

Selling Its Soul: An Analysis of a For-Profit Corporation's Religious Freedom and Autonomy in America

Steffen Pelletier

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POLICY NOTE

**SELLING ITS SOUL: AN ANALYSIS OF A FOR-
PROFIT CORPORATION'S
RELIGIOUS FREEDOM AND AUTONOMY IN
AMERICA**

By: Steffen Pelletier¹

I. Introduction

Is it possible to consider the principles and morals upon which a business entity is built as separate from the individual shareholders that form the business entity—do they make up a “soul”?

While the question above, on its face, rings more of philosophy than law and policy, there is currently a substantial question of law that is strikingly similar, if not the same, yielded by the contraception mandate of the Patient Protection and Affordable Care Act (“PPACA”). In brief, the PPACA, among other things, requires all health insurance policies, including those policies made available to subscribers through a privately held corporation, to provide contraceptive and preventative care for women.² Rooted in the fundamental religious beliefs they hold, many Americans find this so-called “contraceptive mandate” abhorrent.³ Certainly, no one would question that it is those Americans’ right to speak and act in accordance with that belief. However, the more

¹ J.D. Candidate 2016, University of Tennessee College of Law.

² Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 sec. 1001(a)(5), 42 U.S.C.A. § 300gg-13(a)(4) (2013).

³ Jack Kerwick, *Backlash Against Obamacare Contraceptive Mandate*, THE NEW AM. (Jul. 3, 2013, 15:12),

<http://www.thenewamerican.com/usnews/constitution/item/15891-backlash-against-obamacare-contraceptive-mandate>.

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complex question arises when dealing with the privately held for-profit corporation. Specifically, assuming a private corporation's fundamental principles on which it was built are in direct conflict with the entire notion of contraceptive care, what is the extent of Congress's ability to require the corporation to make insurance available covering contraceptive care?

In this policy note, I will address the many considerations surrounding a corporation's legal and moral autonomy. The general threshold question is this: to what extent is a for-profit corporation afforded religion and speech protections separately and distinctly from its shareholders?⁴ I intend this note to serve as a guide through the myriad complicated considerations implicated by this issue; in addition, I conclude that there is both objective value in and legal authority supporting the protection of a corporation's right to act in accordance with its religious affiliation. I will show that a corporation has a "soul" of its own—an individual and distinct set of principles that should be valued and protected.

II. The Development of the Law: The PPACA and "Preventative Health Services"

The PPACA mandates that "preventative health services" be included in healthcare plans without any cost sharing.⁵ Congress did not initially define "preventative health services" and instead authorized the Department of Health and Human Services ("DHHS") to promulgate rules to this effect.⁶ DHHS issued a preliminary rule that defined the religious employer exception narrowly and included

⁴ John K. DiMugno, *The Affordable Care Act's Contraceptive Coverage Mandate*, 25 No. 1 CAL. INS. L. & REG. REP. 1 (2013).

⁵ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 2713, 124 Stat. 119 (2010).

⁶ 3 RELIGIOUS ORGANIZATIONS AND THE LAW § 13:51 (2013).

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contraception in the definition of “preventative health service.”⁷ In order to qualify for the “religious employer exception,” an organization is required to (1) have the inculcation of religious values as its purpose; (2) primarily employ persons who share its religious views; (3) primarily serve persons who share its religious views; and (4) be a nonprofit organization.⁸ Accordingly, this exemption did not exempt many religious employers, such as Catholic healthcare providers, from being required to offer contraception as part of the routine coverage policies they offered.⁹ Because the Catholic Church forbids contraception, those non-exempt Catholic organizations would be forced to either violate their Catholic principles or violate the newly enacted law.¹⁰ Although the DHHS attempted to resolve the issue by delaying the date on which religious-affiliated nonprofits were required to comply with the law by one year and ordered the insurance companies of those religious employers to pay for the contraception, rather than the employers directly, the primary dispute remained: specifically, the Catholic Church wanted absolutely no affiliation with the provision of contraceptives.¹¹

⁷ Coverage of Preventive Health Services, 45 C.F.R. § 147.130(a)(iv) (2013).

⁸ *Id.*

⁹ 3 RELIGIOUS ORGANIZATIONS, *supra* note 6.

¹⁰ *See id.*; Pope Paul VI, *Humanae Vitae*, Vatican (July 25, 1968), available at

http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html.

¹¹ *See* 45 C.F.R. § 147.130; 3 Religious Organizations and the Law § 13:51 (citing *White House Misrepresents Its Own Contraceptive Mandate*, United States Conference of Catholic Bishops (Feb. 3, 2012), <http://www.usccb.org/news/2012/12-020.cfm>). Additionally, the exemption clause was again amended and expanded to define “religious employers” only as those that are considered nonprofit religious houses of worship and religious orders as defined by the IRS. The amended contraception mandate, while expanded to include more groups and

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Additionally, many other nonprofits and for-profits corporations have remained unwilling to breach their fundamental principles by providing insurance coverage for contraceptives. The crux of this conflict is primarily rooted in the interplay between the federal act giving individuals statutory claims where the government “substantially burdens” her freedom to exercise her religion and case law which identifies corporations as individuals.

III. Substantive Law at Issue

A. Religious Freedom Restoration Act

The Religious Freedom Restoration Act (“RFRA”) of 1993 was a response to the holding of the Supreme Court in *Employment Div. v. Smith*.¹² In *Smith*, the Court held that the dispositive issue in evaluating the constitutionality of a law under the First Amendment is not whether a law suppressed an individual’s religious practices.¹³ Rather, the Court held that, so long as the law was otherwise “neutral” and “generally applicable” to all individuals, the secondary effect of whether the law suppressed the religious practices of some is irrelevant.¹⁴ In effect, the Court removed the sometimes ambiguous

organization, still did not provide an exemption to other non-profits, and more extensively, for-profit corporations that asserted religious reasons for exemption. The amended contraception mandate was finalized on June 28, 2013. However, the mandate’s final version did little to mitigate the increased litigation from those still outside of the exemption. *See generally* DiMugno, *supra* note 4.

¹² Codified at 42 U.S.C. §§ 2000bb to 2000bb-4 (Supp. V 1993); *Emp’t Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 885 (1990); *see* Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 TEX. L. REV. 209, 210 (1994).

¹³ *Smith*, 494 U.S. at 885.

¹⁴ *Id* at 878-81, 876.

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weighing between two equally valid considerations: a compelling government interest and the right an American enjoys to practice his or her religion freely.¹⁵

Congress acted swiftly through its enactment of the RFRA, which was not only intended to replace the *Smith* standard with the compelling interest test, shifting the burden of proof to the government, but also to provide statutory claims and defenses for an individual where a law “substantially burdens” his or her freedom to exercise his or her religion.¹⁶ The RFRA provides that the government’s burden is met if it demonstrates that the law or policy is “(1) in a furtherance of a *compelling* governmental interest; and (2) is the *least restrictive means* of furthering that compelling governmental interest.”¹⁷

Notably, sub-section (c) provides that “[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.”¹⁸ To date, the federal circuit courts have held that subsection (c)’s use of “person” is ambiguous and therefore, the potential application of subsection (c) to different organizations and corporations is a matter of statutory interpretation.¹⁹ There is a circuit split

¹⁵ *Id.* at 879.

¹⁶ The RFRA provides that the “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability[]” (citing 42 U.S.C. § 2000bb-1(a)); *see* Klemka v. Nichols, 943 F. Supp. 470, 474 (M.D. Pa. 1996) (citing Rodriguez v. City of Chicago, No.95C5371, 1996 WL 22964, at *4 (N.D. Ill. Jan. 12, 1996)).

¹⁷ 42 U.S.C. § 2000bb-1(b) (emphasis added).

¹⁸ 42 U.S.C. § 2000bb-1(c).

¹⁹ Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114, 1129 (10th Cir. 2013), *cert. granted*, 134 S. Ct. 678 (2013).

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as to which entities may bring a claim, and, of those, which entities may be successful in adjudicating their claims on the merits.²⁰

B. First Amendment and *Citizens United*

For-profit corporations raising claims based on the RFRA find support in the landmark Supreme Court holding in *Citizens United v. Federal Election Commission*,²¹ which held that corporations enjoy First Amendment protections.²² The petitioner, Citizens United, sought injunctive relief from anticipated civil and criminal penalties that would be imposed on it following the release of a political documentary within thirty days of the 2008 Democratic primary elections.²³ The Court specifically held that the First Amendment applies to corporations and it “does not permit Congress to make categorical distinctions based on corporate identity” concerning freedom of speech.²⁴ Further, it held that “[n]o sufficient governmental interest justifies limits on political speech of non-profit or for-profit corporations.”²⁵ *Citizens United*’s

²⁰ *Id.*

²¹ *See generally* *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

²² *Id.* at 886, 917.

²³ *Hobby Lobby Stores, Inc.*, 723 F.3d 1114; *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013); *Gilardi v. U.S. Dep’t of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013) (citing *Citizens United*, 558 U.S. 310).

²⁴ The First Amendment does not permit Congress to make categorical distinctions based on the corporate identity of the speaker and the content of the political speech. *Citizens United*, 558 U.S. at 364 (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14 (1978)).

²⁵ *Citizens United*, 558 U.S. at 315. The sweeping implications of the holding that a corporation has its own identity that is separate from an individual citizen cannot be understated. When analyzing whether a section of the Bipartisan Reform Act restricting corporate speech was

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sweeping implication is simply this: “[t]he First Amendment protects speech and the speaker, and the ideas that flow from each,” regardless of whether the speaker is a person in the literal sense or a for-profit corporation.²⁶

IV. Action to the Courts

A. Non-Profit Dismissals

Two types of lawsuits have been filed in response to the contraception: those brought by nonprofit religious employers like the Catholic dioceses, and those brought by for-profit companies owned by religious individuals who disagree with the use of contraception.²⁷ Many of the claims brought by nonprofit organizations have been dismissed on procedural grounds dealing primarily with ripeness.²⁸

unconstitutional, the Court noted that if the Act were imposed on an individual citizen the government’s “time, place, and manner” argument would not be accepted, but instead be seen as a government action to silence suspect voices. *Id.* at 339.

²⁶ *Id.* at 341.

²⁷ *HHS Mandate Central*, THE BECKET FUND FOR RELIGIOUS LIBERTY, <http://www.becketfund.org/hhsinformationcentral/>, (last visited Jan. 28, 2014). Specifically, there have been a total of 91 cases filed by over 300 plaintiffs, including 46 cases brought by for-profit companies and 45 cases brought by non-profit organizations. Additionally, there have been 2 class action cases brought. Of those cases adjudicated on the merits, 33 injunctions have been granted and 6 denied in cases filed by for-profit companies, and 19 injunctions have been granted and 1 denied in cases filed by non-profit organizations. *See HHS Mandate Central*, THE BECKET FUND FOR RELIGIOUS LIBERTY, <http://www.becketfund.org/hhsinformationcentral/> (last visited Jan. 28, 2014).

²⁸ DiMugno, *supra* note 4. (Noting the reason behind many of these dismissals was that the DHHS was still finalizing its rules.) *See Catholic Diocese of Nashville v. Sebelius*, 2012 WL 5879796 (M.D. Tenn. 2012).

B. For-Profit Litigation and Circuit Court Splits

Cases brought by for-profit corporations generally do not share the same procedural impediments as their nonprofit counterparts²⁹ and have reached the United States Courts of Appeal on the merits.³⁰ Currently, there is a split between five Circuit Courts on whether for-profit corporations and their owners are able to bring First Amendment RFRA claims.³¹ The Seventh and Tenth Circuits have held that for-profit corporations and their owners have legitimate RFRA claims.³² The D.C. Circuit Court rejected the corporate claim, but recognized the individual claim.³³ Finally, the Third and Sixth Circuits rejected both corporate and individual claims.³⁴

1. Seventh and Tenth Circuit Courts

In *Hobby Lobby Stores, Inc v. Sebelius*, Hobby Lobby, a for-profit corporation, and its individual owners filed for injunctive relief claiming that the contraception mandate for employers violated their religious freedoms by compelling them to fund insurance coverage for “drugs or devices they consider to induce abortions.”³⁵ In defense of

²⁹ *Id.* at 1325.

³⁰ *Id.* at 1326.

³¹ *Hobby Lobby Stores, Inc.*, 723 F.3d 1114; *Korte*, 735 F.3d 654, 665; *Gilardi*, 733 F.3d 1208; *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377 (3d Cir. 2013) *cert. granted*, 134 S. Ct. 678 (U.S. 2013).

³² *Hobby Lobby Stores, Inc.*, 723 F.3d 1114; *Korte*, 735 F.3d 654, 665.

³³ *Gilardi*, 733 F.3d at 1216.

³⁴ *Autocam Corp.*, 730 F.3d 618; *Conestoga Wood Specialties Corp.*, 724 F.3d 377.

³⁵ *Hobby Lobby Stores, Inc.*, 723 F.3d at 1141. What is problematic about this quote is that it is from the synopsis and this exact quote is not found within the case. The RE or stack checker should have found

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the PPACA, the Attorney General argued that for-profit corporations are not considered “persons” under the RFRA because, among other things, Congress did not specifically include for-profit corporations as an entity offered rights and protections under the RFRA.³⁶ Because Congress did not specifically define the term “person,” the United States contended that the Tenth Circuit should adopted the definition of ‘persons’ as defined under other laws that excluded corporations.³⁷

The Tenth Circuit agreed that because Congress provided no definition for “person” within the RFRA, it left such definition to the discretion of the court.³⁸ However, the Tenth Circuit turned to the Dictionary Act, in which a corporation is included in the definition of a “person.”³⁹ Rejecting the government’s argument, the Tenth Circuit held that although other statutes do not include a corporation within the definition of a “person,” the court is not afforded the power to figuratively cut-and-paste definitions from statute to statute.⁴⁰ Accordingly, where

where this was discussed in the case and made the appropriate citation, and then changed the language to paraphrase the same point.

³⁶ *Id.* at 1128.

³⁷ *Id.* at 1130 (citing The Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, (1964); The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, (2009); the Fair Labor Standards Act (“FLSA”), 29 U.S.C.A. § 203 (2006)). (The United States argues that for-profit corporations are not recognized as persons? under these Acts and thus should not be given that status under the RFRA).

³⁸ *Id.* at 1129.

³⁹ *Id.*

⁴⁰ *Id.* at 1130. (Rather than implying that similar narrowing constructions should be imported into statutes that do not contain such language, they imply Congress is quite capable of narrowing the scope of a statutory entitlement or affording a type of statutory exemption when it wants to. The corollary to this rule, of course, is that when the

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Congress did not define “person,” the court must default to the Dictionary Act.⁴¹

In *Korte v. Sebelius*, the Seventh Circuit addressed the same issue.⁴² Like the Tenth Circuit, the Seventh Circuit held that corporations and individual owners might be successful on the merits of their cases.⁴³ However, the Seventh Circuit’s analysis differed slightly from that of the Tenth Circuit. Specifically, the Seventh Circuit held that “nothing in the Court’s general jurisprudence of corporate constitutional rights suggests a non-profit limitation on organizational free-exercise rights.”⁴⁴

2. D.C. Circuit Court

In *Gilardi v. U.S. Department of Health & Human Services*, the D.C. Circuit recognized that individual corporate owners might have RFRC standing. However, the D.C. Circuit split from the Tenth and Seventh Circuits in its holding that a corporation itself does not have standing to bring a claim under a RFRA.⁴⁵ The court looked to the “nature and history” surrounding the passage of the RFRA.⁴⁶ The court held that the cases that

exemptions are not present, it is not that they are “carried forward” but rather that they do not apply).

⁴¹ *Id.* at 1129 (In addition, the Supreme Court has affirmed the RFRA rights of corporate claimants, notwithstanding the claimants’ decision to use the corporate form. *See* *O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 973 (10th Cir. 2004) (en banc), *aff’d*, 546 U.S. 418, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006) (affirming a RFRA claim brought by “a New Mexico corporation on its own behalf”).

⁴² *Korte*, 735 F.3d at 664.

⁴³ *Id.* at 665.

⁴⁴ *Id.* at 681.

⁴⁵ *Gilardi*, 733 F.3d at 1215.

⁴⁶ *Id.* at 1214.

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influenced the RFRA's formation concerned individual rights, not corporate rights, and therefore they concluded that the RFRA does not apply to for-profit corporations.⁴⁷ Furthermore, the court held that "there is no basis for concluding that a secular organization can exercise religion."⁴⁸ Therefore, in effect, the D.C. Circuit held that it is simply not possible to infringe upon a secular corporation's freedom to exercise religion, as the corporation is not considered a "person" under the RFRA. The court notes that they are satisfied that the shareholders have been "injured in a way that is separate and distinct from an injury to a corporation."⁴⁹

3. Sixth and Third Circuit Courts

In *Autocam Corporation v. Sebelius*, Autocam Corporation and Autocam Medical, high-volume manufacturing corporations owned by a single Catholic family, brought RFRA claims seeking injunctive relief from the contraception mandate. The Sixth Circuit held that Autocam was barred from bringing an RFRA claim because it was not considered a "person" under the RFRA and that the shareholders were barred because of the shareholder-standing rule.⁵⁰ The court held that the plaintiff's reliance on *Citizens United* was "unavailing" because the Free Exercise Clause and the Free Speech Clause have historically been interpreted in different ways.⁵¹ The Court held that while *Citizen United* identified a number of cases where it recognized that corporations enjoyed rights under the First Amendment, because these cases only concerned freedom of speech, the Court could

⁴⁷ *Id.*

⁴⁸ *Id.* at 1215.

⁴⁹ *Id.*

⁵⁰ *Autocam Corp.*, 730 F.3d at 623, 626.

⁵¹ *Id.* at 628.

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not concede that the Religious Exercise clause entailed the same constitutional treatment.⁵²

Likewise, in *Conestoga Wood Specialties Corp. v. Secretary of U.S. Department of Health & Human Services*, the Third Circuit held that for-profit secular corporations could not assert claims under the RFRA because they were incapable of engaging in religious exercise.⁵³ It held that there is no authority applying the Free Exercise Clause of the First Amendment to secular for-profit organizations in the same way as the Free Speech Clause.⁵⁴ The court held that the proximity of the two clauses does not imply that all First Amendment rights are afforded to for-profit secular corporations.⁵⁵

V. The Future for For-Profit Corporations

While the RFRA protects religious organizations and individuals' religious freedoms from substantially burdensome government laws, the courts are addressing for the first time whether for-profit corporations are considered "persons" who have the ability and right to exercise religious freedoms.⁵⁶ *Citizen United* provides a compelling argument, implying that because corporations have a distinct voice and enjoy Freedom of Speech rights under the First Amendment, those business entities are also entitled to Religious Exercise rights as well.⁵⁷

⁵² *Id.*

⁵³ *Conestoga Wood Specialties Corp.*, 724 F.3d at 381.

⁵⁴ *Id.* at 385-86. The stack checker noted that this passage concerned the incorporation of the Free Exercise Clause and not really the direct application of the FEC to for-profit corporations. I wasn't sure exactly how to fix this.

⁵⁵ *Id.* at 387.

⁵⁶ Mark L. Rienzi, *God and the Profits: Is There Religious Liberty for Moneymakers?*, 21 GEO. MASON L. REV. 59, 61 (2013).

⁵⁷ *Id.* at 98.

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The primary conflict between the circuit courts presents a more complex issue than the right to invoke the religious protection of the First Amendment. Rather, this issue arguably requires the reevaluation of a corporation's identity and ability to invoke any First Amendment protections.⁵⁸

In March of 2014, the Supreme Court will have the opportunity to address this seemingly philosophical issue concerning the identity of the for-profit corporation.⁵⁹ However, the answer lies behind statutory analysis of the RFRA and previous Supreme Court decisions concerning corporate rights.⁶⁰ While analyzing the Circuit courts' holdings may provide insight into how the Supreme Court will rule concerning for-profit corporations' identities and First Amendment protections, the future of for-profit, privately owned corporations is unclear.

The idea of "corporate personhood" is not a modern idea, but a historical practice that has evolved with our country's democracy.⁶¹ In today's modern economy, a business entity can, undoubtedly, have an identity that includes specific goals, motives, and morals.⁶² Additionally, courts have recognized a business entity's ability to act in accordance with certain established

⁵⁸ See generally DiMugno, *supra* note 4.

⁵⁹ Lyle Denniston, *Court to Rule on Birth-Control Mandate (UPDATED)*, (Nov. 26, 2013), <http://www.scotusblog.com/2013/11/court-to-rule-on-birth-control-mandate/>.

⁶⁰ *Hobby Lobby Stores, Inc.*, 723 F.3d at 1129; *Korte*, 735 F.3d at 681.

⁶¹ John B. Stanton, *Keeping the Faith: How Courts Should Determine "Sincerely-Held Religious Belief" in Free Exercise of Religion Claims by for-Profit Companies*, 59 LOY. L. REV. 723, 748 (2013).

⁶² *Id.* at 756 (citing *Bob Jones Univ. v. United States*, 461 U.S. 574, (1983); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006)).

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principles.⁶³ What, then, creates the distinction between nonprofit and for-profit entities so as to deny for-profit corporations the ability to adhere to the same goals, motives, and morals?

As the Tenth Circuit held, there is both objective value in protecting a corporation's right to act in accordance with the religious affiliations upon which it was built, as well as legal authority to support such protection.⁶⁴ The Tenth Circuit held in *Hobby Lobby* that Hobby Lobby considered itself a "faith-based" corporation.⁶⁵ The court noted that nonprofits have historically been afforded the right to act in accordance with a "faith-based" identity in the market place.⁶⁶ In comparison, for-profit corporations have a voice that is protected by the First Amendment; furthermore, they are required to adhere to specific moral and social standards that are in place to benefit and protect the general public.⁶⁷ Thus, disallowing a corporation's clear faith-based identity would contradict those moral expectations that we as a society impose on corporations, and the US Supreme Court has allowed to flourish. Accordingly, and in the case of the PPACA, a for-profit corporation should be afforded the right to act in accordance with a faith-based identity, just as it has been offered in those other instances discussed above.⁶⁸

VI. Conclusion

⁶³ THE BECKET FUND, *Statutes of Non Profit Cases*, (2013), <http://www.becketfund.org/hhsinformationcentral/#tab1>.

⁶⁴ *Hobby Lobby Stores, Inc.*, 723 F.3d at 1129.

⁶⁵ *Id.* at 1131.

⁶⁶ *Id.*

⁶⁷ Steven J. Willis, *Corporations, Taxes, and Religion: The Hobby Lobby and Conestoga Contraceptive Cases*, 65 S.C. L. REV. 1, 44 (2013).

⁶⁸ *Id.*

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The United States prides itself on its diversity of views, cultures, and religions. However, respecting and protecting the right to speak and act in accordance with those beliefs has been of the utmost importance throughout the nation's history.⁶⁹ The federal government is now attempting to alter the definition of for-profit corporations in our country by disallowing them to act upon any other motivation than monetary ends. Allowing a for-profit corporation to be forthcoming with its foundational principles not only reveals its greater purpose, but also puts the general public on notice of that purpose while allowing the correct implementation of the contraception mandate. Rather than restricting the ability of a for-profit corporation to act as moral entity, the Supreme Court should consider the sincerity of the corporation's foundational principles. By analyzing the sincerity of a for-profit corporation's motivation to adhere to specific principles, the government is both recognizing the identity and protecting the rights of the for-profit corporation.

⁶⁹ William N. Eskridge, Jr, *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2064 (2002).

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