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Happy Independence Day From the Supreme Court: Unions and Women Lose, Koch Brothers Win

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SCOTUS SPEAKS ... HOW, WHAT AND WHY-As you crack open a cold one or launch a pyrotechnic skyward to commemorate Independence Day, I invite you to reflect for a moment on the work accomplished by our not-so independent Supreme Court under the leadership of Chief Justice John Roberts on Monday, the final sitting of the tribunal's October 2013 term.

After a brief sojourn to the political left that culminated in last week's decision upholding the privacy rights of cellphone owners, the court returned to what it does best in its last session, making a radical U-turn in the opposite direction. In a pair of bitterly contested 5-4 decisions written by Justice Samuel Alito—Harris v. Quinn and the consolidated appeals in Burwell v. Hobby Lobby —the panel's five-member conservative majority wielded their extraordinary powers not only to slam public-sector unions and restrict the contraception mandate of the Affordable Care Act, but to enlarge the doctrine of corporate personhood, declaring for the first time that for-profit, closely held corporations have rights to the free exercise of religion.

Sadly, despite their razor-thin margins, both decisions were inevitable, given the court's ideological composition and the dominant recent trends in constitutional law. And while the decisions could have been even worse from a progressive standpoint, the cases have handed long-sought political victories to some of the most extreme elements of the American right—the John Birch Society, tea party groups, think tanks like the Heritage Foundation and the Cato Institute, Christian fundamentalists, and, especially, the shadowy network of behind-the-scenes political manipulators and financiers led by activist billionaire brothers Charles and David Koch.

Let's take a closer look at the spoils:

Harris v. Quinn

Argued before the Supreme Court in January, Harris was filed by the National Right to Work Legal Defense Foundation, the legal arm of the National Right to Work Committee, on behalf of a group of Illinois nonunion home-care personal assistants who object to paying "fair share" fees to the Service Employees International Union to cover the costs SEIU incurs by serving as the exclusive representative for those employed under the Illinois Home Services Program. Fair-share fees—which were approved by the court for public-sector unions in 1977 in the case of Abood v. Detroit Board of Education—are paid in lieu of formal dues by employees who receive the benefits of collective bargaining but choose not to become union members themselves.

Fair-share fees cannot be used to finance a union's political spending, but they are a significant source of overall union revenue. In California, for example, about 29 percent of SEIU members employed by the state are fair-share payers. In the 24 states that have enacted "right to work" laws, nonunion workers cannot be required to make any fair-share payments.

Alito's majority ruling held that because personal assistants work in people's homes (often tending to the needs of ill and disabled relatives), they are only "partial public employees," and as such they are not subject to Abood. Thus, they cannot be compelled to pay any fees to the SEIU, even though they profit from the wage increases the union negotiates for them with the state.

Alito could have ended his analysis right there, sparing public-sector unions further damage, but he didn't. While the majority stopped short of explicitly overruling Abood, Alito invoked the now-familiar meme—which he previewed in another SEIU case two years ago—that requiring nonunion public employees to pay fair-share fees amounts to compelled speech in violation of the First Amendment as the fees help sustain unions the workers don't want to join.

Although anti-union crusaders didn't get 100 percent of what they wanted from the Supreme Court this time, their victory nonetheless moves us one big step closer to the day when the high court could rule that the entire public sector should be transformed into a uniform right-to-work regime. That, precisely, has been the goal of the National Right to Work Committee since it was formed in 1955 by a gathering of hard-core conservatives, anti-communist zealots and Christian fundamentalists.

The committee's first president was former New Jersey Congressman Fred Hartley, co-sponsor of the 1947 Taft-Hartley Act that authorized states to adopt right-to-work laws. Many of the committee's early leaders were also founders of the John Birch Society, including Fred Koch, the father of Charles and David.

Over the decades, the committee's Bircher ties may have waned, but they have not disappeared. Reed Larson, a once-prominent member of the society, still sits on the committee's board, and both the committee and the legal defense foundation are supported by donations from the right-wing Koch-aligned oligarchy. As reported by The Progressive magazine, in 2012 "the Kochs' Freedom Partners group funneled $1 million to the National Right to Work Committee, while the Charles G. Koch Charitable Foundation gave a $15,000 grant to the [defense foundation], which has also received significant funding from the Koch-connected DonorsTrust and Donors Capital Fund."

According to The Progressive, at least three former Koch associates work as attorneys for the defense foundation. Other important financial backers of both the defense foundation and the committee include the Walton Family Foundation that runs Walmart, the Coors family's Castle Rock Foundation, Wisconsin's Bradley Foundation, the John M. Olin Foundation and the Searle Freedom Trust.

There can be little doubt that the ultimate goal of the right-to-work movement is to stamp out what's left of the political influence of unions in America. In the private sector, where the unionization rate has dwindled to 6.7 percent, organized labor is already on the road to extinction. The public sector, by contrast, boasts a unionization rate of 35.3 percent. That rate will likely drop in the wake of the Harris decision; the only question will be how quickly and by how much.

Hobby Lobby

Alito's 5-4 majority opinion in Hobby Lobby is similarly constructed on another First Amendment meme of the Roberts era—the doctrine of corporate personhood. Expanded by the Citizens United case in 2010 to cover corporate spending on federal elections under the rubric of free speech, the doctrine now by way of Alito has metastasized to enshrine corporate religious liberty, at least for closely held enterprises like Hobby Lobby, Inc. and Conestoga Wood Specialties Corporation, whose cases were consolidated and heard together.

Hobby Lobby, which is owned by the Southern Baptist Green Family, and Conestoga, which is owned by the Mennonite Hahns of Pennsylvania, objected to the Affordable Care Act's contraception mandate that requires employer-funded health insurance plans to cover a full range of birth control choices. They argued that under both the First Amendment and a once obscure federal statue—the Religious Freedom Restoration Act of 1993, a law originally enacted to protect the worship rituals of Native Americans but which has since become a litigation catalyst for fundamentalists across the nation—they had rights to freely exercise and practice their religious beliefs, particularly their anti-abortion principles, even though their businesses are for-profit enterprises, not religious institutions.

Those rights, they insisted, supported their decisions to withhold health insurance benefits from female employees for contraceptives that they believe can terminate pregnancies—specifically, the "morning after" pill and intrauterine devices.

All too predictably, Alito and his Republican brethren bought Hobby Lobby's argument from top to bottom. Nor is it any comfort to American women concerned about reproductive rights or anyone else alarmed more generally by the ever-burgeoning corporate domination of American life Alito suggested—but did not explicitly hold—that his decision would be limited to closely run, family operated businesses whose stock is not publicly traded.

As I have written before in this column, a closely held corporation is defined as a company in which five or fewer individuals own more than 50 percent of the company's stock. Over 90 percent of American businesses operate as closely held corporations, accounting for more than 51 percent of private sector output and 52 percent of private sector employment. Each year, Forbes magazine updates a list of the country's biggest closely held companies. Ranked No. 1 by Forbes is the agricultural commodities giant Cargill Inc., with 140,000 employees and nearly $137 billion in annual revenue. Ranked No. 2 is Koch Industries with 60,000 employees and $115 billion in annual receipts. Hobby Lobby took the number 135 spot, with annual revenue of $3.3 billion and over 13,000 workers. Conestoga, with 950 employees, is unranked.

The long arm of the Koch empire can thus be felt all over Alito's opinion, and not just in the sense of the empire being a direct beneficiary of the decision. Since 1977, when Charles Koch co-founded the Cato Institute, the brothers and their foundations have donated untold millions to help finance an armada of right-wing activist organizations and they have been at the forefront of the corporate personhood struggle. The brothers' outside counsel—the famed litigator Ted Olson—represented Citizens United before the Supreme Court. The brothers and DonorsTrust are also principal financial backers of the Becket Fund for Religious Liberty, a Washington, D.C., public-interest law firm that represents Hobby Lobby along with former Solicitor General Paul Clement.

Having opened the door to corporate religious personhood, the big question now, as with the Harris decision, is how widely the decision will reverberate. In her dissent, Justice Ruth Bader

Ginsburg decried the “extraordinary” sweep of Alito’s ruling, reasoning that “the court’s expansive notion of corporate personhood invites for-profit entities to seek religion-based exemptions from [other] regulations they deem offensive to their faiths.”

So what will be the next target for corporate religious personhood? Health-insurance coverage for vaccines? Blood transfusions? Employer mandates regarding the minimum wage or even Social Security coverage for all employees?

As you contemplate the possibilities large and small, enjoy your Independence Day celebrations. If you’re an owner of a corporation or heck, even if you *are* a corporation, you have a lot of reasons to cheer. If you’re a woman or a public employee, or any kind of worker for that matter, you don’t.