



Written by [Dave Bohon](#) on May 26, 2013

Hobby Lobby Takes Contraception Mandate to Appeals Court

The Christian owners of Hobby Lobby and Mardel Christian book retailer have taken their case against the Obama Administration's contraception mandate to a federal appeals court, asking to be exempted from the rule requiring businesses to provide free birth control to their employees — including “morning after” pills that are known to cause abortion.

Last September Hobby Lobby's CEO, David Green, filed a lawsuit to halt implementation of the mandate. Two-months later, a two-judge panel of the 10th Circuit U.S. Court of Appeals rejected the company's request for a temporary injunction against the mandate as litigation in the case proceeded. That ruling prompted Green to announce that his companies, which have a combined total of over 14,000 employees, would [defy the mandate](#), an action that could cost an estimated \$1.3 million in federal fines per day. “The government is forcing us to choose between following our faith and following the law,” explained Green. “I say that's a choice no American and no American business should have to make.”

While Hobby Lobby's owners say they have no problem with offering their employees contraceptives as part of their health coverage, they have refused to spring for the Plan B-type abortifacient drugs. Kyle Duncan of the [Becket Fund for Religious Liberty](#), which is representing the companies, said that the Hobby Lobby/Mardel group would “continue to provide health insurance to all qualified employees. To remain true to their faith, it is not their intention, as a company, to pay for abortion-inducing drugs.”

On May 23 Duncan took the Hobby Lobby/Mardel case before the full 10th U.S. Court of Appeals, arguing that the as Christians, the companies' owners run the business using Christian values, and so should enjoy the same exemption from the mandate as churches. The stores are a “profit-making company, yes, but also a ministry,” Duncan told the eight judges.

“When the government threatens to ruin a family's business unless they renounce their faith, the pressure placed on them is unmistakable,” Hobby Lobby's lawyers wrote in a brief filed in the case. “In other words, ‘Your business or your religion’ is just as effective a threat as ‘Your money or your life.’ ”

[World Magazine](#) noted that the latest court appearance for Hobby Lobby “marks the third time the





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company has made its case in the courts. If it loses this round of its religious liberty fight, it will appeal to the U.S. Supreme Court.”

Arguing against Hobby Lobby, the federal government insisted giving Hobby Lobby a pass on the mandate would mean that Green would be imposing his religious beliefs on his employees. “If you make an exemption for the employer, it comes at the expense of the employee,” argued federal attorney Alisa Klein.

But Duncan refuted that notion, telling the [Catholic News Agency](#) that “the idea Hobby Lobby is oppressing its employees or denying them a significant amount of benefits really doesn’t measure up to the facts. Let’s remember, Hobby Lobby provides generous wages well above the minimum wage, and generous benefits to its employees.”□ He noted that the company “isn’t violating the rights of its employees. Its employees are perfectly free to buy and use these drugs, even to use the generous wages Hobby Lobby gave them, to buy the drugs, so we think the government has the rights question really quite backwards.” Duncan added that the coverage the the company has balked at is for “a very small number of drugs [within its] otherwise extraordinarily generous comprehensive health benefits.”□

World Magazine noted that this is “the same argument government lawyers have made in other cases, with mixed results. Fourteen for-profit businesses have won temporary injunctions against the mandate on grounds it violates their religious freedom. Only six businesses have lost their cases. But the mixed rulings from across the country virtually guarantee the issue will end up before the U.S. Supreme Court.”

Hobby Lobby is one of some 60 private businesses, colleges, schools, hospitals, and other non-profit groups which have filed suit to halt implementation of the mandate. On May 6 one of the companies, Tyndale House Bible publishers, [won a major victory](#) in its efforts against the mandate, when, at the request of the Department of Justice, a federal appellate court dismissed an Obama administration appeal of an order that had halted enforcement of the mandate against Tyndale. The retreat by the administration marked the first complete appellate victory on a preliminary injunction in any of the cases against the mandate.

The Illinois-based publisher is the world’s largest privately held publisher of Bibles and Christian books, and funnels over 95 percent of its profits to religious non-profit groups and causes around the world. The company filed its suit against the mandate last October, objecting — as has Hobby Lobby and the majority of other groups filing suit — to being forced to provide “morning after” contraceptives that can also act as abortifacients. The Obama administration’s Department of Health and Human Services (HHS), which administers the mandate, had tried to rule that Tyndale was not a sufficiently religious entity to qualify for the exemption bestowed upon churches and a select few non-profits.

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