

Not Just For Profit Religious Corporations Have Their Day in Court

**by Travis Weber
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Post-argument predictions will continue to pour out regarding *Sebelius v. Hobby Lobby* and *Conestoga Wood Specialties v. Sebelius*, cases in which business owners (the Green and Hahn families) have voiced religious objections to being forced to pay for certain types of contraceptives. The truth is, no one knows what will happen; what should happen is somewhat clearer.

Certain justices' opposition to Hobby Lobby's position predictably centered on what other claims corporations might bring should the Court rule for the Green family and against the government. Justices wondered whether a ruling for Hobby Lobby would lead to corporations objecting on religious grounds to providing vaccinations, blood transfusions, and the like. Hobby Lobby's attorney Paul Clement responded that the Court would still rule on each case as it arose under the standard set forth in the relevant federal statute, the Religious Freedom Restoration Act or RFRA, and there is no guarantee the religious claim would win. Furthermore, if the "parade of horrors" is so likely to occur, where is it? RFRA has been around since 1993.

The justices' questioning of the government's lawyer suggested that its attempt to distinguish between for-profit and other corporate forms did not make sense, at least in the case of a closely-held family business. Solicitor General Donald Verrilli was pressed by the justices about why the government insisted on hampering corporate religious exercise but not other religious exercise, which the government exempted from the mandate. Even Justices Anthony Kennedy and Stephen Breyer piled on at points.

When Verrilli said the Court had never ruled that corporations had a right to exercise religion, Justice Samuel Alito "[wondered](#) if there was something wrong with the corporate form that it would not be accorded" religious freedom, and asked whether "the only reason for a corporation to exist was to 'maximize profits?'" Verrilli said no. Later, when Verrilli said the Court had never granted a religious exemption to a for-profit corporation, Justice Antonin Scalia reminded him that the Court had never denied such an exemption either.

For-profit businesses often take on a variety of causes and charities through their operation. "Corporate social responsibility," "green practices," and "sustainable supply chain practices" are only a few examples of modern corporate priorities or "values." These goals are set as those running the business freely choose to set them. This is something business owners in America

have always been permitted to do. For example, TOMS shoes, well known for giving away one pair of shoes for each pair it sells, recently [announced](#) that it would start selling coffee, with each bag financing a week's worth of clean water for one person.

Business owners' beliefs may guide them to provide shoes for children, supply water for those who need it, provide special attention to the environment, ensure their suppliers are not committing human rights abuses or—need it even be said—run their businesses in accordance with their faith. American business owners only want to be left free to work and live as they wish.

The holes in the government's argument in *Hobby Lobby* are widened by all this generous corporate social responsibility and the fact that many corporations, for-profit and non-profit, work toward many different goals and objectives besides making money. Even aside from the lack of support in the law for such a distinction, "for-profit" status is beside the point when it comes to the freedom to run one's business as one wishes. Non-profits are often thought of as somehow more "noble" in their aims, but that view is silly. Whether "for-profit" or "non-profit," businesses are directed by those at their helm. As the Cato Institute's Ilya Shapiro [points out](#), "the reality is that any organization can act only at the direction of human beings. In a very real sense, the compulsion of a corporation is felt by the individuals who direct its affairs."

A family business owner's aims, hopes, and aspirations don't somehow magically disappear if the government taxes his or her company as a "for-profit" instead of a "non-profit." Despite being "for-profit," TOMS and Hobby Lobby still express the views of the human beings who run them. And companies like these often *voluntarily* put in place practices that benefit employees. For example, Hobby Lobby starts its full-time hourly employees at a salary 90 percent above the minimum wage and has long provided a generous employee health-insurance plan. Such companies don't need the "assistance" of additional government regulation like the intrusive employer mandate to operate in a manner that benefits their employees. Nevertheless, the mandate demands that American business owners like the Greens and Hahns violate their principles or stand up for their civil rights and be punished.

American businesses have always been free to accomplish a variety of purposes—purposes, like Hobby Lobby's high starting wage—that are often very beneficial to society. Such freedom thus more starkly reveals the government's acts of targeting and singling out families that simply want to operate their businesses according to their consciences. The HHS mandate puts the jobs, livelihoods, and healthcare of millions of Americans at risk by forcing those who stand up for their consciences to choose between paying crippling fines that could shut down their businesses or dropping the healthcare of their employees. Such coercion has no place in our religious liberty jurisprudence. We can only hope the Supreme Court will agree.

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