businesslaw

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Mc Graw Hill Education

Contents

Dear Professor,

Summer fast approaches! Welcome to McGraw-Hill's May 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, Issue 10 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the May 2014 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A recent United States Supreme Court decision regarding limits on individual political campaign contributions;

2. A United States Supreme Court case regarding potential defamation liability in political campaigns;

3. A case involving $31,000 mistakenly deposited in a teenager's bank account;

4. Videos related to a) the Affordable Care Act contraceptive mandate and b) the unionization of football players at Northwestern University;

5. An "ethical dilemma" related to ex-Charlotte, North Carolina Mayor Patrick Cannon's alleged acts of bribery and extortion; and

6. "Teaching tips" related to Video 1 ("High Court Clash over Obamacare Contraceptive Mandate") and Video 2 ("Labor Board: Northwestern University Football Players Can Unionize") of the newsletter.

I hope all of you have a restful, rejuvenating and enjoyable summer!

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Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Of Special Interest

This section of the newsletter covers three (3) topics:

1) A recent United States Supreme Court decision regarding limits on individual political campaign contributions;

2) A United States Supreme Court case regarding potential defamation liability in political campaigns; and

3) A case involving $31,000 mistakenly deposited in a teenager's bank account.

Hot Topics in Business Law

Article 1: "Supreme Court Allows More Private Money in Election Campaigns"

http://www.cnn.com/2014/04/02/politics/scotus-political-donor-limits/

Note: In addition to the following article, please also see the related video at the above-referenced web address.

Note: The following article refers to the recently-decided United States Supreme Court decision, McCutcheon v. Federal Election Commission.

According to the article, if you are rich and want to give money to a lot of political campaigns, the Supreme Court ruled recently that you can.

The 5-4 ruling eliminated limits on how much money people can donate in total in one election season.

However, the decision left intact the current $5,200 limit on how much an individual can give to any single candidate during a two-year election cycle. Until now, an individual donor could give up to $123,200 per cycle.

The ruling means a wealthy liberal or conservative donor can give as much money as desired to federal election candidates across the country, as long as no candidate receives more than the $5,200 cap.

While most people lack the money to make such a large total donation to election campaigns, the ruling clears the way for more private money to enter the system.

In effect, it expands the loosening of campaign finance laws that occurred with the high court's Citizens United decision in 2010 that eased campaign spending by outside groups.

At issue was whether limits in the Federal Election Campaign Act on overall -- or aggregate -- campaign spending by individuals violate the First Amendment rights of contributors.

"We conclude that the aggregate limits on contributions do not further the only governmental interest this court accepted as legitimate" in a 1976 ruling, said Chief Justice John Roberts, who wrote the opinion of the court's

conservative majority. "They instead intrude without justification on a citizen's ability to exercise the most fundamental First Amendment activities."

In dissent, Justice Stephen Breyer said the majority opinion will have the effect of creating "huge loopholes in the law; and that undermines, perhaps devastates, what remains of campaign finance reform."

Republican leaders hailed the decision as an affirmation of free expression rights.

"It does not permit one more dime to be given to an individual candidate or a party -- it just respects the constitutional rights of individuals to decide how many to support," said Senate GOP leader Mitch McConnell of Kentucky.

However, congressional supporters of tougher campaign finance laws expressed concern about more private money influencing elections.

"I am concerned that today's ruling may represent the latest step in an effort by a majority of the court to dismantle entirely the longstanding structure of campaign finance law erected to limit the undue influence of special interests on American politics," said Republican Senator John McCain of Arizona, a longtime proponent of campaign finance reform.

Some legislators called for new campaign finance legislation in response to the ruling, but such reforms appeared impossible in an election year.

Senator Pat Leahy of Vermont, the Democratic chairman of the Senate Judiciary Committee, said he would hold a hearing on the impact of "alarming Supreme Court decisions that have eviscerated our campaign finance laws."

Another top Senate Democrat, Charles Schumer of New York, warned of further erosion of limits on special interest influence in elections.

"This in itself is a small step, but another step on the road to ruination," Schumer said. "It could lead to interpretations of the law that would result in the end of any fairness in the political system as we know it."

The case involved Shaun McCutcheon, the owner of an Alabama electrical engineering company, with support from the Republican National Committee.

They objected to a 1970s Watergate-era law restricting someone from giving no more than $48,600 to federal candidates, and $74,600 to political action committees during a two-year election cycle, for a maximum of $123,200.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

McCutcheon argued he had a constitutional right to donate more than that amount to as many office seekers as he wanted, as long as no single candidate got more than the $5,200 per election limit ($2,600 for a primary election and another $2,600 for a general election).

"Spending money on advertising, promoting ideas and supporting candidates is an exercise of our right to freedom of speech," McCutcheon said after the ruling came out.

Supporters of the limits struck down recently said the law prevented corruption or the appearance of corruption. Without the limits, they argued, one well-heeled donor could in theory contribute to every federal race possible.

The ruling leaves in place current donor limits to individual candidates, and donor disclosure requirements by candidates, political parties, and political action committees.

"What I think this means is that freedom of speech is being upheld," said House Speaker John Boehner, an Ohio Republican. "You all have the freedom to write what you want to write. Donors ought to have the freedom to give what they want to give."

But supporters of the limits expressed disappointment.

"The Supreme Court majority continued on its march to destroy the nation's campaign finance laws, which were enacted to prevent corruption and protect the integrity of our democracy," said Democracy 21 president Fred Wertheimer, a longtime advocate for election money reforms.

"The court re-created the system of legalized bribery today that existed during the Watergate days."

Congress passed the individual aggregate limits in the wake of the Watergate scandal, and the Supreme Court upheld them in 1976.

The separate Citizens United case in 2010 dealt with campaign spending by outside groups seeking to influence federal elections.

In that case, the conservative majority -- citing free speech concerns -- eased longstanding restrictions on campaign spending by corporations, labor unions, and certain nonprofit advocacy groups.

The Citizens United ruling helped open the floodgates to massive corporate spending in the 2012 elections. It also led to further litigation seeking to loosen current restrictions on both spending and donations.

Discussion Questions

1. Describe the “free speech” provision of the First Amendment to the United States Constitution.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

The First Amendment to the United States Constitution proclaims that "Congress shall make no law...abridging the freedom of speech." Although government can impose reasonable "time, place and manner" restrictions on speech, the judiciary has interpreted the First Amendment to give individuals (and corporations) wide-ranging rights in terms of freedom of expression.

2. If political contributions are a form of free speech protected by the First Amendment to the United States Constitution, why did the United States Supreme Court uphold the $5,200-per-election limit for each political candidate? If political contributions are protected by the First Amendment, why should a political donor not be allowed to contribute unlimited amounts of money to a certain candidate?

These are interesting questions. In your author's opinion, if political contributions are indeed a form of free speech protected by the First Amendment, there should be no per-candidate contribution limit.

3. In your reasoned opinion, will the United States Congress react to the Supreme Court decision by enacting campaign finance reform? Why or why not?

In your author's opinion, real campaign finance reform from the United States Congress is doubtful. By limiting political contributions, politicians would in effect be limiting their own campaigns for re-election, and incumbents generally have greater ability to generate political contributions than do political newcomers.

Article 2: "Susan B. Anthony List v. Driehaus: SCOTUS Skeptical over Ohio Law"

http://www.msnbc.com/msnbc/supreme-court-susan-b-anthony-list-driehaus-campaign-lying-free-speech

Note: In addition to the following article, please also see the related video at the above-referenced web address. Disregard the video segment beginning at 2:14 and ending at 3:31 (the Aereo case).

According to the article, United States Supreme Court justices turned a skeptical eye towards an Ohio law banning knowingly false statements in political campaigns recently with one justice adopting an analogy to the dystopian novel *1984* to describe the law's impact.

"The mere fact that a private individual can chill somebody's speech does not say, well, since a private individual can do it, you know, the ministry of truth can do it," Justice Antonin Scalia told Ohio State Solicitor Eric Murphy. Scalia was adopting an analogy deployed earlier by Michael Carvin, the attorney representing the anti-abortion rights group Susan B. Anthony List, who said "Our constitutional claim here is the ministry of truth has no ability to judge our political speech as falsity." The Ministry of Truth is the part of the totalitarian government in *1984* responsible for state propaganda, ironically named because it produces politically expedient lies.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Experts believe the high court will rule on whether or not Susan B. Anthony List can challenge the law, not on whether the law itself is constitutional, but Scalia wasn't the only justice whose distaste for the Ohio law seeped into an argument that was technically supposed to be about standing. In 2010, the anti-abortion rights group Susan B. Anthony List wanted to put up a billboard attacking Democratic Ohio Rep. Steve Driehaus's support for the Affordable Care Act as a vote for "taxpayer funded abortion." Public funds for abortion have been banned since the 1970s, and President Obama signed an executive order barring the Affordable Care Act from funding abortion. So, Driehaus filed a complaint with the state election commission, which found probable cause to believe the statement was false.

Driehaus lost and the complaint was withdrawn, but since Susan B. Anthony List has every intention of running similar ads against Democrats in the future, the group is arguing the law is an infringement on their First Amendment rights. Civil liberties groups like the ACLU that support abortion rights and worry about the Ohio law's impact on political speech have backed Susan B. Anthony List's argument that they should be allowed to challenge the law. They fear that, should the high court side against the group, future challenges to laws that abridge speech would be harder to mount.

Murphy argued that since there was no pending prosecution, the group shouldn't be allowed to challenge the law yet. Courts are supposed to only take on matters when someone has or is likely to be harmed by a law.

"You're making it sound like the commission hears every political statement out there," Murphy said in response to criticism of the law by Scalia. "But it has to be filed by a person, and only one person filed a complaint against the SBA this last time, and he is in Africa now. So I don't think he'll be filing complaints any time soon."

"He really lost, didn't he," Scalia noted to laughter in the courtroom.

Though some of the Democratic-appointed justices seemed to be more on-the-fence than their conservative counterparts, at least one of them, Justice Stephen Breyer, seemed ready to side with Susan B. Anthony List.

"Why can't a person say, you know, there are things I want to say politically, and the Constitution says that the state does not have the right to abridge my speech, and I intend to say them. And if I say them, there's a serious risk that I will be had up before a commission and could be fined," Breyer said. "What's the harm? I can't speak; that's the harm."

Attempting to tease out the contradictions of trying to prove a political argument true or false, Breyer asked Murphy if the commission would go after a group that called a politician a "murderer" for voting for legislation that lead to the death of cats. Murphy said "probably not."

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Murphy made a valiant effort to defend the law, but the justices sympathies seemed to be with the challengers. While the court might not be unanimous in agreeing that Susan B. Anthony List has a right to challenge the law, a majority seemed willing to side with the anti-abortion rights group, and if it ever makes it to the high court on the merits, it's probably toast.

Discussion Questions

1. What types of speech are protected by the First Amendment to the United States Constitution?

Both individual speech and commercial speech are protected by the First Amendment. Traditionally, the judiciary has given wide-ranging protection to individual speech, especially when the speech is politically related.

2. What types of speech are not protected by the First Amendment to the United States Constitution?

Several types of speech are not protected by the First Amendment, including defamation (libel and slander), obscenity, fighting words, child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, and solicitations to commit crimes.

3. If the United State Supreme Court should ever decide that false political statements are not protected by the First Amendment to the United States Constitution, who should determine whether certain political statements are true or false?

If the Supreme Court should decide that false political statements are not protected by the First Amendment, it would be due to the defamation exclusion, and the key question regarding defamation is whether the subject statement was true or false. Truth is an absolute defense to defamation liability, while falsity results in defamation liability. If called upon, the judiciary could determine whether certain political statements are true or false.

In politics, whether a statement is true or false can be subjective. As an example, have students evaluate the statements "George W. Bush was a fascist during his presidency" and "Barack Obama has been a socialist during his presidency." Replies will likely vary, depending on the respondent's subjective political views. In matters of politics, opinion often takes priority over fact.

Article 3: "Bank Asks Georgia Teen to Return $31,000 Mistakenly Deposited into His Account"

http://abcnews.go.com/Business/ga-teen-spends-31000-mistakenly-deposited-account/story?id=23086244

According to the article, a Georgia bank is asking a teenager to return $31,000 that was mistakenly deposited into his account. The problem is he may have already spent most of the cash.

businesslaw

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Mc Graw Hill Education

The Madison County Sheriff Office police were dispatched to First Citizens Bank in Hull, Georgia, on March 18 concerning financial fraud, a police report states. There, employee Kristy Bryant explained that on March 7 a customer named Steven Fields deposited $31,000, but a teller entered the amount into the account of another customer who had the same name.

After receiving the mistaken deposit, Steven Fields, 18, withdrew $20,000 and made $5,000 in purchases with his ATM card. The deposit error wasn't noticed until original Steven Fields complained to the bank of his missing money on March 17.

When the alleged deposit recipient tried to withdraw more money the next day, the bank "informed him of the mistake that was made and asked him to return the money," the police report stated, but "Mr. Fields claimed that the money was his from an inheritance."

He also claimed that the money entered his account through a direct deposit, which the bank said is not true, the police report stated. Nevertheless, Fields said he would return to the bank with proof of his inheritance, but he never returned, the police report stated.

After the police went to Fields' home, he stated that "he thought the money came from his grandmother's estate," the police report states.

"I informed Mr. Fields that the bank wanted the money back as soon as possible," according to the reporting officer's statement. "Mr. Fields stated that he would go to the bank and talk with Mrs. Bryant and try to settle this situation without going to jail."

The bank told police they would give Fields a deadline of March 19, 5 p.m. to return all the money or they want him prosecuted.

Recently, Angela English, director of corporate communications for First Citizens released a statement that said, "Due to the bank's privacy policies and out of respect for our customers, I cannot comment on the police report or the matter under investigation."

Discussion Questions

1. What legal obligation (if any) does First Citizens Bank owe to the "original" Steven Fields who deposited the $31,000?

According to Article 3 of the Uniform Commercial Code, First Citizens Bank has an absolute legal obligation to re-credit the "original" Steven Fields' account the $31,000. If the bank credits the wrong account with the depositor's money, the bank must make the depositor whole.

2. From the standpoint of civil (non-criminal) law, is eighteen-year-old Steven Fields responsible for the $31,000? Explain your response.

Young Mr. Fields is responsible civilly for the $31,000. Ownership of the funds remained with the "original" Mr. Fields, in spite of the bank's mistake.

3. Assess the prosecuting attorney's criminal case against eighteen-year-old Steven Fields. Is the prosecutor likely to win his or her case against the teenager? Why or why not?

As the article indicates, young Mr. Fields said he would return to the bank with proof of his inheritance, but he never did so. In your author's opinion, this speaks loudly in terms of his liability. This looks like a case of criminal misappropriation, especially if the young man had no reasonable basis for believing he was a current heir to his grandmother's estate.

businesslaw

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Mc Graw Hill Education

Video Suggestions

Video 1: "High Court Clash over Obamacare Contraceptive Mandate"

http://www.foxnews.com/politics/2014/03/25/supreme-court-to-take-up-obamacare-contraceptive-mandate-in-landmark-case/

Discussion Questions

1. Suppose a business owner refuses to hire African-Americans, claiming that hiring African-Americans would violate his religious beliefs. If the government holds (as it does through the Civil Rights Act of 1964) that racial discrimination in employment is illegal, would such a limitation illegally violate the business owner's freedom of religion?

The right to "religious freedom" in such a case would be subservient to the employment obligation of non-discrimination. The employer would be in violation of the Civil Rights Act, based on race discrimination.

2. Suppose a business owner refuses to hire women, claiming that hiring women would violate his religious beliefs. If the government holds (as it does through the Civil Rights Act of 1964) that gender discrimination in employment is illegal, would such a limitation illegally violate the business owner's freedom of religion?

The right to "religious freedom" in such a case would be subservient to the employment obligation of non-discrimination. The employer would be in violation of the Civil Rights Act, based on gender discrimination.

3. In your reasoned opinion, does a business have constitutionally-protected freedom of religion? Why or why not?

This is an opinion question, so student responses may vary. A corporation is an artificial entity. It exists only as a creation of state law. Ask students what determines the religious beliefs of a corporation. Are such religious beliefs based on the beliefs of the chief executive officer? The board of directors? The shareholders? What if the religious beliefs of the directors are different? What if the religious beliefs of the shareholders are different?

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Video 2: "Labor Board: Northwestern University Football Players Can Unionize"

http://www.cnn.com/2014/03/26/us/northwestern-football-union/index.html?hpt=hp_t3

Discussion Questions

1. Why would football players want to unionize?

Football players would want to unionize for reasons other workers unionize; namely, based on the hope that collectivization might lead to better pay, benefits and working conditions.

2. Are football players employees?

This is an opinion question, so student responses will likely vary. An employee is generally defined as a person who works for another in return for financial or other compensation. In a college football player's case, the "other compensation" might be construed as the scholarship and other benefits he receives in return for playing football.

3. Describe the impact the Northwestern University football player unionization case might have on college football.

The Northwestern University case is landmark in the sense that it could lead to mass-unionization of college football players across the country. If Northwestern players are allowed the right to unionize, players at other colleges will likely follow suit.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Of Special Interest

This section of the newsletter addresses ex-Charlotte, North Carolina Mayor Patrick Cannon's alleged acts of bribery and extortion.

Ethical Dilemma

Ethical Dilemma: "Charlotte Mayor Accused of Bribery, Extortion"

http://www.cnn.com/2014/03/26/justice/charlotte-mayor-alleged-corruption/

According to the article, FBI agents recently arrested the mayor of Charlotte, North Carolina, for allegedly taking tens of thousands of dollars worth of bribes "in exchange for the use of his official position," the U.S. attorney's office said.

Patrick D. Cannon, 47, faces federal charges of theft and bribery concerning programs receiving federal funds, honest services wire fraud and extortion under color of official right, according to a press release from U.S. Attorney Anne Tompkins of western North Carolina.

The media obtained a copy of Cannon's resignation letter, sent to City of Charlotte Manager Ron Carlee and City Attorney Bob Hagemann.

"I hereby give notice of my resignation from the position of the Mayor of the City of Charlotte, effective immediately. In light of the charges that have been brought against me, it is my judgment that the pendency of these charges will create too much of a distraction for the business of the City to go forward smoothly and without interruption," Cannon wrote in the letter.

"I regret that I have to take this action, but I believe that it is in the best interest of the City for me to do so."

First elected to City Council in 1993 -- when he was 26 and two years removed from graduating from North Carolina A&T State University -- the Democrat served through 2005, including the last four years as mayor pro tem.

Cannon, the president of a private parking business, spent four years out of office until being elected to City Council again in 2009. Between 2010 and 2013, he served as both a council member and mayor pro tem until his election as mayor in November 2013.

Federal authorities launched their corruption investigation in August 2010, using FBI agents who posed as commercial real estate developers and

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

investors looking to do business in the North Carolina city, Tompkins' office said.

Investigators documented five separate occasions between January 2013 and February 2014 in which Cannon allegedly took more than $48,000 in cash, airline tickets, a hotel room and a luxury apartment from the undercover agents.

In the last instance, authorities say Cannon got $20,000 in cash in the mayor's office.

He allegedly accepted the largesse in exchange for returning the favor using his powers as a City Council member, mayor pro tem and, eventually, mayor.

Cannon appeared in court recently and was released on bond, the U.S. attorney's office reported.

If convicted on all charges, he could be sentenced to as many as 50 years in federal prison and pay as much as $1.5 million in fines, officials said.

Discussion Questions

1. As the article indicates, federal authorities launched their corruption investigation against Charlotte Mayor Patrick Cannon in August 2010, using FBI agents who posed as commercial real estate developers and investors looking to do business in the North Carolina city. Investigators documented five separate occasions between January 2013 and February 2014 in which Cannon allegedly took more than $48,000 in cash, airline tickets, a hotel room and a luxury apartment from the undercover agents.

Did the actions of the federal authorities constitute “entrapment?” Why or why not?

The actions of the federal authorities in this case did not constitute entrapment. In order for the entrapment defense to succeed, the defendant must prove that he would not have acted in a certain way were it not for the involvement of federal authorities. In this case, there is no convincing proof that Mr. Cannon would not have accepted the bribes if someone else was involved on the other side of the “transaction.”

2. According to internet research, the mayor of Charlotte receives less than $50,000 in annual salary. Does this information help explain why Patrick Cannon was tempted to take bribes? Does this information affect your opinion in terms of whether Mr. Cannon should be criminally prosecuted for the actions described in this article? Why or why not?

In your author’s opinion, the low annual salary for such a high-ranking position might explain why Mr. Cannon was tempted to take bribes, but it should not affect prosecution in any appreciable way. Personal responsibility is the key here. An individual must be responsible for the choices he or she makes. With that being said, it is surprising (shocking, perhaps?) that mayoral salaries across the nation are so low. In some instances, a secretary’s salary might be higher than a mayor’s salary.

3. As the article indicates, if convicted on all charges, Cannon could be sentenced to as many as 50 years in federal prison and pay as much as $1.5 million in fines. In your reasoned opinion, would such punishment be excessive or appropriate? Explain your response.

This is an opinion question, so student responses may vary. The relatively high prison sentence, 50 years, and the criminal fine, as much as $1.5 million, are an indication of the number of charges against Mr. Cannon--The greater the number of charges, the higher the possible prison sentence and criminal fines.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Of Special Interest

This section of the newsletter will assist you in addressing Video 1 ("High Court Clash over Obamacare Contraceptive Mandate") and Video 2 ("Labor Board: Northwestern University Football Players Can Unionize") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Video 1—"High Court Clash over Obamacare Contraceptive Mandate"):

"Justices Divide by Gender in Hobby Lobby Contraception Case"

http://www.npr.org/2014/03/25/294385167/birth-control-mandate-goes-under-high-court-microscope

Note: In addition to Video 1, please also see the following article from the above-referenced web address:

There was a clear difference of opinion between male and female justices at the U.S. Supreme Court in the Hobby Lobby Contraception case. The issue was whether for-profit corporations, citing religious objections, may refuse to include contraception coverage in the basic health plan now mandated under the Affordable Care Act.

The female justices were clearly supportive of the contraception mandate, while a majority of the male justices were more skeptical.

The lead challenger in the case is the Hobby Lobby corporation, a chain of 500 arts and crafts stores that has 13,000 employees. The owners object to two forms of contraception, IUDs and morning-after pills, which they view as a form of early abortion.

Hobby Lobby lawyer Paul Clement had barely begun his argument when he was pelted with a series of hypotheticals.

Justice Sonia Sotomayor led off: What about employers who have religious objections to health plans that cover other basic medical procedures — blood transfusions, immunizations, medical products that include pork?

Clement replied that each would have to be evaluated by the courts to see if it is fully justified and accomplished by the least restrictive means.

Justice Elena Kagan observed that using that reasoning, an employer might have a religious objection to complying with sex discrimination laws, minimum wage laws, family leave laws and child labor laws, to name just a few.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Clement responded that just because claims are being brought doesn't mean that they will all win. The courts, he said, can "separate the sheep from the goats."

"Have any of these claims ever been brought, and have they succeeded?" asked Justice Samuel Alito.

Answer: "Very few."

"With respect," interjected Kagan, "I think that that's probably because" until now this court has had "a different" understanding of how to interpret the constitutional and statutory law.

How, asked Sotomayor, does a for-profit corporation exercise religion? Whose religion is it? The shareholders'? The corporate officers'? How much of the business has to be dedicated to religion? And once you go down that road, aren't you having to do something that the court has "always resisted — measuring the depth of someone's religious beliefs?"

Kagan noted that the Obama health law doesn't require corporate employers to provide insurance. The Hobby Lobby owners could have paid a fine, which, she observed, is much less than the cost of insurance. It's "a choice," she said.

"I thought part of the religious commitment of the employers was to provide health insurance," opined Chief Justice John Roberts.

"Exactly," replied lawyer Clement.

Justice Anthony Kennedy asked questions from a variety of perspectives. The government sees this case as the employer putting its employees in a disadvantaged position, he said. Do the employer's religious beliefs just "trump" those of the employees?

Justice Ruth Bader Ginsburg noted that in this case the employer is opposed to IUDs and morning-after pills. But, she said, suppose an employer objected to all contraceptives, as some employers have.

Clement conceded the point, agreeing that all contraceptives could be excluded on religious grounds.

When the government's chief advocate, Solicitor General Donald Verrilli, stepped to the lectern, he faced a different formulation from Kennedy. "Under your view, a for-profit corporation could be forced, in principle ... to pay for abortions."

Verrilli responded that there is no law that would require for-profit corporations to provide abortions. "Isn't that what we are talking about?" interjected Roberts. "They have to pay for methods of contraception that they believe provide abortions."

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

We don't question their sincere belief, replied Verrilli, but IUDs and morning-after pills are legal contraception methods approved by the FDA. Moreover, he said, federal laws that ban funding for abortions do not consider these methods to be abortion.

Kennedy raised another issue, contending that the government had exempted "a whole class of corporations" from the provisions of this law.

The only exemptions are for churches, explained Verrilli, and special accommodations are made for religious nonprofits. The special accommodation is that the insurance company pays for the contraception coverage to employees, not the religious nonprofit itself.

Justice Stephen Breyer asked whether, as lawyers for Hobby Lobby have suggested, there is a method of providing contraception coverage for Hobby Lobby employees that is less restrictive of the owners' rights. Namely, have the government pay for the coverage.

This isn't very expensive stuff, chimed in Justice Antonin Scalia.

Verrilli replied that IUDs are the most expensive — between $500 and $1,000 — and the most effective method of contraception. Further, he said, even if the government agreed to pay when corporations invoked religious objections, corporations would say that signing the forms attesting to their objections would make them "complicit." Indeed, some nonprofits have made just that objection.

Alito focused on a different question: Why for-profit corporations should be barred from making claims that their religious rights are being infringed. "You say they can't ever get their day in court?"

Verrilli replied that the court has not ever recognized such a right. He pointed repeatedly to the court's decision declaring that an Amish carpenter had to pay Social Security taxes for his employees, even though paying such taxes violated his religious beliefs.

Alito, however, wasn't buying the argument. Suppose Congress passed a law barring kosher slaughter methods because it considered them inhumane. "Would an incorporated slaughterhouse have no recourse whatsoever?"

Verrilli replied that such a law could be challenged as targeted at a particular religion.
Roberts, perhaps looking for a narrow way to rule in the case, suggested that even if the court rules in favor of Hobby Lobby, that would only affect closely held corporations, not large publicly traded companies.

Within hours of the argument, critics noted that some giant corporations like Dell and Heinz are closely held corporations.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

Teaching Tip 2 (Related to Video 2—"Labor Board: Northwestern University Football Players Can Unionize"):

"Labor Board: Northwestern University Football Players Can Unionize"

http://www.cnn.com/2014/03/26/us/northwestern-football-union/index.html?hpt=hp_t3

Note: In addition to Video 2, please also see the following accompanying article from the above-referenced web address:

The National Labor Relations Board in Chicago has ruled that football players at Northwestern University are employees and can unionize.

In a statement, Northwestern acknowledged the ruling and says it plans to appeal.

The players' petition was a way to get a seat at the bargaining table in college sports and could change the landscape of the NCAA model.

Northwestern University fought the petition by saying its players are students, not employees. But the board's decision indicates that there was enough evidence presented that the athletes are employees of the university -- getting paid in the form of scholarships, working between 20 and 50 hours per week and generating millions of dollars for their institutions.

The athletes have said they're seeking better medical coverage, concussion testing, four-year scholarships and the possibility of being paid.

But while former Northwestern quarterback CJ Bacher said he agrees with the reform issues set forth by the College Athletes Players Association and other groups, he doesn't think unionizing is the way to achieve those goals.

"While we agree with CAPA's stated objectives, the decision made by the NLRB today is disconcerting to those of us that care deeply about the future success & stability of Northwestern athletics," Bacher said.

Richard Epstein, labor law professor at New York University, said the ruling has "vast implications for the structure of the sport, if upheld."

But he noted an appeal would likely take years to resolve.

The regional NLRB office said any requests for review of its decision must be filed with the board's headquarters in Washington, D.C. by April 9.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

The NCAA promptly said that while it wasn't party to the proceeding, it was "disappointed" with the board's ruling and disagreed "with the notion that student-athletes are employees."

"We frequently hear from student-athletes, across all sports, that they participate to enhance their overall college experience and for the love of their sport, not to be paid," said the statement from NCAA chief legal officer Donald Remy. "While improvements need to be made, we do not need to completely throw away a system that has helped literally millions of students over the past decade alone attend college.

"We want student-athletes -- 99 percent of whom will never make it to the professional leagues -- focused on what matters most -- finding success in the classroom, on the field and in life."
Last week, Northwestern University's president emeritus said that if the football players were successful forming a union, he could see the prestigious private institution giving up Division I football.

"If we got into collective bargaining situations, I would not take for granted that the Northwesterns of the world would continue to play Division I sports," Henry Bienen said at the annual conference for the Knight Commission on Intercollegiate Athletics.

He further said that if the players won their fight, private institutions with high academic standards -- he specifically cited Duke and Stanford -- could abandon the current model in order to preserve academic integrity.

He compared it to the pullback of the Ivy League schools decades ago, when the Ivy League conference decided to opt out of postseason play and to end athletic scholarships, preserving the emphasis on academics for the players.

"In the 1950s, the 'Ivies' had some of the highest-ranked football teams in the country. The Princeton teams were ranked in the top 5 or 10 at that time. They continue periodically to have ranked basketball teams, but they've given up a certain kind of model of sports," he said, adding that "under certain conditions" the same could happen at other private elite universities that "continue to play big time sports."

Jerry Price, senior associate athletic director at Princeton, said that change for the Ivy League allowed those schools to maintain academic integrity in the sports where, at other schools, academics can often be compromised in the name of the game.

"It was sort of a breaking point moment," Price said, saying the Ivy League schools made the decision not to move forward like the bigger conferences -- to "draw the line with the commercialization of what football was becoming."

Proceedings

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"And the results have been that Ivy football is not what it was in the first half of the 20th century," Price said. "Certainly not like Big Ten football, SEC football. Its crowds are generally less than 10,000 people. They play only 10 games a year. ... Certainly not what is going on at BCS level."

Bienen, who was president of Northwestern from 1995 to 2009, made his comments during a panel discussion that included a presentation from Ramogi Huma, the president of the National College Players Association (NCPA) and the man who helped organize another former Northwestern quarterback, Kain Colter, to lead a unionization attempt.

Huma talked, as he has for months, about the issues his organization sees as great flaws in the current NCAA model. The NCPA believes that athletes in the revenue-generating sports of college football and men's basketball are taken advantage of by universities, conferences and the NCAA, making billions from games, while the players sometimes struggle with basic needs like medical care, concussion testing and guaranteed scholarships.

Huma said his organization has, for years, tried other strategies but failed.

"Everyone is entitled to opinions, but after a decade of advocacy, I've tried every other way," he said. "We've begged, pleaded, pressured, changed laws. There is no other way to bring forward comprehensive reform, and just like other billion-dollar industries, the answer is a union."
Huma said he won't comment on whether other teams at other schools are now planning to follow in the steps of the Northwestern football players, but he did note that the NLRB judge ruled in CAPA's favor on every point they made.

"This sets a precedent," Huma said. "This ruling is going to apply to all private schools in (Division 1). That's a significant number of schools, a significant domino to fall where hundreds of thousands of players will have rights under labor law and that's the first step in creating an environment where players are protected."

In March, the NCPA took its fight before the NLRB in Chicago and presented a case during a five-day hearing. Both sides recently submitted court briefs.

Northwestern's appeal could go as far as the U.S. Supreme Court, and it could take years before there is a definitive decision.

During his daylong testimony last week, Colter talked about year-round time requirements, at times 50 hours a week devoted to football.

Colter said he had to give up his major related to pre-med studies because he couldn't fit the classes into his schedule. The university countered that by bringing in students who were able to stay in rigorous classes, but Colter's sentiment was echoed by the NCAA itself in a 2012 survey that asked athletes what they would change about their college experience.

Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

About 15% of men's football, baseball and basketball players said they would have had different majors had they not been athletes. Twelve percent of Division I football players said athletics prevented them from majoring in what they wanted. The average time spent on athletics in-season hovered around 40 hours per week for all three sports, according to the survey.

That flies in the face of the NCAA 20-hour rule, which states that, no matter the sport, coaches can't take up more than 20 hours of their players' time.

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Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

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Proceedings

A monthly newsletter from McGraw-Hill

May 2014 Volume 5, Issue 10

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