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7-1-2014

July 1, 2014: Another Reason to Hate Religion

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Ledewitz, B. (2014). July 1, 2014: Another Reason to Hate Religion. Retrieved from <https://dsc.duq.edu/ledewitz-hallowedsecularism/843>

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Title: Another Reason to Hate Religion

Date: 2014-07-01T14:54:00.000-04:00

7/1/2014—The decision yesterday in the Hobby Lobby case, and the accompanying orders today affirming even broader religious exemptions for closely-held corporations that oppose all contraceptive coverage, were inevitable given the Religious Freedom Restoration Act. That statute was passed in 1993 by an almost unanimous Congress to reverse the refusal of the Supreme Court to allow religious exemptions under the Free Exercise Clause of the First Amendment. Although it is hard to believe now, that decision, *Employment Division v. Smith* in 1990, pitted the more conservative members of the Court—Justice Scalia wrote the majority opinion on behalf of Chief Justice Rehnquist, and Justices White, Stevens, O'Connor and Kennedy—against the most liberal members of the Court—Justices Brennan, Marshall and Blackmun. At that time, rights for religious believers were still regarded by the left as a good thing. Only Justice Stevens would feel at home in today's anti-religious atmosphere.

My perspective on Hobby Lobby is not the same as that of most other people. The question for me is, what effect will the decision have on the rapidly increasing secularization of this society, especially among the young? The answer, as far as I can tell, is that the decision will contribute to that secularization. The proponents of the religious exemption have not convinced anyone except the Justices that granting these exemptions is fair and just. To many people, especially young people, especially women, the decision just seems like one more instance of bullying by wealthy men and powerful corporations.

First, does the exemption threaten to limit contraceptive services or are these services so cheap that most people pay for them themselves? Some are, many are not. Vasectomies, I read, were never covered by the Affordable Care Act in the first place.

Second, are there alternatives for employees whose employers are granted exemptions? Probably. Justice Kennedy, the fifth vote, seems to feel that the religious non-profit exemption could be applied to the for-profit corporations that are granted exemptions. If so, since that exemption was accomplished by executive action, no Congressional action would be needed to expand it. Under that exemption, the insurance carrier pays and even the self-insured are included. Yes, that exemption is under attack, but Justice Kennedy would be the fifth vote to uphold it.

Third, what about religious exemptions in the future? Despite the attempt to write a narrow decision, it is now open season for employers and individuals to object to government policies on religious grounds. The majority opinion suggests that Justice Alito believes that race discrimination and opposition to vaccinations would not be accommodated, but these are more like ad hoc hopes than legal holdings—just like Justice Alito's hope that publically held corporations will not raise religious claims. Why not? Chevron spent money on the past election cycle.

And as more employees are inconvenienced by wealthy interests, and as public health and policy are more and more threatened, the Religious Freedom Restoration Act will become the target for repeal by a growing secular cohort that will eventually be a majority. In the meantime, anyone hoping the young will rediscover religion will be disappointed.

It could have been different. More on that later in the week.