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The Hobby Lobby Case May Turn Out to Be a Dud

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For months, the right and left have prepared for the battle over the *Hobby Lobby* case at the Supreme Court. Billed as a major showdown over religious liberty, corporate rights, and Obamacare, the case involves a claim by the Christian conservative owners of a chain called Hobby Lobby, who believe that the First Amendment protects them from having to provide contraceptive coverage to employees as part of their health plan.

Conservatives have attempted to utilize an argument rooted in religious liberty to fight back against Obamacare. This is part of a larger embrace of religious liberty amongst legal conservatives. To right-wing groups such as the CATO Institute, which filed an amicus brief, the case is about the ability of a corporation to claim a religious identity and draw certain exemptions from the law as a product of their religious beliefs.

The problem for conservatives hoping for a big win here is that, in Tuesday's arguments, Chief Justice Roberts looked like he was hoping to avoid an all-or-nothing style decision.

Dating back to his confirmation hearings, Chief Justice Roberts has argued that the Supreme Court should avoid far-reaching decisions that can "jolt the legal system" by upending precedent. Roberts had pledged to foster an era of narrow and unanimous decisions. In areas such as the Court's First Amendment decisions, Roberts has structured narrow decisions that allow for votes that can have even eight of the Justices in the majority.

At oral arguments today, Roberts may have "appeared to tip his hand," as the Wall Street Journal's Jess Bravin put it. While the government claimed that allowing Hobby Lobby to exempt itself from laws based on a religious claim would have far-reaching implications, Chief Justice Roberts in his questions appeared to be searching for a way to distinguish this case from claims that could be brought by a larger publicly traded company. We could, he noted, "simply say that it's in this type of Chapter S Corporation that is closely held. Whether it applies in the other situations is—is a question that we'll have to await another case when a large publicly traded corporation comes in and says, we have religious principles, the sort of situation, I don't think, is going to happen."

Guessing about decisions based on questions from the Supreme Court is a risky exercise, but we shouldn't be surprised if the opinion comes out as a narrow victory for Hobby Lobby that tries to curtail the scope of its ruling to not included publicly traded companies.

The decision certainly would be problematic; it would entangle the Supreme Court in having to determine which religious convictions are genuine enough from a corporation to warrant exemptions to laws. However, it would not be the kind of far-reaching assertion of corporate rights that liberals are dreading.

Such a decision would still end up pushing corporate rights at the expense of the rights of employees, but not as broadly as many liberals had feared. Roberts suggested that the real battle will have to “await another case” involving a larger company, a case that he doesn’t see coming at all. In other words, the Hobby Lobby case, despite all of its hype, may turn out to be a bit of a dud.

The real fight, if it ever happens, will require another case.