

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:

Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

GOD VS. THE GAVEL: THE PERILS OF EXTREME RELIGIOUS LIBERTY

Revised Second Edition

Clergy sex abuse, polygamy, children dying from faith-healing, companies that refuse to do business with same-sex couples, and residential neighborhoods forced to host homeless shelters and rehab clinics next door to children. What do these have in common? They are all examples of believers harming others and demanding religious liberty regardless of the harm. This book unmasks those responsible, explains how this new set of rights is not derived from the First Amendment, and argues for a return to common-sense religious liberty.

God vs. the Gavel: The Perils of Extreme Religious Liberty sets the record straight, through facts and documented stories, about the move toward extreme religious liberty in the United States. This thoroughly revised second edition features a new introduction, epilogue, and new examples and stories that revise the previous edition by more than half. All Americans need this book, before they or their friends and family are harmed by believers' newfound capacity to break the law at will.

Marci A. Hamilton is one of the United States' leading church/state scholars and holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University. Her blog with Professor Leslie Griffin on religious liberty, women's rights, and children's rights can be found at <http://hamilton-griffin.com/>. She also hosts www.RFRAperils.com, which tracks free exercise statutes in all 50 states and the federal government.

Professor Hamilton is also an author and lecturer on the protection of children from sex abuse and a national leader and advocate for legislative reform of statutes of limitation through her website, www.sol-reform.com. She is the author of *Justice Denied: What America Must Do to Protect Its Children* (2008) and is a bi-monthly columnist for www.justia.com/verdict. Hamilton received the National Crime Victim Bar Association's Frank Carrington Champion of Civil Justice Award; the E. Nathaniel Gates Award for outstanding public advocacy and scholarship; and the Lifetime Achievement Award for Pro Bono Legal Service to veterans groups. She also has been honored as one of Pennsylvania's Women of the Year and as a Distinguished Alumnus of Wheaton North High School, Wheaton, IL. She clerked for Supreme Court Justice Sandra Day O'Connor and Judge Edward R. Becker.

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:
Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:

Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

GOD vs. THE GAVEL

THE PERILS OF EXTREME RELIGIOUS LIBERTY

Revised Second Edition

MARCI A. HAMILTON

PAUL R. VERKUIL CHAIR IN PUBLIC LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW

YESHIVA UNIVERSITY



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:
Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107456556

© Marci A. Hamilton 2005, 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2005

Reprinted 2005

First paperback edition 2007

Reprinted 2011

Revised electronic edition 2014

Second revised edition 2014

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

ISBN 978-1-107-08744-6 Hardback

ISBN 978-1-107-45655-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press
978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:
Revised Second Edition
Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo
Frontmatter
[More information](#)

CONTENTS

Acknowledgments / vii
Preface to the Second Edition / ix
Introduction: The Wages of RFRA / 1

PART ONE. RELIGIOUS LIBERTY IS NOT A LICENSE TO
HARM OTHERS

1 The Problem / 13
2 Children / 38
3 Marriage / 84
4 Religious Land Use and Residential Neighborhoods / 115
5 Schools / 151
6 The Prisons and the Military / 180
7 The Right to Discriminate / 219

PART TWO. THE HISTORY AND DOCTRINE BEHIND
COMMON-SENSE RELIGIOUS LIBERTY

8 Ordered Liberty: Religious Liberty at the Supreme Court / 239
9 The Decline of Church Autonomy and the Rise of the
No-Harm Rule / 278
10 The Path to the Public Good / 314

Epilogue: Follow the Money 347
Foreword to the 2005 Edition by Judge Edward R. Becker 361
Notes 363
Index 455

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:
Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:

Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

ACKNOWLEDGMENTS

This new extensively revised edition would not have been possible without extraordinary work by a number of my students at Benjamin N. Cardozo School of Law and the support of the school itself. Emma Glazer, Courtney Soliday, Rebecca Maller, Tammy Lam, Shane Martins, Alyssa Figueroa, and my graduate Fellow, Jordan Walsh, did tremendous research, put in long hours, and made great suggestions. I thank each and every one of them. I must also thank my intern, Julianne Toia.

In addition, thanks are due to Leslie Griffin, Chip Lupu, Andrea Moore-Emmett, and Rita Swan for reading and commenting on various sections.

I am also indebted to Cambridge University Press, and in particular my editor, John Berger, who has supported my work without fail and given me opportunities to reach a larger audience on issues that were taboo when we published the first edition but are now getting the attention they deserve. I am very grateful to him.

Finally, thanks as always must go to my family. I couldn't and I wouldn't have the courage or fortitude to do the work I do without them. Thank you.

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:
Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-08744-6 - God vs. the Gavel: The Perils of Extreme Religious Liberty:

Revised Second Edition

Marci A. Hamilton, Paul R. Verkuil Chair and Benjamin N. Cardozo

Frontmatter

[More information](#)

PREFACE TO THE SECOND EDITION

It's a serendipitous story, but I represented Boerne, Texas, before the Supreme Court challenging the Religious Freedom Restoration Act, or RFRA. We won in 1997, and I was led on a journey into the underside of religion, because all the groups that lobby against religion sought me out. They earnestly and generously educated me about the facts of religiously motivated illegal behavior. At first, I was just appalled. Children were *dying* in faith-healing homes? We don't regulate summer camps or day care centers if they are religious? Prisoners demand *what* in prison?! I started a file of "Religion Misbehaving," which turned into multiple files. Then I knew that I had an obligation to share what I had learned with the public, which is why I wrote GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW a decade ago.

Ten years later, I am no longer shocked at the unacceptable behavior of too many believers, but I am even more determined that Americans learn about the dangers inherent in the religious liberty regime that was initiated in 1993 with the RFRA. The Framers called too much liberty "licentiousness." I simply call it extreme.