

# Out & Equal Workplace Advocates

Advocating for workplace equality for people of all sexual orientations, gender identities, expressions, and characteristics.

Posted by: **outandequal** | July 28, 2014

## Religious Liberty or Religious Dominance? From Hobby Lobby to the Executive Order to ENDA and beyond

By Jennifer C. Pizer (<http://www.lambdalegal.org/about-us/staff/jennifer-c-pizer>) – Law and Policy Project National Director, Lambda Legal

The U.S. Supreme Court closed out its 2013-2014 term with *Burwell v. Hobby Lobby* ([http://www.lambdalegal.org/in-court/legal-docs/burwell\\_us\\_20140630\\_opinion](http://www.lambdalegal.org/in-court/legal-docs/burwell_us_20140630_opinion)), a decision whose repercussions already are being felt and promise to echo for years to come. By a 5-4 vote, the Court held that religiously minded business owners essentially may “line-item veto” birth control coverage out of their employees’ health plans. Many wonder if the ruling means the Court’s conservative majority has succeeded in elevating religious interests over equality in the marketplace. As the dust settles and immediate punditry has come and gone, I think we must answer “yes,” religion has dominated over women’s reproductive freedom. And, some changes in the legal doctrine are problematic for everyone.

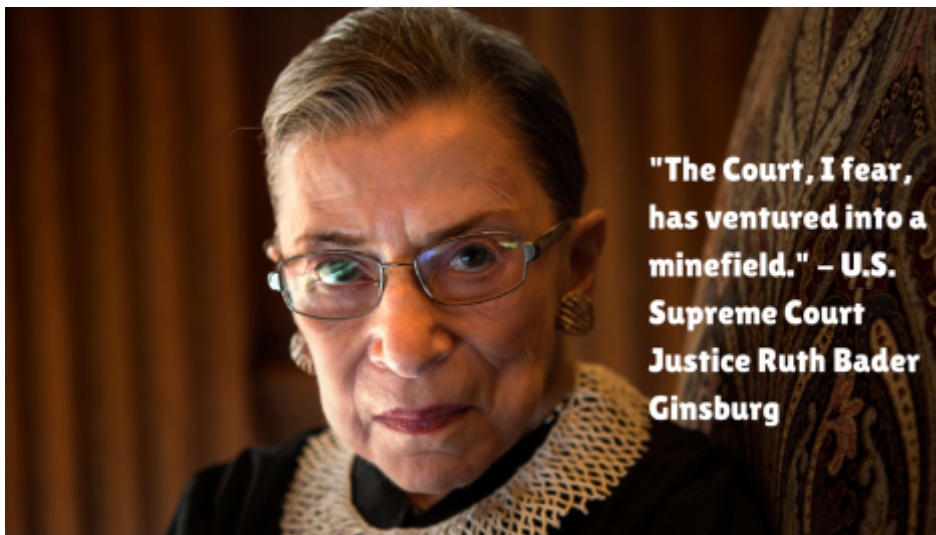


(<https://outandequal.files.wordpress.com/2014/07/hobby-lobby.jpg>)

But, for LGBT equality, the answer is “no” — religion has not prevailed generally over civil rights. And, this will remain the case if we continue making the case for equality and collaborating within a broad, inclusive movement against the use of religion to discriminate. You’ll find a more detailed look at the ins and outs of the *Hobby Lobby* decision here: [What the Supreme Court’s Hobby Lobby Decision Means for LGBT People](http://www.lambdalegal.org/blog/20140708_what-hobby-lobby-decision-means-for-lgbt-people) ([http://www.lambdalegal.org/blog/20140708\\_what-hobby-lobby-decision-means-for-lgbt-people](http://www.lambdalegal.org/blog/20140708_what-hobby-lobby-decision-means-for-lgbt-people)).

As I explain in that post, in time, *Hobby Lobby* could stand for either of at least two propositions. It could mean that religious interests of those engaged in business should be accommodated if and only if there is no harm to others. That has been the rule in religious freedom cases for decades.

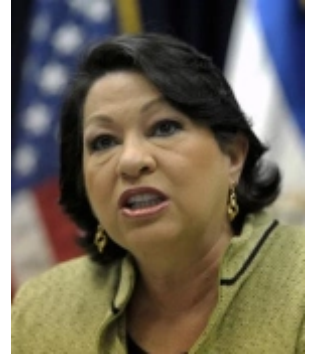
On the other hand, it *could* mean religious interests now trump other interests in many circumstances, with believers entitled to impose their views at others’ expense in ways rejected in the past. We flagged a range of potential problems for LGBT people and people living with HIV in our *Hobby Lobby* amicus brief ([http://www.lambdalegal.org/in-court/legal-docs/sebelius\\_us\\_201410128\\_amicus-lambda-legal](http://www.lambdalegal.org/in-court/legal-docs/sebelius_us_201410128_amicus-lambda-legal)) and Justice Ginsburg called out some of them in her passionate dissenting opinion.



<https://outandequal.files.wordpress.com/2014/07/the-court-i-fear-has-ventured-into-a.png>

Recent events suggest an alarming push for religion to trump is already underway. In two cases brought by business owners objecting to *all* birth control services ([Gilardi v. HHS](http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-567.htm) (<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-567.htm>) and [Autocam Corp. v. Burwell](http://www.scotusblog.com/case-files/cases/autocam-corp-v-sebelius/) (<http://www.scotusblog.com/case-files/cases/autocam-corp-v-sebelius/>)), the Supreme Court just ordered the appellate courts to reconsider owners’ arguments that the courts had rejected. In a third case, [Wheaton College v. Burwell](http://www.supremecourt.gov/opinions/13pdf/13a1284_ap6c.pdf) ([http://www.supremecourt.gov/opinions/13pdf/13a1284\\_ap6c.pdf](http://www.supremecourt.gov/opinions/13pdf/13a1284_ap6c.pdf)), the Court granted temporary relief to one of the dozens of religiously affiliated employers objecting even to using the HHS form to be excused from providing contraception coverage. In a scathing dissent joined by both other women on the Court, Justice Sotomayor said:

<https://outandequal.files.wordpress.com/2014/07/121246469-associate-justice-of-the-supreme-court-sonia-sotomayor-crop-promo-mediumlarge.jpg>) I have deep respect for religious faith, for the important and selfless work performed by religious organizations, and for the values of pluralism protected by [the Religious Freedom Restoration Act] and the Free Exercise Clause. But the Court's [order] in this case allows Wheaton's beliefs ... to trump the democratic interest in allowing the Government to enforce the law. ... Our jurisprudence has over the years drawn a careful boundary between majoritarian democracy and the right of every American to practice his or her religion freely. We should not use [this rare form of court order] to work so fundamental a shift in that boundary.



The day after *Hobby Lobby*, conservative religious leaders petitioned President Obama to include a broad exemption in his imminent executive order forbidding discrimination against LGBT workers by federal contractors. Three weeks later, the [executive order \(http://www.lambdalegal.org/blog/20140721\\_obama-signs-executive-order\)](http://www.lambdalegal.org/blog/20140721_obama-signs-executive-order) did *not* include an LGBT-specific religious carve out. But, what many in the LGBT community have not known is that religious organizations *already* have permission to discriminate against LGBT workers on federally funded projects thanks to President George W. Bush. President Obama's new executive order does not change that, although a coalition of progressive religious and civil rights groups are [pressing the Administration \(https://www.aclu.org/files/assets/2013-06-26\\_card\\_letter\\_to\\_melissa.pdf\)](https://www.aclu.org/files/assets/2013-06-26_card_letter_to_melissa.pdf) to do so.



<https://outandequal.files.wordpress.com/2014/07/thank-you-mr-president.png>

The *Hobby Lobby* decision emphasizes that it does not authorize employment discrimination. And yet, it did grant for-profit businesses unprecedented religious rights and has inspired some large, ultra-conservative religious organizations to demand still more freedom to discriminate. This means it is more important than ever that we work for clear, *effective* nondiscrimination laws.

That is why [Out & Equal](http://outandequal.org/node/611) (<http://outandequal.org/node/611>), [Lambda Legal](http://www.lambdalegal.org/blog/20140708_joint-statement-withdrawal-support-enda) ([http://www.lambdalegal.org/blog/20140708\\_joint-statement-withdrawal-support-enda](http://www.lambdalegal.org/blog/20140708_joint-statement-withdrawal-support-enda)), and many other organizations have withdrawn support from the [Senate-approved version](http://www.lambdalegal.org/blog/20131107_enda-religious-loop-hole) ([http://www.lambdalegal.org/blog/20131107\\_enda-religious-loop-hole](http://www.lambdalegal.org/blog/20131107_enda-religious-loop-hole)) of the Employment Non-Discrimination Act (ENDA (<http://outandequal.org/enda>)), which allows religious organizations—including hospitals, nursing homes and many social services agencies—to discriminate based on sexual orientation and gender identity. Of course churches, other houses of worship, and religious schools must have full control over their selection of clergy and those who teach religion and lead religious activities. But when an organization invites people of all faiths (and no faith) to apply for jobs doing non-religious work (such as food service, janitorial, medical and business functions), those workers need to be treated just as fairly as in any work setting. No child labor or cheating on wages. No toxic chemicals in the air. And no toxic discrimination either.



Once upon a time, Southern restaurants used religion to explain racial segregation. Businesses have cited the Bible to justify paying women less than men. Attitudes about race and sex discrimination have evolved through a powerful mix of advocacy and outrage. This past spring, bills to allow religiously motivated anti-LGBT discrimination appeared in too many states, including Kansas, Georgia and [Arizona \(http://www.lambdalegal.org/blog/20140226\\_arizona-no-misuse-of-religion-to-discriminate\)](http://www.lambdalegal.org/blog/20140226_arizona-no-misuse-of-religion-to-discriminate). Because community advocates, corporate leadership, and elected officials stood together, fairness prevailed. Now, given *Hobby Lobby's* thumb on the scale for religious interests, it is ever more important that civic, business and affirming faith leaders create an urgent chorus of support for *explicit, effective* and *equal* legal protections for LGBT people at every level of government. Our extraordinarily talented, diverse American community deserves no less.



[https://outandequal.files.wordpress.com/2014/07/staff\\_jpizer\\_8x10.jpg](https://outandequal.files.wordpress.com/2014/07/staff_jpizer_8x10.jpg)

Jennifer C. Pizer

About these ads (<https://wordpress.com/about-these-ads/>)

Earn Travel Rewards    Earn Cash Rewards    Earn Business Rewards    Save On Interest

[BROWSE ALL CHASE CARDS](#)

Posted in [ENDA](#), [Law & Policy](#), [Uncategorized](#), [Workplace Equality](#) | Tags: [corporations](#), [discrimination](#), [executive order](#), [Guest Blogger](#), [Hobby Lobby](#), [Jennifer C. Pizer](#), [LGBT](#), [non-discrimination](#), [Obama](#), [Ruth Bader Ginsburg](#), [Social Justice](#), [Sonia Maria Sotomayor](#)

[...] This post originally appeared in a blog for Out Equal Workplace Advocates. [...]

By: [Gay and Lesbian Friendly Yellow Pages Directory – GayFriendlyBiz.com – Op-ed: The Hobby Lobby Decision's Slippery Slope](#) on August 7, 2014  
at 1:20 am

## Categories

- [Advertising](#)
- [Allies](#)
- [Anti-gay](#)
- [Business](#)
- [Careers](#)
- [Coming out](#)
- [Disability](#)
- [Diversity](#)
- [Don't Ask Don't Tell](#)
- [Education](#)
- [Employee Resource Groups \(ERGs\)](#)
- [Executive Forum](#)
- [Executives](#)
- [Federal Government](#)
- [Gender identity](#)
- [Global](#)
- [Guest Blogger](#)
- [Health](#)
- [Human rights](#)
- [Immigration](#)
- [Inclusion](#)
- [India](#)
- [Law & Policy](#)
- [Leadership](#)
- [LGBT](#)
- [LGBT Parenting](#)
- [LGBTCareerlink](#)
- [Marriage equality](#)
- [Military](#)
- [Non-discrimination laws](#)
- [Non-profits](#)

- [Out & Equal Board of Directors](#)
- [Out & Equal Executive Forum](#)
- [Out & Equal Staff](#)
- [Out & Equal Workplace Summit](#)
- [Philanthropy](#)
- [Regional Affiliates](#)
- [Relationship recognition](#)
- [Research](#)
- [Self-Id](#)
- [Sexual orientation](#)
- [Social Justice](#)
- [Sports](#)
- [Training](#)
- [Uncategorized](#)
- [Video Selfie](#)
- [Violence](#)
- [Women](#)
- [Working Parents](#)
- [Workplace Equality](#)
- [Workplace Giving](#)
- [Workshops](#)
- [Youth](#)

[Blog at WordPress.com.](#) | [The Ocean Mist Theme.](#)