



Written by [Dave Bohon](#) on January 1, 2013

Hobby Lobby Will Defy Contraception Mandate, Others May Follow

With their legal options at an impasse for the time being, and with the [U.S. Supreme Court ruling against an emergency injunction on their behalf](#), the owners of the Oklahoma-based retailer Hobby Lobby have decided they will defy the Health and Human Services (HHS) mandate that requires employers to provide their employees with free contraception — including the so-called “morning after” pill that has been found to induce abortion in pregnant women.



On December 26, Supreme Court Justice Sonia Sotomayor refused to grant Hobby Lobby’s request for an emergency injunction blocking implementation of the contraception mandate. As of January 1 the federal government will require thousands of American business owners — even those who say the action violates their moral and religious convictions — to begin including free birth control with their health insurance plans.

Because David Green, CEO of Hobby Lobby and the Mardel Christian book retailer, which have a combined total of over 14,000 employees, has refused to honor the mandate, he and the other owners of the Christian-based company will likely face 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 as he filed a lawsuit against the mandate last September — a suit that is still pending in the courts. “I say that’s a choice no American and no American business should have to make.”

Kyle Duncan of the Becket Fund for Religious Liberty, which is representing Hobby Lobby in its legal claim, [said in a statement](#) after the Supreme Court ruling: “The company will 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.”

In a statement provided to the [Oklahoman](#) newspaper, Duncan confirmed that the businesses are “not going to comply with the mandate. They’re not going to offer coverage for abortion-inducing drugs in the insurance plan.” As for the potential fines Hobby Lobby and Mardel face, Duncan said, “We’re just going to have to cross that bridge when we come to it.”

In November U.S. District Judge Joe Heaton made an initial decision against Hobby Lobby, ruling that while constitutional protections allowed churches and some religious organizations to opt out of the mandate, “Hobby Lobby and Mardel are not religious organizations” and their owners’ religious convictions were not sufficient to provide immunity against the mandate. On December 20, the Tenth U.S. Circuit Court of Appeals followed up on Heaton’s ruling by denying Green’s request for a temporary injunction while his lawsuit against the mandate goes forward.

Duncan noted that Sotomayor’s ruling against Hobby Lobby’s injunction only meant that the High Court “decided not to get involved in the case at this time. It left open the possibility of review after [Hobby



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Lobby's] appeal is completed in the Tenth Circuit."

In explaining the suit he and his family filed to stop the mandate, Green said that as Christians, "we don't pay for drugs that might cause abortions.... We believe doing so might end a life after the moment of conception, something that is contrary to our most important beliefs. It goes against the Biblical principles on which we have run this company since day one."

There are now 42 separate lawsuits filed against the mandate, most by Christian colleges, religious non-profits, and private companies owned and operated by Christians. In several of the suits, federal judges have already ruled against the mandate, providing some organizations and businesses with at least temporary relief from obeying the mandate. For example, on December 18 the U.S. Court of Appeals for the District of Columbia reversed a lower court's dismissal of a suit 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 prove that it has effectively revised the rules to protect the religious freedoms of private colleges.

In mid-November Christian publisher [Tyndale House won a similar victory](#) when a federal judge granted a temporary injunction blocking the 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 had insisted that the company is not "religious enough" and must comply with the mandate.

In his ruling U.S. District Judge Reggie Walton sided with Tyndale, 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."

And last July U.S. District Court Judge John L. Kane granted a preliminary injunction halting the contraception mandate in the case of a Colorado-based company, [Hercules Industries](#), whose owners operate their business based on their Catholic faith. In granting the injunction Kane ruled that the company would suffer "irreparable harm" if its owners were required to abide by the mandate in conflict with their religious convictions.

While the owners of Hobby Lobby may be the first forced to make a choice between following their convictions or caving in to the mandate, other Christians have warned that they will defy the mandate as well. In early November, the newly installed Catholic bishop of Lincoln, Nebraska, predicted that the Catholic Church will similarly defy the mandate once it is forced to make a choice. "The Catholic Church is not going to back down," said Bishop James Conley. "We are never going to compromise our principles. We will defy it and face the consequences."

In June 2012, the U.S. Catholic Bishops penned a letter to the Church's members nationwide warning that there may come a time when faithful Christians are called upon to take a stand that includes some potentially painful consequences. "Some unjust laws impose such injustices on individuals and organizations that disobeying the laws may be justified," the Catholic leaders explained in the document. "Every effort must be made to repeal them. When fundamental human goods, such as the right of conscience, are at stake, we may need to witness to the truth by resisting the law and incurring its penalties."

The bishops added that it is "a sobering thing to contemplate our government enacting an unjust law. An unjust law cannot be obeyed. In the face of an unjust law, an accommodation is not to be sought,



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especially by resorting to equivocal words and deceptive practices. If we face today the prospect of unjust laws, then Catholics in America, in solidarity with our fellow citizens, must have the courage not to obey them. No American desires this. No Catholic welcomes it. But if it should fall upon us, we must discharge it as a duty of citizenship and an obligation of faith.”

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