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### Religious Accommodations from the Contraceptive Mandate: Sincere Belief or Political Statement?

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### Abstract

In 2014, the Supreme Court made a controversial decision in *Burwell v. Hobby Lobby*, ruling that for-profit businesses were entitled to religious protections under the 1993 Religious Freedom Restoration Act (RFRA) and could seek and receive a religious accommodation from the contraceptive mandate of the 2010 Affordable Care Act (ACA). This decision split legal scholars who have since debated whether corporations may even qualify as persons under RFRA and what motivated Hobby Lobby and its litigating peers. Why did 48 other businesses litigate alongside Hobby Lobby for a religious accommodation? Should we believe the sincerity of their beliefs or consider different motivations? This paper focuses on an explanation offered by Gregory Lipper who says that contraceptive mandate litigators were driven by politics. Using SPSS software, this paper compares the total 49 litigating businesses to a control group made up of composites from three businesses in each community of the litigating group in a crosstab. It compares the groups' donations to Political Action Committees and controls for outward displays of religion. It finds that litigating businesses as a whole were more politically active and affiliated with the Republican party than its control counterpart with 46.9% of litigating businesses donating to Republican-affiliated PACs compared to just 26.5% of control businesses doing the same. Yet, 25 of the 49 litigating businesses were not politically affiliated. The study also finds that while the litigating group was more religious than the control group, 69.4% of litigating businesses were still not outwardly religious. These results, then, are complicated and limited, but they at least question the widely-held belief that the litigating businesses were purely motivated by sincere religious beliefs.

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### Abstract

*In 2014, the Supreme Court made a controversial decision in *Burwell v. Hobby Lobby*, ruling that for-profit businesses were entitled to religious protections under the 1993 Religious Freedom Restoration Act (RFRA) and could seek and receive a religious accommodation from the contraceptive mandate of the 2010 Affordable Care Act (ACA). This decision split legal scholars who have since debated whether corporations may even qualify as persons under RFRA and what motivated Hobby Lobby and its litigating peers. Why did 48 other businesses litigate alongside Hobby Lobby for a religious accommodation? Should we believe the sincerity of their beliefs or consider different motivations? This paper focuses on an explanation offered by Gregory Lipper who says that contraceptive mandate litigators were driven by politics. Using SPSS software, this paper compares the total 49 litigating businesses to a control group made up of composites from three businesses in each community of the litigating group in a crosstab. It compares the groups' donations to Political Action Committees and controls for outward displays of religion. It finds that litigating businesses as a whole were more politically active and affiliated with the Republican party than its control counterpart with 46.9% of litigating businesses donating to Republican-affiliated PACs compared to just 26.5% of control businesses doing the same. Yet, 25 of the 49 litigating businesses were not politically affiliated. The study also finds that while the litigating group was more religious than the control group, 69.4% of litigating businesses were still not outwardly religious. These results, then, are complicated and limited, but they at least question the widely-held belief that the litigating businesses were purely motivated by sincere religious beliefs.*

## Introduction

When the Affordable Care Act (ACA) was passed in 2010, it was met with intense opposition. One of the landmark Supreme Court decisions to emerge concerning the ACA was *Burwell v. Hobby Lobby* 573 U.S. 682 (2014). This case involved the contraception “mandate” of the ACA which required employers to include contraceptive coverage with no cost-sharing for patients in employee health plans.<sup>1</sup> The ACA allowed accommodations for only non-profit organizations with sincerely-held religious objections. The case was brought by the owners of Hobby Lobby Stores, Inc., a closely held, private, for-profit, craft store business. The owners had religious objections to specific contraceptives that they believed were abortifacients. Further, they maintained that they operated a Christian business and that including these contraceptives in their plan would violate their faith. Legally, the owners maintained that the ACA violated their constitutional free exercise rights and the Religious Freedom Restoration Act of 1993 (RFRA). The court ruled in favor of Hobby Lobby, establishing that for-profit businesses are persons under RFRA and that, as such, they may relieve sincerely-held religious objections by seeking an accommodation from the contraception mandate of the ACA. There were many opponents to this ruling, including dissenting Justice Ruth B. Ginsburg, who believed the religious accommodation would substantially burden employees, echoing the basic tenet of the third-party harm principle, which contends that individuals should not be limited in the freedom of their actions unless their actions harm others.

Since *Burwell v. Hobby Lobby*, hundreds of for-profit businesses have taken up this religious accommodation.<sup>2</sup> Still, there have been very few empirical studies on what

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<sup>1</sup> Section 2713 of the ACA called for no cost-sharing contraceptive coverage starting in late 2012. Although commonly used, the term “mandate” is misleading; the ACA called for coverage of preventative services and afforded the Department of Health and Human Services (HHS) authority to determine these services/medicines.

<sup>2</sup> Laying out new regulations, the Federal Register noted that as of 2018, 209 for-profit businesses made use of the contraceptive mandate religious accommodation. *See References*. I submitted a Freedom of Information Act (FOIA)

characteristics those businesses have in common or what alternative motives may have driven their decision to seek the religious accommodation. This study seeks to untangle the intertwining of politics and religion and understand how political party affiliation in particular relates to these for-profit businesses' decision to seek religious accommodation from the contraceptive mandate of the ACA. The cases to be studied are the 49 total for-profit businesses – including Hobby Lobby – that brought lawsuits against the Secretary of the Department of Health and Human Services from 2012 up until the *Hobby Lobby* decision.<sup>3</sup> These businesses were arguably those passionate and dedicated enough to spend valuable resources on litigation. Using these 49 cases, this study analyzes whether for-profit businesses with Republican party affiliations were more likely to litigate for a religious accommodation from the contraceptive mandate of the ACA than for-profit businesses with Democratic party affiliations.

This investigation is important because it will improve scholars' empirical understanding of the consequences of *Hobby Lobby* and contribute to a larger conversation concerning the sincerity of religious beliefs when it comes to religious accommodations. This study questions how religious beliefs may function as a facade for politically motivated interests. Of course, this study is also very timely. With the Supreme Court's overturning of *Roe v. Wade* 410 U.S. 113 (1973) in June of 2022, women's access to abortion services has been restricted in many parts of the United States. In response, many advocates have called for greater access to birth control, yet for women employees and female dependents of employees at religiously accommodated businesses, even access to certain birth control products is limited. This study hopes to uncover the reasons behind these limitations.

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request for all records of entities that requested either a religious or moral accommodation or exemption from the Centers of Medicare and Medicaid on September 7, 2022. As of December 19, 2022, I have not received this data.

<sup>3</sup> See *Appendix A*.

### **Four Answers to Why For-Profit Businesses Seek Religious Accommodations from the Contraceptive Mandate of the Affordable Care Act**

Exactly why for-profit businesses decide to seek a religious accommodation from the contraceptive mandate of the Affordable Care Act (ACA) is relatively understudied. Still, scholars have advanced four different explanations. The first explanation points to businesses' institutional makeup as a predictor of a business's decision to seek an accommodation. A second explanation instead takes a realist, economic lens in assuming that business owners seek religious accommodation from the contraceptive mandate of the ACA simply to rid themselves of the extra cost of contraceptive coverage (Strasser, 2016; Diaz, 2022). The final two explanations focus on the ideas of business owners as actors. The Religious Beliefs Explanation straightforwardly holds that businesses seek religious accommodations from the contraceptive mandate of the ACA because doing so would mean violating their sincere religious beliefs. According to this school, business owners may very well be religious and desire to operate their business according to their beliefs (Fernandez Lynch, 2017; Colombo, 2017). Finally, the fourth and final explanation asserts that businesses' decisions to seek a religious accommodation from the contraceptive mandate of the ACA are more closely tied to political ideologies and a desire to rebel against Democrat-championed policy (Lipper, 2017). While each of the explanations probably has some degree of truth, a careful analysis shows the Political Agenda Explanation may be most compelling of all in explaining what motivates or allows a for-profit business to seek a religious accommodation from the ACA's contraceptive mandate.

The first approach, the Firm Type Explanation, attempts to answer the research question by analyzing the categorization of for-profit businesses. This school considers not sincerity but turns to the structure of ownership to explain why businesses seek religious accommodation.

Adherents reason that since closely held corporations comprise a small number of owners, agreement on beliefs is more probable and, therefore, leads to a greater likelihood of seeking a religious accommodation than their publicly traded counterparts. After all, a group of say, six owners, is privileged compared to 6,000 shareholders because coordination, transaction, and collective action costs are smaller. Agreeing with the assertions of Justice Alito in his majority opinion in *Burwell v. Hobby Lobby* 573 U.S. 682 (2014), David T. Ball (2014) recognizes that most religious for-profit corporations “. . . are owned by members of a single-family or by two individuals whose faith is the bond between them” (p. 2). A second reason this explanation believes closely held corporations are more likely to seek religious accommodations is that doing so is controversial and risky, which publicly traded corporations rarely welcome. Rather than serving a local community that may or may not share a closely held business’s religious sentiments, publicly traded corporations generally serve a much larger portion of the nation, if not the world. As Ronald Colombo (2017) points out, some view introducing “a subject as ‘divisive’ as religion into the business setting” as unwise (p. 829). The publicly traded corporation’s consumers are assumed to be as diverse as the population at large, so a national chain adopting a religion that only some of the population identifies with is inherently risky.

This explanation is particularly convincing since no publicly traded corporations brought lawsuits against the Department of Health and Human Services (HHS), unlike the nearly fifty closely held companies. But, immediately adopting this approach would miss the impact of the accommodation. As Elizabeth Pollman (2016) points out, this school incorrectly synonymizes closely held for-profit corporations with small businesses (p. 164). Indeed, there are many closely held, for-profit corporations with religious roots that are large in size, like In-N-Out,

Chick-Fil-A, and Mary Kay Cosmetics.<sup>4</sup> Thus, the implication that a closely held ownership model signifies marginal impact is false. In fact, even just those three previously mentioned businesses employ over 67,000 people altogether. And, Hobby Lobby, which obviously was religiously accommodated, now employs over 43,000 people. So, being closely traded does not necessarily mean small.

A second explanation instead takes an economic approach. The Cost Reduction Explanation upholds that for-profit corporations are motivated by saving money in their decision to seek a religious accommodation from the contraceptive mandate of the ACA. This approach focuses on the fact that by seeking a religious accommodation, the overall cost of the plan is reduced since contraceptive coverage is dropped. Under the original accommodation model proceeding *Hobby Lobby*, insurance companies or third-party administrators then take on the cost of contraceptive coverage. Like the Political Ideology Explanation, this approach assumes that businesses have ulterior, realist motives in seeking a religious accommodation. In the case of this school, that ulterior motive is to save money on employee healthcare plans by shifting that cost onto others (Strasser, 2016; Diaz, 2022). This theory builds upon a basic principle of business that firms aim to reduce fixed costs and act as rent-seekers when possible. In acting to reduce overall plan costs by seeking an accommodation not to cover contraceptives, businesses have more money in their wallet.

This explanation is right to emphasize the empirical economic benefit to employers with a religious accommodation to the contraceptive mandate. Yet this approach ignores the other fact that insurance companies and third-party administrators alike may reject the accommodation.

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<sup>4</sup> This is not to suggest that those companies have the contraceptive mandate religious accommodation. They may or may not. Again, that information is not publicly available.



Thirdly, the Religious Beliefs Explanation provides the most obvious answer to the research question: for-profit businesses seek religious accommodations because they are, indeed, religious, and compliance with the contraceptive mandate would mean compromising their beliefs. Through this claim, the explanation centers on the sincerely-held religious ideas of corporation owners.

This third explanation is founded on the idea that businesses are more than money-making machines. David Million (1990) proposes that corporations need not be focused solely on profit-making, but may also be purposeful in their public relations. This is the base wherein authors considering the specificity of the contraceptive mandate of the ACA find legitimacy. Since for-profit corporations are assumed to have the freedom to act on issues other than finance, like environmentalism, these adherents find that business and religion are not mutually exclusive. Ronald J. Colombo (2017) adopts this belief and argues further that, indeed, some businesses are born out of religious motivations (p. 830). Holly Fernandez Lynch (2017) adds that society actually values corporations that engage in “moral agency” (p. 160) and highlights how a religiously led business may benefit society. These scholars do not doubt the sincerity of the business owners and find sympathy in such owners’ pleas for accommodation.

The Religious Beliefs Explanation has a strength in that it makes the most logical sense when first considering the research question and provides the obvious answer. Still, there are many flaws with this approach. First, the idea that for-profit corporations qualify as “persons” under the Religious Freedom Restoration Act of 1993, as it was decided they were in *Hobby Lobby*, is still hotly debated.<sup>5</sup> Additionally, this school ignores the additional benefits that

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<sup>5</sup> Scholars like Holly Lynch-Fernandez, Douglas Laycock, and George Curfman argue that corporations are persons under RFRA while others such as William Marshall, Kent Greenawalt, and Elizabeth Pollman argue the opposite.

accommodated businesses enjoy and instead automatically assumes business' pureness of purpose.

If the third explanation was blind to the possibility of business' bad faith, the fourth school is entirely based on it. The Political Agenda Explanation argues that for-profit businesses seeking religious accommodations from the contraceptive mandate of the ACA are driven by political ideologies rather than sincere religious beliefs. Opinion polls have long shown a partisan divide in favor or disfavor of the ACA ever since its passage in 2010. Since the ACA was a centerpiece of 2008 Democratic presidential nominee Barack Obama's campaign and later the brightest achievement of his administration, Republicans typically do not embrace the policy. This theory assumes that religiously objecting businesses are Republican-owned and acting on political motivations. After all, *Hobby Lobby* was only one of a few major cases intended to dismantle the ACA. Indeed, Gregory Lipper (2017) points out that many businesses covered contraceptives before the passage of the ACA and reiterates that objecting businesses are "... more concerned with scoring political points against the Obama administration" (p. 68). Indeed, a professional who has spent over 35 years in human relations confirmed that contraceptives were regularly included in employee group healthcare plans before the ACA, they just included copayments or coinsurance (C. Lotz, personal communication, December 7, 2022). Lipper argues that the litigating businesses are seeking religious accommodations in retaliation. This explanation is strong because it recognizes the intense partisan divide of the policy in question and highlights how political ideology motivates behavior. This approach aims to look deeper than the surface level.

Ultimately, there are a large number of possible explanations for why a for-profit business may seek a religious accommodation from the contraceptive mandate of the ACA. But, four

schools — the Firm Type School, the Cost Reduction School, the Religious Beliefs School, and the Political Agenda School — emerge as strong contenders. The Firm Type School reframes motivation to seek an accommodation by viewing ownership type as an enabler, but this school incorrectly synonymizes the term “closely held” with “small.” Under the realist lens of the Cost Reduction School, business owners seek the accommodation simply to alleviate some of their financial burdens, but the expected outcome of a reduction in fixed cost may not be easily achieved. The Religious Beliefs School claims that businesses make this decision solely based on sincere religious beliefs, but this approach fails to view businesses holistically. To adherents of the Political Ideology School, businesses seek the accommodation to spite Democrats and the Obama administration. In truth, each of the first three schools may operate as components of a for-profit business decision, but the Political Agenda School is understudied and intriguing. It is within this Political Agenda School, then, where I situate my research.

### **How to Explore the Impact of Party Affiliation on For-Profit Businesses’ Decision to Litigate**

To test the relationship between businesses’ party affiliation and their decision to litigate for a religious accommodation from the contraceptive mandate of the ACA, I will conduct a cross-tabular comparison analysis between a study group and a control group.

The study group will consist of for-profit businesses that sued the Department of Health and Human Services between 2012-2014, before the *Hobby Lobby* decision. This group is worth studying because they believed they had a winnable case and, thus, devoted valuable resources to litigation. Since the universe of these litigating businesses is fairly small, I will include all 49 identified for-profit businesses. This group of litigating for-profit businesses is accurate because it has been cross-checked against lists from *TIMES* and *Planned Parenthood*. To ensure that

these businesses, indeed, litigated, I have retrieved either their original complaint or the order resulting from the suit.<sup>6</sup>

There will be a control group of for-profit businesses that did not litigate. Obviously, a business in this control group may or may not have sought a religious accommodation or exemption after the *Hobby Lobby* decision, but this information is not currently unavailable,<sup>7</sup> and it is more important to recall that these businesses did not feel compelled to sue in the very early days of the ACA as the study group did. Each litigating for-profit business in the study group will have a counterpart in the control group. This control group will be selected in a hybrid purposive-random sampling;<sup>8</sup> that is, I will create population lists for each business from the study group using their area's Chamber of Commerce and randomly select three for-profit, privately-owned businesses from that list.<sup>9</sup> For example, the litigating American Pulverizer Company is located in St. Louis, Missouri. I will, therefore, create and randomize a list of all businesses within that city's Chamber and then randomly select three. Those three will be averaged to create a composite that then will be included in the control group. This method is adequate since each control composite will be located in the same geographical area as a business in the study group, controlling for possible factors like urban/rural, population, and political landscape of an area. This control group will enable me to make comparisons with like-businesses that did *not* litigate. Everything measured from the study group will also be measured in the control group.

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<sup>6</sup> See Appendix A.

<sup>7</sup> Again, as of December 19, 2022, my FOIA request submitted in September 2022 has still not been fulfilled.

<sup>8</sup> Ideally, I would compare each business in the study group to one exactly like it in the study group – both with roughly the same number of employees, revenue, urban/rural, and industry. Since these are all private companies, however, that is incredibly difficult to do due to limited data.

<sup>9</sup> I will weed out not-for-profit businesses/organizations and publicly traded companies from the population list. I will also ensure that selected businesses were operated during the time period in question.

When working with the cases, controlling for religion is essential as it is the biggest alternative independent variable. I will measure whether or not businesses make outward displays of their faith, ultimately coding them outwardly religious or not outwardly religious. I will look at pre-litigation news articles about each business and each businesses' mission statements or 'about us' stories on their websites.<sup>10</sup> If there are any usages or variations of the words "faith," "religion," "religious," or a specific religion/sect/religious text or figure (like "God"), I will deem the business outwardly religious. This is the most valid measure possible since data on what non-profit organizations that businesses donate to is a trade secret. This method of content analysis is also a reliable measure since coders will only be looking for a few keywords. Controlling for outward displays of religion will better isolate my independent variable of party affiliation.

To operationalize my independent variable, party affiliation, I will look at the total amount in dollars that both the corporate business itself and its executives<sup>11</sup> have donated to Political Action Committees between 2007-2014<sup>12</sup>. This range includes the 2008 and 2012 presidential cycles and contains the years in which Obama was elected and businesses litigated. This is a valid measure of party affiliation because it shows businesses' and executives' financial commitment to certain party-affiliated causes. I will retrieve this data from the *OpenSecrets* and *Federal Elections Commission* websites. This system will ensure my measure is reliable.

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<sup>10</sup> From any news source between 01/01/2000 and the date of the business' complaint. If the business is mentioned in news articles – preceding its own complaint date – about other businesses' lawsuits, those will not be included. Obituaries will also not be included.

<sup>11</sup> For executives, I will only consider the donations by the businesses' owners, CEO, and President.

<sup>12</sup> If a business has donated both to Republican-affiliated PACs and Democrat-affiliated PACs, I will find the net contribution to the party affiliation they donated most to by subtracting the amount donated to the opposing party. For instance, if a business has donated \$10,000 to the Republican National Committee and \$2,500 to a Democrat Senate candidate, their net contribution would be \$7,500 to a Republican-affiliated PAC. Alternatively, if a PAC is occupation-based, I will label it Republican-affiliated or Democrat-affiliated by examining what party's candidates it more often donates to on *OpenSecrets.org*.

The dependent variable is easily measured: businesses either did or did not litigate. I will create a crosstab to organize the data. This will provide a chi-squared value that will help determine whether the correlation is statistically significant. This design will be a satisfactory test of my hypothesis. My case selection groups provide both variations—a group that did litigate and a group that did not—and control—the control group will be created using purposive sampling. My operationalization captures valid data from reliable sources and is not subjective. Ultimately, I am seeking to discover at the very least a correlational relationship between businesses' party affiliation and their decision to litigate for a religious accommodation from the contraceptive mandate of the ACA.

### **Results and Discussion**

To assess whether political party affiliation is related to a business's decision to litigate for a religious accommodation from the contraceptive mandate, the group of 49 litigating businesses was compared to a control group of 49 composite businesses. The data present two particular points of notice: though most businesses did not donate to PACs, the litigating businesses donated more to Republicans, and the majority of the businesses were not outwardly religious.

With the utilization of SPSS software, a crosstab organizing data from both the study and the control groups was created and is displayed below in Figure 1. The categories for a business's total donation are coded -1 (for donations of \$1-5,000 to Democrat-affiliated PACs), 0 (for no donations), 1 (for donations of \$1-5,000 to Republican-affiliated PACs), 2 (for donations of \$5,000-10,000 to Republican-affiliated PACs), and 3 (for donations of over \$10,000 to Republican-affiliated PACs). The crosstab contains the controlling variable of outward displays of religion.

**Figure 1**  
**Litigate \* Total\_Donations \* Outwardly\_Religious Crosstabulation**

				Total_Donations					Total
Outwardly_Religious				-1	0	1	2	3	
no	Litigate	no	Count	3	30	12	0	0	45
			% within Total_Donations	75.0%	60.0%	75.0%	0.0%	0.0%	57.0%
	yes		Count	1	20	4	4	5	34
			% within Total_Donations	25.0%	40.0%	25.0%	100.0%	100.0%	43.0%
	Total		Count	4	50	16	4	5	79
			% within Total_Donations	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
yes	Litigate	no	Count		3	0	1	0	4
			% within Total_Donations		37.5%	0.0%	25.0%	0.0%	21.1%
	yes		Count		5	1	3	6	15
			% within Total_Donations		62.5%	100.0%	75.0%	100.0%	78.9%
	Total		Count		8	1	4	6	19
			% within Total_Donations		100.0%	100.0%	100.0%	100.0%	100.0%
Total	Litigate	no	Count	3	33	12	1	0	49
			% within Total_Donations	75.0%	56.9%	70.6%	12.5%	0.0%	50.0%
	yes		Count	1	25	5	7	11	49
			% within Total_Donations	25.0%	43.1%	29.4%	87.5%	100.0%	50.0%
	Total		Count	4	58	17	8	11	98
			% within Total_Donations	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

As a group, a majority (59.2%) of businesses did not donate to any PACs. Still, the businesses that litigated donated more to Republican-affiliated PACs than those businesses that did not litigate. Twenty-three litigating businesses donated at least \$1 to Republican-affiliated PACs compared to only 13 non-litigating businesses doing the same. Additionally, of the whole 4 businesses that donated to Democrat-affiliated PACs, 75% were businesses that did not litigate.

Figures 2 and 3 below display the frequency values for the study and control group, respectively.

**Figure 2****Statistics**

		Total_Donations	Outwardly_Religious
N	Valid	49	49
	Missing	0	0
Mean		11297.07163	
Median		.0000000000	
Mode		.0000000000	
Std. Deviation		30811.50116	
Variance		949348603.8	

**Figure 3****Statistics**

		Outwardly_Religious	Total_Donations
N	Valid	49	49
	Missing	0	0
Mean			396.5984
Median			.0000
Mode			.00
Std. Deviation			1539.28180
Variance			2369388.466

Both groups donated mostly to the Republican-affiliated PACs. The average donation amount for the litigating group of businesses was \$11,297.07. The average donation for the non-litigating group was \$396.59. These averages are skewed, however, by a few businesses that donated far more than others. The largest donation to Republican-affiliated PACs for non-litigating businesses was \$9,793.33 compared to the litigating businesses' largest donation of \$184,900.<sup>13</sup> Still, this data shows that litigating businesses had higher affiliations with the Republican party than counterparts in their community.

<sup>13</sup> For a complete list of each litigating businesses' donations to PACs, *see Appendix A*.



A second interesting point of comparison between the control and study groups was that neither had a majority of outwardly religious businesses. Indeed, only 15 of the 49 litigating businesses were deemed outwardly religious, rendering a majority, 69.4% of the study group, not outwardly religious. Unsurprisingly, this was exaggerated in the control group where only 4 of the 49 composite businesses were outwardly religious, leaving 91.8% of the control group not outwardly religious.<sup>14</sup>

A closer inspection of the study group is warranted as there are many interesting points in the data. As seen in previously mentioned Figure 1, the litigating businesses were, as a whole, more politically active than the businesses that did not litigate. Early litigators were some of the biggest donors. Outward displays of religion cannot be eliminated as a possible intervening variable.

First, litigating businesses donated more to Republican PACs. As seen in the “Total” category in Figure 1, 48.97% of all litigating businesses donated to a PAC from 2007 until the start of their lawsuit. Only 1 of the entire 49 litigating businesses donated to Democrat-affiliated PACs. Of all the businesses that donated between \$5,000-10,000 to PACs affiliated with the Republican party, 87.5% litigated. Every single business that donated over \$10,000 to Republican-affiliated PACs was in the litigating group. As mentioned earlier, this makes the litigating group more politically active and associated with conservatives, at least as demonstrated financially, than the control group, supporting my hypothesis.

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<sup>14</sup> In actuality, only four of the entire 147 businesses that make up the composites of the control group were outwardly religious. These four outwardly religious businesses were all from different composites and there are, therefore, four outwardly religious composites.

Interestingly the majority of early litigators were big donors to Republican-affiliated PACs. Table 1 below displays the litigating businesses that donated over \$10,000 to Republican-affiliated PACs. Table 2 below lists the first ten businesses that filed a complaint.<sup>15</sup>

**Table 1**  
**Litigating Donations Over \$10,000**

<b>Business</b>	<b>Total Donations</b>	<b>Outwardly_Religious</b>
Autocam Corporation	\$184,900	No
Ozinga Brothers	\$89,000	Yes
Domino's Farms	\$79,548	Yes
Feltl & Company	\$31,308	Yes
Grote Industries	\$24,714	No
Sharpe Holdings	\$23,000	No
American Pulverizer Company	\$16,950	No
Cherry Creek Mortgage Company	\$15,900	Yes
Hobby Lobby	\$13,400	Yes
Tyndale House Publishers	\$11,250	Yes
Korte & Luitjohan Contractors	\$10,035	No

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<sup>15</sup> Complaint dates were found for every litigating business except four. Complaints were found either on the ACLU's website or within the NexisUni database.

**Table 2**  
**First 10 Litigating Businesses**

<b>Business</b>	<b>Complaint Date</b>	<b>Outwardly_Religious</b>
Beckwith Electric Company	3/13/2012	No
O'Brien Industrial Holdings	3/15/2012	No
Hercules Industries, Inc.	4/30/2012	No
TRIUNE Health Group	8/22/2012	No
<b>Hobby Lobby</b>	9/12/2012	Yes
Tonn and Bank Construction	9/20/2012	Yes
<b>Tyndale House Publishers</b>	10/2/2012	Yes
<b>Autocam Corporation</b>	10/8/2012	No
<b>Korte &amp; Luitjohan Contractors</b>	10/9/2012	No
<b>Grote Industries</b>	10/29/2012	No
Annex Medical	11/2/2012	Yes

The bolded businesses in Table 2 demonstrate the overlap between businesses that donated over \$10,000 to Republican-affiliated PACs and early litigators.

Surprisingly, the biggest donor, giving almost \$200,000 to Republican-affiliated PACs, did not have any outward displays of religion. Many of the biggest donors did, however, have outward displays of religion.

As the tables together demonstrate, half of the first ten businesses to file a complaint in a court of law had donated over \$10,000 to Republican-affiliated PACs. This makes sense because these are businesses that were obviously politically active and had a wealth of resources to devote. Three of those five businesses were labeled not outwardly religious, but two were.

Also, religion seemed not to play as big a role as one might have suspected. It is true that the litigating group contained 11 more outwardly religious companies than the non-litigating

group, which does not support a null hypothesis that the groups would have similar rates of religiosity. Yet, the mere 20.4% of outwardly religious litigating groups is not the amount one would logically suspect. And, within the litigating group, the outwardly religious litigating businesses were not drastically more or less politically active than not outwardly religious litigating businesses. As seen in Figure 1, there were 9 businesses that litigated but were not outwardly religious and donated at least \$5,000 to Republican-affiliated PACs. Similarly, there were exactly 9 businesses that litigated, were outwardly religious, and donated at least \$5,000 to Republican-affiliated PACs. So, it does not seem that outward displays of religion majorly were correlated with political activity.

Ultimately, the hypothesis that litigating businesses were more likely to be associated with the Republican party than non-litigating businesses is only somewhat supported. Litigating businesses certainly had greater financial ties to the Republican party than the control group, but 25 of the 49 litigating businesses did not donate to any PACs at all.

What is perhaps more surprising is the result that only 15 of the 49 litigating businesses were outwardly religious. While the operationalization of religion was a challenge and certainly imperfect, adherents to the Religious Beliefs Explanation might need to reconsider the possibility of alternative factors, potentially even a combination of the other three explanations, influencing businesses' decision to litigate.

### **Conclusion**

This study set out to discover if for-profit businesses that litigated for a religious accommodation from the contraceptive mandate of the ACA were more involved with the Republican party than the Democratic party. This hypothesis was not entirely supported. Litigating businesses were definitely more politically active and associated with the Republican

party than their counterparts, yet the majority (59.2%) of the control and litigating groups did not donate to any PACs. More specifically, even though 46.9% of litigating businesses donated to Republican-affiliated PACs, just over half (51.0%) of the litigating businesses did not donate at all. This may be because some businesses could not afford lavish donations to PACs or preferred to donate to charities. It seems more likely that political party affiliation was not the driving force Lipper proposed it to be, at least not in this study.

This pursuit was not without its challenges. For starters, the reality of operationalizing religion was incredibly difficult and perhaps not all-encompassing. After all, outward displays of religion do not equate to the sincerity of beliefs. As a result, one cannot assume that the litigating businesses found to be not outwardly religious had ulterior motives in filing their lawsuits. Indeed, religion and politics are two, very entangled variables. Another obstacle in this study was the lack of publicly available, complete data. It would have been helpful to know every business's number of employees, revenue, and donations to non-profit charities for instance, but that information is private. Additionally, it might have been enlightening to know if any of the businesses in the control list later sought the accommodation or exemption regulated by the Trump administration post-*Hobby Lobby*, but, again, that information is not easily retrievable.

Still, this study is worthwhile. Though it may be limited, it has built on the understudied, limited literature of contraceptive mandate litigators and has attempted to present the empirical reality of that litigation while other studies focus on normative questions. This study sheds light on the characteristics of the litigating businesses, showing that they may not be as easily reduced to a group of sincere evangelicals nor a group of Obama-opposing political radicals, either. They are complex.

There remain plenty of opportunities for future research. If one were able to retrieve a complete, up-to-date list of for-profit businesses with the accommodation or exemption, it would be interesting to expand upon this study. Or, one might continue with this set of 49 litigating businesses and more closely examine each court complaint or geographical influence. Yet another possibility would be creating a case study on one of the litigating businesses other than Hobby Lobby. Or, one might take a different path and research the history behind the sincerity of religious beliefs. Ultimately, though the *Hobby Lobby* decision seems to have come and passed, this work is increasingly relevant as reproductive rights continue to occupy news headlines and the minds of voters.

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## Appendix A

### List of Litigating Businesses

Business	Location	Date Originated	Complaint/ Order Link	Total Donations	Religious Score
American MFG Company	St. Joseph, MN	2/5/13	<a href="#">complaint</a>	\$0	0
American Pulverizer Company	St. Louis, MO	2012	<a href="#">complaint</a>	\$16,950	0
Annex Medical	Minnetonka, MN	11/2/2012	<a href="#">complaint</a>	\$0	1
Autocam Corporation	Grand Rapids, MI	10/8/2012	<a href="#">complaint</a>	\$184,900	0
Barron Industries	Oxford, MI	9/4/2013	<a href="#">complaint</a>	\$5,250	0
Beckwith Electric Company	Largo, FL	3/13/2012	<a href="#">complaint</a>	\$450	0
Bick Holdings, Inc.	Maryland Heights, MO	3/13/2013	<a href="#">complaint</a>	\$0	0
Cherry Creek Mortgage Company	Greenwood Village, CO	3/5/2013	<a href="#">complaint</a>	\$15,900	1
Conestoga Wood Specialties Corp.	East Earl, PA		<a href="#">SC blog</a>	\$5,250	1
Continuum Health Partnership	Greeley, CO	2/4/2013	<a href="#">complaint</a>	\$0	0
Doboszinski & Sons	Loretto, MN	11/14/2013	<a href="#">complaint</a>	\$0	0
Domino's Farms	Ann Arbor, MI	12/14/2012	<a href="#">complaint</a>	\$79,548.51	1
Dustone Company	Charlotte, NC	10/30/2013	<a href="#">complaint</a>	\$0	0
Eden Foods	Clinton, MI	3/20/2013	<a href="#">complaint</a>	\$0	0
Electrolock, Inc.	Hiram, OH		<a href="#">order</a>	\$0	0
Encompass DDC LLC	LaGrange, KY	11/27/2013	<a href="#">complaint</a>	\$0	0
Feltl & Company, Inc.	Minnetonka, MN	9/25/2013	<a href="#">complaint</a>	\$31,300	1
Freshway Foods and Logistics	Sidney, OH	1/24/2013	<a href="#">complaint</a>	\$2,500	0
Grote	Madison, IN	10/29/2012	<a href="#">complaint</a>	\$24,714.58	0



Hart Electric LLC	Lostant, IL	3/26/2013	<a href="#">complaint</a>	\$5,777	0
Hastings Automotive	Hastings, MN	1/29/2014	<a href="#">complaint</a>	\$0	0
Hercules Industries, Inc.	Denver, CO	4/30/2012	<a href="#">complaint</a>	\$647	0
Hobby Lobby	Oklahoma City, OK	9/12/2012	<a href="#">complaint</a>	\$13,400	1
Infrastructure Alternatives	Rockford, MI	1/1/2013	<a href="#">complaint</a>	\$0	0
Joe Holland Chevrolet	South Charleston, WV	6/24/2013	<a href="#">complaint</a>	\$7,500	0
Johnson Welded Products, Inc.	Urbana, OH	4/30/2013	<a href="#">complaint</a>	\$7,700	0
Korte & Luitjohan Contractors	Highland, IL	10/9/2012	<a href="#">complaint</a>	\$10,035	0
Lindsay, Rappaport, & Postel LLC	Waukegan, IL	2/14/2013	<a href="#">complaint</a>	\$0	0
M&N Plastics	Sterling Heights, MI	5/31/2013	<a href="#">complaint</a>	\$50	0
Mersino Management Company	Davison, MI	3/22/2013	<a href="#">complaint</a>	\$5,585	1
Midwest Fastener Corporation	Portage, MI	9/5/2013	<a href="#">complaint</a>	\$0	1
MK Chambers Company	North Branch, MI	3/28/2013	<a href="#">complaint</a>	\$0	0
O'Brien Industrial Holdings	St. Louis, MO	3/15/2012	<a href="#">complaint</a>	\$7,250	1
Ozinga Brothers	Mokena, IL	5/1/2013	<a href="#">complaint</a>	\$89,000	1
QC Group LLC	Minnetonka, MN	7/2/2013	<a href="#">complaint</a>	\$0	0
Randy Reed Automotives	Kansas City, MO	10/8/2013	<a href="#">complaint</a>	\$4,500	0
Seneca Hardwoods	Cranberry, PA		<a href="#">pre injunction motion</a>	\$0	0
Sharpe Holdings, Inc.	Bethel, MO	12/4/2013	<a href="#">complaint</a>	\$23,000	0
Sioux Chief MFG Company	Kansas City, MO	1/14/2013	<a href="#">complaint</a>	\$2,000	1
SMA LLC	Clearwater, MN	6/7/2013	<a href="#">complaint</a>	\$0	1

Stinson Electric	New Brighton, MN	3/26/2014	<a href="#">complaint</a>	\$0	0
Tonn and Bank Construction	Michigan City, IN	9/20/2014	<a href="#">complaint</a>	\$0	1
Trijicon	Wixom, MI	8/5/2013	<a href="#">complaint</a>	\$0	1
TRIUNE Health Group	Lombard, IL	8/22/2012	<a href="#">complaint</a>	\$0	0
Tyndale House Publishers	Carol Stream, IL	10/2/2012	<a href="#">complaint</a>	\$11,250	1
Weingartz Supply Company	Utica, MI	8/30/2013	<a href="#">amended complaint</a>	\$0	0
Willis & Willis PLC	Kalamazoo, MI	7/24/2013	<a href="#">complaint</a>	\$0	0
WLH Enterprises	Emlenton, PA		<i>see Seneca</i>	\$0	0
Zumbiel Packaging	Hebron, KY	10/22/2013	<a href="#">complaint</a>	\$0	0