

I [...] The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Planned Parenthood of Southeastern Pa. v.*

[...] In the Court’s view, RFRA demands accommodation of a for-profit corporation’s religious beliefs no matter the impact that accommodation may have on third parties who do not share the corporation owners’ religious faith—in these cases, thousands of women employed by Hobby Lobby and Conestoga or dependents of persons those corporations employ. Persuaded that Congress enacted RFRA to serve a far less radical purpose, and mindful of the havoc the Court’s judgment can introduce, I dissent.

In a decision of startling breadth, the Court holds that 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. See *ante*, at 16–49. Compelling governmental interests in uniform compliance with the law, and disadvantages that religion-based opt outs impose on others, hold no sway, the Court decides, at least when there is a “less restrictive alternative.” And such an alternative, the Court suggests, there always will be whenever, in lieu of tolling an enterprise claiming a religion-based exemption, the government, *i.e.*, the general public, can pick up the tab. See *ante*, at 41–43.

[June 30, 2014] JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, and with whom JUSTICE BREYER and JUSTICE KAGAN join as to all but Part III–C–1, dissenting.

Casey, 505 U. S. 833, 856 (1992). Congress acted on that understanding when, as part of a nationwide insurance program intended to be comprehensive, it called for coverage of preventive care responsive to women’s needs. [...] The genesis of this coverage should enlighten the Court’s resolution of these cases.

A The Affordable Care Act (ACA), in its initial form, health plans must cover at no added cost to the plan specified three categories of preventive care that

participate or beneficiary. [...] Senator Barbara Mikulski introduced the Women’s Health Amendment, which added to the ACA’s minimum coverage requirements a new category of preventive services specific to women’s health. Women paid significantly more than men for preventive care, the amendment’s proponents noted: in fact, cost barriers operated to block many women from obtaining needed care at all. See, *e.g.*, *id.*, at 29070 (statement of Sen. Feinstein) (“Women of childbearing age spend 68 percent more in out-of-pocket health care costs than men.”); *id.*, at 29302 (statement of Sen. Mikulski) (“copayments are [often] so high that [women] avoid getting [preventive and screening services] in the first place”). And increased access to contraceptive services, the sponsors comprehended, would yield

important public health gains. [...] [...] The First Amendment is not offended. *Smith* held, when “prohibiting the exercise of religion . . . is not the object of [governmental regulation] but merely the incidental effect of a generally applicable and otherwise valid provision.” *Id.*, at 878; see *id.*, at 878–879 (“An individual’s religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free

[...] There is an overriding interest, I believe, in keeping the courts “out of the business of evaluating the relative merits of differing religious claims,” *Lee*, 455 U. S., at 263, n. 2 (Stevens, J., concurring in judgment), 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.” *Ibid.* The Court, I fear, has ventured into a minefield, cf. *Spencer v. World Vision, Inc.*, 633 F. 3d 723, 730 (CA9 2010) (O’Scannlain, J., concurring), by its immoderate reading of RFRA. I would confine religious exemptions under that Act 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.”

[...] Would the exemption the Court holds RFRA demands for employers with religiously grounded objections to the use of certain contraceptives extend to employers with religiously grounded objections 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)? According to counsel for Hobby Lobby, “each one of these cases . . . would have to be evaluated on its own . . . apply[ing] the compelling interest-least restrictive alternative test.” Tr. of Oral Arg. 6. Not much help there for the lower courts bound by today’s decision.

[...] The ACA’s contraceptive coverage requirement applies generally; it is “otherwise valid,” it trains on women’s well-being, not on the exercise of religion, and any effect it has on such exercise is incidental. [...] The exemption sought by Hobby Lobby and Conestoga would override significant interests of the corporations’ employees and covered dependents. It would deny legions of women who do not hold their employers’ beliefs access to contraceptive coverage that the ACA would otherwise secure. See *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 565, 85 P. 3d 67, 93 (2004) [...] In sum, with respect to free exercise claims no less than free speech claims, “[y]our right to swing your arms ends just where the other man’s nose begins.”

III

[...] C With RFRA’s restorative purpose in mind, I turn to the Act’s application to the instant lawsuits. That task, in view of the positions taken by the Court, requires consideration of several questions, each potentially dispositive of Hobby Lobby’s and Conestoga’s claims: Do for-profit corporations rank among “persons[s]” who “exercise . . . religion”? Assuming that they do, does the contraceptive coverage requirement “substantially burden” their religious exercise? If so, is the requirement “in furtherance of a compelling government interest”? And last, does the requirement represent the least restrictive means for furthering that interest? [...]

[...] Whether a corporation qualifies as a “person” capable of exercising religion is an inquiry one cannot answer without reference to the “full body” of pre-*Smith* “free-exercise case law.” *Gilardi*, 733 F. 3d, at 1212. There is in that case law no support

for the notion that free exercise rights pertain to for-profit corporations.

of Labor, 471 U. S. 290, 303 (1985), or according women equal pay for substantially similar work, see *Dole v. Shenandoah Baptist Church*, 899 F. 2d 1389, 1392 (CA4 1990)? Does it rank as a less restrictive alternative to require the government to provide the money or benefit to which the employer has a religion-based objection? Because the Court cannot easily answer that question, it proposes something else: Extension to commercial enterprises of the accommodation already afforded to nonprofit religion-based organizations [...]

IV [...] But the *Lee* Court made two key points one cannot confine to tax cases. “When followers of a particular sect enter into commercial activity as a matter of choice,” the Court observed, “the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on statutory schemes which are binding on others in that activity.” *Id.*, at 261. The statutory scheme of employer-based comprehensive health coverage involved in these cases is surely binding on others engaged in the same trade or business as the corporate challengers here, Hobby Lobby and Conestoga. Further, the Court recognized in *Lee* that allowing a religion-based exemption to a commercial employer would “operat[e] to impose thg employer’s religious faith on the employees.” *Ibid.* No doubt the Greens and Hahns and all who share their beliefs may decline to acquire for themselves the contraceptives in question. But that choice may not be imposed on employees who hold other beliefs. Working for Hobby Lobby or Conestoga, in other words, should not deprive employees of the preventive care available to workers at the shop next door, at least in the absence of directions from the Legislature or Administration to do so.

The first Amendment’s free exercise protection, the Court has indeed recognized, shelter churches and other non-profit religion-based organizations. “For many individuals, religions actively derives meaning in large measure from participation in a larger religious community,” and “furtherance of the autonomy of religious organizations often furthers individual religious freedom as well.” [...] No such subjective traditional for commercial organizations. Indeed, until today, religions exemptions had never been extended to any entity operating in “the commercial, profit-making world.” *Amos*, 483 U. S., at 337.

The reason why is hardly obscure. Religious organizations exist to foster the interests of persons subscribing to the same religious faith. Not so of for-profit corporations. Workers who sustain the operations of those corporations commonly are not drawn from one religious community. Indeed, by law, no religion-based criterion can restrict the work force of a for-profit corporation. [...] The distinction between a community made up of believers in the same religion and one embracing persons of diverse beliefs, clear as

it is, constantly escapes the Court’s attention. One can only wonder why the Court shuts this key difference from sight.

Conestoga share the religious beliefs of the Greens and Hahns, she is of course under no compulsion to use the contraceptives in question. But “[n]o individual decision by an employee and her physician—be it to use contraception, treat an infection, or have a hip replaced—is in any meaningful sense [her employer’s] decision or action.” [...] Any decision to use contraceptives made by a woman covered under Hobby Lobby’s or Conestoga’s plan will not be propelled by the Government, it will be the woman’s autonomous choice, informed by the physician she consults.

3 Even if one were to conclude that Hobby Lobby and Conestoga meet the substantial burden requirement, the Government has shown that the contraceptive coverage for which the ACA provides furthers compelling interests in public health and women’s well being. Those interests are concrete, specific, and demonstrated by a wealth of empirical evidence. [...]

That Hobby Lobby and Conestoga resist coverage for only 4 of the 20 FDA-approved contraceptives does not lessen these compelling interests. Notably, the corporations exclude intrauterine devices (IUDs), devices significantly more effective, and significantly more expensive, than other contraceptive methods. See *id.*, at 105. Moreover, the Court’s reasoning appears to permit commercial enterprises like Hobby Lobby and Conestoga to exclude from their group health plans all forms of contraceptives. [...]

And where is the stopping point to the “let the government pay” alternative? Suppose an employer’s sincerely held religious belief is offended by health coverage of vaccines, or paying the minimum wage, see *Tony and Susan Alamo Foundation v. Secretary*

[...] Undertaking the inquiry that the Court forgoes, I would conclude that the connection between the families’ religious objections and the contraceptive requirement is too attenuated to rank as substantial. The requirement carries no command calls on the companies covered by the requirement to direct money into undifferentiated funds that finance a wide variety of benefits under comprehensive health plans. [...]

Importantly, the decisions whether to claim benefits under the plans are made not by Hobby Lobby or Conestoga, but by the covered employees and dependents, in consultation with their health care providers. Should an employee of Hobby Lobby or