Written by **Dave Bohon** on December 22, 2012

Appeals Courts Make Conflicting Rulings on Contraception Mandate

A federal appeals court has ruled against Hobby Lobby, a nationwide arts-and-crafts retailer, in its efforts to block enforcement of the Obama administration's contraception mandate. A part of the ObamaCare health law, the mandate requires businesses to provide their employees with free contraceptives, including abortion-causing drugs such as the "morning after" pill.

Hobby Lobby CEO David Green, an outspoken evangelical who operates his business on biblical principals, filed suit in September to block enforcement of the mandate, saying that the mandate forced him and his family "to choose between following the laws of the country that we love or maintaining the religious beliefs that have made our business successful and have supported our family and thousands of our employees and their families."

In November U.S. District Judge Joe Heaton ignored the conflict Green faced, ruling that his company would be required to implement the mandate and offer contraceptives to its nearly 15,000 employees, as well as the hundreds of employees of an educational supply retailer Green owns.

On December 20, the U.S. Court of Appeals in Denver followed up on Heaton's ruling by denying Green's request for a temporary injunction while his lawsuit against the mandate goes forward. Green could now face up to $1.3 million in fines per day unless he complies with the mandate. In its ruling, the court said Green had not proven that the mandate would "substantially burden" the religious values he uses to run his company.

Kyle Duncan, general counsel with the Becket Fund for Religious Liberty, which is representing Hobby Lobby in the case, said in a statement that Green and his family were naturally disappointed with the ruling. "They simply asked for a temporary halt to the mandate while their appeal goes forward, and now they must seek relief from the United States Supreme Court," said Duncan. "The Greens will continue to make their case on appeal that this unconstitutional mandate infringes their right to earn a living while remaining true to their faith."

Fox News noted that should the High Court take up the case, "it would only be deciding narrowly on whether to give Hobby Lobby a temporary reprieve, as opposed to ruling on the merits of the mandate itself."

There have been a total of 42 suits filed against the mandate, most of them by religious universities and non-profits who contend, like Hobby Lobby, that to abide by the mandate would require them to violate

the Christian values that define their mission. There have also been a number of suits filed by private businesses owned and managed by Catholics. The Becket Fund noted that Hobby Lobby is the largest business to file such a suit, and the only one owned by a non-Catholic. "The Green family has no moral objection to the use of preventive contraceptives and will continue covering preventive contraceptives for its employees," the Becket Fund emphasized about the Hobby Lobby owners. "However, the Green family's religious convictions prohibit them from providing or paying for the abortion-inducing drugs, the 'morning-after' and 'week-after' pills, which would violate their most deeply held religious belief that life begins at conception."

In a letter penned at the outset of the Hobby Lobby suit, David Green said that his family had lived the "American Dream" and wanted to "continue growing our company and providing great jobs for thousands of employees, but the government is going to make that much more difficult. The government is forcing us to choose between following our faith and following the law. I say that's a choice no American and no American business should have to make."

Green contended that the federal government "cannot force you to follow laws that go against your fundamental religious belief. They have exempted thousands of companies but will not except Christian organizations including the Catholic church."

While the U.S. Court of Appeals in Denver ruled against Hobby Lobby's case, days earlier a separate appeals court offered hope to Christian colleges fighting the mandate. On December 18, the U.S. Court of Appeals for the District of Columbia reversed the dismissal of lawsuits filed by Wheaton College, an evangelical school in Illinois, and Belmont Abbey College, a Catholic college in North Carolina.

Not only did the court reinstate the cases, it also ordered the Obama administration to report back every 60 days — starting in mid-February — until it has revised the rules to protect the religious freedoms of private colleges. The new rule must be issued by March 31, 2013.

"The DC Circuit has now made it clear that government promises and press conferences are not enough to protect religious freedom," said the Becket Fund's Kyle Duncan, who argued the case for the two colleges. "The court is not going to let the government slide by on non-binding promises to fix the problem down the road."

The ruling was based on promises the federal government had made in court that it would "never enforce [the mandate] in its current form" against Wheaton, Belmont Abbey, or other similar religious entities, and that it would publish a proposed new rule protecting those religious institutions by the first quarter of 2013. "The administration made both concessions under intense questioning by the appellate judges," explained the Becket Fund in a press release on the ruling, and the appeals court "deemed the concessions a 'binding commitment' and has retained jurisdiction over the case to ensure the government follows through."

Duncan said that, contrary to the decision against David Green and Hobby Lobby, the ruling by the DC court represents "a win not just for Belmont Abbey and Wheaton, but for all religious non-profits challenging the mandate. The government has now been forced to promise that it will never enforce the current mandate against religious employers like Wheaton and Belmont Abbey and a federal appellate court will hold the government to its word."