

Harmonizing the Two Kingdoms: For-Profit Businesses, the Theology of Work, and the Affordable Care Act's Contraception Mandate

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The Affordable Care Act's contraception mandate cases have brought into sharp relief the free exercise rights of for-profit businesses. As these cases progress, the federal courts must decide the scope of any such rights under the First Amendment and the Religious Freedom Restoration Act. Circuit courts, and perhaps the Supreme Court, will determine whether a corporation, whose primary business concerns are car parts or art supplies or other secular products or services, can have religious interests, scruples, and motivations that are more than minimally burdened when employees use employer-subsidized insurance to purchase contraceptives or abortifacient medications. Indeed, a key question that these contraception mandate cases highlight is whether for-profit firms can have religious concerns apart from their owners' personal interests and ethical concerns. That the same concern about the existence or scope of free exercise rights for businesses with explicitly religious purposes or religious, para-church firms does not exist in the same way as the concern for for-profit businesses' rights bespeaks a crisp divide between the sacred and secular in America and the tight limitations on free exercise in American jurisprudence.

Though several courts have granted injunctions staying the application of the contraception mandate, ultimate merits decisions have yet to be rendered. It is therefore appropriate to ask *why* claimants would bring constitutional claims on behalf of their businesses when it is unclear, notwithstanding the *Citizens United* decision, that these for-profit businesses have the discrete right of the free exercise of religion. Therefore, this Paper will sketch the purposes of the extant for-profit claimants in joining the litigation over the ACA's contraception mandate. Fundamentally, the claimants' purposes are theological in orientation, and revolve around their respective theologies of work. Traditional Christian conceptions of work, both Catholic and Protestant, place a premium on humans' *comprehensive* pact with God and humans to subdue the world and make it flourish. Everything that a Christian does, including her called vocation, resonates under God's guidance, authority, control, and ultimately, accountability. It is therefore impossible for for-profit business owners to coolly rend the commercial and money-making functions of their firms apart from their duties and service to God, notwithstanding the contrary suggestion of some jurists in the ACA cases, like Judge Rovner of the Seventh Circuit.

This Paper will trace the late 19th through early 21st century theologies of work, primarily conservative Protestant and Roman Catholic in orientation (thereby tracking the religious dispositions of the firm owner claimants who have filed suit against the contraceptive mandate). The Paper will conclude that while the ultimate constitutional success of the claimants' cases is questionable, their decision to try to mend the tear between secular and sacred is a theologically-informed attempt that has been made as an outgrowth of their duty and service to the Almighty.