

Liberty "a shield, not a sword"

By [David Heim](#)

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A federal judge in Eastern Missouri has upheld the government mandate that insurance policies cover birth control. [Judge Carol E. Jackson ruled](#) that the mandate is not a violation of religious liberty. Religious freedom is "a shield, not a sword," she said, and religious liberty claims cannot be used as a "means to force one's religious practices upon others." Her argument closely aligns with points that the *Century* made some months ago in an [editorial](#) and that I tried to make in a [blog post](#).

[Mark Silk notes](#) that other courts are likely to reach different conclusions. The plaintiffs' lawyers [filed an appeal](#) and voiced confidence that the judgment would be overturned. It may take a ruling by the Supreme Court to decide the issue.

It's significant that the case decided by Jackson—Frank O'Brien et al. v. U.S. Dept of Health and Human Services—involves a secular for-profit company, O'Brien Industrial Holdings, a mining operation. Other pending cases involve religious schools or other nonprofit agencies, and judges may well think those cases raise a different set of religious liberty issues.

O'Brien claimed that the mandate violates his religious liberty as a Catholic businessman, but Jackson ruled that the burden on his free exercise was indirect and minimal.

Here are the key paragraphs from Jackson's ruling (her reference to RFRA refers to the Religious Freedom Restoration Act):

The burden of which plaintiffs complain is that funds, which plaintiffs will contribute to a group health plan, might, after a series of independent decisions by health care providers and patients covered by OIH's plan, subsidize someone else's participation in an activity that is condemned by plaintiffs' religion. This Court rejects the proposition that requiring indirect financial support of a practice, from which plaintiff himself abstains according to his religious principles, constitutes a substantial burden on plaintiff's religious exercise.

RFRA is a shield, not a sword. It protects individuals from substantial burdens on religious exercise that occur when the government coerces action one's religion forbids, or forbids action one's religion requires; it is not a means to force one's religious practices upon others. RFRA does not protect against the slight burden on religious exercise that arises when one's money circuitously flows to support the conduct of other free-exercise-wielding individuals who hold religious beliefs that differ from one's own.