supportive of the sort of freedom of conscience the decision prioritizes. Conservatives aren't the only ones with consciences, after all, and the shoe will at some point be on the other foot. That makes a measure of sense.

Then there are the particulars of Justice Alito's decision. Yes, the government may have other means of ensuring that people have contraception coverage—and turning things back to the feds [may ultimately ensure wider coverage](#). Add Alito's move to explicitly narrow the decision to the contraception mandate itself—as opposed to being a precedent for all manner of claims, inflected religiously—and you basically have a small-bore decision that does a fair job of balancing the competing interests. Sure, that makes a certain amount of sense, too.

Of course, these two lines of reasoning don't really work together to build a larger case to cheer *Burwell v. Hobby Lobby*. That's because these two lines of reasoning pretty much contradict each other. Is the decision about freedom of (corporate) conscience broadly, or is it just about a few contraceptives? It can't really be both.

And anyway, either option is plenty troubling. I don't have the background to speculate as to whether [Alito's dictum](#) against a broad interpretation will actually

have any legal teeth. But say [it does](#): say this decision will not pave the way for employers to claim religion as a reason not to cover vaccinations, blood transfusions, or whatever else. After all, not every theoretical slope is in fact all that slippery (a point we liberals make regularly). Still, why would a principled decision asserting the religious rights of certain businesses apply only to a certain kind of assertion of a certain kind of right? It's hard not to be cynical about the politics of such a thing.

In a case involving perhaps the two most polarizing subjects in America—abortion and Obamacare—the Court splits on party lines and essentially expands its concept of religious freedom [specifically to accommodate a conservative business owner's anti-abortion beliefs](#). (Not that the contraceptives in question [actually cause abortion](#), or that Hobby Lobby cared enough to notice [it was providing them to employees before](#) the politics of taking a stand got so compelling, or that it felt a twinge of conscience about [supporting the same companies through its 401\(k\) program](#).) Hobby Lobby makes a claim based on religious freedom—the current proxy issue for all the old culture-war stuff—and a conservative Court gives it a win, while explicitly warning that this doesn't mean it'll do the same for other people with other beliefs. That's hard to celebrate.

On the other hand, what if Alito's dictum proves ineffective in narrowing the scope of this decision? Then we have exactly what Justice Ginsburg and the minority fear: a startling expansion of corporate personhood. From Ginsburg's dissent:

Until today, religious exemptions had never been extended to any entity operating in “the commercial, profit-making world.” *Amos*, 483 U. S., at 337.16

The reason why is hardly obscure. Religious organizations exist to foster the interests of persons subscribing to the same religious faith. Not so of for-profit corporations.

Yet the decision asserts that businesses have religious rights—yes, just a particular class of businesses, but [it's a really big group](#). If this decision has broad implications—that is, if it isn't just about a special right to avoid providing a handful of allegedly abortive contraceptives—then it's shifting power from workers to corporations, [as if we needed more of that](#). To say nothing of stretching any theological sense of what it means to be a person practicing religion. (See [John Oliver's entertaining take on corporate personhood](#).)

It remains to be seen how much this decision will ultimately hurt women's health. But it's hard for me to see it as a net positive for the health of our political life—whether it proves to be a narrow case about contraception or a broader one about the religious rights of corporations.

UPDATE: [The Court clarified Tuesday](#) that this decision applies to the contraception mandate generally, not just to the four contraceptives Hobby Lobby objects to.