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OPINION | KENT GREENFIELD

Unfair advantage would spur abuse of exempt status

Do corporations have religious liberty?

By Kent Greenfield | MARCH 02, 2014

THE SUPREME Court is poised to give corporate conscience a bad name.

The big case at the court this year asks whether for-profit corporations can exercise rights of religious conscience. At the center of the case is arts-and-crafts retailer Hobby Lobby, an Oklahoma corporation that operates over 500 stores and employs more than 13,000. Owned by devout Christians, the company says its obligation under the Affordable Care Act to provide employee health insurance that includes

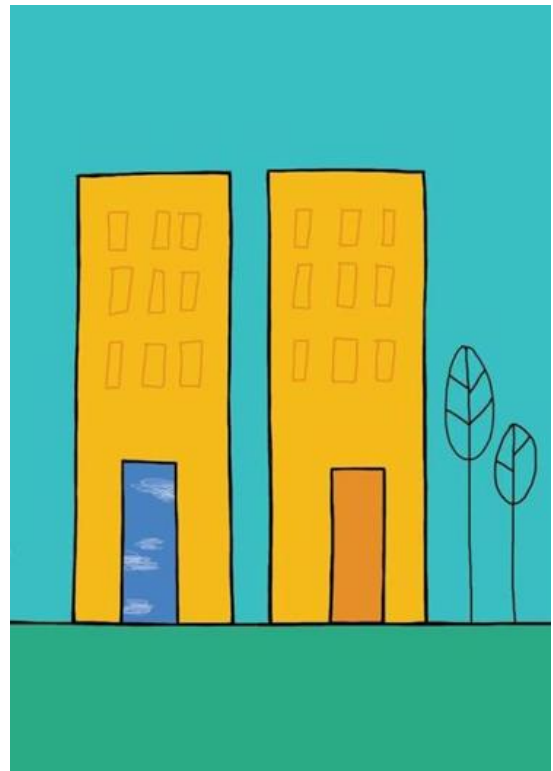
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it think that this is an easy question. Of course companies cannot hold beliefs. Over two centuries ago, the Lord Chancellor of England pointed out the futility of expecting “a corporation to have a conscience, when it has no soul to be and no body to be kicked.”

institutions can in fact have religious identities. Boston College, my employer, would not be damned or body to be kicked, yet has a religious identity that helps its mission and culture.

profit companies can act with religious motivations. The most famous example occurred here in New England in the days before Christmas in 1995 when the Toys R Us factory in Lawrence burned down. The company’s owner, Aaron Feuerstein, kept the employees on and even paid their Christmas bonuses. He promised to stay in Lawrence rather than moving the jobs offshore. Feuerstein became a hero, sitting next to First Lady Hillary Clinton during the president’s State of the Union message a few months later. Feuerstein’s main rationale for his company’s decision was that he wanted his business to be a reflection of his personal religious beliefs.



Dwight G. Duncan: Our legal heritage favors religious freedom

American history is replete with examples where corporate charters have indeed been legal vehicles for the practice of religion.

But Hobby Lobby should lose, and the story of Aaron Feuerstein helps show why.

The unfortunate truth is that corporate conscience is usually a loser in our ruthless marketplace. Paying employees more than competitors — or polluting less, or rebuilding a factory here rather than in Bangladesh — creates financial disadvantages that appear exactly as inefficiency on the bottom line. A few companies might “do well by doing good,” if they create a market niche that rewards such efforts or if they can create benefits they can monetize, such as customer or employee loyalty.

But making money from conscience is the exception. As with individual goodness, corporate conscience usually requires sacrifice of some kind — refusing an unfair advantage; treating with dignity someone who cannot return the favor; being honest when subterfuge would get by. When we occasionally see such sacrifice by corporations, as we saw with Malden Mills, we can trust its integrity.

But Malden Mills itself fell on hard times, filing for bankruptcy twice. The Lawrence factory was sold in 2007. Whether Feuerstein’s generosity caused the company’s demise is a subject of debate among business ethicists. But one thing is clear: Genuine corporate conscience and the sacrifice it requires is difficult to sustain when the divide between success and failure can be pennies on the dollar.

This is why no advanced nation in the world leaves corporations to their own consciences. Corporations are hardwired to produce financial gain; most will seek out shortcuts to maximize returns even if that means they must pollute, discriminate, or endanger. The best way to ensure corporations are positive influences in an economy, much less a society, is to construct a framework of financial, workplace, and environmental regulation. In other words, corporate conscience alone is no shield from bad behavior or a sufficient prompt for good. We need laws for that.

This is where the Supreme Court could do real damage. Hobby Lobby wants to be relieved of regulatory controls because of religious views. Such relief will give it an unfair advantage in the marketplace, since Hobby Lobby would not have to provide health coverage that its competitors still must.

The response to a Hobby Lobby victory will be quick. Companies will experience a Road to Damascus conversion like the Apostle Paul, discovering religious beliefs where they had none before. Companies will assert religious convictions inconsistent with whatever regulation they find obnoxious, and not just Obamacare's contraceptive requirement. Some companies will claim a religious right to discriminate against gay job applicants. Others will insist a woman's place is in the home, and claim a religious exemption to Title VII's obligation that women be paid the same as men. And are we sure there are no companies that will assert a religious right to pollute?

Our public efforts to constrain business through regulation will be circumvented by assertions of religious belief, whether genuine, inflated, or fraudulent. Ironically perhaps, claims of religious conscience could liberate companies to become bad actors in the economy and society at large. Instead of sacrifice, corporate conscience could devolve to sacrilege.

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