

## Both Sides Face Tough Questions As The Supreme Court Hears Oral Argument Regarding The Contraceptive Mandate

April 4, 2014 | [Employee Health Issues, Labor And Employment](#)



**Mark D.  
Scudder**  
Of Counsel

On March 25, 2014, the U.S. Supreme Court heard the long-awaited oral argument in *Sebelius v. Hobby Lobby Stores and Conestoga Wood Specialties Corp. v. Sebelius*. In both cases, for-profit employers argued that the contraceptive mandate under the Patient Protection and Affordable Care Act violated their religious beliefs as protected by the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act. In contrast, the government argued that for-profit corporations cannot exercise religion and therefore cannot challenge the mandate on religious grounds.

As expected, both sides faced tough questions from the Justices, revealing the potential scope of the Court's ruling. Justices asked counsel for the employers how the Court would determine the religious beliefs of a corporation. They also asked whether for-profit employers could object to other types of medical procedures on religious grounds, such as vaccines or blood transfusions. Similarly, they asked whether for-profit employers could raise religious objections to a host of employment laws, such as Title VII's prohibition on race or sex discrimination. Counsel for the employers generally responded that the government could compel employers to take certain actions if the government had a compelling interest and the government used the least restrictive means to advance that interest. Here, the employers argued that the government had not used the least restrictive means, as the government could directly provide the contraceptive services at issue rather than forcing the employers to do so against their religious beliefs. The government faced equally tough questions. The Justices questioned whether an individual forfeits all rights to the free exercise of religion by forming a for-profit corporate entity. They used the example of an incorporated kosher slaughter house and questioned whether the government could outlaw kosher slaughtering methods on the grounds that they were inhumane. Under the government's theory, such a corporation would have no right to challenge the law on religious grounds. The Justices also noted that the courts have allowed corporations to assert race discrimination claims and questioned how they could assert race claims but not religious claims. The government generally responded to these questions by saying individuals forfeit any right to assert religious claims when they choose to operate a for-profit business under a corporate form. The argument shows the Justices understand the wide-ranging impact that this decision will likely have. In some ways, who wins is less important than why they win. The Court's reasoning will likely spawn a flurry of activity for one side or the other. The Court is expected to issue a ruling in late June of this year.

### RELATED PRACTICE AREAS

[Affirmative Action/OFCCP Compliance](#)  
[Disability, Leave and Medical Issues](#)  
[Labor and Employment](#)  
[Workers' Compensation](#)

### RELATED TOPICS

[Affordable Care Act](#)  
[Contraceptive Mandate](#)