

Five takeaways from the Supreme Court decision

by [Lauren Markoe](#) and [Cathy Lynn Grossman](#)

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## **1. Corporations can't pray, but they do have religious rights.**

Hobby Lobby isn't a person. It's a company owned by a religious family. And though the Green family objects to parts of the Affordable Care Act's emergency contraception mandate, it's not the Greens but the company that writes the check for employees' health insurance. The first question the justices had to answer was this: Does Hobby Lobby have religious rights? To many Americans, this sounds a little nutty. Does Burger King believe in God? Can Home Depot go to mass?

A majority of the justices held that a closely held company such as Hobby Lobby does have religious rights. The court didn't apply those rights to publicly held corporations, however, where owners' religious beliefs would be hard to discern.

Many legal scholars weren't surprised that the court affirmed the company's religious rights. American corporations do have some of the rights and responsibilities we usually associate with people. And in the 2010 *Citizens United* campaign finance case, the justices overturned bans on corporate political spending as a violation of freedom of speech—*corporation's* free speech.

## **2. The Affordable Care Act isn't the only way to get contraception to women.**

The justices in this case interpreted not only the 225-year-old Constitution but also the 21-year-old Religious Freedom Restoration Act (RFRA). One of the things RFRA says is that if a federal law is going to substantially burden someone's religious freedom, the feds must make sure that the law uses the "least restrictive means" to achieve its purpose. In this case, the purpose is providing birth control to female employees at no cost.

Justice Stephen Breyer asked the "least restrictive means" question: Instead of making the company provide insurance that conflicts with its owners' beliefs, how

about having the government pay for it? The Supreme Court answered Breyer's question in the affirmative: there are ways of getting contraception to women that don't substantially burden the Green family's religious beliefs. Justice Anthony Kennedy suggested the government could pay.

### **3. The American people would have ruled differently.**

There are nine U.S. Supreme Court justices and most of them ruled for Hobby Lobby. But what if a softball team composed of a random sample of nine American adults were to decide this case? The team would have likely come up with a very different decision.

In a Kaiser Health Tracking Poll, released in April, Americans expressed solid support for the contraception mandate, backing it by a 2-to-1 margin. Kaiser also asked specifically about requiring coverage in the Hobby Lobby scenario. Should a for-profit business owner with religious objections to birth control be subject to the requirement? Again, a majority (55 percent) said yes, "even if it violates the owners' personal religious beliefs."

### **4. This court is "rah rah" religious rights.**

Chief Justice John Roberts's court is shaping up to be protective of the free exercise clause. Only two months ago the court ruled 5-4 that the town of Greece, New York, could regularly convene town meetings with sectarian Christian prayers. And in 2012, the court ruled 9-0 that a Lutheran school could fire a teacher who had some ministerial responsibilities, despite the government's finding that her dismissal violated the Americans with Disabilities Act.

In each case, the court sided with religious rights over other rights. "The Roberts court has been a great champion of religious freedom," said Lori Windham, senior counsel at the Becket Fund for Religious Liberty, which represented Hobby Lobby.

### **5. Hobby Lobby won, but the next company to cite religious objections might well lose.**

Contraception mandate fans painted terrible scenarios of religious rights run amok in the case of a Hobby Lobby win. What if a Jehovah's Witness invokes her religious rights and says she won't cover blood transfusions in her company's health plan? What if a Christian Scientist doesn't want to cover hospital admissions?

The Hobby Lobby decision may certainly embolden religious employers to object to laws they consider burdensome. But that doesn't mean they're always going to win. The court made clear in this ruling that religion should not always trump the law and said its ruling here applies to the contraception mandate and not to other insurance mandates. The court also specified that an employer could not use religion to get an exemption from laws that prohibit discrimination—on the basis of race, for example. The justices were silent, however, on whether employers' religious beliefs could override laws that prohibit discrimination on the basis of sexual orientation. —RNS

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