TO THE DICTIONARY AND BEYOND! THE PERSONIFICATION OF CORPORATIONS IN *BURWELL V. HOBBY LOBBY STORES, INC.*, 134 S. CT. 2751 (2014)

Alex Riley*

I. INTRODUCTION

It seems that the United States Supreme Court always saves the "best for last." In the Supreme Court's case, this does not always mean the most popular, the wisest, the most respectable, the most proper, or the "best" from a policy standpoint. In its case, saving the "best for last" means the Court usually saves the most controversial, provocative, or contentious case as the last opinion it will announce before ending its term and breaking for summer. Indeed, *Burwell v. Hobby Lobby*, the last case released in the summer of 2014, was no exception.

As is typical in this modern era of instant information and, unfortunately, grotesque over-exaggeration and over-dramatization, one could have easily come to the conclusion, after reading highly partisan internet blogs and watching highly partisan cable news channels discussing the Court's ruling, that the Court, in its decision, had banned all forms of birth control for all women employed by Hobby Lobby.[1] Thankfully, of course, this is not at all what happened in *Hobby Lobby*. However, even though many headlines, media personalities, academics, celebrities, and politicians over-exaggerated or over-celebrated the breadth of the Court's holding, it was still a landmark decision, which will have major implications in the future in many areas of law including corporate law, healthcare law, and religious liberty law.

This casenote will argue the majority correctly decided *Hobby Lobby* in holding that corporations are persons under the Religious Freedom Restoration Act (RFRA) by analyzing the Court's use of the Dictionary Act and by analyzing and comparing case law holding that corporations have

* Alex Riley is a law student at Southern Illinois University School of Law expecting his J.D. degree in May of 2016. He thanks Professor Valerie Munson for her guidance throughout the article writing process. He also thanks his casenote and comment editor, Shay Morgan, for her advice, insight, and creative suggestions. Finally, he thanks his wife, Ellen Riley, for her love, encouragement, and support in everything he does.

1. *See, e.g.*, *Hobby Lobby Bans Contraceptives Through Health Care*, STATE HORNET (Sept. 3, 2014), http://www.statehornet.com/opinion/hobby-lobby-bans-contraceptives-through-health-care/article_523a6554-3300-11e4-9d66-0017a43b2370.html.

racial identities under federal civil rights statutes. Section II will review the critical legal background of the Contraceptive Mandate, RFRA, the Dictionary Act, cases where courts have utilized the Dictionary Act in holding that corporations are persons within the meaning of a statute, and cases holding that corporations have racial identities and are thus capable of bringing racial discrimination suits. Section III will review the United States Supreme Court's opinion in *Hobby Lobby*, with a focus on the portion of the opinion holding that the Dictionary Act was applicable and that corporations are persons capable of exercising religion. Section IV will analyze why the Supreme Court correctly held that corporations are persons within the meaning of RFRA by comparing *Hobby Lobby* to other cases in which courts held corporations were persons under the Dictionary Act. This analysis will focus especially on the similarities between courts holding that corporations are persons within the meaning of RFRA and courts holding that corporations are persons within the meaning of Civil Rights legislation.

II. LEGAL BACKGROUND

There are a few legal matters which need to be explained in order to gain a better appreciation and understanding of the issues to be addressed in this casenote. This section first analyzes the legislative history of the relevant statutes and then examines relevant case law.

A. Legislative History

As the portion of the *Hobby Lobby* case being addressed in this casenote is primarily based on statutory interpretation, the legislative history and statutes at issue are crucial for a clear understanding. Because of this, this note will analyze the Contraceptive Mandate, RFRA, and the Dictionary Act.

1. The Contraceptive Mandate

In March of 2010, Congress passed, and President Obama signed into law, the highly controversial and heavily debated Affordable Care Act (ACA).[2] One of the provisions in the ACA states that group health plans and individual insurance plans must, at a minimum, provide coverage for women for forms of additional preventative care and screenings contained in the Health Resources and Services Administrations comprehensive

2. U.S. DEP'T OF HEALTH AND HUMAN SERVS., http://www.hhs.gov/healthcare/facts/timeline/ (last visited Nov. 8, 2014).

guidelines.[3] Pursuant to this provision, regulations commonly known as the Contraceptive Mandate were promulgated "requir[ing] coverage, without cost sharing, for '[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,' as prescribed by a provider."[4] However, a number of courts have found that this Contraceptive Mandate violates religious freedom.[5] One of the means courts have utilized to find the Contraceptive Mandate violates religious freedom is by application of RFRA[6]

2. The Religious Freedom Restoration Act (RFRA)

In November of 1993, RFRA became law when Congress passed the Act and President Clinton signed it into law.[7] There were a number of reasons RFRA was adopted, and many of the reasons are cited in the statute itself.[8] One reason is that Congress found that laws which are impartial toward religion may nevertheless burden religious exercise just as laws intended to interfere with religious exercise would burden religion.[9] Consequently, Congress determined additional protections for religious liberty were needed.[10] Because of this determination, and Congress's desire to overrule *Employment Division v. Smith*, 494 U.S. 872 (1990), which RFRA documents "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion," RFRA was enacted.[11]

Thus, Congress proclaimed that unless there was a compelling justification, the government could not substantially burden the exercise of religion.[12] The key language of RFRA states "[g]overnment shall not

3. Patient Protection and Affordable Care Act, 42 U.S.C. § 300gg-13 (2010).
4. 77 F.R. 8725-01 (Feb. 15, 2012).
5. *See generally* Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014); Eternal Word Television Network, Inc. v. Sec'y, U.S. Dep't. of Health and Human Servs., 756 F.3d 1339 (11th Cir. 2014); Korte v. Sebelius, 735 F.3d 654, (7th Cir. 2013) *cert. denied sub nom.* Burwell v. Korte, 134 S. Ct. 2903 (2014); Archdioces of St. Louis v. Burwell, 28 F. Supp. 3d 944 (E.D. Mo. 2014); Monaghan v. Sebelius, 931 F. Supp. 2d 794 (E.D. Mich. 2013); Tyndale House Publishers, Inc. v. Sebelius, 904 F. Supp. 2d 106, 112 (D.D.C. 2012) *appeal dismissed*, No. 13-5018, 2013 WL 2395168 (D.C. Cir. May 3, 2013).
6. *See Hobby Lobby Stores, Inc*., 134 S. Ct. 2751; *Korte*, 735 F.3d 654; *Monaghan*, 931 F. Supp. 2d 794; *Tyndale House Publishers, Inc.*, 904 F. Supp. 2d 106, 112.
7. Peter Steinfels, *Clinton Signs Law Protecting Religious Practices*, N.Y. TIMES, Nov. 17, 1993, *available at* http://www.nytimes.com/1993/11/17/us/clinton-signs-law-protecting-religious-practices.html.
8. Religious Freedom Restoration Act, 42 U.S.C § 2000bb (2014).
9. *See id.*
10. *See id.*
11. RFRA, 42 U.S.C § 2000bb (2014).
12. *Id.*

substantially burden a person's exercise of religion . . . [unless it] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest."[13] Perhaps most importantly for the purposes of this casenote and the *Hobby Lobby* analysis, the definition section of RFRA contains no explicit definition of "person."[14] RFRA only contains definitions for the terms "government,"[15] "covered entity,"[16] "demonstrates,"[17] and "exercise of religion."[18]

3. The Dictionary Act

Because RFRA does not explicitly define "person," it is necessary for courts to look to other sources to determine what the word "person" means.[19] One of the sources the Supreme Court used in *Hobby Lobby* was the Dictionary Act.[20] The relevant language of the Dictionary Act cited by the Court and at issue in *Hobby Lobby* states "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."[21] The Dictionary Act codifies a long-standing principle, stated one way in *Monell v. New York City*, that for purposes of constitutional and statutory interpretation, corporations should be treated in the same manner as natural persons.[22]

Stated another way in *Charleston R.R. Co. v. Letson*, an 1844 United States Supreme Court case, for all intents and purposes, even though a corporation is an artificial creation, if it has been created and is doing business within a particular jurisdiction, it should be treated as a citizen of that jurisdiction in the same manner as a natural person.[23] Courts have utilized the Dictionary Act in many ways over the years, and one of the

13. Religious Freedom Restoration Act, 42 U.S.C § 2000bb-1 (2014).
14. Religious Freedom Restoration Act, 42 U.S.C § 2000bb-2 (2014).
15. RFRA defines "government" as including "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity." 42 U.S.C § 2000bb-2 (2014).
16. RFRA defines "covered entity" as "the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States." 42 U.S.C § 2000bb-2 (2014).
17. RFRA defines "demonstrates" as "meet[ing] the burdens of going forward with the evidence and of persuasion." 42 U.S.C § 2000bb-2 (2014).
18. § 2000bb-2 of RFRA defines "exercise of religion" as "religious exercise, as defined in section 2000cc–5 of this title." 42 U.S.C § 2000bb-2 (2014). § 2000cc–5 defines "exercise of religion" as "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C § 2000cc–5 (2014).
19. *See generally* Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).
20. *See id.*
21. Dictionary Act, 1 U.S.C. § 1 (2012).
22. Monell v. N.Y.C. Dep't of Soc. Servs., 436 U.S. 658, 687 (1978).
23. Louisville, Cincinnati, and Charleston R.R. Co. v. Letson, 43 U.S. 497, 558 (1844).

ways it has been used is to determine that corporations are persons for the purpose of Civil Rights causes of action and, as such, have "racial identities."[24]

B. Cases Affirming Corporations Have Racial Identities

Every federal circuit court of appeals considering the issue of whether corporations have racial identities has held that corporations do have racial identities and can therefore bring racial discrimination claims.[25] However, the analyses the courts have utilized differ. Some courts utilize the Dictionary Act to determine that corporations are persons for purposes of Civil Rights causes of action, while others come to the same conclusion without explicitly citing the Dictionary Act.[26] The following cases are illustrative of the analyses the circuit courts have used.

1. Carnell Construction Co. v. Danville Redevelopment & Housing Authority[27]

In *Carnell*, the issue was whether a corporation could acquire a racial identity and establish standing to bring a Title VI race discrimination claim.[28] Carnell Construction Corporation, whose owner was African-American, was certified as a minority business enterprise.[29] Carnell bid on a project for the Housing Authority, was granted the contract for the project because it was the low bidder, and entered into a $793,541 contract with a June 2009 completion date.[30] Unfortunately, Carnell's relationship with the Housing Authority deteriorated over time.[31] Expensive delays occurred, which the Housing Authority claimed were due to Carnell's "unacceptable work."[32] However, Carnell claimed the work was being done properly and

24. Carnell Constr. Co. v. Danville Redevelopment and Hous. Auth., 745 F.3d 703, 715 (4th Cir. 2014).
25. Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc., 368 F.3d 1053, 1060 (9th Cir. 2004) (using the Dictionary Act to hold corporations have racial identities); Oti Kaga, Inc. v. S.D. Hous. Dev. Auth., 342 F.3d 871, 882 (8th Cir. 2003); Guides, Ltd. v. Yarmouth Grp. Prop. Mgmt., Inc., 295 F.3d 1065, 1072 (10th Cir. 2002); Gersman v. Group Health Ass'n, 931 F.2d 1565, 1568 (D.C. Cir. 1991); Triad Assocs., Inc. v. Chicago Hous. Auth., 892 F.2d 583, 591 (7th Cir. 1989); Hudson Valley Freedom Theater, Inc. v. Heimbach, 671 F.2d 702, 706 (2d Cir. 1982); Des Vergnes v. Seekonk Water Dist., 601 F.2d 9, 13–14 (1st Cir. 1979).
26. *See Thinket Ink Info. Res., Inc.*, 368 F.3d 1053; *Oti Kaga, Inc*., 342 F.3d 871; *Guides, Ltd*., 295 F.3d 1065; *Gersman*, 931 F.2d 1565; *Hudson Valley Freedom Theater, Inc*., 671 F.2d 702.
27. *See Carnell Constr. Co.*, 745 F.3d 703 (4th Cir. 2014).
28. *Id.* at 709–10.
29. *Id.* at 710.
30. *Id.*
31. *Id.* at 711.
32. *Id.*

the delays were the Housing Authority's fault.[33] By December of 2008, the relationship between the two parties had deteriorated to the point that Carnell's president began to complain of racial discrimination, claiming Carnell was singled out as a minority contractor and was expected to work without pay on extreme construction modifications.[34] Carnell ultimately filed suit against the Housing Authority claiming race discrimination and breach of contract.[35]

The statute at issue in the case stated that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal Financial Assistance."[36] The defendant argued Carnell lacked standing to bring suit because it was not a "person" within the meaning of the statute.[37]

However, the Court of Appeals for the Fourth Circuit noted the statute's plain language granted the corporation standing.[38] Furthermore, although the statute did not explicitly define "person," the Court held the Dictionary Act applied and therefore, included corporations within the meaning of the word "person."[39] The court noted that at least eight other circuits had also found that corporations can have racial identities and fall within the meaning of "person" for purposes of Title VI claims.[40] For these reasons, the court held that corporations could establish an imputed racial identity to bring race discrimination claims under federal law.[41]

2. Thinket Ink Information Resources, Inc. v. Sun Microsystems, Inc.[42]

In *Thinket*, the Court of Appeals for the Ninth Circuit also addressed the question of whether corporations have imputed racial identities and hence, can make racial discrimination claims.[43] All of Thinket's shareholders were African-American.[44] Thinket entered into a business relationship with Sun Microsystems (hereinafter "Sun") to provide support services to Sun's facilities, but over time, the relationship deteriorated.[45] Thinket eventually filed suit claiming that Sun refused to do business with

33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* at 713 (citing 42 U.S.C. § 2000d).
37. *Id.* at 713.
38. *Id.* at 714 n.4 (citing 1. U.S.C. § 1).
39. *Id.*
40. *Id.* at 714.
41. *Id.* at 715.
42. *See Thinket Ink Info. Res., Inc*., 368 F.3d 1053.
43. *Id.* at 1057.
44. *Id.* at 1055.
45. *Id.* at 1055–56.

Thinket due to the fact that it was owned by African-Americans.[46] The court found Thinket had acquired an imputed racial identity because it was certified as a corporation with a racial identity to acquire government benefits.[47] Because of this, Thinket had standing to bring racial discrimination claims.[48] Unlike the court in *Carnell*, the court here did not utilize the Dictionary Act in its analysis.[49]

3. Hudson Valley Freedom Theater v. Heimbach[50]

In *Hudson Valley*, the corporation was a theater formed for the purpose of creating theatrical and artistic productions in the local Orange County area with a focus on reaching the needs and enhancing the rich culture, ambitions, and creativity of Black and Hispanic communities.[51] The theater filed suit against Orange County and Orange County officials claiming they engaged in racially discriminatory conduct relating to, among other things, the theater's applications for funds.[52] The District Court for the Southern District of New York ruled against the theater, stating that corporations could not be a target of racial discrimination or claim it on their own behalf under the Fourteenth Amendment because they are artificial creations of the state.[53]

However, the Court of Appeals for the Second Circuit disagreed, holding that it was unnecessary to interpret that clause as only applying to a natural person because the statute at issue did not contain any explicit language requiring the person to be natural.[54] The statute stated, "[n]o person in the United States shall, on the ground of race, color, or national origin . . . be subjected to discrimination under any program or activity receiving Federal financial assistance" and did not say, "[n]o person . . . on the ground of *his* race, color, or national, origin."[55] Relying on this analysis, the court held that the theater had standing to bring a racial discrimination suit.[56]

---

46. *Id*. at 1056.
47. *Id*. at 1059–60 (Thinket was certified as an SBA minority owned business).
48. *Id*. at 1060.
49. *See generally id.*
50. Hudson Valley Freedom Theater, Inc. v. Heimbach, 671 F.2d 702 (2d Cir. 1982).
51. *Id*. at 703.
52. *Id*.
53. *Id*. at 704.
54. *Id*. at 705–06.
55. *Id*. at 705 (citing 42 U.S.C. § 2000d). (Emphasis added.)
56. *Id*. at 706–707.

4. Gersman v. Group Health Association[57]

In this case, a Jewish individual, Alan Gersman, and his wife owned a computer security corporation, and the corporation had a contractual relationship with a health maintenance organization (HMO) to store and deliver computer software.[58] When an individual named Mohammed Ghafori became the manager of the HMO, he asked Gersman if he was Jewish.[59] When Ghafori found out that Gersman was indeed Jewish, he terminated the HMO's contract.[60] Gersman brought suit claiming Ghafori's discrimination based on Gersman's race violated the Civil Rights Act.[61] The District Court for the District of Columbia held that Gersman's corporation had no standing to bring suit because the corporation had no racial identity and could not be a discrimination victim.[62]

However, the Court of Appeals for the District of Columbia Circuit disagreed and held that a corporation has standing to litigate a discrimination claim if the corporation suffers harm from racial discrimination.[63] Consequently, the court did not explicitly address the question of whether corporations can have "racial identities."[64] However, the court was heavily influenced by the fact that the contract was terminated only because the shareholder was Jewish.[65]

Even though the Supreme Court did not utilize these racial identity cases in its *Hobby Lobby* analysis, these cases provide further support for the Court's ultimate personification of corporations in *Hobby Lobby*.

III. EXPOSITION OF THE CASE

In *Hobby Lobby*, the Court addressed two major issues. The first was whether two for-profit closely held corporations fell under the definition of "persons" within RFRA.[66] The second was whether, given that corporations are "persons" under RFRA, the Contraceptive Mandate substantially burdened the corporations' exercise of religion.[67] The Court

57. Gersman v. Grp. Health Ass'n, Inc., 931 F.2d 1565 (D.C. Cir. 1991), vacated, 502 U.S. 1068 (1992).
58. *Id.* at 1567.
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* at 1568–69.
64. *Id.*
65. *Id.* This court rejected the notion that corporations could only bring suit for discrimination claims when they had been incorporated for the express purpose of "furthering minority interests." *Id.* at 1569.
66. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2767 (2014).
67. *Id.*

found that corporations could be "persons" under RFRA and that the Contraceptive Mandate did substantially burden the corporations' exercise of religion.[68]

A. Facts and Procedural History

Norman Hahn opened a woodworking business out of his home fifty years ago, and that company, Conestoga Wood Specialists (hereinafter "Conestoga"), has now grown to over 950 employees.[69] Conestoga is a closely held business over which the Hahn family exercises sole ownership, controls the board of directors, and holds all voting shares.[70] One of the three Hahn sons is the CEO and president of the corporation.[71] The members of the Hahn family are members of the Christian Mennonite Church, which opposes abortion.[72]

The Hahns' religious-based opposition to abortion is so important to them that Conestoga's board adopted a "Statement on the Sanctity of Human Life" which declared that human life begins at conception and that it is "against [the Hahns'] moral conviction to be involved in the termination of human life."[73] Because of the Hahns' deep faith, they strive to run their business in a manner consistent with their religious beliefs and principles and to "operate in a professional environment founded upon the highest ethical, moral, and Christian principles."[74] Due to the Hahns' religious beliefs, they decided to exclude four contraceptive methods which they believe induce abortions from the group-health insurance plan offered to Conestoga employees.[75] The excluded contraceptive methods include two types of "morning after pills" and two forms of intrauterine device.[76]

The Green family is likewise devoutly Christian.[77] David Green started a small arts-and-crafts store called Hobby Lobby forty-five years ago which has now become a large nationwide chain of over 500 stores and 13,000 employees.[78] One of the Green sons opened Mardel, an affiliated Christian bookstore operating thirty-five stores and employing 400 people.[79] Hobby Lobby and Mardel are closely held for-profit corporations organized under Oklahoma law and are exclusively controlled by the Green

68. *Id.*
69. *Id.* at 2764.
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.* at 2764–65.
74. *Id.* at 2764.
75. *Id.* at 2765.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*

family with David serving as CEO and his three children in the positions of president, vice president, and vice CEO.[80]

Hobby Lobby's purpose statement declares the Greens' commitment to honor God in everything they do and to manage the company according to Biblical principles.[81] Because of this commitment, Hobby Lobby and Mardel stores are closed on Sundays, corporate profits are contributed to Christian missionaries and causes, and the Greens purchase hundreds of newspaper ads containing Christian messages.[82] Additionally, the Greens openly oppose abortion because they believe life begins at conception.[83] They believe it would violate their religious beliefs to provide access to contraceptive methods which take effect after the moment of conception and thus object to the same contraceptive methods the Hahns find objectionable.[84]

Because of these religious beliefs and opposition to abortion, the Hahns sued the United States Department of Health and Human Services (HHS) under RFRA seeking an injunction of the ACA's Contraceptive Mandate to the extent it required them to facilitate access to the four contraceptive methods they found objectionable.[85] The District Court for the Eastern District of Pennsylvania denied the injunction and the Court of Appeals for the Third Circuit likewise denied the injunction, holding for-profit corporations could not engage in the exercise of religion under RFRA or the First Amendment.[86]

The Greens likewise sued HHS seeking a preliminary injunction, which the District Court for the Western District of Oklahoma denied.[87] However, the Court of Appeals for the Tenth Circuit reversed and held that the Greens' corporations were "persons" under RFRA and that the Contraceptive Mandate forced the companies to choose between compromising their religious beliefs and dropping health insurance for their employees.[88] The United States Supreme Court ultimately granted certiorari in both the Hahn and Green matters and consolidated the cases for review.[89]

---

80. *Id.*
81. *Id.* at 2766.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 2765.
86. *Id.*
87. *Id.* at 2766.
88. *Id.*
89. *Id.* at 2767.

B. Majority Opinion

The first of the two major issues the Court addressed in the case was whether a for-profit closely held corporation fell under the definition of "person" within the meaning of RFRA.[90] The second major issue was whether, given that a corporation was a "person" under RFRA, the HHS Contraceptive Mandate substantially burdened the corporation's exercise of religion.[91]

Because RFRA itself does not explicitly define "person" in its definition section, or specifically include corporations in the statute, the Court determined that it would be appropriate to use the Dictionary Act's definition of "person."[92]

According to the Dictionary Act, "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."[93] According to the Court, the Dictionary Act is applicable unless the context of RFRA indicates something to the contrary.[94] No extensive analysis was done to determine whether there were contrary indications in RFRA, but the Court found that nothing in RFRA indicated that the Dictionary Act's definition of person did not apply.[95] Additionally, because HHS conceded nonprofit corporations were "persons" under RFRA and because the Court has heard RFRA claims by nonprofit corporations in the past, these determinations supported a finding that corporations could be persons under RFRA.[96] It would not make sense for the word "person" to include some types of corporations while excluding others.[97]

After determining that corporations are persons that can have religious beliefs within the meaning of RFRA, the Court then held that the Contraceptive Mandate was a substantial burden on corporations' religious beliefs.[98] The Contraceptive Mandate imposes enormous penalties on corporations with religious objections if the insurance they provide is not in compliance with the Contraceptive Mandate.[99] As a result, the Court found the Contraceptive Mandate violated RFRA as applied to closely held corporations.[100]

---

90. *Id.* at 2767.
91. *Id.*
92. *Id.* at 2768.
93. Dictionary Act, 1 U.S.C. § 1 (2012).
94. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2768.
95. *Id.* 2768.
96. *Id.* at 2768–69.
97. *Id.* at 2769.
98. *Id.* at 2779.
99. *Id.*
100. *Id.* at 2785.

C. Concurring Opinion

In Justice Kennedy's short concurring opinion, he agreed with the majority's holding that corporations are persons within the meaning of RFRA.[101] He also reiterated that the Court's holding was narrow and "does not have the breadth and sweep ascribed to it by the respectful and powerful dissent."[102] Finally, he argued that because the Government previously established an "accommodation" to nonprofit religious groups, which required insurance companies themselves to provide the contraceptives at issue in *Hobby Lobby*, there is a workable alternative in place that furthers the Government's interest in providing contraceptives to women but does not infringe on religious liberties.[103] Because of this, the Government did not show that it utilized the least restrictive means in achieving its objective.[104]

D. Dissenting Opinion

In a very passionate dissent, Justice Ginsburg stated that the decision was one "of startling breadth" which meant "commercial enterprises, including corporations, along with partnerships and sole proprietorships, can opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs."[105] Justice Ginsburg reiterated the rule that the Dictionary Act only applies when context does not indicate to the contrary.[106] However, she found that the Dictionary Act's definition could not control here because RFRA's context did indicate to the contrary.[107]

Generally, corporations are, in the words of Chief Justice John Marshall, "'artificial being[s], invisible, intangible, and existing only in contemplation of law.'"[108] Further, Justice Ginsberg reiterated Justice Stevens' famous quote that corporations "'have no consciences, no beliefs, no feelings, no thoughts, [and] no desires.'"[109] Due to these general qualities showing lack of personification, Justice Ginsberg found that a

101. *Id.* at 2787. (Kennedy, J. concurring).
102. *Id.* at 2785. (Kennedy, J. concurring).
103. *Id.* at 2786. (Kennedy, J. concurring).
104. *Id.* (Kennedy, J. concurring).
105. *Id.* at 2787. Justice Sotomayor joined in Justice Ginsburg's dissent in full while Justices Breyer and Kagan joined in most of her dissent. *Id.* Justices Breyer and Kagan wrote a separate dissent stating that because they believed the plaintiff's challenge failed on the merits, there was no need to address whether for-profit corporations could bring RFRA claims. *Id.* at 2806. (Ginsburg, J. dissenting).
106. *Id.* at 2793. (Ginsburg, J. dissenting).
107. *Id.* (Ginsburg, J. dissenting).
108. *Id.* at 279–94 (citing Trs. of Dartmouth Coll. v. Woodward, 17 U.S. 518, 636 (1819)).
109. *Id.* at 2793–94 (citing Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 466 (2010) (Stevens, J., concurring in part and dissenting in part)).

corporation could not be a person within the meaning of RFRA.[110] The dissent argued the majority's expansion of the idea of corporate personification in its construction of RFRA was a great error and would allow a proliferation of claims of other for-profit entities to try to obtain religious based exemptions from other regulations offensive to their religion.[111]

IV. ANALYSIS

The United States Supreme Court correctly decided *Hobby Lobby*. The case is not nearly as radical or far-reaching as the dissent suggests. In actuality, the holding of *Hobby Lobby* is fairly narrow, as the entire case hinges on statutory interpretation: addressing whether corporations are "persons" within the meaning of RFRA. When one reviews the Dictionary Act, RFRA, cases utilizing the Dictionary Act, and cases personifying corporations by holding they can be discriminated against due to race and as such have "racial" identities, it was entirely reasonable for the Supreme Court to hold that corporations fall within the meaning of "persons" under RFRA.

This analysis will first compare *Hobby Lobby* to *Carnell Construction Corp.*, where the court utilized the Dictionary Act in holding that corporations are "persons" under the Civil Rights Act and can have a racial identity. It will then compare *Hobby Lobby* to other cases where the courts have held corporations have racial identities but did not explicitly use the Dictionary Act to arrive at that conclusion. Finally, this analysis will argue that Justice Ginsburg's dissent is faulty in regard to whether corporations can be persons within the meaning of RFRA.

A. *Burwell v. Hobby Lobby* compared to *Carnell Construction v. Danville*

Like the Supreme Court in *Hobby Lobby*, the appellate court in *Carnell Construction* used the Dictionary Act to hold that corporations are persons within the meaning of a federal statute.[112] In *Hobby Lobby*, the Court used the Dictionary Act to interpret RFRA while the court in *Carnell Construction*, used it to interpret the Civil Rights Act.[113]

According to the portion of the Civil Rights Act at issue in *Carnell Construction*, "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the

110. *Id.* at 2793–94.
111. *Id.* at 2797.
112. Carnell Constr. Co. v. Danville Redevelopment and Hous. Auth., 745 F.3d 703, 714 n.4 (4th Cir. 2014).
113. *Id.* at 713; *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2767.

benefits of, or be subject to discrimination under any program or activity receiving Federal Financial Assistance."[114] The portion of RFRA at issue in *Hobby Lobby*, states "[g]overnment shall not substantially burden a person's exercise of religion . . . [unless it] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling interest."[115] The structure of both of the statutes at issue in these respective cases are very similar as they both prohibit government conduct which places a burden on a "person" because of that "person's" race, color and national origin,[116] or that "person's" religion.[117]

The Dictionary Act documents, and courts hold, that it is applicable unless the statute the Dictionary Act is being used to interpret indicates to the contrary.[118] Therefore, the *Hobby Lobby* Court utilized the Dictionary Act to determine that corporations fell within the meaning of "persons" under RFRA because it saw nothing in the context of the statute which indicated to the contrary.[119] This understanding is entirely logical and consistent with precedent because corporations have been recognized as persons under the law in the United States since at least 1886.[120] In *Carnell Construction*, the court similarly noted that the statute's plain use of the term "person" conferred standing on a corporation even though the statute did not explicitly define "person." This practice is not unusual because courts frequently utilize the Dictionary Act to determine that the word "person" as used in federal statutes is not limited to a "natural person."[121]

---

114. *Carnell Constr. Co.*, 745 F.3d at 713 (citing 42 U.S.C. § 2000d).
115. RFRA, 42 U.S.C § 2000bb-1 (2014).
116. *See* 42 U.S.C. § 2000d (2014).
117. *See* RFRA, 42 U.S.C § 2000bb-1 (2014).
118. Dictionary Act, 1 U.S.C. § 1 (2012); *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2768.
119. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2768.
120. *See* Santa Clara County v. S. Pac. R.R., 118 U.S. 394, 395 (1886). In this case, the Chief Justice stated:

> The court does not wish to hear argument on the question whether the provision in the . . . Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does.

Id.

121. *See generally* Cook Cnty., Ill. v. U.S. *ex rel.* Chandler, 538 U.S. 119 (2003) (using Dictionary Act in holding a municipal corporation was a person under the False Claims Act); U.S. v. Bly, 510 F.3d 453 (4th Cir. 2007) (using the Dictionary Act in holding University was a person under criminal law statute); Hutchins v. U.S. Dep't of Labor, 683 F.3d 75 (4th Cir. 2012) (using the Dictionary Act in holding a municipality was a person under the Federal Employees' Compensation Act); Carnell Constr. Co. v. Danville Redevelopment and Hous. Auth., 745 F.3d 703 (4th Cir. 2014) (using the Dictionary Act in holding a corporation was a person under Civil Rights statute).

B. *Hobby Lobby* Compared to other Cases Holding that Corporations have Racial Identities or Can File Suit as Persons Under Civil Rights Statutes.

There are many other cases where the courts did not use the Dictionary Act but still held that corporations had racial identities such that they were "persons" for purposes of bringing suit under federal discrimination statutes. The courts' analyses in these cases are very helpful in showing why, if it is reasonable for a corporation to be a person for purposes of civil rights litigation, it is also reasonable for a corporation to be a person for purposes of religious rights litigation.

In *Thinket*, the Court found that the corporation was a "person" within the civil rights statute and could thus bring a discrimination claim because 1) all the shareholders of the corporation were African-American and 2) the corporation was certified as one with a racial identity.[122] While the corporations in *Hobby Lobby* were not certified in any way as "religious corporations," all of the corporations' shareholders were devout Christians and managed their businesses based on Christian principles.[123] In fact, a corporation cannot even incorporate as a "for-profit religious corporation;" only a non-profit corporation can incorporate as a religious corporation.[124]

However, this inability to be certified as a religious corporation should not detract from the ability of the Hobby Lobby and Conestoga corporations to establish religious identities before the courts. As fifty-six percent (56%) of Americans say religion is a very important part of their lives and twenty-two percent (22%) of Americans say religion is fairly important in their lives,[125] it stands to reason that religious identity is just as important to many Americans as racial identity, if not more so. The shareholders of Hobby Lobby spend great sums of money donating to Christian ministries and willingly forgo millions of dollars every year by closing their stores on Sundays in accordance with their Christian principals.[126] Hobby Lobby clearly states its Christian principles in its purpose statement.[127] Additionally, Hobby Lobby shareholders have willingly spent millions of dollars on a Bible museum they are building in Washington D.C., which indicates the strong religious identity of the corporation.[128] While Conestoga does not have the same resources as

122. *See* Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc., 368 F.3d 1053 (9th Cir. 2004).
123. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2764–65.
124. *See* U.S. SMALL BUSINESS ADMINISTRATION, http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business (last visited, Nov. 8, 2014).
125. GALLUP, http://www.gallup.com/poll/1690/religion.aspx (last visited, Oct. 25, 2014).
126. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2766.
127. *Id.*
128. Michelle Boorstein, *Hobby Lobby's Steve Green has Big Plans for His Bible Museum in Washington*, WASH. POST (Sept. 12, 2014), http://www.washingtonpost.com/lifestyle/magazine/hobby-lobbys-steve-green-has-big-plans-for-his-bible-museum-in-washington/2014/09/11/

Hobby Lobby, it also holds itself out as a Christian-operated corporation.[129] Even though Hobby Lobby and Conestoga are not able to "certify" themselves under the law as corporations with religious identities, they have consistently held themselves out to the world as corporations with religious identities.

In *Thinket*, the court held that corporations are persons capable of bringing suit under a civil rights statute by relying on the fact that all the corporation's shareholders were African-American and that the corporation was certified as one with a racial identity. In *Hobby Lobby*, the Supreme Court relied on the fact that all the *Hobby Lobby* shareholders were devout Christians and engaged in many Christian activities in holding that corporations could have religious convictions and bring suit as persons under RFRA. Both courts in these cases were logically influenced by the nature of the corporation's shareholders. The similar analyses in these cases further support the conclusion that it is rational to establish the personification of corporations for purposes of bringing racial discrimination and religious freedom suits.

In *Hudson Valley*, the court reviewed the statute at issue, which stated that "[n]o person in the United States shall, on the ground of race, color, or national origin . . . be subjected to discrimination under any program or activity receiving Federal financial assistance."[130] The court did not find any explicit requirement that the "person" be a "natural person" because no language indicating to the contrary was present.[131] Relying on this analysis, the court held that the corporation had a racial identity and was a statutory "person" with standing to bring a racial discrimination suit.[132] The language of RFRA cited in *Hobby Lobby* is similar, in that there is no specific language requiring the person to be a "natural person." The statute contains no definition section defining person and the statute uses no pronouns indicating a requirement that the statutory "person" be natural.

In *Gersman*, while the court did not fully address whether the corporation could have a racial identity, it still found that when a corporation is discriminated against based solely on the fact that the corporation's shareholders belong to a particular race, the corporation has standing to sue as a "person" under civil rights legislation.[133] In *Hobby Lobby*, while the government was not necessarily engaged in active discrimination, the government was infringing on the shareholders'

52e20444-1410-11e4-8936-26932bcfd6ed_story.html.

129. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2765.

130. Hudson Valley Freedom Theater, Inc. v. Heimbach, 671 F.2d 702, 705 (2d Cir. 1982) (citing 42 U.S.C. § 2000d).

131. *Id.* at 705.

132. *Id.* at 706–7.

133. Gersman v. Group Health Ass'n, 931 F.2d 1565, 1567 (D.C. Cir. 1991).

religious freedom and attempting to force them to do something repugnant to their religious beliefs.[134] This infringement was based solely on the religious faith of the corporation's shareholders and thus, it would logically follow that under a *Gersman* analysis, the corporation has standing to sue as a "person" under religious rights legislation as well.

C. Justice Ginsburg's Dissent is Faulty in Light of "Racial Identity" Cases

According to Justice Ginsburg's dissent, corporations could not be persons within the meaning of RFRA because corporations are "'artificial being[s], invisible, intangible, and existing only in contemplation of law'" and "'have no consciences, no beliefs, no feelings, no thoughts, [and] no desires.'"[135] However, as has been discussed throughout this casenote, courts have routinely held that corporations are persons within the meanings of various statutes. While corporations are "legal fictions," they are composed of and created by people who certainly have consciences, beliefs, feelings, thoughts, and desires. Indeed, as noted by the majority in this case, "[c]orporations, 'separate and apart from' the human beings who own, run, and are employed by them, cannot do anything at all."[136] If corporations only possess the characteristics Justice Ginsburg claims, and cannot be persons within the meaning of federal statutes, then all of the cases holding that corporations are persons within the meaning of civil rights statutes would necessarily be invalid.

Understandably, it is difficult to find the human factor in large multi-national corporations with dozens, hundreds, or thousands of shareholders. However, the corporations involved in *Hobby Lobby* and the corporations involved in the race discrimination cases discussed in this casenote are very different, as they involve closely held corporations where the shareholders are very few and/or all members of one family. It is much easier to concur with the majority's assertion that corporations cannot do anything without the humans who run them when there are only a few shareholders involved in the corporation, as there are in the cases discussed here. Because corporations have been recognized as persons under the law in the United States since at least 1886,[137] there is no reason to diverge from that recognition now, especially in cases involving racial discrimination or religious liberty.

---

134. *Hobby Lobby Stores, Inc.*, 134 S. Ct. at 2785.

135. *Id.* at 2793–94 (citing Trustees of Dartmouth Coll. v. Woodward. 17 U.S. 518, 636 (1819) and Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 446 (2010) (Stevens, J., concurring in part and dissenting in part.)).

136. *Id.* at 2768.

137. *See* Santa Clara Cty. v. Southern Pac. R.R., 118 U.S. 394 (1886).

V. CONCLUSION

Even though the Supreme Court's decision has been vilified by other judges, lawyers, politicians, media personnel, Internet bloggers, and millions of other Americans, *Burwell v. Hobby Lobby* was correctly decided. This note has shown the Supreme Court's holding that corporations are persons and have standing to sue under RFRA is sound. When one compares the portion of the Supreme Court's decision which holds that corporations are persons for purposes of bringing suit under RFRA with other courts' use of the Dictionary Act, and the unanimous court decisions holding corporations are persons and have racial identities for purposes of bringing suit under the Civil Rights Act, the Supreme Court's decision appears far less controversial. Therefore, because courts unanimously personify corporations by recognizing their racial identities, the Supreme Court was correct in ruling to recognize corporations' religious identities as well.