



## Victory — and Defeat — in Battle Over Contraception Mandate

A pair of court rulings covering President Obama's contraception mandate, which requires employers to provide free abortion-inducing contraceptives with their health insurance, has Christian business owners and faith-based non-profits wondering if they will be considered religious enough to dodge the rule they consider morally unacceptable. While churches are immune from the rule, other Christian organizations, as well as private businesses, are required to offer contraceptives, including "morning after pills" that are known to induce abortion. Thus far over 40 businesses, schools, and other organizations have filed suit to stop the mandate, arguing that their moral and religious convictions prevent them from following it.



On November 16 one of those companies, Christian publisher Tyndale House, won a victory when a federal judge granted a temporary injunction blocking the Obama administration's Department of Health and Human Services (HHS) from forcing the company to implement the mandate. While Tyndale, the world's largest Christian publisher which funnels nearly all of its profits into Christian, non-profit endeavors, strongly objects to covering abortifacients in its health plan, HHS attorneys insisted that the company is not "religious enough" and must comply with the mandate.

U.S. District Judge Reggie Walton agreed with the Christian business, ruling in his temporary injunction that "the beliefs of Tyndale and its owners are indistinguishable.... Christian principles, prayer, and activities are pervasive at Tyndale, and the company's ownership structure is designed to ensure that it never strays from its faith-oriented mission."

In his ruling Walton wrote that he had "no reason to doubt ... that Tyndale's religious objection to providing insurance coverage for certain contraceptives reflects the beliefs of Tyndale's owners." He added that there was also no dispute that Tyndale's primary owner, Tyndale House Foundation, "can 'exercise religion' in its own right, given that it is a non-profit religious organization; indeed, the case law is replete with examples of such organizations asserting cognizable free exercise and RFRA [Religious Freedom Restoration Act] challenges."

Walton granted a temporary injunction against enforcement of the mandate, noting that it places Tyndale "in the untenable position of choosing either to violate their religious beliefs by providing coverage of the contraceptives at issue or to subject their business to the continual risk of the imposition of enormous penalties for its noncompliance."

Officials at Tyndale responded to the ruling, saying that they were "rejoicing and thanking God today



Written by [Dave Bohon](#) on November 20, 2012

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for the judge's decision." Attorney Matt Bowman of [Alliance Defending Freedom](#), which is representing Tyndale in the lawsuit, applauded the ruling, saying that "Bible publishers should be free to do business according to the book that they publish. The court has done the right thing in halting the mandate while our lawsuit moves forward."

Bowman said it was "startling" that HHS officials thought Tyndale was not religious enough to dodge the rule. "It demonstrates how clearly the Obama administration is willing to disregard the Constitution's protection of religious freedom to achieve certain political purposes," he said.

In July ADF was successful in obtaining a [similar injunction for Colorado-based Hercules Industries](#), a private business whose owners say their Catholic faith prevents them from implementing the mandate for their employees. The judge in that case ruled that the company would suffer "irreparable harm" if its owners were required to abide by the mandate in conflict with their religious convictions.

By contrast, the judge considering a similar suit by [Hobby Lobby](#), owned by evangelical Christians and operated by Christian values, ignored the conflict between those values and the contraception mandate, ruling November 19 that the company must implement the rule and provide its nearly 15,000 employees with free abortifacient contraceptives upon request.

"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," said Hobby Lobby owner David Green when the [Becket Fund for Religious Liberty](#), which is representing the company, announced the suit in mid-September. "We simply cannot abandon our religious beliefs to comply with this mandate."

In his decision against Hobby Lobby, U.S. District Judge Joe Heaton denied the company's request for a preliminary injunction, ruling that while Green and other family members who own the retailer have religious rights, those rights do not extend to their company, which the mandate defines as secular, and the Greens must violate their beliefs and institute the mandate.

In addition to Hobby Lobby, the Green family had also sought an exemption from the mandate for its book and educational supply retailer Mardel, which has 35 stores and 372 employees in seven states.

While saying that he was not unsympathetic to the conflict the Greens face with the mandate, Heaton nonetheless ruled that the plaintiffs had "not cited, and the court has not found, any case concluding that secular, for-profit corporations such as Hobby Lobby and Mardel have a constitutional right to the free exercise of religion."

Kyle Duncan, general counsel for the Becket Fund, said that the Greens would appeal the ruling. "Every American, including family business owners like the Greens, should be free to live and do business according to their religious beliefs," said Duncan. "The Green family needs relief now and we will seek it immediately from the federal appeals court in Denver."

David Green added that "it is by God's grace and provision that Hobby Lobby has endured. Therefore we seek to honor God by operating the company in a manner consistent with biblical principles."

The ADF's Matt Bowman told *The New American* that the Tyndale and Hobby Lobby rulings demonstrate that "the Obama Administration is trying to deprive all believers of religious freedom when they act through a business, no matter how religious they or their activities are."

Bowman emphasized that the ruling for Tyndale, which he represented, "is the right one: Supreme Court precedent clearly shows that religious people acting through corporations are not excluded from religious freedom protection, and government coercion to violate religious beliefs in their businesses is



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a coercion on the religious owners and directors themselves.”

He added that “when Christians and their families run a company, the government cannot force them to check their biblical duties at the door. The Tyndale and Hercules decisions were very thoroughly supported by religious freedom precedent, whereas the Hobby Lobby decision adopted the government’s secularizing viewpoint.”

Bowman expressed his hope that ultimately “appellate courts and the Supreme Court will follow precedent instead of the government’s attempt to cut religious freedom out of most Americans’ lives.”



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