



## Excerpts from DOJ response to motion for preliminary injunction: *Newland v. Sebelius*

Hercules Industries is a for-profit, secular employer, and a secular entity **by definition does not practice religion.**

Plaintiffs' challenge rests largely on the theory that a for-profit, secular corporation ... can claim to exercise a religion and thereby avoid the reach of laws designed to regulate commercial activity. **This cannot be.** ... "[w]hen followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity."

Plaintiffs' free exercise claim fails at the outset because **for-profit, secular employers generally do not engage in any exercise of religion** protected by the First Amendment.

Having chosen the secular, for-profit path, the company may not **impose its owners' religious beliefs on its employees** (many of whom may not share, or even know of, the owners' beliefs).

"[o]nce [an organization] enters the marketplace of commerce in any substantial degree it loses the complete control over its membership that it would otherwise enjoy if it confined its affairs to the marketplace of ideas").

The owners of Hercules Industries have no right to control the choices of their company's employees, many of whom may not share the Newlands' religious beliefs.

Nor can the owners of a for-profit, secular company eliminate the legal separation provided by the corporate form to impose their personal religious beliefs on the corporate entity's employees.

These harms would befall female employees (and covered spouses and dependents) who do not share their employer's religious beliefs and might not have been aware of those beliefs when they joined the ostensibly secular company. Hercules Industries' **desire not to make available a health plan that permits such individuals to exercise their own choice as to contraceptive use** must yield to the Government's compelling interest in avoiding the adverse and unfair consequences that would be suffered by such individuals as a result of the company's decision.

And the Newlands, as individuals, are not required to provide any health coverage at all.

In short, there is nothing to indicate that Hercules Industries is **anything other than a for-profit, secular employer.**

By definition, a secular employer does not engage in any “exercise of religion,” ...

The Newlands nonetheless claim that the regulations substantially burden *their* religious exercise because the regulations may require the group health plan sponsored by their secular *company* to provide health insurance that includes contraceptive coverage.

...even if the preventive services coverage regulations were deemed to impose a substantial burden on any plaintiff’s religious exercise, the regulations would not violate RFRA because they are narrowly tailored to serve two compelling governmental interests: improving the health of women and children, and equalizing the provision of preventive care for women and men so that women who choose to do so can be a part of the workforce on an equal playing field with men.

This Court, therefore, should reject plaintiffs’ effort to bring about an **unprecedented expansion** of constitutional and statutory free exercise rights.

**(Note: Alliance Defending Freedom and its client are not asking for an “expansion” of anything, only the *protection of existing freedoms* guaranteed under the United States Constitution.)**

- [Full DOJ response](#) to motion for preliminary injunction
- [Hercules Industries reply to DOJ response](#) on motion for preliminary injunction
- [Hercules Industries original brief](#) in support of motion for preliminary injunction