



**“Social Responsibility - Doing Good While Also Making Money And
Protecting Owner Interests”
Profit Maximization, Social Responsibility and
Organizations Designed to Provide a Public Benefit**

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Introduction and Questions (Without Answers)

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There are a huge number of issues surrounding corporate/entity social responsibility. Even understanding what “social responsibility” is in this context has a divergent path. For the purposes of this discussion, it can be described as “Doing Good While Also Making Money And Protecting Owner Interests.”² This demonstrates the potential conflict – should an investor in a business entity (the owner) look to the entity to “do good” or merely to comply with legal requirements (do not pollute; do not violate the law) while making money for the owners (profit maximization). Should the owner have a say in the business entity’s choices?

Should an entity selling t-shirts worry about the workers in Bangladesh? Should an entity selling coffee worry about how it is grown and harvested? Should an entity selling beef burritos worry about how the cattle are slaughtered?

The legal landscape in which these questions must be considered has changed dramatically in the last five years. Consumer attitudes toward many of these issues have also changed. Some businesses are now extolling their social responsibility, while others apparently continue to consider that to be a secondary consideration, at best. *Citizens United v. Federal Election Comm’n*³ interprets the Constitution to give business entities the right of free speech in

¹ I would like to thank Jenny Knight (University of Colorado Law School (2016)) and Alex Urban (University of Denver Sturm College of Law (2016)) for their assistance in considering issues related to social responsibility, the millennials in general, and these questions in particular. An updated version of this paper is available at <http://ssrn.com/abstract=2641402>.

² Of course, the concept of “doing good” has potentially a variety of meanings depending on political, moral, religious, and other deeply held beliefs. This paper will not focus on the potentially contradictory definition of “good.” In the most controversial extreme, consider the “rights of the unborn” versus “freedom of choice” as a justification for abortion. This paper will leave the definition of “good” to others.

³ 130 S. Ct. 876 (2010).

political campaigns in a manner that is not necessarily answerable to the owners.⁴ Has *Burwell v. Hobby Lobby Stores, Inc.*⁵ done similarly for social responsibility and business philanthropy?

The following points are more than can be discussed at one sitting, but hopefully will form a basis for an interesting presentation.

1. Does *Hobby Lobby* change the landscape for business enterprises to consider factors other than profit in making their business decisions?

In *Burwell v. Hobby Lobby Stores, Inc.*,⁶ the court said in language I believe to be broad enough to include any closely-held or publicly-held corporation.⁷

And even if RFRA [the Religious Freedom Restoration Act] did not exist, the owners of a company might well have a dispute relating to religion. For example, some might want a company's stores to remain open on the Sabbath in order to make more money, and others might want the stores to close for religious reasons. State corporate law provides a ready means for resolving any conflicts by, for example, dictating how a corporation can establish its governing structure. See, e.g., *ibid*; *id.*, §3:2; Del. Code Ann., Tit. 8, §351 (2011) (providing that certificate of incorporation may provide how "the business of the corporation shall be managed"). Courts will turn to that structure and the underlying state law in resolving disputes.⁸

Jennifer Taub, Professor of Law at Vermont Law School agrees that the majority opinion in *Hobby Lobby* "suggests that to be deemed a person under RFRA, a corporation would *not* need to be closely-held," but goes on to offer guidance she interprets from the majority opinion where corporations should be treated as persons under RFRA (and perhaps elsewhere in the law):⁹

⁴ In August 2011, the "Committee on Disclosure of Corporate Political Spending" filed a petition for rehearing with the Securities and Exchange Commission (<http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>) in which the committee asked "that the Commission develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities." Those rules still do not exist for 1934 Act reporting companies. The SEC does have rules prohibiting investment advisors from making political contributions to encourage political subdivisions to hire them as advisors. See 17 CFR § 275.206(4)-5.

⁵ 134 S. Ct. 2751 (2014).

⁶ 134 S. Ct. 2751 (2014).

⁷ *Slip op.* at pages 36-37.

⁸ See, also, the discussion of *Hobby Lobby* in Lyman Johnson and David Millon, *Corporate Law After Hobby Lobby*, 70 The Bus. L. (ABA) v. 1 at p. 1 (Winter 2014-2015).

⁹ Taub, Jennifer, "Is Hobby Lobby a Tool for Limiting Corporate Constitutional Rights," 30 Const. Comment. 403 (2015), summarized at <http://clsbluesky.law.columbia.edu/2015/08/11/is-hobby-lobby-a-tool-for-limiting-corporate-constitutional-rights/>.

The Court's threshold determination that the three corporations were persons under RFRA appears to have depended upon the existence of three conditions.

- First, upon looking-through the corporate entity, the Court was able to see human owners that were co-extensive with the corporation. This move ignored the "separateness" that state corporate law recognizes between a corporation and its owners.
- Second, it appears that only because the identified human owners held (or agree to share) the same sincere religious beliefs, and
- third, openly ran the corporation in accordance with those beliefs, did the Court conclude the beliefs of these human beings could be attributed to the corporate entity.

Arguably, only with these three factors present, did the Court determine that the contraceptive mandate substantially burdened the sincere religious beliefs of each corporation.

2. **The duties of the Board of Directors after *Hobby Lobby* – can a for-profit corporation consider social responsibility even if it has the effect of reducing profits?**

See the following disclosure that appears in the disclosure contained in the prospectus for the recent public offering by ETSY, Inc.¹⁰:

Adherence to our values and our focus on long-term sustainability may negatively influence our short- or medium-term financial performance.¹¹

Our values are integral to everything we do, and accordingly, we intend to focus on the long-term sustainability of our business and our ecosystem. We may take actions that we believe will benefit our business and our ecosystem and, therefore, our stockholders over a period of time, even if those actions do not maximize short- or medium-term financial results. However, these longer-term benefits may not materialize within the timeframe we expect or at all. For example:

- we may choose to prohibit the sale of items in our marketplace that we believe are inconsistent with our values even though we could benefit financially from the sale of those items;

¹⁰ Available at www.sec.gov. See amendment number 2 to ETSY's registration statement on Form S-1, filed April 14, 2015, Commission file no. 333-202497 (the "ETSY Registration Statement"). Note that ETSY is a Delaware corporation with a broad "for profit" purpose in its certificate of incorporation and no deference to social responsibility that has not elected PBC status, but is a certified B Corp.

¹¹ This and the following language can be found at pages 16-17 of the prospectus included in the ETSY Registration Statement (the "ETSY Prospectus").

- we may choose to revise our policies in ways that we believe will be beneficial to our members and our ecosystem in the long term even though the changes are perceived unfavorably among our existing members; or
- we may take actions, such as investing in alternative forms of shipping or locating our servers in low-impact data centers, that reduce our environmental footprint even though these actions may be more costly than other alternatives.

3. Where investors are concerned, what is the role of disclosure regarding consideration of alternative constituencies?

- a. Is a risk factor (as in ETSY) sufficient or should it be more prominent – say, on the cover page of the prospectus?
- b. Should there be *pro forma* financial statements comparing the competing expectations? (This is what we could make if we ignored social responsibility (in ETSY’s case, used the least expensive credible shipping method, for example) versus meeting our social responsibility goals?)

For example, in its Form 10-K for the year ended December 31, 2014, NeoPhotonics Corp. included the following risk factor (at page 31) to reflect the potential cost of its corporate social responsibility: “International standards of corporate social responsibility include strict requirements on labor work practices and overtime. As global service providers and their network equipment vendors adopt these standards, we have in the past incurred and may be required in the future to incur additional direct labor costs associated with our compliance with these standards.” Should we ask “how much additional?”

- c. There has been significant focus on corporations disclosing political contributions after *Hobby Lobby*; should/will there be the same focus for socially responsible expenditures – especially where some expenditures may be more controversial than others.

4. Should a for-profit corporation desiring to include a focus on social responsibility at the expense of profit expressly so state in its articles of incorporation or adopt a form such as (in Colorado) a public benefit corporation?

See *Newland v. Sebelius*¹² where the plaintiffs brought a suit against Kathleen Sebelius in her official capacity as Secretary of the Department of Health and Human Services (and other defendants) seeking an injunction to prevent the application of portions of the

¹²

Case 1:12-cv-01123-JLK Document 30 Filed 07/27/12 USDC Colorado.

Patient Protection and Affordable Care Act (“ACA”)¹³ to their business, Hercules Industries, Inc. In anticipation of the litigation, Hercules had amended its articles of incorporation to reflect attention to the principles of the Roman Catholic religion which were contrary to the application of the contraception mandate contained in the ACA. In granting the preliminary injunction, the Honorable John Kane implicitly confirmed the effectiveness of such amendment when he stated [*citations to the amended complaint omitted*]:

Although Hercules is a for-profit, secular employer, the Newlands adhere to the Catholic denomination of the Christian faith. According to the Newlands, “they seek to run Hercules in a manner that reflects their sincerely held religious beliefs.” Thus, for the past year and a half the Newlands have implemented within Hercules a program designed to build their corporate culture based on Catholic principles. Hercules recently made two amendments to its articles of incorporation, which reflect the role of religion in its corporate governance: (1) it added a provision specifying that its primary purposes are to be achieved by “following appropriate religious, ethical or moral standards,” and (2) it added a provision allowing members of its board of directors to prioritize those “religious, ethical or moral standards” at the expense of profitability.

5. Is there a religious and moral side to profit maximization and corporate social responsibility?

See (*inter alia*) Pope Francis’ *Laudato Si*,¹⁴ paragraph 128, 129, and 195, where His Holiness says [*citations omitted; emphasis supplied*]:

128. We were created with a vocation to work. The goal should not be that technological progress increasingly replace human work, for this would be detrimental to humanity. Work is a necessity, part of the meaning of life on this earth, a path to growth, human development and personal fulfilment. Helping the poor financially must always be a provisional solution in the face of pressing needs. The broader objective should always be to allow them a dignified life through work. *Yet the orientation of the economy has favoured a kind of technological progress in which the costs of production are reduced by laying off workers and replacing them with machines.* This is yet another way in which we can end up working against ourselves. The loss of jobs also has a negative impact on the economy “through the progressive erosion of social capital: the network of relationships of trust, dependability, and respect for rules, all of which are indispensable for any form of civil coexistence”. In other words, “human costs always include economic costs, and economic dysfunctions always involve human costs”. *To stop investing in people, in order to gain greater short-term financial gain, is bad business for society.*

¹³ Pub. L. No. 111-148, 124 Stat. 119 (2010).

¹⁴ May 24, 2015, available at: http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

129. In order to continue providing employment, it is imperative to promote an economy which favours productive diversity and business creativity. For example, there is a great variety of small scale food production systems which feed the greater part of the world's peoples, using a modest amount of land and producing less waste, be it in small agricultural parcels, in orchards and gardens, hunting and wild harvesting or local fishing. Economies of scale, especially in the agricultural sector, end up forcing smallholders to sell their land or to abandon their traditional crops. Their attempts to move to other, more diversified, means of production prove fruitless because of the difficulty of linkage with regional and global markets, or because the infrastructure for sales and transport is geared to larger businesses. Civil authorities have the right and duty to adopt clear and firm measures in support of small producers and differentiated production. To ensure economic freedom from which all can effectively benefit, restraints occasionally have to be imposed on those possessing greater resources and financial power. *To claim economic freedom while real conditions bar many people from actual access to it, and while possibilities for employment continue to shrink, is to practise a doublespeak which brings politics into disrepute.* Business is a noble vocation, directed to producing wealth and improving our world. It can be a fruitful source of prosperity for the areas in which it operates, especially if it sees the creation of jobs as an essential part of its service to the common good.

195. The principle of the maximization of profits, frequently isolated from other considerations, reflects a misunderstanding of the very concept of the economy. As long as production is increased, little concern is given to whether it is at the cost of future resources or the health of the environment; as long as the clearing of a forest increases production, no one calculates the losses entailed in the desertification of the land, the harm done to biodiversity or the increased pollution. In a word, businesses profit by calculating and paying only a fraction of the costs involved. *Yet only when "the economic and social costs of using up shared environmental resources are recognized with transparency and fully borne by those who incur them, not by other peoples or future generations", can those actions be considered ethical.* An instrumental way of reasoning, which provides a purely static analysis of realities in the service of present needs, is at work whether resources are allocated by the market or by state central planning.

6. Is there a difference between corporate social responsibility and social entrepreneurship?

Professor Christine Hurt¹⁵ describes one of the differences between corporate social responsibility ("CSR") and social entrepreneurship (often used interchangeably with "social enterprise") as:

¹⁵ Illinois Law, www.theconglomerate.org/2012/04/csr-v-social-entrepreneurship.html.

CSR focuses on companies that make widgets, but who do so in an enlightened way; Social entrepreneurship envisions companies that make a completely different kind of widget. . . .most of the companies who are heralded for “good CSR” make products for rich people or at least premium products that are a splurge for the average person: Ben & Jerry's ice cream; Burt's Bees; Toms shoes. In making these products, which are more expensive than their competitors, they brand themselves as “giving back” or being enlightened to employees, communities or the environment. These companies don't seem to be losing money by “doing well and doing good,” though their profit margins arguably might be lower than otherwise.

Social entrepreneurs start for-profit companies in a sphere usually inhabited only by not-for-profits and try to do something that can't be done by NGOs because of capital scarcity or knowhow scarcity. Social E's make a different kind of widget that isn't needed by rich people, but by the needy: affordable clean water, light sources, hygiene products, sanitation, etc.

In the Facebook prospectus,¹⁶ Mark Zuckerberg wrote: “Facebook was not originally founded to be a company. We’ve always cared primarily about our social mission, the services we’re building and the people who use them. . . . Most great people care primarily about building and being a part of great things, but they also want to make money. . . . Simply put, we don’t build services to make money; we make money to build better services. . . . These days I think more and more people want to use services from companies that believe in something beyond simply maximizing profits. . . . We don’t wake up in the morning with the primary goal of making money, but we understand that the best way to achieve our mission is to build a strong and valuable company.”

7. Are alternative entities important, and must they be carefully crafted?

- a. L3Cs are not necessary since no state requires an LLC to have a profit motive.¹⁷
- b. A benefit corporation under the model statute must promote the “general public benefit,” defined as having “[a] material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.”¹⁸ Consider cases where a positive impact on the environment may have a negative impact on society:

¹⁶ Page 67-70 of Form S-1 registration statement filed on February 1, 2012, SEC file no. 333-179287.

¹⁷ See Callison, *L3Cs: Useless Gadgets?* Business Law Today (ABA), Volume 19, Number 2 oing soNovember/December 2009. See also his companion article in 35 Vt. L. Rev. 272 (2010).

¹⁸ 4-10-13 version at http://www.benefitcorp.net/storage/documents/Model_Benefit_Corporation_Legislation.pdf.

- i. Closing the Colo-Wyo mine near Craig, Colorado, was argued to be necessary in the region's battle to reduce climate change; may have had a positive impact on the environment (although the September 6, 2015 *Denver Post* indicated that the impact would have been negligible), but it would have put 700 people out of work and impacted the entire economy of northwestern Colorado.
 - ii. Similarly, imposing new clean air standards in the Denver metropolitan area may have a beneficial impact on the environment, but is predicted to have a negative impact on employment.
 - iii. Converting public-use national forest land into wilderness area will likely have a positive impact on the environment, but will significantly reduce the number of visitors – arguably a negative impact on society.
- c. Must ETSY (or any other B Corp. certified entity, whether corporation, LLC, or cooperative) become a public benefit corporation to maintain its B Corp. certification? The “rules” for a business entity that has received B Corp. certification requires that all certified B Corps incorporated under the law of (among other states) Colorado and Delaware.¹⁹

Congratulations! Your state recently passed benefit corporation legislation. Electing this status is the best way to ensure that the values of your company are maintained over time. Adopting benefit corporation status is a straightforward process that you can learn about [here](#); companies must elect benefit corporation status within four years of the first effective date of the legislation [August 1, 2013 in Delaware; April 1, 2014 in Colorado] or two years of initial certification, whichever is later.

The ETSY Prospectus says the following about becoming a public benefit corporation under the Delaware General Corporation Law (with no commitment to do so):²⁰

“Pursuant to certain stock transfer and other agreements, if our board of directors approves an amendment to our certificate of incorporation specifying that we become a “public benefit corporation” subject to the requirements of Chapter 1, Subchapter XV of the Delaware General Corporation Law, certain holders of more than 5% of our capital stock have an obligation to vote all voting securities held by such holders, or over which such holders otherwise exercise voting or investment authority, in favor of such amendment. Upon the completion of this offering, the obligation will terminate and none of our stockholders will have any obligation to vote in favor of any such amendment.”

¹⁹ See <http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap/corporation-legal-roadmap>.

²⁰ ETSY Prospectus at page 146.

8. Is it a question of marketing?

- a. Can you be “good” and not be a certified B Corp., benefit corporation, or other designated socially-responsible entity? Would you rather pay \$4.00 for a Chipotle burrito or \$2.50 for a Taco Bell burrito?

See www.chipotle.com/company:

When Chipotle opened its first restaurant in 1993, the idea was simple: show that food served fast didn't have to be a “fast-food” experience. Using high-quality raw ingredients, classic cooking techniques, and distinctive interior design, we brought features from the realm of fine dining to the world of quick-service restaurants.

Over 20 years later, our devotion to finding the very best ingredients we can—with respect for animals, farmers, and the environment—is shown through our Food With Integrity commitment. And as we grow, our dedication to creating an exceptional experience for our customers is the natural result of cultivating a culture of genuine, rewarding opportunities for our employees.

Taco Bell, for example, has no similar statement. The Taco Bell website does discuss its nutrition, however. See www.tacobell.com/nutrition: Avocado Ranch Sauce:

Soybean oil, buttermilk, water, avocado, vinegar, enzyme modified egg yolk, garlic juice, sugar, salt, garlic powder, onion powder, spices, natural flavor, lactic acid, lemon and lime juice concentrate, disodium inosinate, potassium sorbate and sodium benzoate (P), propylene glycol alginate, xanthan gum, calcium disodium EDTA (PF), blue 1 (C). Contains Milk, Eggs

See www.toms.com/improving-lives where the company states: “With every product you purchase, TOMS will help a person in need. One for One.®” Will the consumer pay more for shoes at TOMS than at DSW because of TOMS’ social mission?

- b. Does the socially-responsible label (PBC, “B Corp.,” L3C, or other) provide anything more than a marketing cachet?

See www.bcorporation.net:

Lead a movement, differentiate from pretenders, generate press, attract and engage talent, attract investors, participate in ad campaign

- c. Holding one’s business out as a socially responsible business (or even better, as a PBC, benefit corporation, or L3C) makes one’s business look better whether or not it

is. Wikipedia defines “greenwashing” as “a form of spin in which green PR or green marketing is deceptively used to promote the perception that an organization's products, aims or policies are environmentally friendly.” William H. Clark and Elizabeth K. Babson²¹ describe ‘greenwashing’ as follows:

As consumer demand for socially responsible products and companies is increasing, consumer trust in corporations is decreasing. Marketers use the terms “green,” “responsible,” “sustainable,” “charitable,” and words like them on a daily basis to describe their products or their companies. However, the more these terms are used, the less meaning they have because there are no standards to back up the claims. This problem, often referred to as “greenwashing,” is misleading for consumers and frustrating for businesses that try to distinguish themselves based on their social and environmental business practices. Consumers are less likely to trust the company’s claims versus consumer reports or third-party certifications. As a result, various certifications, such as “Organic,” “Fair Trade,” “Energy Star,” “Green seal,” “LEED,” and “Forest Stewardship Council,” have emerged to provide insight on particular aspects of a certain company’s social or environmental performance. Although there has been a proliferation of narrow product or practice-specific standards like those mentioned, there are fewer standards that provide a comprehensive understanding of a company’s performance as a whole.

9. Where does “blind philanthropy” fit in?

A segment of the population has always believed that philanthropy is more meaningful when private. Contributions to church, synagogue, charity, and cause may provide tax deductions, but are they intended to provide publicity and marketing opportunities? *See, e.g.,* Mark 6:3-4:

“But when you help a needy person, do it in such a way that even your closest friend will not know about it. Then it will be a private matter. And your Father, who sees what you do in private, will reward you.”

Is it a true test of corporate social responsibility that a business be socially responsible without touting it? Isn’t touting it “marketing” and therefore less valuable?

10. Once you have done it, can you go back?

The ETSY Prospectus²² provides a risk factor as follows:

We are a Certified B Corporation. The term “Certified B Corporation” does not refer to a particular form of legal entity, but instead refers to companies that are certified

²¹ *How Benefit Corporations Are Redefining The Purpose of Business Corporations*, 38 William Mitchell Law Review 817, 820-821 (2012).

²² At page 17.

by B Lab, an independent nonprofit organization, as meeting rigorous standards of social and environmental performance, accountability and transparency. B Lab sets the standards for Certified B Corporation certification and may change those standards over time. Our reputation could be harmed if we lose our status as a Certified B Corporation, whether by our choice or by our failure to meet B Lab’s certification requirements, if that change in status were to create a perception that we are more focused on financial performance and are no longer as committed to the values shared by Certified B Corporations. Likewise, our reputation could be harmed if our publicly reported B Corporation score declines, if that created a perception that we have slipped in our satisfaction of the Certified B Corporation standards.

11. **Is it the Millennials (born 1980-1995) versus the Baby Boomers (born 1945-1960)?²³**

While characterization of any single group is always dangerous and usually wrong, the literature describes the “Millennials Generation” in the United States (86 million people now in or entering the workforce who were born between 1980 and 1995²⁴) as a generation of more socially and globally conscientious consumers, employees, and entrepreneurs than their predecessors. As employees, popular literature suggests that millennials will at least try to bring their values into their careers, placing some weight on employers’ reputation for social responsibility when considering job options. How much will the Baby Boomers (who generally are the employers) adapt remains to be seen.

Literature also suggests that, as consumers, millennials are expected to pay attention to the authenticity, accountability, and transparency of the companies behind the brands they buy, including issues such as environmental sustainability and fair labor standards.

²³ Michelle Nunn, *Millennials to Business: Social Responsibility Isn’t Optional*, WASHINGTON POST (December 20, 2011), http://www.washingtonpost.com/national/on-innovations/millennials-to-business-social-responsibility-isnt-optional/2011/12/16/gIQA178D70_story.html.

Andrew Swinand, *Corporate Social Responsibility Is Millennials’ New Religion*, CRAIN’S CHICAGO BUSINESS (March 25, 2014), <http://www.chicagobusiness.com/article/20140325/OPINION/140329895/corporate-social-responsibility-is-millennials-new-religion>.

Jesse Fishman, *Making the Case For Work-Life Balance: How Millennials Will Change The Practice of Law*, 38 Jun Wyo. Law. 26 (June 2015) available at <https://www.wyomingbar.org/news-publications/wyoming-lawyer-magazine/>.

²⁴ This paper uses the term “Millennials” notwithstanding the exhortation from CBA President Loren Brown to eschew the use of the term as being “paternalistic.” See Brown, Loren M., *The Future Of The Bar Is Now!*, 44 The Colo. L. (CBA) 5 (August 2015). I have found that Millennials refer to themselves as “Millennials” and use that term as being descriptive without any intention of being paternalistic. I have been a “Baby Boomer” my entire life.

As entrepreneurs, literature suggests that millennials are developing companies that integrate social responsibility into their business models. Authenticity in corporate commitments to social causes is essential – the economic benefit is lost if it’s just for show. Of course, it remains to be seen whether these new business models will be successful.

12. Whither the future?

The Supreme Court has decided several cases which effectively empower business corporations similarly to individuals. The most notable have been *Citizens United v. Federal Election Comm’n*²⁵ and *Burwell v. Hobby Lobby Stores, Inc.*²⁶ Both derived from the conservative side of the political spectrum. Neither opinion limits its holdings as to corporate personhood or the corporate right to free exercise of religion (*Hobby Lobby*) or political expression (*Citizens United*) to privately-held corporations. On June 26, 2015, the Supreme Court issued its opinion in *Obergefell v. Hodges*²⁷ holding that the “Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.”

How will this square with a corporation’s right under RFRA and Chief Justice Roberts’ warning at page 28 of his dissent in *Obergefell*:

“Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Indeed, the Solicitor General candidly acknowledged that the tax exemptions of some religious institutions would be in question if they opposed same-sex marriage. . . . There is little doubt that these and similar questions will soon be before this Court. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today”

Can a public benefit corporation insulate its board of directors and the entity itself from the effects of *Obergefell*? As in *Hobby Lobby*, can a business entity deny marital benefits (insurance, retirement benefits, etc.) to same sex couples based on RFRA? Looking at this from the other side of the political spectrum, can corporate personhood and corporate rights as defined in *Citizens United* and *Hobby Lobby* be used as a sword to challenge tax exemptions, economic development credits, and business prerequisites of entities that do not follow the “law of the land” as defined by the Supreme Court in *Obergefell*?

²⁵ 130 S. Ct. 876 (2010).

²⁶ 134 S. Ct. 2751 (2014).

²⁷ 135 S. Ct. 2584, 576 U.S. ____ (2015).

