



12-2014

# Quasi-Rights for Quasi-Religious Organizations: A New Framework Resolving the Religious-Secular Dichotomy After *Burwell v. Hobby Lobby*

Krista M. Pikus

Follow this and additional works at: [http://scholarship.law.nd.edu/ndlr\\_online](http://scholarship.law.nd.edu/ndlr_online)



Part of the [Religion Law Commons](#)

## Recommended Citation

Krista M. Pikus, Case Comment, *Quasi-Rights for Quasi-Religious Organizations: A New Framework Resolving the Religious-Secular Dichotomy After Burwell v. Hobby Lobby*, 90 Notre Dame L. Rev. Online 16 (2015).

Available at: [http://scholarship.law.nd.edu/ndlr\\_online/vol90/iss1/2](http://scholarship.law.nd.edu/ndlr_online/vol90/iss1/2)

This Case Comment is brought to you for free and open access by the Notre Dame Law Review at NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review Online by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

QUASI-RIGHTS FOR QUASI-RELIGIOUS  
ORGANIZATIONS: A NEW FRAMEWORK RESOLVING  
THE RELIGIOUS-SECULAR DICHOTOMY AFTER  
*BURWELL V. HOBBY LOBBY*

*Krista M. Pikus\**

INTRODUCTION

With the proliferation of corporate entities, courts must determine what constitutional rights and statutory protection these corporations should enjoy. A major factor in the courts' assessment is where on the religious-secular spectrum the corporation falls. Although it has long been recognized that religious institutions can assert First Amendment free exercise rights, it is not necessarily clear that business corporations qualify as religious organizations warranting such privileges.<sup>1</sup>

On June 30, 2014, the Supreme Court decided the controversial and highly politicized case of *Burwell v. Hobby Lobby Stores, Inc.*<sup>2</sup> The Court held that Department of Health and Human Services (HHS) regulations imposing mandatory insurance coverage of contraceptives violated the Religious Freedom Restoration Act (RFRA) as applied to closely held for-profit corporations, because the mandate substantially burdened these corporations' religious exercise.<sup>3</sup> Many criticized this decision, largely on grounds that Hobby Lobby is not a "religious" organization.<sup>4</sup>

---

\* J.D. Candidate, Notre Dame Law School, 2015; B.S., Business, Miami University, 2012; B.A., Psychology, Miami University, 2012. I would like to thank Professor Rick Garnett for his guidance and support in preparing this Comment, the staff of the *Notre Dame Law Review* for their excellent editing skills, and my family for their continuous love and support. All errors are my own.

1 See Ronald J. Colombo, *The Naked Private Square*, 51 HOUS. L. REV. 1, 6–16 (2013).

2 134 S. Ct. 2751 (2014).

3 *Id.* at 2775–79, 2785.

4 See, e.g., Noah Fitzgerald, *Beyond Accommodation: Hobby Lobby as a Challenge to Our Perception of Religious Organizations*, HUFFINGTON POST (Sept. 11, 2014, 5:59 AM),

The Court's analysis never officially declared Hobby Lobby religious or secular, yet it curiously described many of Hobby Lobby's business characteristics as incorporating both religious and secular elements.<sup>5</sup> The absence of a clear declaration whether Hobby Lobby is religious or secular is curious, because in earlier cases the Supreme Court often classified organizations as religious *or* secular before deciding if the organization had religious rights.<sup>6</sup> More importantly, though, the *Hobby Lobby* decision failed to recognize a third option beyond the religious-secular dichotomy: a "quasi-religious" classification. This classification would afford some, but not all, religious rights to organizations that embody religious characteristics while simultaneously maintaining secular aspects. Recognizing this middle-ground classification also suggests a useful amendment to the Affordable Care Act and similar statutes offering religious exemptions: granting quasi-rights to quasi-religious organizations in a way tailored to their particular corporate character.

This Comment aims to break free of the limiting religious-secular dichotomy by proposing a "quasi-religious" classification in order to achieve a more nuanced assignment of corporate religious exercise rights. Part I addresses the current legal standard for classifying organizations as religious and how the *Hobby Lobby* decision engaged that standard. Part II identifies and discusses the problems with the religious-secular dichotomy. Lastly, Part III proposes a new solution to the problem of corporate

---

[http://www.huffingtonpost.com/noah-fitzgerel/hobby-lobby-a-challenge-hobby-lobby\\_b\\_5576513.html](http://www.huffingtonpost.com/noah-fitzgerel/hobby-lobby-a-challenge-hobby-lobby_b_5576513.html) ("Americans do not universally consent to the majority opinion's claim that Hobby Lobby constitutes a religious organization entitled to the same accommodations as religious communities like churches or religious non-profit organizations in the *first place*. In other words, this is an issue even more fundamental than an argument about accommodation; instead, it is an argument about whether Hobby Lobby has even the right to approach the table as a religious organization.").

<sup>5</sup> *Hobby Lobby*, 134 S. Ct. at 2766.

<sup>6</sup> See *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 388 (3d Cir. 2013) (characterizing Conestoga as "secular" and using that characterization to justify the conclusion that it cannot engage in the exercise of religion), *rev'd sub nom.*, *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014); *Barnes-Wallace v. City of San Diego*, 704 F.3d 1067, 1072 (9th Cir. 2012) (following the stipulated facts, which identified Boy Scouts of America as a religious organization for purposes of resolving an Establishment Clause case); *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 226 (3d Cir. 2007) (looking to for-profit status, among many other factors, in considering whether an organization is secular or religious for purposes of Title VII); *Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67, 75 (Cal. 2004) (finding that Catholic Charities did not qualify as a religious employer for purposes of the statutory exemption); *cf.* Susan J. Stabile, *State Attempts to Define Religion: The Ramifications of Applying Mandatory Prescription Contraceptive Coverage Statutes to Religious Employers*, 28 HARV. J.L. & PUB. POL'Y 741, 757 n.69 (2005) ("It is difficult to understand how one can come to the conclusion that the Boy Scouts is a religious organization and that Catholic Charities or a Catholic hospital is not.").

religious exercise rights that transcends the limitations of the religious-secular dichotomy and may also bring clarity to the *Hobby Lobby* decision.

### I. CURRENT LEGAL STANDARD FOR CLASSIFYING ORGANIZATIONS AS “RELIGIOUS”

The term “religious” appears in both constitutional and statutory frameworks and applies to organizations and individuals alike. Yet, currently there is no established test for defining a religious organization. Courts sometimes rely on the criteria defining an organization as religious for purposes of Title VII when evaluating the religious nature of an organization in other statutory or constitutional contexts.<sup>7</sup>

Two prominent cases—*LeBoon v. Lancaster Jewish Community Center Association*<sup>8</sup> and *Spencer v. World Vision*<sup>9</sup>—illuminate the several tests available for determining whether an organization is “religious” for purposes of Title VII. In *LeBoon*, Linda LeBoon worked for the Lancaster Jewish Community Center, a nonprofit corporation whose “mission was to enhance and promote Jewish life, identity, and continuity.”<sup>10</sup> The relationship between LeBoon and the executive director of the Center began deteriorating near the spring of 2002. The Center fired LeBoon on August 30, 2002, citing financial difficulties and the ability for other coworkers to assume her responsibilities.<sup>11</sup> LeBoon claimed the Center discriminated against her on the basis of her religion, because she was an Evangelical Christian.<sup>12</sup> The Third Circuit held that the Lancaster Jewish Community Center was a religious organization exempt from compliance with the religious discrimination prohibition provision of Title VII.<sup>13</sup> The court determined that, in analyzing whether a religious organization exemption applies under Title VII, “[a]ll significant religious and secular characteristics must be weighed to determine whether the [employer’s] purpose and character are primarily religious.”<sup>14</sup> The Third Circuit

---

<sup>7</sup> See *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1136 (10th Cir. 2013) (discussing the *Hosanna-Tabor* case for its effect on free exercise rights of corporations). In determining whether an organization can be exempt for purposes of the Affordable Care Act, the Third Circuit in *Conestoga Wood* considered cases that dealt with religious exemptions for purposes of Title VII. See *Conestoga Wood*, 724 F.3d at 401 n.16 (Jordan, J., dissenting) (citing *Leboon*, 503 F.3d at 229–30), *rev’d sub nom.*, *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014).

<sup>8</sup> 503 F.3d at 217.

<sup>9</sup> 633 F.3d 723 (9th Cir. 2011).

<sup>10</sup> *LeBoon*, 503 F.3d at 221 (internal quotation marks omitted).

<sup>11</sup> *Id.* at 221–22.

<sup>12</sup> *Id.* at 220.

<sup>13</sup> *Id.* at 231.

<sup>14</sup> *Id.* at 226 (quoting *EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 618 (9th Cir. 1988)).

mentioned some factors typically relevant in determining whether an organization is “religious” for purposes of a Title VII exemption:

(1) whether the entity operates for a profit, (2) whether it produces a secular product, (3) whether the entity’s articles of incorporation or other pertinent documents state a religious purpose, (4) whether it is owned, affiliated with[,] or financially supported by a formally religious entity such as a church or synagogue, (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, (6) whether the entity holds itself out to the public as secular or sectarian, (7) whether the entity regularly includes prayer or other forms of worship in its activities, (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution,<sup>15</sup> and (9) whether its membership is made up by coreligionists.<sup>15</sup>

The *LeBoon* court noted, however, that not all the factors may be relevant in every case.<sup>16</sup> Rather, the factors should “be measured with reference to the particular religion.”<sup>17</sup>

In *Spencer v. World Vision, Inc.*,<sup>18</sup> the Ninth Circuit decided against using a checklist like the one in *LeBoon*, though disagreement remained on what standard should govern. In *World Vision*, former employees brought suit against World Vision, Inc., a nonprofit faith-based humanitarian organization, alleging termination on account of their religious beliefs in violation of Title VII.<sup>19</sup> At the time World Vision hired them, the employees “submitted required personal statements describing their ‘relationship with Jesus Christ.’”<sup>20</sup> Further, all the employees “acknowledged their ‘agreement and compliance’ with World Vision’s Statement of Faith, Core Values, and Mission Statement.”<sup>21</sup> In 2006, World Vision discovered the “[e]mployees denied the deity of Jesus Christ and disavowed the doctrine of the Trinity,”<sup>22</sup> and fired them.<sup>23</sup>

The Ninth Circuit agreed that World Vision qualified as a religious organization exempt from Title VII’s prohibition against religious discrimination, but the judges divided on their reasoning for reaching that

---

15 *Id.* (citing *Killinger v. Samford Univ.*, 113 F.3d 196 (11th Cir. 1997)); *EEOC v. Kamehameha Sch./Bishop Estate*, 990 F.2d 458 (9th Cir. 1993); *Townley*, 859 F.2d at 618–19; *EEOC v. Miss. Coll.*, 626 F.2d 477 (5th Cir. 1980)).

16 *Id.* at 227.

17 *Id.*

18 633 F.3d at 723.

19 *Id.* at 725.

20 *Id.*

21 *Id.*

22 *Id.* (footnote omitted) (citations omitted).

23 *Id.*

result.<sup>24</sup> All three judges on the panel “agree[d] that a multifactor test does not work well because it is inherently too indeterminate and subjective.”<sup>25</sup> Judge O’Scannlain’s concurrence argued that “where the religious or nonreligious nature of a particular activity or purpose is in dispute,” the analysis should not rely exclusively on *LeBoon*’s “constitutionally questionable inquiries.”<sup>26</sup> Rather, Judge O’Scannlain proposed an alternative evaluation based on a simpler, three factor test: whether it is “(1) is organized for a self-identified religious purpose (as evidenced by Articles of Incorporation or similar foundational documents), (2) engaged in activity consistent with, and in furtherance of, those religious purposes, and (3) holds itself out to the public as religious.”<sup>27</sup> In contrast, Judge Berzon stated that “Congress used the terms ‘religious corporation, association . . . or society’ as they were commonly understood: to describe a church or other group organized for worship, religious study, or the dissemination of religious doctrine.”<sup>28</sup> Consequently, only those organizations meeting this common understanding should qualify for the exemption.<sup>29</sup> Judge Kleinfeld criticized Judge O’Scannlain’s test for being “too inclusive,”<sup>30</sup> and Judge Berzon’s formulation for being “too exclusive.”<sup>31</sup> Instead, he recommended a modification of Judge O’Scannlain’s three-factor test: an entity is “religious” if (1) “organized for a religious purpose,” (2) “engaged primarily in carrying out that religious purpose,” (3) “holds itself out to the public as an entity for carrying out that religious purpose,” and (4) “does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.”<sup>32</sup>

Despite the several tests available for classifying an organization as “religious” at the time *Burwell v. Hobby Lobby* came before the Supreme Court, and the opportunity to settle debate among the circuits as to the correct formulation, the Court avoided the task of classifying Hobby Lobby along the religious-secular spectrum.<sup>33</sup> The Court did, however, describe many religious aspects of the Hobby Lobby corporation.<sup>34</sup> For instance,

---

24 *Id.* at 724 (per curiam); *id.* at 741 (Kleinfeld, J., concurring). The opinion contains a per curiam decision, two concurrences, and one dissent. *Id.*

25 *Id.* at 741 (Kleinfeld, J., concurring).

26 *Id.* at 734 (O’Scannlain, J., concurring).

27 *Id.* (footnote omitted) (citing *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (D.C. Cir. 2002); *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 399–400, 403 (1st Cir. 1985) (en banc) (Breyer, J.)).

28 *Id.* at 753 (Berzon, J., dissenting).

29 *Id.*

30 *Id.* at 742 (Kleinfeld, J., concurring).

31 *Id.*

32 *Id.* at 748.

33 *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759–85 (2014).

34 *Id.* at 2766.

the Court noted Hobby Lobby's statement of purpose, which commits the owners to "[h]onoring the Lord in all [they] do by operating the company in a manner consistent with Biblical principles."<sup>35</sup> The Court also noted that Hobby Lobby closes on Sundays in accordance with these principles, even though the company loses millions of dollars annually as a result.<sup>36</sup> Furthermore, Hobby Lobby refuses to engage in business transactions that promote the use of alcohol, because to do so would violate the corporation's principles of faith.<sup>37</sup> The fact that the Court took time to highlight the organization's statement of purpose and practices in furtherance of that purpose likely signals that these are factors relevant to determining whether an entity is "religious"—but the Court neither set forth a definitive test nor officially characterized Hobby Lobby as "religious." Failure to complete this analysis<sup>38</sup> leaves lower courts without a workable framework for assessing the religious claims of entities that are not closely held corporations. Furthermore, in the absence of a clear classification of the corporation as a "religious" entity, many criticize the Court's decision arguing that Hobby Lobby is not definitively a religious organization.<sup>39</sup>

## II. RELIGIOUS-SECULAR DICHOTOMY

Currently, no federal statute recognizes quasi-religious organizations for exemption purposes. Although courts look at all the relevant secular and religious elements in characterizing an organization,<sup>40</sup> the ultimate

---

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2767–75.

<sup>39</sup> See, e.g., Fitzgerald, *supra* note 4; Jamie Raskin, *The Gospel of Citizens United: In Hobby Lobby, Corporations Pray for the Right to Deny Workers Contraception*, PEOPLE FOR THE AMERICAN WAY, <http://www.pfaw.org/media-center/publications/gospel-citizens-united-hobby-lobby-corporations-pray-right-deny-workers-co> ("The astounding nature of the decision becomes clear when we focus on the fact that Hobby Lobby is a regular business corporation, secular in its operations and devoted to profit-making purposes. It is neither a church nor a religious organization.") (last visited Dec. 27, 2014); cf. Amelia Thomson-DeVeaux, *The Spirit and the Law*, THE AMERICAN PROSPECT, <http://prospect.org/article/little-known-force-behind-hobby-lobby-contraception-case> ("It's one thing to argue that a Catholic college's daily operations are imbued with a religious ethos. It's another to contend that a corporation, competing in a secular marketplace, is so fundamentally guided by its owners' faith that it should enjoy religious-liberty rights.") (last visited Dec. 27, 2014).

<sup>40</sup> See *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 226 (3d Cir. 2007) ("[A]ll significant religious and secular characteristics must be weighed to determine whether the [employer's] purpose and character are primarily religious." (internal quotation marks omitted)).

judicial classification is secular *or* religious.<sup>41</sup> Maintaining this religious-secular dichotomy can be quite difficult when an organization embraces both religious and secular elements.<sup>42</sup> The requirement that religious and secular characterizations be mutually exclusive may lead to contradictory outcomes.<sup>43</sup> If this approach continues, then many organizations will likely face unfair treatment before the courts.

The assumption that what is religious is distinct from what is secular is commonplace in our legal and cultural discourse.<sup>44</sup> Nevertheless, this assumption is increasingly difficult to maintain in a world where the influence and involvement of religion often surfaces in the public sphere and political discourse.<sup>45</sup> Some argue the religious-secular distinction has become blurred in American culture, thus rendering the religious-secular dichotomy no longer useful.<sup>46</sup> The inept nature of the divide perhaps signals a need to revisit the way in which we classify organizations in a legal context.

Requiring the court to determine whether a corporation is religious or secular before ascertaining whether it is afforded constitutional rights or statutory protection may be a burdensome process that generates inconsistent results. Some scholars even argue that the uncertain vitality of the religious-secular dichotomy warrants disregarding this portion of the analysis and instead allowing all corporations to assert free exercise rights.<sup>47</sup>

There remains, however, an important distinction between constitutional religious rights and statutory protections. The constitutional religious rights derive from the First Amendment, while statutory protections derive from Congress. Statutory protections often provide enforcement mechanisms for preservation of constitutional rights, or additional safeguards to ensure or advance religious freedom.<sup>48</sup> Even if all

---

41 *Id.*

42 For a discussion of the disparities and inconsistencies with states attempting to define religion, see Susan J. Stabile, *supra* note 6.

43 See, e.g., *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 388 (3d Cir. 2013), *rev'd sub nom.*, *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014); *Barnes-Wallace v. City of San Diego*, 704 F.3d 1067, 1072 (9th Cir. 2012); *LeBoon*, 503 F.3d at 226; *Catholic Charities of Sacramento, Inc. v. Superior Court*, 85 P.3d 67, 75 (Cal. 2004).

44 See Sheila Greeve Davaney, *The Religious-Secular Divide: The U.S. Case*, 76 SOC. RES. 1327, 1327 (2009).

45 *Id.* at 1327–28.

46 *Id.* at 1331 (“[W]e need to ask if our now more nuanced views of the secular and the religious have outlived their usefulness or whether they can be rehabilitated to provide significant work for the present.”).

47 See Colombo, *supra* note 1, at 16–24; *accord id.* at 1.

48 Compare U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”), with Religious



corporations can assert First Amendment free exercise rights,<sup>49</sup> it does not automatically follow that they should be granted every statutory protection.<sup>50</sup> Although religious rights in the Constitution are distinct from religious protections afforded by statutes, courts have understandably viewed the interpretative question of corporate religious exercise as one uniformly answered. For instance, in *Conestoga Wood*, the Third Circuit explained that its “conclusion that a for-profit, secular corporation cannot assert a claim under the Free Exercise Clause necessitates the conclusion that a for-profit, secular corporation cannot engage in the exercise of religion. Since *Conestoga* cannot exercise religion, it cannot assert a RFRA claim.”<sup>51</sup> While principles overlap in the constitutional and statutory contexts, it is important to keep in mind that what religion or free exercise means under the Constitution may differ from its meaning in a statute.

### III. TRANSCENDING THE DICHOTOMY OF RELIGIOUS AND SECULAR ORGANIZATIONS

#### A. *The Need for and Benefit of a Quasi-Religious Framework*

Quasi-religious organizations bring benefit to society, and should enjoy constitutional and statutory protections commensurate with their religious nature.<sup>52</sup> Certain organizations already make substantial

---

Freedom Restoration Act of 1993, Pub. L. No. 103-141, § 3, 107 Stat. 1488, 1489 (1993) (codified at 42 U.S.C. § 2000bb-1(a)-(c) (2012)) (“Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.”).

<sup>49</sup> See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2785 (2014) (failing to answer whether for-profit corporations may engage in religious exercise under the First Amendment).

<sup>50</sup> See Mark L. Rienzi, *God and the Profits: Is There Religious Liberty for Moneymakers?*, 21 GEO. MASON L. REV. 59, 114 (2013) (borrowing distinctions from Title VII or the Internal Revenue Code about differences in treatment for nonprofit or for-profit entities, if any distinction even exists, “is particularly problematic” in light of RFRA’s broad language).

<sup>51</sup> *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377, 388 (3d Cir. 2013) *rev’d sub nom.*, *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014).

<sup>52</sup> See CARL H. ESBECK ET AL., *THE FREEDOM OF FAITH-BASED ORGANIZATIONS TO STAFF ON A RELIGIOUS BASIS* 92 (2004) (“It is not possible for a religious organization of a particular faith to retain the characteristics and tenets of that faith, if it is forbidden to take religion into account in its employment decisions.”); JAMES W. SKILLEN, *RECHARGING THE AMERICAN EXPERIMENT* 101 (1994) (“[T]he only way to assure a civic/legal unity that does not hang illegitimately on the coattails of an unjust ecclesiastical, ideological, or racial establishment is to make sure that every citizen enjoys full religious freedom in all spheres of life.”).

sacrifices in accordance with their religious beliefs. For example, Hobby Lobby chooses to close its operation on Sundays, in an effort to honor the Sabbath.<sup>53</sup> Failure to recognize the semi-religious nature of some organizations, and to reward them accordingly with constitutional and statutory protections, could cause the organizations to lose the ability or willingness to stay in business, thereby thwarting economic growth and limiting providers of important services.<sup>54</sup> Furthermore, if such organizations shut down, the government may be forced to bear the economic burden of unsatisfied needs in the community,<sup>55</sup> such as programs to assist the elderly, homeless, and orphaned.

“Quasi-rights” for quasi-religious organizations would mean that the quasi-religious organizations would not qualify for *all* rights or benefits that fully religious organizations enjoy, such as tax exemption<sup>56</sup> or permission to hire on a religious basis.<sup>57</sup> Rather, they would qualify for those rights that logically and meaningfully connect to the religious convictions of their organization. Under the current religious-secular dichotomy, there is no ability to tailor the protections a “religious” organization receives, creating some concern that organizations may enjoy a range of benefits they do not deserve.<sup>58</sup> A quasi-rights framework alleviates that concern by restricting religious protections to those logically and meaningfully connected to the corporation’s religious characteristics.

A “logical and meaningful connection” test also encourages consistency between an organization’s words and actions. Requiring a colorable connection between an organization’s religious mission and the exemption they wish to claim would encourage corporations to demonstrate through their business practices adherence to their mission statements.

---

53 See *Hobby Lobby*, 134 S. Ct. at 2766.

54 See ESBECK ET AL., *supra* note 50, at 92; see also Matthew W. Clark, Note, *The Gospel According to the State: An Analysis of Massachusetts Adoption Laws and the Closing of Catholic Charities Adoption Services*, 41 SUFFOLK U. L. REV. 871, 894–97 (2008) (discussing the closing of Catholic Charities in Massachusetts as a result of its adoption laws and arguing that, as a result, Massachusetts has lost its most successful adoption agencies). For a discussion of the scope of religious liberty the Privileges and Immunities Clause of the Fourteenth Amendment intended to embrace, see generally Kurt T. Lash, *The Second Adoption of the Free Exercise Clause: Religious Exemptions Under the Fourteenth Amendment*, 88 NW. U. L. REV. 1106 (1994).

55 See JAMES FREELAND ET AL., FUNDAMENTALS OF FEDERAL INCOME TAXATION 744 (Clark et al. eds., 17th ed. 2013) (“Congress encourages contributions to charitable organizations by providing taxpayers with this deduction. This relieves some of the economic responsibilities that would otherwise fall on the federal government if not met by private funding.”).

56 See 26 U.S.C. § 501(c)(3) (2012).

57 See 42 U.S.C. § 2000e-1(a).

58 See Rienzi, *supra* note 50, at 112–13.

This would transform mission statements from mere “window dressing”<sup>59</sup> to guides of action. In essence, this is a litmus test seeking demonstrated commitment to professed beliefs. For instance, Hobby Lobby’s Sunday closing practice would provide evidence of the exercise of its religious mission.<sup>60</sup> The validity of its religious practice is not the question presented; rather, at issue is whether the corporate practice conforms to the organization’s professed religious beliefs.<sup>61</sup>

The concept of a “quasi-religious” organization is not entirely new; at least one court already employed this designation. In *Youle v. Edgar*,<sup>62</sup> the Appellate Court of Illinois held that the state requirement that a driver participate in Alcoholics Anonymous as a condition of reinstatement of his driving privileges did not violate his constitutional rights, even though Alcoholics Anonymous could be considered a quasi-religious organization.<sup>63</sup> The organization’s twelve-step program includes a belief and faith in God and has strong religious undertones.<sup>64</sup>

In utilizing this framework, it is important to note that an organization denied religious status under one statute should not be foreclosed such status for other statutory or constitutional purposes.<sup>65</sup> Courts often mistakenly treat the foreclosure of religious status under one statute as appropriate grounds for denial of religious status under a different statute.<sup>66</sup> The purpose of the “quasi-religious rights” framework is to allow the courts flexibility to recognize religious rights and protections where appropriate. When an organization is “quasi-religious” instead of fully religious, it will likely not qualify for *all* statutory religious exemptions. For instance, if the Supreme Court classified Hobby Lobby as a quasi-religious organization, its sincere religious beliefs and business practices arising from those beliefs should be protected as religious exercises, even when the larger part of its

---

59 Donna T. Chen & Ann E. Mills, *Addressing Ethical Commitments When Professionals Partner with Organizations*, 39 MCGEORGE L. REV. 719, 722 (2008).

60 See *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1122 (10th Cir. 2013).

61 *Id.* at 1137 (recognizing Hobby Lobby’s “explicit Christian mission”).

62 526 N.E.2d 894 (Ill. App. 1988).

63 *Id.* at 899.

64 See Michael G. Honeyman, Jr., Note, *Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does It Amount to Establishment of Religion?*, 97 COLUM. L. REV. 437, 442 (1997).

65 See Rienzi, *supra* note 50, at 64 (“The better course is to protect religious exercise wherever it occurs regardless of identity, ownership structure, or tax status of the party engaged in the exercise. In truth, this is the only course permitted under the Free Exercise Clause and federal religious freedom laws.”).

66 See *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377, 388 (3d Cir. 2013) (“Our conclusion that a for-profit, secular corporation cannot assert a claim under the Free Exercise Clause necessitates the conclusion that a for-profit, secular corporation cannot engage in the exercise of religion.”), *rev’d sub nom.*, *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014).

“secular” endeavors are subject to regulation. Therefore, even though Hobby Lobby may assert a religious exemption for the contraception mandate, it will not necessarily be able to hire on a religious basis per Title VII, or enjoy tax exemption as a religious organization.

*B. Nonprofit Status Should Not Be a Dispositive Factor in the Quasi-Religious Characterization*

An often-decisive factor in courts’ classification of an organization as religious or secular is whether the organization is a nonprofit entity.<sup>67</sup> A policy that identifies profitmaking as incompatible with religion is a controversial value judgment that lies with Congress, not the courts.<sup>68</sup> Additionally, that policy ignores the ethical conflicts ever-present in business practice—“profit” is never obtained free of value judgments and temptations. As white-collar crimes are on the rise,<sup>69</sup> corporate commitments to ethical practices should be acknowledged as indispensable aspects of the business endeavor. These corporate commitments to ethical practices will subsequently result in benefits to stockholders, as well as society in general.<sup>70</sup> A corporation’s adherence to moral or ethical principles plays a role in the organization’s public reputation and goodwill, perhaps even affecting its status in the stock market. For instance, the FTSE KLD Catholic Values 400 Index evaluates large corporations’ adherence to moral and ethical principles, presenting information to

---

67 See *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass’n*, 503 F.3d 217, 226 (3d Cir. 2007) (looking to for-profit status among many other factors in considering whether an organization is religious for purposes of Title VII exemption). In *Hobby Lobby Stores, Inc. v. Sebelius*, the court responded negatively to the government’s citation of *Hosanna-Tabor* as evidence that religious organizations must be nonprofit entities—the Tenth Circuit explained that “*Hosanna-Tabor* was not deciding for-profit corporations’ Free Exercise rights, and it does not follow that the Congress which enacted RFRA would have understood the First Amendment to contain such a bright-line rule.” 723 F.3d 1114, 1136 (10th Cir. 2013).

68 Cf., e.g., *Matthew 25:14–30* (describing, in the parable of the talents, a master becoming angry with a servant to whom money was entrusted after the servant did not invest the money while the master was away).

69 See Mary Kreiner Ramirez, *Criminal Affirmance: Going Beyond the Deterrence Paradigm to Examine the Social Meaning of Declining Prosecution of Elite Crime*, 45 CONN. L. REV. 865, 865 (2013) (arguing that the lack of prosecutions in the wake of recent financial scandals has created “perverse incentives” for “even more lawlessness”).

70 Cf. Richard W. Garnett, *The Righteousness in Hobby Lobby’s Cause*, L.A. TIMES, Dec. 5, 2013, <http://www.latimes.com/opinion/commentary/la-oe-garnett-obamacare-contraception-surpreme-cou-20131205,0,2899.story#ixzz2mcEverlh> (“At a time when we talk a lot about corporate responsibility and worry about the feeble influence of ethics and values on Wall Street decision-making, it would be strange if the law were to welcome sermonizing from Starbucks on the government shutdown but tell the Greens and Hobby Lobby to focus strictly on the bottom line.”).

Catholic investors who seek equity in corporations that align with the Church's teachings.<sup>71</sup>

A corporation's for-profit status should not preclude it from enjoying rights of religious exercise. Although courts often elevate nonprofit status, giving it vital consideration toward an organization's religious standing for statutory religious exemptions<sup>72</sup>—that approach inexplicably makes tax exemption a stand-in for religious character. It is an arbitrary boundary.<sup>73</sup> Although for-profit status may be a valuable element in considering whether an organization is religious, quasi-religious, or secular, it should not be dispositive.<sup>74</sup>

### CONCLUSION

This Comment proposed that quasi-religious organizations should be recognized and afforded quasi-religious rights where there is a logical and meaningful connection to those rights, as demonstrated by the character of the organization. Doing so would help to resolve the dichotomy between religious and secular corporations without unduly favoring religion or secularism.<sup>75</sup> This framework is increasingly more necessary in American culture given the overlap of religious and secular aspects in many organizations. The *Hobby Lobby* decision failed to officially classify the organization's religious status, allowing confusion in this area of the law to fester. Recognizing a middle ground of "quasi-religious" status could help to avoid or eliminate contradictory classifications, resulting in the safeguarding of genuine religious beliefs where appropriate.

---

71 See generally *MSCI USA Catholic Values Index*, MSCI RESEARCH (July 2010), [http://www.msci.com/resources/products/indexes/thematic/esg/MSCI\\_USA\\_Catholic\\_Values\\_Index\\_Methodology\\_Jul10.pdf](http://www.msci.com/resources/products/indexes/thematic/esg/MSCI_USA_Catholic_Values_Index_Methodology_Jul10.pdf).

72 See *supra* Part I.

73 *Spencer v. World Vision, Inc.*, 633 F.3d 723, 745–46 (9th Cir. 2011) (Kleinfeld, J., concurring) ("There is not much congruence between nonprofit status and the free exercise of religion. . . . Nonprofit status affects corporate governance, not eleemosynary activities.").

74 See Rienzi, *supra* note 50, at 111 (arguing that making money does not preclude for-profit businesses from engaging in protected religious exercise).

75 See *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 703 (1994) ("Government should not prefer one religion to another, or religion to irreligion."); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.").