

# What does the *Hobby Lobby* decision mean?

## HIGHLIGHTS

- The Supreme Court decided Hobby Lobby and other closely held businesses are not required to provide contraception if doing so violates their religious beliefs.
- What hasn't changed: Publicly-owned companies that provide health insurance must still provide full contraception coverage, and health insurance purchased from the exchanges must also include full contraception coverage.
- What fixes are possible? The Department of Health and Human Services could extend the current contraceptive coverage process it uses for religious non-profits to businesses like Hobby Lobby. A legislative fix is possible, but Congress has already unsuccessfully attempted to pass a law to restore coverage.

**What is the issue?** The owners of three businesses, Hobby Lobby, Mardel and Conestoga Wood Specialties, claim that the Affordable Care Act's requirement, which is enforced with a fine, that employer health plans cover certain forms of contraception stands in violation of their religious beliefs. Supporting the health of their employees by providing insurance is also part of their religious beliefs. Hobby Lobby and Conestoga Wood sued the government to seek an exemption from the requirement and won.

**What forms of contraception do the companies oppose?** Two types of oral contraceptive, Plan B and ella, and two intrauterine devices.

**What did the Supreme Court decide?** The choice presented to the three companies by the ACA of providing certain forms of contraception or paying a substantial fine violates the Religious Freedom Restoration Act. RFRA states the federal government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the law "is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling interest." The Supreme Court found the ACA's requirement on employers to provide insurance coverage for certain forms of contraception or pay a fine was not the least restrictive means of guaranteeing this coverage. As a result, closely held companies with religious objections to covering contraception, like Hobby Lobby, do not have to provide health insurance that includes such contraceptives.

## What does this mean for public health?

### WHAT HASN'T CHANGED

Publically-owned companies that provide health insurance must still provide full contraception coverage without any out of pocket costs to employees.

Health insurance purchased through the health insurance exchanges must include full contraception coverage.

### WHAT HAS CHANGED

The employees of some closely held companies might have insurance that excludes coverage for some or all forms of contraception. That is because the Supreme Court held closely-held corporations are not required to include certain forms of contraception in their employees' health insurance benefits if providing such contraception violates their religious beliefs.

- The total number of employees affected by the Hobby Lobby decision is unknown, as the federal government has not set the definition of "closely held" for purposes of the ACA. Many people are potentially affected, however. A 2009 study finds that fifty-two percent of all working people in the U.S. work for closely held corporations.
- The Supreme Court decision also determined that closely held corporations are considered "persons" with religious beliefs for purposes of RFRA.

### WHAT ARE SOME POSSIBLE FIXES?

Members of Congress have proposed legislation that would restore the ACA's requirement on employers to provide insurance that covers all preventive services, including the recommended contraceptives. This option presents the most seamless fix, though it is unlikely to pass both the Senate and House of Representatives.

The government recently issued regulations that would allow objecting organizations (both non-profit and closely held for-profit businesses) to report their religious opposition to providing contraception. This information would allow the federal government to tell the organization's insurance company to provide full contraceptive coverage.