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Supreme Court tightens the reins

By John Mcclaughry

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Three June decisions of the U.S. Supreme Court carry important messages to America, and one in particular is likely to have an impact in Vermont.

The decision that attracted the most national attention came in a case (Burwell vs. Hobby Lobby) defining religious freedom. In 1993 Congress passed the Religious Freedom Restoration Act (Vermont Sens. Leahy and Jeffords voted Yes.) It provided that when a government action raised a question of religious liberty, the government must present a "compelling interest," and that interest must be furthered by the "least restrictive means."

ObamaCare requires employer health insurance must cover "essential benefits," or else the employer will be taxed or fined. The Obama administration -- not Congress -- decided that those benefits must include twenty different varieties of contraception as free "preventive care."

Hobby Lobby is a family-owned chain of craft stores. Its insurance plan covers 16 of those varieties. But the Green family, the owners, objected to being forced to pay for the remaining four, which they view not as contraception, but as abortion.

The Court's conservative majority held, over frenzied dissent from the Court's four liberal justices, that when a government agency decides that offering twenty varieties of free contraception is an essential insurance benefit, and the owners of a closely-held family business sincerely believe that some of those varieties run counter to their sincere moral and religious beliefs, the government cannot beat that company into submission.

The decision has triggered an outburst of "war against women" rhetoric from the left, but in truth, as Cato Institute lawyer Ilya Shapiro observed, "The mandate fell because it was a rights-busting government compulsion that lacked sufficient justification."

In the second important case (Harris v. Quinn), the same majority held that a woman who provides Medicaid-financed home care to her disabled child cannot be forced to pay dues or "agency fees" to a labor union. The Court held that just because the labor-dominated Illinois Legislature deemed the woman to be a "state employee" for this sole purpose, did not make her a state employee.

The backstory here is that the union involved, the SEIU, was raking in millions of dollars from these non-employee caregivers for lobbying the state government to increase Medicaid subsidies. If the law had been upheld, it wouldn't be long before one or another union tried to get some legislature to mandate that food stamp recipients belong to a similarly phony

"bargaining group," and then dock their benefits for the dues and fees the union needs to feed its political machine.

Earlier this year the Vermont Legislature enacted a similar law authorizing just such a phony child care workers' union. It was ardently sought by the American Federation of Teachers but bitterly opposed by many independent child care providers. Last year the legislature did the same for home health care workers for the benefit of the American Federation of State, County and Municipal Employees. Both of these "pseudo union" schemes are now vulnerable to powerful legal challenges.

The third case (NLRB vs. Noel Canning) has far less real world consequences, but great symbolic value. The Constitution allows the President to make recess appointments when the Senate is in recess. In 2012 President Obama defiantly made three controversial recess appointments to the National Labor Relations Board even though the Senate was not in recess.

The Court held that the Senate determines when it is in recess, and when a recess is for less than ten days the President may not make recess appointments. The fact that the ruling was unanimous sent a powerful message to the President that even his own appointees on the Court will not let him blow off the Constitution with his recently-coined legal theory of "we can't wait!" This was, astonishingly, the tenth instance where the Supreme Court has unanimously struck down an Obama administration action or position.

Taken together, these three cases sent a powerful message to bureaucrats, legislatures, and the president that people's religious beliefs cannot be scornfully overruled, labor union schemes to extract ever more money from unwilling non-employees will not stand, and the President, sworn to uphold the Constitution, seriously needs to start doing just that.