

LIFE ISSUES FORUM - Much Ado About Hobby Lobby

The ink was not dry on the U.S. Supreme Court's *Hobby Lobby* decision before the attacks began. "The immediate effect... is to deny many thousands of women contraceptive coverage vital to their well-being and reproductive freedom," intoned *The New York Times*. We must "keep bosses out of the examination room," said Senate Majority Leader Harry Reid. Employees' beliefs have been "effectively overruled by the religious beliefs of the boss," said talk show host Rachel Maddow.

In fact, what the court did was faithfully apply a law passed almost unanimously by the people's elected representatives.

That law is the Religious Freedom Restoration Act (RFRA), signed into law by President Bill Clinton in 1993. It says a federal policy cannot "substantially burden" a person's religious freedom, unless it serves a "compelling state interest" in a way that is "least restrictive" of that freedom.

The court applied that law to a situation in which unelected officials of the Obama administration tried to force family businesses to provide insurance coverage for *all* FDA-approved contraceptives – even if their religion rejects the drugs and devices that can attack early human life. Three businesses filed suit under RFRA.

They prevailed because, even assuming that the government has a "compelling" interest in maximizing birth control coverage, it failed to show it was furthering that interest by a means that is least restrictive of religious freedom. Among other things, the government could provide that coverage itself, as it already does to millions of Americans.

The court also had to decide: Can a for-profit family-owned business have religious freedom rights? It noted the following: Courts treat corporations as "persons" in various ways; they treat nonprofit corporations as having religious freedom; they have said that people don't lose their religious freedom just because they run a business; and the Supreme Court itself has said that for-profit companies can have First Amendment free speech rights. So the logical answer to the question is yes.

So far, so good. But what about the charges we began with? They run afoul of some basic facts.

First, this is not about employers intruding into employees' private health decisions on contraception. The employers are doing just the opposite: Staying out of those decisions and leaving them to the individual. Far from trying to stop others from purchasing or using contraceptives, they are leaving them alone. Isn't that what "private" means?

Second, this is no war between employers and employees. The companies have been providing excellent health coverage to their thousands of employees for many years, excluding only the few items they see as harmful to human life. And their employees have chosen to work for them, due in part to these good wages and benefits. The only party trying to force other people to violate their beliefs is the government itself. That government also forces *employees* to buy coverage, for themselves and their minor daughters, that they may find morally objectionable. Why assume that Christian-owned companies have *no* employees who share their values?

Third, this is not about whether people who want contraceptive coverage can have it. As the court noted, the government can provide that coverage without making these families violate their beliefs, so that the number of women deprived of coverage they want would be "zero."

So the indignation of politicians and pressure groups is misplaced. It is they who seem to assume that they *know* how other people should live, and can use the coercive power of government to boss people around in accord with that superior knowledge. The world their agenda may create – a flat, homogenized world lacking spirit and diversity, where no one believes in anything more strongly than in "progress," where life and sexuality lack deeper meaning – is a world I don't want to see. I'm glad a twenty-year-old law, and a court that knows how to read that law, have provided at least a speed bump on the way there.