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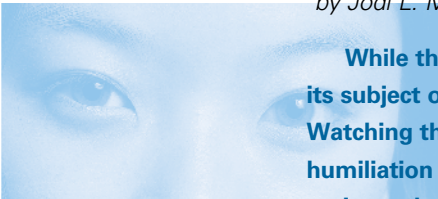


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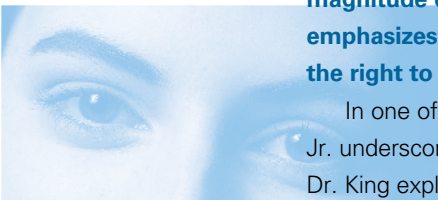
A NEWSLETTER ABOUT LAW AND DIVERSITY

## Voting Rights 50 Years Later—What's Changed?

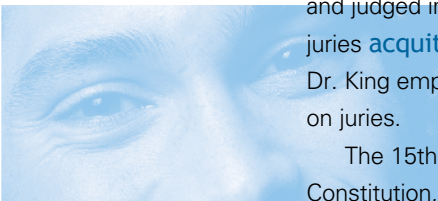
by Jodi L. Miller



**While the recent film *Selma* is set in 1965, its subject of voting rights couldn't be timelier. Watching the struggles depicted in the film—the humiliation suffered by those who attempted to register, the beatings of peaceful protesters and the murders of innocent people—brings home the magnitude of the sacrifices made by so many and emphasizes how important attaining and keeping the right to vote is.**



In one of the film's scenes, Dr. Martin Luther King Jr. underscores that point to President Lyndon Johnson. Dr. King explains that even when white men are held accountable for their crimes against minority protesters and activists and judged in a court of law, all-white juries **acquitt** them. Only registered voters, Dr. King emphasizes, are allowed to serve on juries.



The 15th Amendment to the U.S. Constitution, **ratified** in 1870, guaranteed all men the right to vote "regardless of race, color or previous condition of servitude." The 19th Amendment, adopted in 1920, gave all women the right to vote. The reality in the 1960s South, however, was to keep African Americans from casting a ballot or even registering to vote. For example, in Mississippi at that time 45 percent of the state's population was African American, yet only five percent were registered to vote. The methods used to **disenfranchise** African American voters were intimidation, violence, literacy tests and poll taxes. Poll taxes, fees paid for voter registration, could be as much as

\$1.50 or more, a substantial amount of money to the working class and poor of the South. While the 24th Amendment to the U.S. Constitution, ratified in 1964, outlawed poll taxes federally, the practice would not be struck down as unconstitutional at the state level until the 1966 U.S. Supreme Court decision in *Harper v. Virginia Board of Elections*.

### The right to cast a ballot

The cornerstone of Dr. King's voting rights campaign was three planned marches [>continued on page 6](#)

## Religious Freedom or the Right to Discriminate?

by Phyllis Raybin Emert

**Marriage equality has been one of the fastest moving issues in recent years. In October 2013, New Jersey became the 14th state to render same-sex marriage legal. Just 14 months later, in January 2015, Florida became the 36th state to legalize it.**

According to the website [gaymarriage.procon.org](http://gaymarriage.procon.org), of the states that allow same-sex marriage, 25, including New Jersey, were decided via the courts. Eight states made same-sex marriage legal by **statute** through state legislatures and three states legalized it by popular vote. Of the 14 states that still ban same-sex marriage, 13 of them (Alabama, Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Dakota, Ohio, South Dakota, Tennessee and Texas) do so by constitutional amendment and state law. Nebraska bans same-sex marriage by constitutional amendment only. In January 2015, a federal district court ruled that Alabama's same-sex marriage ban is unconstitutional and in February 2015 the U.S. Supreme Court refused to hear an appeal in the case, technically making Alabama the 37th state [>continued on page 4](#)

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# Can a Corporation Invoke Religious Freedom?

by Cheryl Baisden

**In June 2014, the U.S. Supreme Court decided *Burwell v. Hobby Lobby Stores, Inc.*, and, in effect, for the first time gave some corporations—those owned privately, known as closely held corporations—certain rights previously limited to individuals.**

"It is described as a 'landmark ruling' because, for the first time, the Court recognized a for-profit corporation could claim religious beliefs," says John M. Bowens, a Florham Park attorney who practices in the areas of employment law and civil rights litigation.

The case involved a chain of arts and crafts stores owned by an evangelical Christian family. The Greens run their more than 600 Hobby Lobby stores, which employ more than 13,000 people, according to their religious beliefs, closing on Sundays and opening staff meetings with Bible readings. It was this commitment to their faith, they say, that led them to file a lawsuit against the U.S. government challenging a requirement under the Affordable Care Act (ACA) that large for-profit companies cover the cost of certain contraceptives in their health insurance plans. Failure to provide the free medical benefit would result in hefty fines of \$100 per employee per day.

The Greens contend that four of the 20 Federal Drug Administration-approved contraceptives—two forms of intrauterine devices (IUDs) and two emergency contraceptives—destroy fertilized eggs, which is akin to abortion. As a result, they sought to exempt their corporation from covering them on religious grounds. The ACA and science experts classify these contraceptives differently.

"Abortifacient has a precise meaning in the medical and scientific community and it refers to the termination of a pregnancy," the American College of Obstetricians and Gynecologists said in a legal brief submitted in support of the government's position in the case. "Contraceptives that prevent fertilization from occurring, or even prevent implantation [of a fertilized egg] are simply not abortifacients,

regardless of an individual's personal or religious beliefs..."

In other words, the four methods of birth control that the Greens object to are not akin to abortion. The FDA, the National Institutes of Health and the American Medical Association all agree that these forms of birth control block the fertilization of an egg, preventing pregnancy. They are not "abortion-inducing drugs" and would not end "an active pregnancy."

Even Dennis Sullivan, a staunch abortion opponent and director of the Center of Bioethics at Christian Cedarville University, acknowledges that the contraceptives in question in the Hobby Lobby case do not cause abortions, and disagrees with the Greens' position. "[O]ur claims of conscience should be based on scientific fact, and we should be willing to change our claims if the facts change," he told *Christianity Today*.

Regardless of the scientific facts, the Greens stood behind their claim that their First Amendment right to religious freedom was being violated under the ACA.

"By being required to make a choice between sacrificing our faith or paying millions of dollars in fines, we essentially must choose which poison pill to swallow. We simply cannot abandon our religious beliefs to comply with this mandate," David Green said in a press release when the lawsuit was filed.

## The intersection of two laws

Rather than dwell on the science of the argument, the Court considered the constitutional issue—do corporations have the right to religious protection based on the beliefs of their owners?

The Greens believe they do: "We believe that Americans don't lose their religious freedoms when they open a family business," Barbara Green told reporters following her testimony before the Court.

In a five to four ruling, a divided U.S. Supreme Court agreed.

"The case involved an intersection of two laws: The Religious Freedom Restoration Act

(RFRA), which requires courts to closely scrutinize certain laws that make it difficult for a person to exercise their religion, and the new healthcare law, the Affordable Care Act (ACA), which required employer health insurance plans to cover a number of contraceptive methods,” explains Bowens.

The challenge before the Court, however, was that Hobby Lobby isn’t a “person,” it’s a corporation. The government, other business entities and even many religious organizations were not in favor of regarding the Greens’ corporation as an entity made up of people entitled to exercise their personal religious beliefs.

Incorporation laws give business owners a range of protections from personal legal liability specifically because they are viewed as corporate entities, and not individuals. As a result, business owners voiced concern that a ruling in the Greens’ favor would reduce those protections.

In addition, many spiritual leaders had problems with the idea of corporations being given religious freedoms as well. “I’m a religious person, and I think my tradition is a little different from an arts and crafts store,” Frederick Gedicks, a Mormon legal scholar from Brigham Young University, said at a forum sponsored by the American Constitution Society.

### The key to the case

The RFRA was the key to the *Hobby Lobby* case. Passed in 1993, the law was drafted in response to a 1990 U.S. Supreme Court ruling that allowed Oregon to deny unemployment benefits to two Native Americans who were fired for using peyote, which was illegal in the state at the time, for a religious ceremony. The 1990 Court decision held that a person’s religious beliefs were not sufficient grounds to break laws that are considered neutral or generally applicable. In response to the ruling, the RFRA was passed to

protect an individual’s right to exercise his or her religion, even if it means making exceptions to the law.

In essence, the RFRA states the government “shall not substantially burden a person’s exercise of religion” unless it uses the “least restrictive means” to achieve it.

To win their case under the RFRA, the Greens set out to convince the Court that they were entitled to those same protections as individual owners of a company, and that the ACA’s



contraceptive requirement posed a substantial burden on those beliefs.

The government argued that the RFRA was designed to protect individuals, not corporations, and that the ACA’s contraception rules did not place a substantial burden on the Greens. The company, not its owners, provide employees with health insurance; and the employees, not the owners, decide which medical services to use, according to the government.

“If your argument were adopted...then you would see religious objectors come out of the woodwork with respect to all of these laws,” Justice Elena Kagan told Hobby Lobby lawyer Paul Clement during the case’s March 2014 oral arguments. She added, “So another employer comes in, and that employer says, ‘I have a religious objection to sex discrimination laws’; and then another employer comes in, ‘I have a religious objection to minimum wage laws’; and then another, family

leave; and then another, child labor laws.” New York Representative Jerrold Nadler, who was involved in drafting the RFRA, supported Justice Kagan’s position. In a press statement, Nadler said, “When we passed RFRA, we sought to store—not expand—protection for religion. We kept in place the core principle that religion does not excuse for-profit businesses from complying with our laws. Religious belief did not excise restaurants or hotels from following our civil rights laws in the 1960s or an Amish employer from paying into the Social Security system in the 1980s. It should not be expanded now to allow for-profit companies to override the health care choices of female employees.” He added: “Bosses should not be able to make health care decisions about the reproductive choices of their employees. No matter how sincerely held a religious belief might be, for-profit employers...cannot wield their beliefs as a means of denying employees access to critical preventive health care services.”

### The ruling

In defense of the case, Hobby Lobby lawyers pointed to a relatively recent precedent—the 2010 Supreme Court decision in *Citizens United*, which granted corporations the First Amendment rights of individuals when it came to making political contributions. This same argument was cited by the U.S. Court of Appeals for the 10th Circuit in its ruling favoring Hobby Lobby, which led the case to the U.S. Supreme Court. In a divided opinion, the appeals court ruled, “We see no reason the Supreme Court would recognize constitutional protection for a corporation’s political expression but not its religious expression.”

The Court’s majority agreed, finding the RFRA’s religious protections extend to “the humans who own and control” closely held companies, and that the contraceptive

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## Religious Freedom *continued from page 1*

to legalize same-sex marriage. In defiance of the federal district court's ruling, however, at press time the chief justice of the Alabama Supreme Court ordered that judges not issue same-sex marriage licenses in the state.

The U.S. Supreme Court may decide the constitutionality of same-sex marriage once and for all later this year. In January 2015, the Court accepted (and combined) four cases from Ohio, Kentucky, Tennessee and Michigan dealing with same-sex marriage bans that were upheld by the Sixth Circuit Court of Appeals. Oral arguments are scheduled for April, with a decision expected before the Court's term ends in June.

The fast movement on the issue has created economic opportunities for some in the bridal industry and a crisis of conscience for others who oppose same-sex marriage on religious grounds. So, what happens when your religious beliefs conflict with changing attitudes on an issue and ultimately with laws against discrimination?

### Freedom of expression vs. discrimination

In 2006, the Christian owners of Elane Photography refused to provide wedding pictures for a same-sex New Mexico couple, claiming it would violate their religious beliefs. The couple filed a complaint with the New Mexico Human Rights Commission saying that the photographer's refusal "violated the state's anti-discrimination law as it prohibits for-profit businesses to decline services to customers based on their sexual preference." The court agreed, saying it is considered a violation, "in the same way as if it had refused to photograph a wedding between people of different races."

Lawyers for Elane Photography appealed the ruling noting that it would force them "to create expression" in violation of their religious beliefs and pointed out the photographers gladly provide other services for gays and lesbians, just not wedding photography. The New Mexico State Supreme Court ruled against the photographers, stating, "Courts cannot be in the business of deciding which businesses are sufficiently artistic to warrant exemptions from anti-discrimination laws."

While New Mexico Supreme Court Justice Richard Bosson concurred with the case's [majority opinion](#), he wrote, "The Huguenins [owners of Elane Photography] are not trying to prohibit anyone from marrying. They only want to be left alone to conduct their photography business in a manner consistent with their moral convictions. Instead they are compelled by law to compromise the very religious beliefs that inspire their lives. Though the rule of law requires it, the result is sobering."

In April 2014, the U.S. Supreme Court declined to hear an appeal from Elane Photography, so the ruling of the New Mexico State Supreme Court stands.

### In the name of religious freedom

To address issues like the ones that came to light in the New Mexico case, many state legislatures are attempting to pass what are called "religious freedom bills." Opponents of these bills call them "license to discriminate bills."

Daniel Mach, director of the American Civil Liberties Union (ACLU) Program on Freedom of Religion and Belief, told the Southern Poverty Law Center's (SPLC) Hatewatch blog, "This wave of legislation does seem to be a reaction to an expansion of LGBT (lesbian, gay, bi-sexual and transgender) rights." Mach stated these religious freedom bills would "empower businesses to invoke religion to discriminate."

According to SPLC, a civil rights organization based in Alabama, Alliance Defending Freedom (ADF) is behind the recent wave of legislation. ADF is a legal organization that advocates for Christians to "freely live out their faith," and according to SPLC, was instrumental in the passage of recent anti-gay laws in Uganda, which criminalize homosexuality.



Much of the religious freedom legislation in the U.S. is based on the 1993 Religious Freedom Restoration Act (RFRA), a federal law which states the "government shall not substantially burden a person's exercise of religion." The law originally protected Native American sacred religious sites and ceremonial practices, including the use of

[peyote](#). In 1997, the U.S. Supreme Court struck down the RFRA with respect to its applicability to individual states, although not federally. (For more on the RFRA, see related story on the Hobby Lobby decision in this issue.)

Many states have passed their own versions of RFRA, focusing on the institution of marriage. It is generally accepted that clergy or houses of worship are exempt from participation in same-sex marriage if it is against their faith. The language in religious freedom bills, however, allow businesses and individuals to invoke their religious beliefs to avoid providing services to same-sex couples.

### The debate

In an article for SPLC's Hatewatch blog, journalist David Neiwert wrote, "The most problematic aspect of the 'religious freedom' legislation that has been proposed so far is how vague



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its language is and how broadly it can be applied. Each of the bills so far applies 'religious freedom' not just to the issue of providing services to gays and lesbians, but conceivably to every kind of prejudice under the sun. People could refuse to serve interracial couples," Niewert wrote, "or for that matter anyone of another religion or ethnicity or who has [a] disability." If someone belonged to a radical whites-only religious movement, "one could conceivably use the laws to refuse to provide services to Jews or blacks."

Conservative Christian groups are working with Republican lawmakers to promote these religious freedom bills in many states. Brian Walsh, executive director of the American Religious Freedom Program (ARFP), an organization devoted to promoting and protecting religious freedom for all faiths, told *Mother Jones*, "Our goal...has been to try to find the right balance between fully protecting religious freedom and other civil liberties so that both sides of the marriage debate can coexist harmoniously."

Ryan T. Anderson, who writes about marriage and religious liberty for The Heritage Foundation, a conservative research organization that supports religious freedom bills, wrote an editorial for its online newsletter, *The Daily Signal*, that took issue with a *New York Times* editorial which was critical of religious freedom bills.

"What the *Times* dubs 'discrimination' is in actuality simply liberty. Liberty isn't about acting only in ways that *The New York Times* approves of," Anderson wrote. "Liberty protects the rights of citizens even to do things we might personally disagree with... While the government must treat everyone equally, private actors are left free to make reasonable judgments and distinctions—including reasonable moral judgments and distinctions—in their economic activities. Not every florist need provide wedding arrangements for every ceremony. Not every photographer need capture every first kiss. Competitive markets can best harmonize a range of values that citizens hold."

### Grand Canyon-sized divide

In February 2014, Arizona bill SB 1062, passed in both houses of the state legislature. The text of the bill reads: "'exercise of religion' means the practice or observance of religion, including the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief..." For the purposes of the bill "person" included any individual, association, partnership, corporation, church, religious assembly or institution, estate, trust, foundation or other legal entity.

In a press statement, Anthony D. Romero of the ACLU wrote, "This bill isn't about God or faith. There are already laws on the books in Arizona and amendments within our Bill of Rights protecting religious freedom. What SB 1062 does is allow private individuals and businesses to use religion to discriminate, sending a message that Arizona is intolerant and unwelcoming."

The bill had the support of many conservative and Christian religious groups; however, civil rights groups, the state's two senators, the Chamber of Commerce, Apple Computers, American Airlines, and other prominent businessmen opposed it.

According to *The Daily Beast*, Barry Broome, president and CEO of the Greater Phoenix Economic Council, warned Arizona Governor Jan Brewer "of costly litigation, if the bill becomes law, including the loss of jobs and a potential threat to next year's Super Bowl [now since played February 1, 2015 in Phoenix].

Losing the Super Bowl could have cost the state millions of dollars. Arizona had already lost the Super Bowl before in 1993, when Arizona voters elected not to recognize Dr. Martin Luther King Jr. Day as a national holiday and the National Football League withdrew plans to hold the big game there.

Perhaps fearing a repeat of what happened in 1993, Governor Brewer vetoed SB 1062. At a press conference on February 26, 2014, Brewer stated, "The bill is broadly worded and could result in unintended and negative consequences...SB1062 has the potential to create more problems than it purports to solve. It could divide Arizona in ways we cannot even imagine and no one would ever want. Religious liberty is a core American and Arizona value, so is non-discrimination...Let's turn the ugliness of the debate into a renewed search for greater respect and understanding..."

### The future

According to Americans United for Separation of Church and State, a **nonpartisan**, educational organization dedicated to preserving the constitutional principle of church-and-state separation as the only way to ensure religious freedom for all Americans, at least five states—Georgia, Michigan, Texas, North Carolina and Utah—have announced plans to introduce religious freedom bills in the 2015 legislative session.

Predicting the constitutionality of religious freedom bills is "a challenge," notes Somerville attorney Brian Cige. He explains that the U.S. Supreme Court bases its decisions on "**precedent**..." [which are] past decisions," and "whether the religion is a recognized one...and...the beliefs are truly held. If yes to both, the Supreme Court is likely to protect personal exercise and worship but limit where doing so infringes on the equally important constitutional rights of others, like here involving commerce [and providing public services] which is also protected." Cige explains that in reference to religious freedom bills, "this is not a dispute between conservative or liberal justices but, rather, whether the states should be deferred to or whether a nationwide standard is required."

Cige notes, "Laws both codify and resolve disputes, subject to review by the U.S. Supreme Court, as a check and balance. This is true even if what is legal today may be determined not to be tomorrow. This is an intentionally flexible process as our community beliefs change over time." ■

## Voting Rights 50 Years Later *continued from page 1*

in Selma, Alabama. The first, held on March 7, 1965, came to be known as Bloody Sunday when state troopers attacked 600 unarmed marchers. The assaults were captured on television for the first time. The last march, held later that month, attracted 25,000 marchers, white and black, who would make the 54-mile walk from Selma to the state's capital in Montgomery demanding that African Americans be granted their constitutional right to vote. Dr. King's campaign ultimately led to the passage of the Voting Rights Act (VRA) of 1965, which President Johnson signed into law in August 1965.

The VRA prohibits discrimination in voting nationwide on the basis of race or being a member of a language minority group. The VRA also eliminated literacy tests as a means to disenfranchise voters. A special provision of the VRA was Section 5, which required certain jurisdictions with a history of discrimination to obtain pre-clearance from the U.S. Attorney General before implementing any changes to voting laws. Jurisdictions covered by Section 5 included nine states in their entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia), as well as parts of six other states (California, Florida, New York, North Carolina, Michigan and South Dakota). This provision was meant to expire after five years; however, Section 5 was renewed five times by Congress, most recently in 2007.

### Striking at the heart

With its 2013 decision in *Shelby v. Holder*, the U.S. Supreme Court struck down Section 4 of the VRA, which essentially left Section 5 of the Act unenforceable. Section 4 dealt with the formula used to determine which jurisdictions are subjected to pre-clearance. The Court ruled the formula "was based on 40-year-old facts having no logical relation to the present day."

Pre-clearance is still part of the VRA; however, since there is no formula to determine what jurisdictions are covered by it, the 15 states that were subjected to pre-clearance, whether as a whole or in part, were left to make changes concerning voting laws with no federal oversight.

Before the 2013 decision, jurisdictions covered by Section 5 needed to prove to the federal government that a proposed voting law was not discriminatory. Now, the burden has shifted to voters who will need to challenge discriminatory voting laws under Section 2 of the VRA through the court system, which is often a lengthy process.

### Emergency decisions

As reported in the fall 2014 edition of *Respect*, before the mid-term elections of November 2014 the U.S. Supreme Court was asked to render emergency decisions regarding voting laws in four states (North Carolina, Ohio, Texas and Wisconsin). The Court blocked same-day voting in North Carolina and Ohio. In addition, Ohio early voting was cut from 35 days to 28 days.

A district court in Wisconsin had found that under a proposed state law 300,000 registered voters, or nine percent of Wisconsin's voters, lacked the necessary ID required under its proposed voter ID law and ruled that the law discriminated against minorities. The U.S. Court of Appeals for the Seventh Circuit overturned that decision and upheld the law. In an unsigned October 9th ruling, the U.S. Supreme Court blocked Wisconsin's voter ID law from

being implemented for the mid-term election.

### Everything bigger in Texas

The most restrictive voter ID law was passed in Texas. The state attempted to pass this law in 2011, but because of its pre-clearance status the state needed permission from the Attorney General, which was denied. After the decision in *Shelby*, Texas quickly passed the law, referred to as SB 14.

One of the most controversial aspects of SB 14 is that a gun permit would be an accepted form of ID, but student ID cards would not be accepted. In addition, whatever form of ID presented must match the name on voter rolls exactly or the voter would not be allowed to vote. This requirement disproportionately affects women whose names may have changed through marriage or divorce.

In September 2014, a district court found that SB 14 "was enacted with racially discriminatory purposes and would yield a prohibited discriminatory result." In her opinion, District Court Judge Nelva Gonzalez Ramos wrote, "Based on the testimony and numerous statistical analyses provided at trial, this court finds that approximately 608,470 registered voters in Texas, representing approximately 4.5 percent of all registered voters, lack qualified SB 14 ID and of these, 534,512 voters do not qualify for a disability exemption." The Fifth Circuit Court of Appeals [stayed](#) the district court's decision.

In a turnaround from the Wisconsin case, on October 18, 2014, the U.S. Supreme Court issued an unsigned order allowing



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Texas to move forward with its strict voter ID law for the mid-term elections.

In a six-page dissent, U.S. Supreme Court Justice Ruth Bader Ginsburg wrote, “The greatest threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters.”

The Texas officials who argued the case asserted that the numbers of disenfranchised in the lower court’s ruling is exaggerated because all registered voters would be able to obtain a valid ID. Justice Ginsburg, who was joined in her dissent by Justices Elena Kagan and Sonia Sotomayor, wrote, “Even at \$2, the toll is at odds with this Court’s precedent. And for some voters, the imposition is not small. A voter whose birth certificate lists her maiden name or misstates her date of birth may be charged \$37 for the amended certificate she needs to obtain a qualifying ID. Texas voters born in other states may be required to pay substantially more than that.” Justice Ginsburg also pointed out, “Racial discrimination in elections in Texas is no mere historical artifact. To the contrary, Texas has been found in violation of the Voting Rights Act in every redistricting cycle from and after 1970.”

### Affecting elections

Mid-term elections typically have lower voter turnout than in a presidential year like 2012 or 2016. The mid-term election of 2014 had the lowest turnout in 72 years. How much of that should be attributed to restrictive voting laws is hard to say. According to the National Conference on State Legislatures (NCSL), 31 states had some form of voter ID law in effect for the November 2014 election. Studies, including one published in *Political Research Quarterly*, have shown that voter ID laws disproportionately affect African Americans, Hispanics, women, the young and the elderly. Political scientists from Appalachian State, Texas Tech and the University of Florida, who conducted the study, found that the costs associated with obtaining the necessary ID for these laws “falls overwhelmingly on minorities.”

Wendy Weiser, director of the democracy program at the Brennan Center for Justice at New York School of Law, told *The New York Times*, “These laws should give us pause. They’re creating disenfranchisement. We have enough information to gauge what the order of magnitude is, and it’s close to the order of magnitude of the margins of victory.”

Weiser pointed to the victory of Governor Sam Brownback, who was re-elected as Kansas’ governor by fewer than 33,000 votes, while a federal government study revealed that the state’s strict voter ID law suppressed two percent of its voters.

Paul Gronke, director of the Early Voting Information Center at Reed College, told *The New York Times*, “Turnout is complex

and affected by many things. I think it is far too early to assess the impact of changes in voting laws on turnout.”

Richard L. Hasen, an election law expert at the University of California, Irvine, sees it differently and told *The New York Times*, “Wholly apart from the question whether there’s going to be any demonstrable effect on turnout or election outcomes, there’s a real harm here. Nobody should be denied the right to vote who’s eligible, absent good cause.”

### A new formula

Attempts have been made to come up with a new Section 4 formula that would survive Supreme Court scrutiny. The Voting Rights Amendment Act of 2014, sponsored by Senator Patrick Leahy, Congressman John Conyers and Congressman Jim Sensenbrenner, would require states that have had five or more voting rights violations within the last 15 years be placed under pre-clearance. If enacted, the law would immediately affect four states (Georgia, Louisiana, Mississippi and Texas), subjecting them to the VRA’s Section 5 pre-clearance. Introduced in January 2014, there has been little support for the bill.

“There are still very, very strong protections in the Voting Rights Act in the area that the Supreme Court ruled on,” Congressman Bob Goodlatte, chairman of the House of Representatives Judiciary Committee, told reporters in January 2015 at a breakfast hosted by *The Christian Science Monitor*. “To this point, we have not seen a process forward that is necessary to protect people because we think the Voting Rights Act is providing substantial protection in this area right now.”

### Future of voting rights

As a way to address the concerns over voting rights, the Brennan Center for Justice, a [nonpartisan](#) law and policy institute whose work focuses on social justice issues such as voting rights, proposed the modernizing of the United States’ voter registration system, automatically registering voters at certain government agencies. The Brennan Center claims its proposals would add 50 million eligible voters to the rolls.

When asked about the future of election policy by the NCSL’s *The Canvass*, Weiser of the Brennan Center said, “I expect continued growth of a less noted but more robust trend—legislation to improve and make the voting process more convenient for voters. The most effective and popular reforms have been to modernize the voter registration process—harnessing technology to make the system more accurate, accessible, secure and less expensive—and to expand opportunities to vote before Election Day. The wave of the future is a more streamlined, efficient and customer-friendly voting process,” Weiser said, “hopefully without acrimonious and retrograde fights over access to the ballot box.”

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Based in part on the Brennan Center's proposal, Congressman John Lewis of Georgia, who marched in Selma alongside Dr. King, proposed the Voter Empowerment Act of 2013. The Act would have, among other things, required each state to have an official public website devoted to online voter registration. Unfortunately, the legislation died in committee at the end of the 2013 term.

In addition, U.S. Representatives Mark Pocan, of Wisconsin, and Keith Ellison, of Minnesota, proposed an amendment to the U.S. Constitution in May 2013. The text of the Right to Vote Amendment is simple: "Every citizen of the United States, who is of legal voting age, shall have the fundamental right to vote in any public election held in the jurisdiction in which the citizen resides."

In January 2015, Congressman Pocan told Madison's *The Capital Times* he would travel to Selma to commemorate the 50th anniversary of the marches. "You think about what we fought for in this country to make sure everyone has that right to vote, and then we watch the slippage right now. I think having that big, broad conversation is important."

This amendment has a very long way to go before its passage, as an amendment to the U.S. Constitution requires ratification by two-thirds of Congress and then three-quarters of the states. Addressing the lengthy process of amending the Constitution, Congressman Ellison said in a press statement, "The time is always right to do what is right." ■

## Corporations *continued from page 3*

coverage rule puts a "substantial burden" on the Greens. A closely held company is one that has a limited amount of shareholders. The Internal Revenue Service considers a closely held company one where five or fewer individuals hold 50 percent of a company's ownership. According to a 2000 Copenhagen Business School study, approximately 90 percent of U.S. companies are considered closely held.

In his majority opinion, Justice Samuel Alito Jr. wrote, "Any suggestion that for-profit corporations are incapable of exercising religion because their purpose is simply to make money flies in the face of modern corporate law."

Justice Ruth Bader Ginsburg, writing for the minority, voiced concern for the ruling: "Although the court attempts to cabin its language to closely held corporations, its logic extends to corporations of any size, public or private." In addition, corporations could now use personal religious beliefs to object to "health coverage for vaccines, or paying the minimum wage, or according women equal pay for substantially similar work," Justice Ginsburg wrote. "Would the exemption...extend to employers with religiously grounded objections to blood transfusions (Jehovah's Witnesses); antidepressants (Scientologists); medications derived from pigs, including anesthesia,

intravenous fluids, and pills coated with gelatin (certain Muslims, Jews and Hindus); and vaccinations...Not much help there for the lower courts bound by today's decision."

Justice Alito saw the decision differently: "Our decision in these cases is concerned solely with the contraceptive mandate. Our decision should not be understood to hold that an insurance coverage mandate must necessarily fail if it conflicts with an employer's religious beliefs. Other coverage requirements, such as immunizations, may be supported by different interests (for example, the need to combat the spread of infectious diseases) and may involve different arguments about the least restrictive means of providing them."

Justice Ginsburg countered, "Approving some religious claims while deeming others unworthy of accommodation could be 'perceived as favoring one religion over another,' the very risk the [Constitution's] Establishment Clause was designed to preclude." The justice went on to write, "The court forgets that religious organizations exist to serve a community of believers. For-profit corporations do not fit that bill."

According to Bowens, just how the *Hobby Lobby* ruling will impact businesses and civil liberties remains to be seen. ■

## Glossary

**acquit** — clear of a criminal offense. **concur** — to agree. **disenfranchise** — to deprive of a privilege or right.

**majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **nonpartisan** — not adhering to any established political group or party. **peyote** — a hallucinogen obtained from a cactus plant. **precedent** — a legal case that will serve as a model for any future case dealing with the same issues. **ratified** — approved or endorsed. **statute** — a particular law established by a legislative branch of government. **stay** — an order to stop a judicial proceeding or put a hold on it.