Juliann Phan

Professor Walker

GOVT 301: Essay

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The majority decision is persuasive because it effectively portrays the justices' use of proper methods of statutory interpretation to interpret the case of Burwell v. Hobby Lobby.

Lief H. Carter and Thomas F. Burke state, "The history of statutory interpretation in the twentieth century is series of attempts to respect the supremacy of legislation policymaking by devising some technique for keeping judges within their proper bounds."[1] It can also be understood that statutory interpretation intertwines the workings of judges and legislatures. When a case involve statutes, it is important to incorporate and make use of statutory interpretation to better resolve what the words mean. Further, Carter and Burke say, "Judges who approach statutes wisely know that they cannot treat the words as a series of Webster's definitions strung together. They know words gain meaning not from dictionaries but from context."[2] Statutory interpretation tries to solve the ambiguity of a case and give resolution through the examination and explanation of words in context. Judges may also have a case where legislation has never touched before, which is called statutory interpretation in the first instance, so the importance of the words in the cases must be reviewed and reasoned carefully for consideration. Statutory interpretation is powerful in the sense that it can bring the literal sense of a word into a different meaning that suits the case. The judicial opinion must have good statutory interpretation to better facilitate a case and have a purpose-oriented approach.

[1] RIL, page 72
[2] RIL, page 74

Additionally, judges must be sensible when they encounter a case using statutory interpretation, or else the language will not be interpreted effectively. It is valuable in judicial decision to use statutory interpretation properly to decide the meaning of the keywords in a case. They will review the words on how they are used commonly in everyday language and speech in a case law approach. According to Carter and Burke they state, "Interpreting words in isolation, then, is a danger because it leads judges to believe that they have thought a problem through to its end when they have only reached its beginning."[3] Statutory interpretation is valuable in the sense that isolated words cannot determine its meaning in a case. There is a distinct understanding that judges should not interpret words singularly. It can jeopardize the case possibly giving not resolution—maybe even sparking a bigger problem. Judges are to examine the entirety of a case and review the context of certain keywords to make a trustworthy judgment.

In the majority opinion, for *Burwell v. Hobby Lobby*, statutory interpretation is persuasive because the usage of the word "person." The justices raise the argument that the for-profit company is protected by RFRA, because of the word usage "person." Statutory interpretation is used in this case effectively, because it refers to RFRA and the Dictionary Act. The majority opinion states, "Under the Dictionary Act, "the wor[d] 'person' . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."[4] Meaning, the term "person" supports the Greens and the choices they make in their company, which include health insurance benefits and protecting their religious liberty. According to the statutory interpretation of this case, the employees are not classified under "person" because they are only employed, they do not hold profit within the company (like the

[3] RIL, page 78
[4] *Burwell v. Hobby Lobby,* page 5

owners or share holders), so they cannot make the decision in regards to what the company's health insurance should provide its employees.

The majority opinion is trustworthy because it effectively produces proper use of case facts & social background facts to interpret the case of Burwell v. Hobby Lobby.

According to Carter and Burke, they argue case facts and social background facts as two of the building blocks in the elements of legal reasoning. Carter and Burke explain case facts best by saying, "These are facts about the dispute between the parties in the case as developed in a trial."[5] Whereas, the second element of legal reasoning, social background facts, is described as, "Social background facts are conclusions about the world independent of the specific case facts that parties are disputing."[6] Both are building blocks that are central to a court decision; after all, it's the facts are preliminary insights to cases. It's difficult for case facts to be misinterpreted in the courtroom by a jury or for the facts to be announced falsely by a judge. With social background facts, it's how we understand and acknowledge how the world should function—fairly, with good reasoning. Case facts and social background facts are separate in definition, but work closely together because they are elements of legal reasoning.

Case facts and social background facts are valuable when the elements of legal reasoning are placed into judicial decisions. The facts during trial and the social backgrounds facts are there to conduct fair and reasonable decisions. The two work closely together because they push juries to come to a decision based on what is evident—nothing pertaining to outside the court, such as obscure, controversial and sometimes false facts from the media. Brandon L. Garrett discusses the media's affect on jeopardizing case facts and social background facts saying, "Likewise,

[5] RIL, page 11
[6] RIL, page 11

studies have shown that jurors are far more likely to convict in cases in which there is pretrial publicity."[7] Garret may specialize in criminal law in his book, but he raises a point that the media can adversely affect the jurors, and perhaps a judge's decision because of pretrial publicity on case facts or social background facts about the plaintiff or defendant. The case facts and social background facts are valuable because they remain in the court room to be examined; they do not change, and they are the variable in the midst of the case that needs to remain credible, especially at the appellate court level. Media publicity can try to alter the case facts and social background facts, but ultimately, the jurors and judges must reflect solely on the facts given in the court room to decide the case.

In the majority opinion for *Burwell v. Hobby Lobby*, the case facts given and social background facts are how the Greens own a for-profit company, family members who preside the business sign a pledge stating they will hold Christian beliefs, close on Sundays to observe what is their Sabbath day, refuse to promote alcoholic marketing, donate to Christian ministries and missionaries, and advertise in newspapers saying "know Jesus as Lord and Savior."[8] The case facts are adequate in showing how the majority opinion is trustworthy in analyzing case facts and social background in regards to the Greens. The Court recognizes the Greens willingness and diligence in partaking in Christian beliefs. The justices' use of case facts and social background facts prove to be strong building blocks in the majority opinion.

The majority decision is not persuasive because it is weak in portraying the justices' use of proper methods of constitutional interpretation to interpret the case of Burwell v. Hobby Lobby.

[7] CTI, page 150
[8] *Burwell v. Hobby Lobby*, page 4

Carter and Burke explain constitutional interpretation as, "We need security of believing we are one political community with a continuous history, so we say we are living under one Constitution when in fact we work hard to change out interpretation of it to legitimate contemporary realties."[9] Carter and Burke are explaining that constitutional interpretation is being done all the time to fit the needs of contemporary cases, like *Burwell v. Hobby Lobby*, to successfully interpret cases using the Constitution. The Constitution remains constant, but court room cases are dynamic and need the attention of the Constitution to be affirmed; thus, giving power to constitutional interpretation.

In *New York Times v. United States*, Justice Hugo Black writes in the majority opinion, "Now, for the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the Government can halt the publication of current news of vital importance to the people of this country."[10] The case argues freedom of speech, or press, and Black explains that the First Amendment should not be read exactly as is, because with a technicality—government can in fact, desist from publishing news to the public to know about certain events. In this case, it provides a solid example of how a justice wrote in a majority opinion how the First Amendment in the Constitution holds merit, but has to be interpreted differently in this case. This makes a decision more trustworthy, because Justice Black is considering constitution interpretation as a main factor, but not discounting the understanding the Constitution is powerful how it is written. This is closely related to *Burwell v. Hobby Lobby* because the justices utilize constitutional interpretation for the cases to be valid.

[9] RIL, page 113
[10] MIPTC, page 177 (*New York Times v. United States*)

In *Burwell v. Hobby Lobby*, the justices do not focus on constitutional interpretation, because they heavily rely on statutory interpretation. The case does not use constitutional interpretation; rather it hinders the use of it where it could be done. RFRA prohibits the government from burdening a person's religious freedom, but in this case—"person's" are considered the Green's, the owners of Hobby Lobby. In the majority opinion it states, "By enacting RFRA, Congress went far beyond what this Court has held is constitutionally required. Is there any reason to think that the Congress that enacted such sweeping protection put small-business owners to the choice that HHS suggests?"[11] Congress is suppose to provide the protection of human beings with RFR and HHS as mentioned in the majority opinion, but it's being interpreted as only the Greens and Hanhs who can benefit from it. The majority opinion is faulty and weak to not have the Federal Government impose acts that have been put in place to for-profit companies. It's important to note in the majority opinion it states, "The Court therefore held that, under the First Amendment, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest."[12] The majority opinion also does not accurately interpret the First Amendment in this case, because of RFRA and HHS.

The dissent is trustworthy because it effectively portrays Justice Ginsburg's use of proper methods of matching with incorporation of precedent of the law to interpret the case of Burwell v. Hobby Lobby.

Carter and Burke describe precedent as, "For starters, a precedent contains the analysis and the conclusion reached in an earlier case in which the facts and the legal question(s)

[11] *Burwell v. Hobby Lobby*, page 4-5
[12] *Burwell v. Hobby Lobby*, page 2

resemble the current conflict a judge has to resolve."[13] A reason to consider precedent as an important building block of judicial decision is because it concentrates and relies on the history and past decisions made in courts, especially in the Supreme Court. Primarily, appellate courts are known to form legal precedents. It's important to note, that trial cases do not directly construct precedents; rather, judges in courtrooms decide and reinforce previous precedents that pertain to the current case. Legislatures write laws, but the Court write decisions to articulate legal principles and precedents.

In *Edwards v. Aguillard*, a good judicial decision is practiced through precedent in a 1980's case with a topic that is still rather controversial. In *Edwards v. Aguillard*, Susan Epperson won a Supreme Court ruling against teaching evolution that violated the First Amendment; however, in 1987 the Supreme Court went in favor of Don Aguillard, making the claim that states have no control in changing the science curriculum in favor of religion. Precedent is valuable in this case because it shows the changes done from a prior case. Epperson proved that evolution interferes with religious beliefs, and the Supreme Court agreed; however, Aguillard was able to persuade the Supreme Court to, "…restructure the science curriculum to conform with a particular religious viewpoint."[14] Resulting in the U.S. Supreme Court ruling the state of Louisiana's "Creationism Act" was unconstitutional.

In the dissent for *Burwell v. Hobby Lobby*, Justice Ruth Bader Ginsburg argues that Congress previously created the ACA saying, "…the ACA provides furthers compelling interests in public health and women's well being. Those interests are concrete, specific, and demonstrated by a wealth of empirical evidence."[15] Congress created it to protect the public

[13] RIL, page 26
[14] MIPTC, page 75 (*Edwards v. Aguillard)*
[15] *Burwell v. Hobby Lobby*, page 16

health of women, but in this case it's disregarded, because if the owners of Hobby Lobby were to adhere to ACA and provide contraceptive coverage—it would be a financial burden; thus, involving precedent. The dissent is strong in explaining how the result being unprecedented allows the Supreme Court to grant religious exemption to the Greens. It could be argued that this is troubling for later in the Court because it doesn't follow what Congress put in place with ACA.

The dissent is trustworthy because it effectively portrays Justice Ginsburg's use of proper methods of matching with widely shared social values of the women employees to interpret the case of Burwell v. Hobby Lobby.

Carter and Burke explain that widely shared values must be taken into consideration by stating, "This is not an invitation for judges to recite their own values nor to pick the values they deem most worthy. Instead, they must try to persuade communities they have considered widely shared values that ordinary members of the community can see embedded in the dispute."[16] It is important to understand what a community values to better interpret their needs, especially with those in employment. If judges do not take into consideration the current, most up to date values, they are not adhering to the social values needs. A judge must remain objective and not have their decision be swayed because of their own personal values; moreover, they cannot discipline a community with judicial decisions because they do not share the same values as the judge.

For example, in *Loving v. Virginia*, which is primarily a case violating due process and equal protection can be interpreted as a social value case too. The case is about an interracial couple who attempt to have their marriage approved by the Supreme Court. The Lovings share

[16] RIL, page 12

the value of marriage, a common value many couples seek. The petitioner, Philip K. Hirschkop makes his concluding claim, "They [the antimiscegenation law] robs the Negro race of its dignity, and only a decision which will reach the full body of these laws of the state of Virginia will change that."[17] Hirschkop states that Virginia's antimiscegenation law is violating specifically, the African American race, of their self-respect by not allowing them to marry interracially; thus, violating the Lovings desire for marriage, which is a shared value. This case portrays how judicial decision respected a widely shared social value that essentially paved the way for other couples to be wed, without the question if their marriage is constitutionally accepted because of race.

In the dissent, it mentions from *Planned Parenthood of Southeastern Pa. v. Casey* that "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives,"[18] as well as noting, "In the Court's view, RFRA demands accommodation of a for-profit corporation's religious beliefs no matter the impact that accommodation may have on third parties who do not share the corporation owners' religious faith—in these cases, thousands of women employed by Hobby Lobby."[19] The dissent is verifying that the widely shared social values amongst women are to be taken into account, primarily because a majority of their employees are women. It makes the claim, regardless of what the corporation owners' religious faith and values, they cannot deprive woman of their ability to control their own reproductive organs. The dissent is persuasive in understanding social values do have a part in *Burwell v. Hobby Lobby*.

[17] MIPTC, page 281 (*Loving v. Virginia)*
[18] *Burwell v. Hobby Lobby*, page 12
[19] *Burwell v. Hobby Lobby*, page 12

The dissent is weak because it does not effectively persuade the use of recognition of the value of incremental development of the law to interpret the case of Burwell v. Hobby Lobby.

Carter and Burke describe incremental development of the law by case-by-case approach tying in with common law by saying, "Constitutional decisions posses all the characteristics of the common-law tradition. No one decision permanently sets the course of law. The process is a thoroughly incremental one in which, case by case, new facts and new arguments pro and con repeatedly come before the courts."[20] The incremental development of law from other cases can determine future cases. The importance of incremental development shows the justices in Court are implementing previous cases and their precedent in judicial decisions. Good use of incremental development of the law and using case-by-case approaches can further a case to its resolution and help alleviate future case issues.

In 1963, Abe Fortas represented the poor and imprisoned man, Clarence Earl Gideon. The case involved the issue where in criminal cases defendants unable to afford an attorney could have a court appointed one under the Sixth Amendment to provide counsel; which was taken to the Supreme Court. During the trial, Fortas argues on a prior case, *Betts v. Brady*, a case that enacted law denying counsel to indigent defendants when prosecuted by a state. Fortas explained straightforwardly, "I think that *Betts* against *Brady* was wrong when decided; I think time has illuminated that fact. But I think that perhaps time has also done a service, because time has prepared the way so that the rule, the correct rule, the civilized rule, the rule of the American constitutionalism, the rule of due process, may now be stated by this Court."[21] Fortas goes to

[20] RIL, page125
[21] MIPTC, page 192 (*Gideon v. Wainwright*)

lengths to explain how Betts v. Brady should be uprooted. What is important to note is that the Court decided to overrule *Betts v. Brady* because of Gideon's case. *Gideon v. Wainwright* begins to be important in showing the value of incremental development in law in judicial decisions by showing how a previous case becomes overruled.

In the dissent, it mentions *United States* v. *Lee,* a case about an Amish man who withheld Social Security taxes from his employees because it would violate the Amish faith. This case being brought in the dissent is weak, because it does not provide the persuasion that incremental development in law could be used; rather, the dissent merely provides this case as filler. The dissent could have been stronger in using a different case to display incremental development in law at a case-by-case approach, but it says, "The statutory scheme of employer-based comprehensive health coverage involved in these cases is surely binding on others engaged in the same trade or business as the corporate challengers here, Hobby Lobby and Conestoga."[22] Using this case gives little to no substance in defending the notion of employees deprived of the preventive care with contraceptives in *Burwell v. Hobby Lobby.*

[22] *Burwell v. Hobby Lobby*, page 18

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