



THE FIRST AMENDMENT vs THE RFRA

The just-released Supreme Court decision in the Hobby Lobby case has not pleased advocates of the First Amendment. Americans United for Separation of Church and State called it “insulting and devastating” and warned that employers may:

“use their ‘religious freedom rights’ to trump laws prohibiting discrimination on the basis of religion, gender, sexual orientation or cohabitation outside marriage. Quite simply, this decision could elevate employers’ religious views over employees’ civil rights in unprecedented ways.”

Newsweek predicted that the decision is “likely to open a legal floodgate.” In fact, it already has. After releasing its decision in the Hobby Lobby matter the Supreme Court directed lower courts that had rejected similar exemptions sought by other “religious businesses” to reconsider those cases and denied appeals from lower courts who had granted such exemptions. The 5-4 opinion, written by Samuel Alito and joined by the four other Catholic men on the court, stated that it:

“should not be understood to hold that an insurance-coverage mandate must necessarily fall if it conflicts with an employer’s religious beliefs. Other coverage requirements ... may be supported by different interests ... and may involve different arguments.”

This leaves it open as to whether, as Justice Ruth Ginsburg points out in her dissent, others may be entitled to exemptions “to blood transfusions (Jehovah’s Witnesses); antidepressants (Scientologists); medications derived from pigs, including anesthesia, intravenous fluids, and pills coated with gelatin (certain Muslims, Jews, and Hindus); and vaccinations (Christian Scientists, among others).”

In fairness, and leaving aside other issues such as “corporate personhood” and the peculiar expectation that employers provide medical care for their employees, the US Supreme Court is not really the problem. Nor do the guarantees of the First Amendment lead to such absurdities. The problem is something called the Religious Freedom Restoration Act (RFRA) that was overwhelmingly passed by both parties in Congress and signed into law in 1993 by then-President Clinton. Some warned against it

then, but few wanted to oppose “religious freedom.”

The RFRA requires the courts to apply a “strict scrutiny” standard known as the Sherbert test which the Supreme Court had developed and applied in 1963. In that case, a woman was denied unemployment benefits after quitting her job because her employer wanted her to work on Saturdays, which conflicted with her Seventh-Day Adventist beliefs. The court ruled in her favor, saying that government must have a “compelling interest” carried out by the “least restrictive” means where religion is concerned. Nevermind that taxpayers must subsidize the worship preferences of this woman’s sect. The court later abandoned this standard, most famously in 1990 in Smith, where unemployment compensation was denied to two individuals – counselors at a drug rehab facility! - who were fired for using peyote in religious ceremonies of the Native American Church. In that opinion, Justice Antonin Scalia wrote:

“It is a permissible reading of the [free exercise clause] ... to say that if prohibiting the exercise of religion is not the object of the [law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. ... We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law ... To make an individual’s obligation to obey such a law contingent upon the law’s coincidence with his religious beliefs, except where the State’s interest is ‘compelling’ – permitting him, by virtue of his beliefs, ‘to become a law unto himself,’ [citing an 1879 case concerning polygamy, referred to in April’s NTCOF bulletin] contradicts both constitutional tradition and common sense. To adopt a true ‘compelling interest’ requirement for laws that affect religious practice would lead towards anarchy.”

Congress responded by imposing the Sherbert test on the courts in the form of RFRA. As Justice Scalia presciently suggested, this has led the nation “towards anarchy.” RFRA is the real reason for Hobby Lobby’s being exempt from the law that others must follow.

Interestingly, the Supreme Court refused to apply RFRA to the states in the 1997 case of Boerne. Here the Catholic Church sued under RFRA when it was denied a building permit. Justice John P. Ste-

vens, concurring in a ruling against the church, said:

“the Religious Freedom Restoration Act of 1993 (RFRA) is a ‘law respecting an establishment of religion’ that violates the First Amendment to the Constitution. If the historic landmark on the hill in Boerne happened to be a museum or an art gallery owned by an atheist, it would not be eligible for an exemption from the city ordinances that forbid an enlargement of the structure. Because the landmark is owned by the Catholic Church, it is claimed that RFRA gives its owner a federal statutory entitlement to an exemption from a generally applicable, neutral civil law. ... the statute has provided the Church with a legal weapon that no atheist or agnostic can obtain. This governmental preference for religion, as opposed to irreligion, is forbidden by the First Amendment.”

Justice Ginsburg echoes this realization in her dissent in Hobby Lobby:

“There is an overriding interest, I believe, in keeping the courts ‘out of the business of evaluating the relative merits of differing religious claims,’ or the sincerity with which an asserted religious belief is held. Indeed, approving some religious claims while deeming others unworthy of accommodation could be ‘perceived as favoring one religion over another,’ the very ‘risk the Establishment Clause was designed to preclude.”

But her solution urges such favoritism:

“I would confine religious exemptions under [RFRA] to organizations formed ‘for a religious purpose,’ engage[d] primarily in carrying out that religious purpose,’ and not ‘engaged. ... substantially in the exchange of goods or services for money beyond nominal amounts.”

For to determine what is and is not a valid “religious purpose” it is necessary to “evaluat[e] the relative merits or differing religious claims” and the sincerity of those who make them. The RFRA and the Establishment Clause cannot be harmonized.

But it gets worse. In a brief filed by the Freedom From Religion Foundation (FFRF) in the Hobby Lobby case, Yeshiva University law school professor Marci A. Hamilton argues that RFRA violates the Separation of Powers because it dictates to the courts, and even to the Supreme Court, how to apply the First Amendment. And if that weren’t enough, RFRA violates Article V of the Constitution by enacting Bill-of-Rights-style Constitutional rights without going through the process of amending the Constitution. RFRA simply is not a valid exercise of Congressional power. It leads us towards, not just anarchy, but religious tyranny.

All NTCOF events can be found through our website calendar , or our meetup page, from which you can RSVP, at:

- www.meetup.com/church-of-freethought - JOIN THE NTCOF MEETUP GROUP !!!

Social Luncheon: Today, immediately after our Service, join us for lunch and discussion. Today we meet at the Jason’s Deli on MacArthur Blvd just south of 635, at 7707 N MacArthur Blvd, phone (972) 432-0555.

Freethought Salon: Get together to discuss today’s service topic or other conundrums of interest for Freethinkers. It happens most non-1st Sundays, over breakfast, at the Hilton DFW Lakes Hotel restaurant in Grapevine beginning 10:30 AM; see the meetup site!

Game Night: The regular game night crew meets nearly every Friday night at the IHOP on 2310 Stemmons Trail (I-35), near Northwest Highway (Loop 12). Plan to arrive at about 7:30 PM, and stay late playing Risk, Rummikub, and other fun games!

Have Another Idea? Email or call us about it!

**PLANNED FOR NEXT MONTH:
“REWARDS & PUNISHMENT”
Sorting Out Ends and Means
>>> Sunday, August 3rd, 2014 <<<
SHERATON GRAND DFW AIRPORT
SE CORNER OF 114 AND ESTERS**

**YOUR GENEROUS DONATIONS
TO THE NTCOF ARE NEEDED,
APPRECIATED,
AND TAX-DEDUCTIBLE!!**



The North Texas Church of Freethought
The Fellowship of Unbelievers

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