

Volokh's new ebook on Sebelius v. Hobby Lobby

Reconciling Corporate Rights and Religious Liberty

In 1970, David Green founded a picture-frame company in his Oklahoma City garage. Since then, Hobby Lobby has grown into a leader in the arts-and-crafts retail industry. Ever since Hobby Lobby's founding, the Green family has managed the company in accordance with their Christian principles. For example, Hobby Lobby is closed on Sunday, doesn't sell shot glasses, and purchases newspaper advertisements suggesting that readers seek Jesus.

Thanks to Obamacare, however, the Greens are being forced to provide employee coverage in their group health plans for certain medical services, including contraception that functions by preventing the implantation of a fertilized egg. As Protestants who believe that life begins at conception, they argue that this is a substantial burden on their right to exercise their religion.

In a new ebook called *Sebelius v. Hobby Lobby*, Eugene Volokh, professor at the UCLA School of Law and founder of *The Volokh Conspiracy* blog, offers a comprehensive primer on the resulting Supreme Court case. Should you be entitled to an exemption from the generally applicable law because of your religious beliefs? Or should the government be free to apply the law to you just as it does to others?

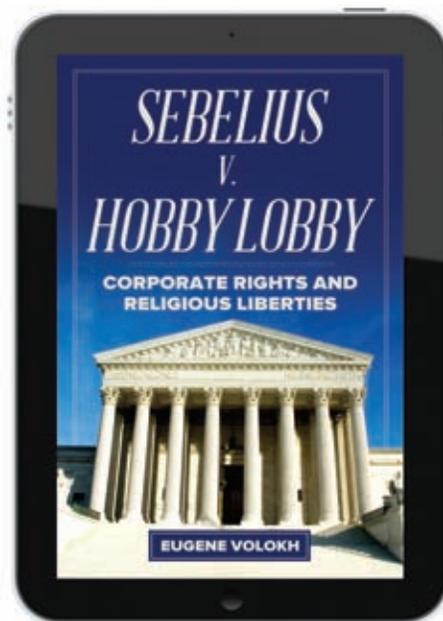
Volokh investigates the legal background leading up to the Religious Freedom of Restoration Act (RFRA), as well as the main arguments used to justify it. He notes that in situations in which accommodations will not be costly for other citizens or society as a whole, religious objectors should be exempted from those obligations, as long as any "compelling government interests" can still be served effectively. Take the requirement that people remove their headgear in court, which can be a substantial burden to, for instance, Orthodox Jews. "Granting religious objectors an exemption from the rule won't do

much to undermine the decorum of the courtroom, but it will let the objectors live normal civic lives without violating either what they see as religious law or secular law," he writes.

The premise of RFRA is that "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise." According to Volokh, those conclusions are just as applicable to laws that tell people what they may or may not do in their commercial activity as such laws that fall outside of commerce.

Many have argued that RFRA shouldn't apply in *Hobby Lobby* because the employer mandate doesn't require employers to actually use, administer, or even handle the contraceptives that they find immoral. Is that a true burden on belief? In this case, the owners of the company argue that providing health insurance that covers what they see as tools for homicide is complicity with sin. Not surprisingly, some people believe that, when a certain behavior is wrong, many sorts of complicity with that behavior are wrong, too. In fact, this principle is enshrined in the American legal system itself. "If you help someone with the purpose of helping him commit his crime," Volokh writes, "you're guilty of the crime itself as an accomplice."

Of course, lots of people have religious beliefs that are substantially burdened by the law, but for most of them the government interest trumps the claim of religious freedom—think, for instance, about cases involving taxes, antidiscrimination, or drugs. "This, I think, is the most unpredictable part of the *Hobby Lobby* case," Volokh writes. Nevertheless, he mines the religious-exemption precedents thoroughly, and concludes that this aspect of the RFRA is essentially a Congressional mandate for courts to



use their own moral and empirical judgments of important interests and the practical problems with exemptions.

In short, the *Hobby Lobby* case revolves around the fact that people are being forced to do what their religious beliefs prohibit. While the focus of the case is the intersection of corporate rights and religious liberties, there is an even bigger issue at stake. "This is just the latest example of the difficulties in turning health care—or increasing parts of our economy more broadly—over to the government," Shapiro writes. As Roger Pilon, director of the Cato Institute's Center for Constitutional Studies, has written, when something is socialized or treated as a public utility, we're forced to fight for every "carve-out" of liberty. The more government controls—whether it's health care, education, or even marriage—the greater the battles over conflicting values will be. ■

SEBELIUS V. HOBBY LOBBY IS AVAILABLE AT WWW.CATO.ORG/STORE, AMAZON, APPLE ITUNES, AND OTHER ONLINE EBOOK VENDORS; \$3.99