

tiffs did not wish to provide insurance coverage to their employees for “emergency contraception” drugs, as those contraceptives may prevent the implantation of fertilized eggs. They argued that enforcement of this portion of the ACA against their corporations is a violation of their right to free exercise and of RFRA.³⁶⁷

The Court decided the case under RFRA, finding that Congress had intended the statute to allow religious claims made by, at a minimum, closely-held corporations.³⁶⁸ Its analysis, however, is suggestive of the larger question of whether a corporation can be said to engage in constitutionally protected religious activities. In *Hobby Lobby*, the Court noted that it had previously entertained free-exercise claims brought by nonprofit corporations such as churches,³⁶⁹ and that there was no reason (at least under RFRA) to distinguish nonprofit corporations from for-profit corporations.³⁷⁰ As to the question of whether a corporate form can “exercise religion,” the Court held that allowing a closely-held corporations to bring a suit under RFRA helped to protect the religious liberties of the plaintiffs.

The Court rejected the argument that profit-making by a corporation precludes a finding that the corporations were “exercising religion,” noting that regulation of single proprietor for-profit businesses had been found in previous cases to implicate the employers’ free exercise rights.³⁷¹ The Court also noted that organizations with religious or charitable goals might organize as for-profit corporations because of the potential benefits of that corporate form.³⁷² The Court did note that difficulties could arise in ascertaining the sincere “beliefs” of large, publicly traded corporations such as IBM or

³⁶⁷ See discussion of RFRA under General Governmental Requirements, *supra*.

³⁶⁸ 573 U.S. ___, No. 13–354, slip op. at 19–30.

³⁶⁹ See *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. ___, No. 10–553, slip op. (2012); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

³⁷⁰ RFRA applies to a “person’s” exercise of religion, 42 U.S.C. §§2000bb-1(a), (b), and the Dictionary Act, 1 U.S.C. §1, generally provides that the word “person” includes “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

³⁷¹ *Braunfeld v. Brown*, 366 U.S. 599, 605 (1961) (Sunday closing law “operates so as to make the practice of . . . religious beliefs” of Orthodox Jewish merchants more expensive); *United States v. Lee*, 455 U.S. 252, 257 (1982) (“compulsory participation in the social security system interferes with [Amish employers’] free exercise rights”).

³⁷² For instance, the for-profit corporate form might give an organization the freedom to participate in lobbying for legislation or campaigning for political candidates who promote their religious or charitable goals.