

It's Official—The Supreme Court Announces That It Will Review The Contraceptive Mandate

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**Mark D.
Scudder**
Of Counsel

Supreme Court

On Nov. 26, 2013, U.S. Supreme Court announced that it will review two cases in which for-profit employers challenged the application of the contraceptive mandate under the Patient Protection and Affordable Care Act. The cases are *Sebelius v. Hobby Lobby Stores* and *Conestoga Wood Specialites Corp. v. Sebelius*.

Both employers say that their religious beliefs bar them from providing employees with drugs or other items that they consider abortifacients. These employers argue that the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act protects their religious beliefs and therefore bars the application of the contraceptive mandate. In contrast, the government argues that for-profit corporations cannot exercise religion and therefore have no protection from the mandate.

At present, the federal courts of appeal are deeply divided on this issue. Three circuits—the Seventh, Tenth, and D.C. Circuits—have upheld challenges to the mandate, while two circuits—the Third and the Sixth—have rejected these challenges. The most recent decision came from the Seventh Circuit in *Korte v. Sebelius*, Case No. 12-3841, and *Grote v. Sebelius*, Case No. 13-1077. The court's ruling, issued Nov. 8, 2013, held that the Religious Freedom Restoration Act barred the application of the mandate to closely held, for-profit corporations when the mandate substantially burdened the religious-exercise rights of the business owners and their companies.

The Supreme Court will likely hear oral argument in the consolidated *Hobby Lobby* and *Conestoga* case in March 2014. The decision is expected to decide whether—and to what extent—for-profit corporations have a right to exercise religion. Many commentators see parallels between this case and the *Citizens United* case in which the Court held that corporations had a First Amendment right to make certain political expenditures. If the Court finds that corporations also have religious rights, it could have significant impact on the application of other laws—including the Title VII, the ADA, the FMLA, etc. For example, could a religious employer object to providing FMLA leave for an employee to care for a same-sex spouse, even in a state that recognizes same-sex unions? Keep an eye on this case—it could have far-reaching consequences.

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