

FIRST THINGS

WHY HOBBY LOBBY IS A PERSON

FOR-PROFIT CORPORATIONS COUNT FOR RFRA PURPOSES

by Mark Movsesian

5 . 21 . 14

Alan Meese and Nate Oman, both of William and Mary, have written [an exceptionally lucid essay](#) in the Harvard Law Review Forum on one of the main issues in *Hobby Lobby*: whether a for-profit corporation can qualify as a person for purposes of the Religious Freedom Restoration Act. It's one of the best things on *Hobby Lobby* I've read and I recommend it to people trying to make sense of the issue.

Meese and Oman make three big points. First, closely-held corporations like Hobby Lobby fit naturally within RFRA's language. Second, there is nothing unusual about closely-held corporations that embody shareholders' religions. Many such firms exist, and they do not violate some elementary principle of corporate law. Third, limiting the exercise of religion to natural persons mistakes an important goal of religious freedom. "[R]eligious freedom is broader than an individualist concern with personal rights," they explain. "Rather, it is about limiting the ability of the state to regulate a particular kind of conduct—religious exercise—even when corporate bodies engage in that conduct."

To me, the second point is the most suggestive for the outcome of *Hobby Lobby*. Most people think of a corporation as a large, publicly-traded firm with thousands of passive shareholders who have little to do with day-to-day operations: Exxon Mobil. It would be strange for such a corporation to exercise a religion. But most corporations, like Hobby Lobby itself, are small, private firms with a handful of shareholders. It's not at all strange to think that the five

owners of Hobby Lobby could wish to run their corporation in a way that advances their religious values.

Meese and Oman argue against drawing a distinction, for RFRA purposes, between large corporations like Exxon Mobil and close corporations like Hobby Lobby. But the distinction could be a way for the Court to avoid practical difficulties. The Court could hold that close corporations like Hobby Lobby are RFRA persons and save the question of large corporations for another day. Indeed, Chief Justice Roberts hinted at that outcome during oral argument.

We'll see what the Court decides. Meanwhile, Meese and Oman have written a very worthwhile essay. You can read it [here](#).

[PREV ARTICLE](#)

[NEXT ARTICLE](#)

ARTICLES *by* MARK MOVSESIAN

 [@markmovesian](#)

[A CALL FOR HELP FOR MIDEAST CHRISTIANS](#)

THURSDAY, MAY 08

[A CHRISTIAN MAN](#)

WEDNESDAY, MAY 07

[YESTERDAY'S DECISION IN THE LEGISLATIVE PRAYER CASE](#)

TUESDAY, MAY 06

SHOW 0 COMMENTS
