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March 25, 2014: What's Going to Happen in the Hobby Lobby Case?

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3/25/2014—I don't look at Supreme Court cases the way others do. Decisions have nothing whatever to do with precedent. Arguments and briefs follow the law and then the Justices change the law. That is not a criticism. It may be what the Supreme Court is for. In Hobby Lobby, a for-profit, closely held business is trying to use the Religious Freedom Restoration Act (RFRA) to avoid the contraception mandate in the Affordable Care Act. I am sure Hobby Lobby will win. I say this for the simplest of reasons. First, the Justices already have said that corporations are like people. That is easy to hold in this case because the owners are so closely identified with their businesses. Hobby Lobby is not a publically owned shareholder company. Second, RFRA is a remedial law. That kind of law is usually read broadly. The legislature is trying to relieve religious people of a burden. Any error should be made on the side of the claimant. In theory, RFRA is just a statute that can be amended if Congress decides that the relief went too far. As to the catastrophe that might ensue if for profit businesses get to claim religious exemptions and the burden this may put on employees, I can see Justice Scalia writing the following: "In *Employment Division v. Smith*, this Court warned that to provide general religious exemption for neutral, generally applicable laws would threaten 'chaos.' In passing RFRA, Congress rejected the Court's view. It is not now the Court's role to restrict the result Congress sought to accomplish in the name of that same fear of chaos."