

MEMORANDUM

Attached are excerpts from two law review articles discussing some of the potential unintended consequences of the Religious Freedom Restoration Act (RFRA), as well as a news article about an unexpected use of Indiana's state RFRA.

1. Marci Hamilton, *The Case for Evidence-Based Free Exercise Accommodation: Why the Religious Freedom Restoration Act is Bad Public Policy*, 9 HARV. L. & POL'Y REV. 129 (2015), available at http://harvardlpr.wpengine.com/wp-content/uploads/2015/04/9-1_Hamilton.pdf.

Marci Hamilton's article walks through RFRA's enactment history, discusses what Hamilton believes are the consequences legislators did not predict, and proposes an alternative legal structure for addressing religious accommodations that takes greater account of the potential harms such accommodations might cause for third parties. With regard to unintended consequences, Hamilton lists dozens of small, non-traditional religions, including many with histories of discriminatory beliefs or abusive practices, and asks whether Congress intended to permit such groups to benefit from exemptions to even criminal laws. She also cites examples of RFRA being invoked against child support laws, public school safety restrictions, ordinary land use laws, prison security regulations, and requirements to provide contraceptives as in *Hobby Lobby*.

2. Alex J. Luchenitser, *A New Era of Inequality? Hobby Lobby and Religious Exemptions from Anti-Discrimination Laws*, 9 HARV. L. & POL'Y REV. 63 (2015), available at http://harvardlpr.com/wp-content/uploads/2015/04/9-1_Luchenitser.pdf.

Alex Luchenitser's article discusses the potential consequences of *Hobby Lobby*'s interpretation of RFRA. Luchenitser focuses on how *Hobby Lobby* might ease claims of exemptions from anti-discrimination laws. According to Luchenitser, while *Hobby Lobby* will have less impact on statutes that already include a religious exemption clause, it may provide for unintended RFRA exemptions in statutes written without religious exemptions, including federal statutes barring discrimination on the basis of race, age, sex, national origin, citizenship status, or genetic information.

3. Kristine Guerra, *She used Indiana's religious freedom law as a defense for beating her son, then got probation*, Wash. Post, Oct. 30, 2016, available at <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/10/30/she-used-indianas-religious-freedom-law-as-a-defense-for-beating-her-son-then-got-probation/>.

This short article in the *Washington Post* describes a criminal defendant's attempt to use Indiana's state RFRA to protect her from prosecution for beating her child. The court did not accept her argument. The article also mentions an attempt to use Indiana's RFRA to challenge its marijuana laws: