EMPIRICAL ANALYSIS OF RELIGIOUS FREEDOM RESTORATION ACT CASES IN THE FEDERAL DISTRICT COURTS SINCE *HOBBY LOBBY*

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ABSTRACT

The Religious Freedom Restoration Act of 1993 has been controversial for almost as long as it has been law. It allows individuals to get exemptions from laws of general applicability based on religious belief. There has been a large body of scholarship performing empirical analysis on RFRA, but notably missing is a post-*Hobby Lobby* study applying techniques bringing predictive power to recent data. This Note fills that gap. Every federal district court case since *Hobby Lobby* making a merits decision on a RFRA issue was coded for various factors thought to influence outcome. Then, binomial logistic regression was performed examining what variables were predictive of outcome, either in favor of or barring an exemption. The model found that being secular or being Christian, all else equal, had a predictive effect on outcome. These results are useful for entering a discussion of how fairly RFRA is applied, and what unintended externalities may be present on third parties.

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INTRODUCTION

"[A] vehicle for institutions and individuals to argue that their faith justifies myriad harms—to equality, to dignity, to health and to core American values."[1]

"[A] remedy in individual cases where religious conscience was threatened."[2]

The Religious Freedom Restoration Act of 1993 ("RFRA") has been both vilified and exalted in the public (or, at least, legal) imagination—as a free pass for people to use their religion to escape essential laws, or as a crucial protection for First Amendment rights. Since the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby*,[3] RFRA has been a flash point in the debate over how far religious exemptions from laws of general applicability should go. Many feared that, following *Hobby Lobby*, RFRA would become an all-purpose tool for an expanding doctrine of religious exemption—for individuals, for corporations, for anything.[4] Popular opinion at times views RFRA as a tool for an increasingly powerful religious right.[5] The reality is more nuanced. While there was an uptick in contraceptive mandate cases following *Hobby Lobby*, RFRA is rarely used, and where litigants bring RFRA claims, they are mostly for individuals with minority religious beliefs.[6]

Despite the misconceptions about RFRA, there is a fairly comprehensive body of literature examining which RFRA cases are

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1. Louise Melling, *The Religious Freedom Restoration Act is Used to Discriminate. Let's Fix It.*, AMERICAN CIVIL LIBERTIES UNION: SPEAK FREELY, https://www.aclu.org/blog/religious-liberty/using-religion-discriminate/religious-freedom-restoration-act-used [https://perma.cc/44W3-FAMP].

2. Bruce Hausknecht, *The Religious Freedom Restoration Act*, FOCUS ON THE FAMILY, https://www.focusonthefamily.com/socialissues/religious-freedom/religious-freedom-in-danger/the-religious-freedom-restoration-act [https://perma.cc/7DH4-TYN8].

3. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014).

4. Emily London & Maggie Siddiqi, *Religious Liberty Should Do No Harm*, CENTER FOR AMERICAN PROGRESS, https://www.americanprogress.org/issues/religion/reports/2019/04/11/468041/religious-liberty-no-harm/ [https://perma.cc/HV4A-VBES].

5. *Id*.

6. Luke W. Goodrich & Rachel N. Busick, *Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases*, 48 SETON HALL L. REV. 353, 357 (2018) (explaining that most RFRA cases involve prisoners, asylum seekers, or individuals with minority beliefs, while Christians are statistically underrepresented).

"winning" and comparing RFRA to other areas of constitutional doctrine.[7] The notable gap in this literature is a lack of statistical analysis applying the more powerful techniques used by researchers such as Michael Heise and Gregory C. Sisk,[8] examining what factors influence judicial decision making in RFRA cases, as applied to the recent body of data since *Hobby Lobby*.[9] This Note fills that gap by undertaking an empirical predictive analysis of recent RFRA cases, with a particular focus on the religion of the applicant and the specific exemption sought. This analysis finds that the religion of the litigant is, in some cases, predictive of the outcome. It also reveals several qualitative findings about the myriad ways RFRA is used by creative litigants today.

I. THE CURRENT STATE OF EMPIRICAL THOUGHT ON RFRA

Past empirical evidence demonstrated that while the narrative casting *Hobby Lobby* as a tool of a powerful religious right was flawed, some bias does creep into RFRA cases. In examining religious liberty claims before the Tenth Circuit from 2012 to 2017, Luke W. Goodrich

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7. *See* Stephanie H. Barclay & Mark L. Rienzi, *Constitutional Anomalies or As-Applied Challenges? A Defense of Religious Exemptions*, 59 B.C. L. REV. 1595, (2018) (providing a useful starting point for a post-*Hobby Lobby* analysis of religious freedom cases, but engaging only in descriptive statistical analysis without making any predictive findings); Goodrich & Busick, *supra* note 6 at 357–358 (2018) (providing a detailed post-*Hobby Lobby* study, but limited to cases in the 10th Circuit, producing idiosyncratic results; *see infra* Part III.C); Michael Heise & Gregory C. Sisk, *Free Exercise of Religion Before the Bench: Empirical Evidence from the Federal Courts*, 88 NOTRE DAME L. REV. 1371, 1373–74 (2013) (providing detailed empirical analysis, but predating *Hobby Lobby*, and not focusing specifically on RFRA cases); Gregory C. Sisk & Michael Heise, *Ideology "All the Way Down"? An Empirical Study of Establishment Clause Decisions in the Federal Courts*, 110 MICH. L. REV. 1201, (2012) (predating *Hobby Lobby*); Gregory C. Sisk, *How Traditional and Minority Religions Fare in the Courts: Empirical Evidence from Religious Liberty Cases*, 76 U. COLO. L. REV. 1021, (2005) (predating *Hobby Lobby*); Gregory C. Sisk & Michael Heise, *Judges and Ideology: Public and Academic Debates About Statistical Measures*, 99 NW. U. L. REV. 743 (2005) (predating *Hobby Lobby*); Gregory C. Sisk, Michael Heise & Andrew P. Morriss, *Searching for the Soul of Judicial Decisionmaking: An Empirical Study of Religious Freedom Decisions*, 65 OHIO ST. L.J. 491, (2004) (predating *Hobby Lobby* but providing an extremely useful model of employing statistical methods to form predictive conclusions from case data points).

8. *See generally* Heise & Sisk, *Ideology "All the Way Down*," *supra* note 7 (displaying such techniques).

9. *See generally* Barclay & Rienzi, *supra* note 7 (providing a study of very recent data).

and Rachel N. Busick found that only five issues were "winning issues" in religious liberty claims: sharia, polygamy, eagle feathers, contraception, and the Ten Commandments.[10] Furthermore, they found that half of all religious liberty decisions involved either prisoners or asylum seekers,[11] and that Christians remain "statistically underrepresented" as plaintiffs despite a spike in contraception mandate claims immediately following *Hobby Lobby*, which has since subsided.[12]

Another broad study of federal cases, by Heise and Sisk, examined all free exercise and religious accommodation claims decisions by federal courts of appeals and district courts between 1996 and 2005.[13] The authors found that while judicial ideology was not a significant factor, claims involving Muslim litigants were less successful, and that cases involving anti-discrimination laws, or before Asian, Latino, or former-professor judges were more likely to succeed.[14] In a third study of federal circuit judges, Heise, Sisk, and Andrew P. Morriss demonstrated that the "single most prominent, salient, and consistent influence" on how judges decided religious freedom cases was whether the religion of the claimant was the same as the religion of the judge, and whether they had similar backgrounds and communities.[15]

Finally, Stephanie H. Barclay and Mark L. Rienzi offer an interesting and recent overview of federal RFRA cases, providing the first national survey of RFRA in the post-*Hobby Lobby* era.[16] They

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10. Goodrich & Busick, *supra* note 6, at 356. They also noted that in their research, religious liberty cases made up only 0.6% of all federal cases. *Id.*

11. *Id*.

12. *Id*. at 357.

13. Heise & Sisk, *Free Exercise of Religion Before the Bench*, *supra* note 7, at 1371.

14. *Id.*

15. Sisk, Heise, & Morriss, *supra* note 7, at 492. The authors emphasize that as with any study examining behavioral decision-making, findings must be taken with a large grain of salt. *Id*. at 613. The authors used regression analysis on several different models of judicial decision making. *See generally id*.

16. Barclay & Rienzi, *supra* note 7, at 1633. The authors offer an interesting take on RFRA, arguing that the Religious Freedom Restoration Act and, indeed, any claims for religious exemptions under the Establishment Clause, should be viewed simply as as-applied challenges to the constitutionality of statutes, which happen regularly. *Id*. at 1598. "When religious exemption requests are properly understood as as-applied challenges, they actually look quite pedestrian." *Id*. This requires a focus on remedy that is absent from many analyses: with both as-applied adjudication on free exercise or free speech grounds, or under a statute such as RFRA, "the court will order a remedy that protects the exercise of the constitutional

demonstrated that *Hobby Lobby* did not have a dramatic effect on the government's win rate.[17] The government won fifty of the 101 federal cases involving a RFRA claim in the time period the authors examined.[18] Significantly, the fact that government win rates remained constant showed that *Hobby Lobby* did not create an easier-to-win category of exemptions. They also found that religious objection cases were actually less widespread than other "expressive First Amendment" claims, such as free speech cases.[19]

These accumulated findings show that while *Hobby Lobby* may not have had the negative impact many feared, a whole host of extra-judicial factors impact the chance of success for an individual seeking a free exercise accommodation to federal law. This Note will build on that knowledge, undertaking an analysis that is narrowly focused on RFRA, but wider in scope of time period and variables considered than previous literature. This Note fills a gap in the literature by providing an updated analysis of RFRA cases post-*Hobby Lobby*, with a data set similar to that of Barclay and Rienzi, and a detailed predictive analysis.

II. METHODOLOGY AND RESULTS

The most significant and novel finding presented here is that the religion of an applicant for a RFRA exemption has a predictive effect on whether the litigant wins the exemption if the litigant is Christian or secular.[20] Previous research described fears of a wave of Christian litigants winning RFRA cases post-*Hobby Lobby* as never-realized. This updated analysis contradicts that research.

A. Methodology

The first step in this study was to gather cases to be analyzed. Previous researchers have done this by various methods, almost

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right, but otherwise leaves the law in place to apply to other circumstances that may arise." *Id*. at 1611.

17. Barclay & Rienzi, *supra* note 7, at 1634–39 (describing their methodology).

18. *Id*. at 1639.

19. *Id*. at 1633.

20. *See infra* Appendix C. The column labeled "Sig." for both the secular and Christian variables are less than .05, indicating a significant result. More analysis is provided *infra* at Part III.

always using some combination of Westlaw or LexisNexis searches.[21] In order to compile a comprehensive list of decisions on the merits of a RFRA claim since the *Hobby Lobby* decision, a search in Westlaw was run for the term "Religious Freedom Restoration Act" in quotation marks. That search yielded a total of 3,208 cases. From there, the search was narrowed to cases decided in federal district courts since June 30, 2014—the day *Hobby Lobby* was decided. This brought the total number of cases to be considered to 572,[22] on the principle that, "[i]t is better to cast too widely and bring up some debris in the nets than to cast too narrowly and miss many of the fish."[23]

Each of these 572 cases was then analyzed to determine whether it contained a decision by the judge on the merits of a RFRA issue. This excluded the majority of cases. This highly sensitive method ensured the pool included every potentially relevant decision. Cases were excluded for many reasons, including: the judge only mentioned RFRA in passing, without having a relevant RFRA issue in the case;[24] the case referred to the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), rather than RFRA;[25] the case concerned a state religious freedom restoration act, rather than RFRA;[26] or dozens

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21. *See* Barclay & Rienzi, *supra* note 7, at 1634–35 (describing methodology of using Westlaw searches to gather cases); Sisk, Heise & Morriss, *Judicial Decisionmaking supra* note 7, at 538–39 (same methodology); Goodrich & Busick, *Sex, Drugs, and Eagle Feathers supra* note 7, at 358 (same methodology).

22. There were two main reasons for the decision to only consider federal district court cases. The primary reason is that a federal district court is the final decision maker for the vast majority of claimants—while there were 572 district court cases, there were only 106 Court of Appeals decisions, and 4 Supreme Court decisions. Therefore, a reasonable picture of how RFRA claims are decided for the majority of claimants focuses on district courts. The other reason was practical—572 is already quite a few cases to analyze in the given time frame.

23. Heise, Sisk & Morris, *supra* note 7, at 542. *See also* William Baude, Adam S. Chilton and Anup Malani, *Making Doctrinal Work More Rigorous: Lessons from Systematic Reviews*, 84 U. CHI. L. REV. 37, 53 (2017) (detailing the importance of establishing a clear methodology for creating a sample of cases and making a broader case for the importance of empirical analysis to support claims about the state of the law.)

24. *Ramsey v. Tucker*, No. CIV.A 15-0487, 2015 WL 4067911, at *2 (W.D. La. July 1, 2015) (mentioning RFRA in a parenthetical in citing a case).

25. *California-Nevada Annual Conference of the Methodist Church v. City and Cty. of San Francisco*, 74 F. Supp. 3d 1144, 1151 (N.D. Ca. 2014) (describing how the history of RFRA led to RLUIPA).

26. *E.g.*, Gallegos v. Bernalillo County Board of County Commissioners, 272 F. Supp. 3d 1256, 1265 (D.N.M. 2017) (referencing the New Mexico Religious Freedom Restoration Act).

of other reasons.[27] This method also had the advantage of simplicity, which aids in reliability for any researchers hoping to update, contradict, or replicate these findings—while it did require sorting through many cases, the method was very straightforward, and therefore less susceptible to error. This analysis excluded cases decided on the basis of RLUIPA.[28]

For the purposes of inclusion, a case was considered to have a "merits ruling" any time a judge decided a substantive RFRA issue that required her to analyze (1) whether the claimant had a sincerely held belief, (2) whether that belief was substantially burdened, (3) whether the government had a compelling interest in maintaining the rule with no exemptions, and/or (4) whether that compelling interest was accomplished in the narrowest way possible. Ultimately, of the 572 cases that were analyzed, only 115 contained a substantive decision on a RFRA issue. These cases formed the data set for analysis.

The next question to consider in deciding how to code cases was how to handle multiple decisions involving the same litigants, as part of the same case. Ultimately, each case was coded independently. There were several reasons for this, largely drawing from the reasons this methodology was used by previous researchers in analyzing RFRA claims: it provides a better view of how often judges see a particular issue, and it lessens the risk of human error in making inconsistent

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27. Those examples include: Sharpe Holdings, Inc. v. United States Dep't of Health and Human Services, No. 2:12 CV 92 DDN, 2018 WL 3772223, at *1 (E.D. Mo. Aug. 9, 2018) (deciding attorney's fees); Congregation of the Passion v. Johnson, 79 F. Supp. 3d 855, 864 n.9 (N.D. Ill. 2015) (RFRA issue was not reached due to a different decision in the case); Students and Parents for Privacy v. United States Dep't of Educ., No. 16 C 4945, 2016 WL 3269001, at *1 (N.D. Ill. June 15, 2016) (deciding on a motion to intervene, not the merits of a RFRA issue); Dordt College v. Burwell, No. C 13-4100-MWB, 2014 WL 5454649, at *7 (N.D. Iowa Oct. 27, 2014) (deciding on a motion to stay the case pending an appeal, rather than a substantive RFRA issue); United States v. Kam Wing Chan, No. 14cr3662 ABJ, 2015 WL 545544 at *6–7 (S.D. Cal. Feb. 9, 2015) (order regarding appointment of attorneys, rather than a RFRA issue); *In re* Navy Chaplaincy, 306 F.R.D. 33, 33 (D.D.C. 2014) (discussing class certification, not the merits of a RFRA question).

28. When RFRA was ruled unconstitutional as applied to states and state actors, RLUIPA was passed to replace it in part. Because the two statutes follow the same analysis, many judges cite RFRA in discussing RLUIPA, so many RLUIPA cases were caught in the Westlaw search. These cases were excluded because, while they may consider the same issues, this paper is focused solely on RFRA and including RLUIPA would add dozens, if not hundreds of cases, many or most involving state prisoners. For a more detailed history of RLUIPA, *see* Anthony Lazzaro Minnervini, *Freedom from Religion: RLUIPA, Religious Freedom, and Representative Democracy on Trial*, 158 U. Pa. L. Rev. 571 (2010).

coding decisions. [29] In addition, this methodology also allowed for a more robust data set and better statistical analysis. Finally, decisions that had been overturned were excluded; red flags were investigated to determine whether they affected a substantive RFRA issue. The variables that were coded are described in the next section.

1. Descriptive Statistics[30]

Outcome, the dependent variable of this model, describes the result of the case, and was coded as a dichotomous variable—either a win or a loss for the plaintiff. In total, 56.5% of plaintiffs lost, and 43.5% won.

The circuit was coded in order to account for both geography and variances in law in different circuits. While state was coded as well, and is also a measure of geographical influence on case outcome, ultimately circuit was chosen. First, because it created a smaller number of possible responses to fit into a model, and second, because RFRA is a federal law, so variances in doctrine would occur by circuit, not by state.

Stage, meaning the stage of the litigation process the case was in, was coded to account for the position of the case before the judge. The most common responses were a motion to dismiss (34.8% of cases), a motion for summary judgment (30.4%), a motion for a preliminary injunction (13.9%), a motion for a permanent injunction (8.7%), or an appeal (frequently from a criminal conviction) (5.2%). It is important to note that, for example, a plaintiff win on summary judgment could indicate either that the plaintiff won the case on summary judgment, or defeated a defendant's motion for summary judgment.

Religion of the litigant was also coded. The most frequently occurring religions were Muslim (19.1%), non-Catholic Christian (12.2%), Catholic (11.3% of cases), secular religions, including a number of non-theological beliefs (10.5%), and individuals for whom the particular religion was not specified by the judge in deciding the case (10.4%).

Context was coded to describe the broad types of cases that were brought. The categories of contexts were the following: cases brought by incarcerated individuals (40.9%); cases involving Health and Human Services ("HHS"), largely in cases challenging the

29. Goodrich & Busick, *Sex, Drugs, and Eagle Feathers*, *supra* note 7, at 359.
30. For full descriptive statistics of each variable, *see* Appendix A.

contraceptive mandate or other Affordable Care Act requirements (20%); cases in the criminal context, often raising RFRA as a defense to criminal behavior, such as drug use (9.6%); cases in the military context involving individuals serving in or working for the U.S. military (6.1%); cases in the immigration context, typically either individuals attempting to immigrate to the United States, or individuals trying to help others immigrate (5.2%); and other (18.3%).

Whether or not a litigant was pro se was coded as a dichotomous variable, with 44% of litigants representing themselves pro se, and 55.2% with independent counsel.

The category of law or requirement that the litigant sought an exemption from was coded as Exemption. There were a few large categories, and a smattering of unique cases.[31] This variable was included to better categorize like cases, such as contraceptive mandate cases, that might otherwise have different religions of applicant or other independent variables. The large categories of exemptions sought by litigants were the following: cases in which individuals, typically incarcerated individuals, sought to practice their religion in a particular way, such as accessing group prayer (28.7%);[32] cases seeking exemptions from the contraceptive mandate (18.3%); cases in which individuals sought or challenged religious speech (7.8%); meal-related cases brought by incarcerated individuals seeking to receive a religious diet (7%); employment cases (6.1%); cases in which an individual, typically an incarcerated individual or member of the military, sought to maintain their appearance in some way, such as a head covering, an article of faith like a necklace, or facial hair style (5.2%); and cases in which individuals sought to use illegal drugs, most often marijuana (5.1%).

Finally, the year the case was decided also coded. 10% of cases were in 2014; 27% in 2015; 23% in 2016; 22% in 2017; and 17% in 2018.

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31. For example, an Amish defendant indicted with violating the Food, Drug, and Cosmetic Act moved to enjoin U.S. Marshals from taking his photograph as part of processing him. He won. United States v. Girod, 159 F. Supp. 3d 773, 773 (E.D. Ky. 2015). Another memorable case is United States v. Epstein, 91 F. Supp. 3d 573, 573 (D.N.J. 2015), in which an individual raised RFRA as a defense to kidnapping charges, arguing that the government's sting operation to catch him with his kidnapped child violated his faith. He lost.

32. Not all examples were so pious—one standout case that comes to mind, which lost, was an individual attempting to keep with him in prison tarot cards featuring depictions of nudity. Guilliot v. Harmon, No. 3:17-cv-2701-M-BN, 2018 WL 4084265 (N.D.Tex. July 25, 2018).

The coding of cases was performed in 2019, so as to include all cases decided in 2018.

Prior to performing any predictive analysis, some of the variables with categories that had at most two coded occurrences were combined into an "Other" category for the sake of easier analysis. For example, in the Religion variable, this meant that Amish, Latter Day Saints, White Supremacy,[33] Hebrew Yisraelite, Pentecostal, Wiccan, and Asatru were combined, because each of those religions had at most two instances in the entire data set. However, descriptive statistics for the full categories are in Appendix A.

Previous research included other factors including, most notably, the religion of the judge deciding the case, which was found to be predictive of outcome, but which was not included here.[34] There are two main reasons that religion of the judge was not included in this study. The first is that it would be impractical. That previous study considered only appellate judges, and the researchers found that almost all had disclosed their religion on the record at some point, often in interviews.[35] This is not true for every federal district judge in the country, and discovering each of their religions would be nearly impossible. The second reason is that this study is interested in investigating which factors unique to a case, not to a judge, affect outcome, so it was appropriate to exclude judge-specific factors.

In addition to descriptive statistics, tests of correlation between each independent variable and case outcome were performed.[36] Because the variables are categorical, a Chi-squared test was used.[37] Two results are statistically significant: there is an association between Context and Outcome (p=.001) and another

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33. There were a number of terms litigants used to describe what was claimed to be a religion amounting to white supremacy. Indeed, a number of judges disputed that it qualified as a religious belief at all. *See, e.g.*, Hale v. Federal Bureau of Prisons, No. 14-cv-00245-MSK-MJW, 2015 WL 5719649 (D. Colo. Sep. 30, 2015).

34. Heise, Sisk & Morriss, *Judicial Decisionmaking*, *supra* note 7, at 578–79.

35. *Id*.

36. For full outputs, *see* Appendix B.

37. A Chi-squared test works, simply put, by generating two hypotheses: a null hypothesis, that the two variables being compared are independent of each other, and a hypothesis one, that the two variables are related. You can reject the null hypothesis, and conclude that the two variables being examined are related, if you have a statistically significant p-value. This Note used the standard significance level $p < .05$.

association between Exemption and Outcome (p=.024).[38] This means that of all the variables examined—pro se representation, religion, exemption, context, circuit, and stage of litigation—only context and type of exemption are correlated with whether a plaintiff won or lost her case. The strength of the association is indicated by the values for Phi and Cramer's V. Context had Phi and Cramer's V values of .452; Exemption was at .587.[39] For both variables, this indicates what can best be described as a moderate correlation—apparent, but not overly strong; though slightly more powerful for the Exemption relationship.

These findings demonstrate that some religious exemptions and case contexts are more likely to win than others. Three particular categories of Exemption stand out: plaintiffs in contraceptive mandate cases won 81% of the time, plaintiffs in immigration cases won 60% of the time, and plaintiffs in employment cases won 57% of the time, compared to an average win rate of 37%.[40] For Context, the most striking result was that criminal cases lost 100% of the time, while HHS cases won 78% of the time.[41]

What this finding does *not* demonstrate, however, is that certain exemptions *cause* a win or loss—correlation does not imply causation. For example, one explanation could be that individuals seeking certain types of exemptions are more likely to have better evidence available to them, or are more likely to have talented attorneys that choose winning cases. Additionally, certain exemptions are correlated with certain religious beliefs.

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38. Appendix B, *see* columns labeled "Asymptotic Significance (2-sided)" for each analysis.

39. Appendix B, *see* rows labeled "Phi" and "Cramer's V" under the "Symmetric Measures" table for each relevant output.

40. *See* Table 1: Exemption vs Outcome, *infra* at 31.

41.

Context	Percent Won	Percent Lost	Total Cases
Criminal	0%	100%	11
General	0%	100%	1
HHS	78%	22%	23
Immigration	67%	33%	6
Military	43%	57%	7
Other	30%	70%	20
Prison	40%	60%	47
Total	**43%**	**57%**	**1**

The lack of a correlation between Stage and Outcome is surprising. Regardless of the type of case being tried, the bar to winning a RFRA case at various stages of litigation rises steadily—compare the motion to dismiss standard, in which all facts are construed in favor of the non-movant,[42] to a motion following a trial, when a judge can reverse only if no reasonable jury could make such a finding.[43] Therefore, it follows logically that Stage would be correlated with likelihood of winning a case. That it is not may be a result of coding method. Because defeating an opposing motion for summary judgement and winning a plaintiff's own were coded the same way, the effects of the bar for a win at various stages may have been muted in the sample.

A final finding concerns pro se litigants. One fear about the judicial system may be, particularly in cases involving indigent or incarcerated litigants, that pro se litigants are unfairly disadvantaged merely because of their ability to pay. Accentuating this fear is the finding that there is a correlation between Religion and Pro Se: litigants of some religions are more likely to have counsel than others. However, there was no correlation between Pro Se and Outcome.[44] This is encouraging—it demonstrates that you are not more likely to win your RFRA case if you have private counsel. On the other hand, among the fifty-one pro se litigants in the data set for this Note, a whopping 78.4% were making claims in the prison context, creating a large pool of litigants facing the double disadvantage of litigating without counsel

42. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

43. Fed. Rules Civ. Pro. 50(a)(1).

44. *See* Appendix B, "Pro Se versus Outcome," Asymptotic Significance is greater than .05, indicating a lack of significant results.

and from behind bars.[45] This number also likely underestimates the frequency of prison-based claims among pro se RFRA litigants, given that claims decided on grounds not reaching the merits were not coded. Overall, this is a small, but perhaps significant, piece of evidence supporting existence of that ever-elusive ideal of a justice system that works for all, whether they be pro se or with lauded counsel.

2. Predictive Models

In order to answer the question of whether any of the variables for which data was gathered have a predictive effect on case outcome, a binomial logistic regression was run. Given that only context and exemption were correlated with outcome, we would expect our model not to find that most of the variables were significant. This expectation was borne out.

A binomial logistic regression[46] was used in lieu of a linear multiple regression because the independent variable, Outcome, is a dichotomous categorical variable.[47] To account for each of the

Context * ProSe Crosstabulation

Count

		ProSe		
		No	Yes	Total
Context	Criminal	7	4	11
	General	0	1	1
	HHS	22	1	23
	Immigration	5	1	6
	Military	7	0	7
	Other	16	4	20
	Prison	7	40	47
Total		64	51	115

45.

46. This is where, typically, a discussion of VIF and concerns about multicollinearity would enter the picture. Because this model has so few statistically significant results and relatively low explanatory power, I omit those considerations. For a more robust discussion of collinearity and regression analysis in social science research, *see generally* Srijati Ananda & Kevin Gilmartin, *Inclusion of Potentially Tainted Variables in Regression Analyses for Employment Discrimination Cases*, 13 INDUS. REL. L.J. 121 (1991).

47. This is so because Outcome has two possible options, making it dichotomous, and the two options are not ordered in any way. For example, a win is not bigger, heavier, or higher than a loss. The more common techniques of ordinary least squares or linear regression is only effective with a scalar dependent

categorical independent variables, k-1 dummy variables were created for each of Context, Exemption, Religion, and Stage. This model showed that the only variable with a predictive effect on Outcome were whether a litigant was Christian (significance=.038), and whether a litigant was secular (significance=.006).[48] This model had only middling explanatory power—it explained 61.6% of variance in whether an individual won their case.[49] This demonstrates empirically that being a Christian or secular litigant in particular in a RFRA case has a predictive effect of outcome, regardless of other factors present in a case.

It must be cautioned that the sample size, at a total of 115 cases, limits the power of the model, and sampling the cases that reached a federal district court decision necessarily excluded cases that settled out-of-court or never reached a judge for another reason. This may be especially true in the context of prison litigation, where plaintiffs have to exhaust administrative remedies through the prison before a district court will make a substantive decision on a RFRA issue.[50] However, because the sample size was as large as possible—every qualifying case was coded—the results are useful and persuasive.

III. ANALYSIS

A. The Case of the Christian and the Contraceptive Mandate

The key findings from the regression analysis were that two religions, Christian and secular, had predictive power on outcome. This finding allows the inference to be drawn that being Christian makes you more likely to win your RFRA case, and being a secular litigant

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variable (think of age, weight, test score, etc.). Logistic regression has been used on similar research projects. *See* Heise, Sisk & Morriss, *Judicial Decisionmaking*, *supra* note 7, at 553 ("A logistical regression was appropriate given the dichotomous dependent variable.").

48. Appendix C, "Variables in the Equation" table under Binomial Logistic Regression, *see* column labeled "Sig." As with the Chi squared tests, a p-value less than .05 indicates statistical significance.

49. Appendix C, "Model Summary" table under Binomial Logistic Regression, *see* "Nagelkerke R Square" value. Because this is not an ordinary least squares regression, the R value should be treated with caution.

50. *See* Jackson v. District of Columbia, 254 F.3d 262, 264 (D.C. Cir. 2001) (holding that the Prison Litigation Reform Act requires administrative exhaustion of prison policies before a litigant can pursue a RFRA claim in federal court).

makes you more likely to lose. The Christian advantage is discussed first.

One possible explanation for this finding is the contrast in the requested exemptions of Christians (and Catholics), as compared to all other religions. Of the cases requesting exemption from the Affordable Care Act contraceptive mandate under *Hobby Lobby*, seventeen of nineteen were brought by individuals who were identified as Catholic or another Christian denomination, and of the claims made by Catholics and Christians, 55% were for a contraceptive mandate exception.[51] In contrast, contraceptive mandate cases made up only 7% of claims in general.[52] This means that Christians and Catholics, far more so than any other religious group, use RFRA to gain an exemption from the contraceptive mandate.

What is even more interesting is that the contraceptive mandate is the only category of exemptions that meaningfully impacts third parties, as seen by comparing to the requests made by inmates and the other major categories of claims, such as employment discrimination. Inmates (mostly Muslim claimants) typically requested the right to pray in a certain way or at a certain time, to modify their appearance in a particular way, or to receive a religious diet. Other claimants typically requested the right exercise free speech in a particular way.[53] While those requests might burden others, or the prison system or an employer indirectly—requiring accommodations to be made, for example, or requiring greater efforts to avoid discrimination—contraceptive mandate exemptions place a heavy and real burden on third parties. Ways to account for third party burdens in the RFRA framework are discussed in the next section.

51.

Religion * Exempt Crosstabulation

Count

52. *Id*.

53. Appendix A, table labeled "Exemption."

It is also a key observation that contraceptive mandate cases had the highest win rate of any context recorded:

Table 1: Exemption vs Outcome

Requested Exemption	Count of Won	Count of Lost	Percent Won
Appearance	2	4	33%
Contraceptive mandate	17	4	81%
Drug Use	1	5	17%
Employment	4	3	57%
Food	3	5	38%
Immigration	3	2	60%
Land use	0	3	0%
Other	7	10	41%
Practicing	13	20	39%
Speech	0	9	0%
Total	50	65	37%

The average win rate across Context was 37%. Contraceptive mandate cases won 81% of the time. So, an explanation for the Christian advantage is the tie to contraceptive mandate cases, which are relatively successful. Finally, this ties into one of the few predictive results found in the binomial linear regression model: that a whether a litigant was Christian was predictive of outcome.

Another factor explaining the Christian advantage in RFRA cases is settled law. As discussed above, the majority of cases involving Christian litigants were for a contraceptive mandate exemption. This is one of the issues of RFRA exemptions that is clearly settled law, because of *Hobby Lobby*. Judges almost always cited *Hobby Lobby* at least once, often more, in deciding favorably to plaintiffs on contraceptive mandate cases.[54] Other areas of RFRA exemptions lack the clarity of a single high-profile Supreme Court case.

This may also be a result of a surge of litigation spurred by *Hobby Lobby* itself. There is a noticeable spike in contraceptive

54. *See, e.g.*, March for Life v. Burwell, 128 F. Supp. 3d 116 (D.D.C. 2015) (two citations to *Hobby Lobby* in the body of the opinion, and an additional two in footnotes); Tyndale House Publishers, Inc. v. Burwell, No. CV 12-1635 (RBW), 2015 WL 13700485 (D.D.C., July 15, 2015) (a total of seven citations to *Hobby Lobby* throughout); Louisiana College v. Sebelius, 38 F. Supp. 3d 766 (W.D. La. 2014) (five references to *Hobby Lobby* in the body of the opinion and five in footnotes); Wieland v. United States Dep't of Health and Human Servs., 196 F. Supp. 3d 1010 (E.D. Mo. 2016) (seven references to *Hobby Lobby*); Brandt v. Burwell, 43 F. Supp. 3d 462 (W.D. Pa. 2014) (twenty-two references to *Hobby Lobby* throughout).

mandate RFRA cases following *Hobby Lobby*, which has generally been decreasing since 2014:

Table 2: Exemption vs Year

Requested Exemption	2014	2015	2016	2017	2018	Total Number of Cases
Appearance	0%	0%	100%	0%	0%	6
Contraceptive mandate	38%	33%	10%	5%	14%	21
Drug Use	0%	33%	17%	17%	33%	6
Employment	0%	43%	29%	14%	14%	7
Food	0%	50%	13%	38%	0%	8
Immigration	0%	0%	20%	40%	40%	5
Land use	0%	0%	33%	33%	33%	3
Other	12%	35%	18%	29%	6%	17
Practicing	6%	27%	21%	21%	24%	33
Speech	0%	0%	33%	44%	22%	9
Total	**10%**	**27%**	**23%**	**22%**	**17%**	**115**

Indeed, 2014 has the highest share of contraceptive mandate cases, and the data set only includes cases after July of 2014, when *Hobby Lobby* was decided so all else equal, we would expect it to have the smallest percentage of cases in all categories. The Christian advantage, therefore, may fade over time as the contraceptive mandate issue is resolved and fewer contraceptive mandate cases appear in court.

Together, this study presents evidence that being Christian makes a litigant more likely to win a RFRA case. While there are many possible explanations for this finding, it should raise concerns about what exemptions are valued and which religious concerns are most considered.

B. The Secular Disadvantage

In contrast to the Christian cases discussed above, the other predictive finding of this study concerns secular litigants, who fared poorly compared to litigants of other religions. Of the secular cases that were considered, the win rate was only 14%, compared to most religions, which hovered somewhere around, or at, 50%:

Table 3: Religion vs Outcome

Religion * Outcome Crosstabulation	Lost	Won	Percentage Won
Atheist	1	0	0%
Catholic	5	8	62%
Christian	9	9	50%
Jewish	4	4	50%
Muslim	12	10	45%
Native American	3	2	40%
Other	4	6	67%
Rastafarian	4	0	0%
Santeria	2	2	50%
Secular	12	2	14%
Sikh	2	2	50%
Unspecified	7	5	42%
Total	65	50	43%

A large fraction of secular cases were individuals requesting to use illegal drugs (five marijuana, one heroin). Drug use generally failed on the merits: the Controlled Substances Act was considered by judges, with little apparent hesitation or deliberation, to be the least restrictive means of furthering a compelling government interest.[55]

A qualitative explanation for the secular disadvantage is that judges seem to have fairly strong and fairly consistent intuitions about cases that they consider not to be valid. One of the few successful cases, defeating a motion to dismiss, was brought by an individual who requested stuffed animals in prison as part of his meditation practice.[56] This claimant had a secular religion that nonetheless was intuitively closer to traditional religion because of its descriptions of spirituality and mediation.[57] This suggests that judges are intuitively controlling for religions that *feel* like traditional religions, even though a belief in God is not a written component of RFRA. For example, an individual seeking a religious exemption for marijuana use lost before a judge who explicitly deemed the plaintiff's belief "secular" rather than having "a religious connotation."[58] The judge made this finding because the plaintiff alleged that marijuana use allowed him to become "sovereign,"

55. *See* United States v. Anderson, No. 4:13 CF 164 RWS, 2015 WL 13546454, at *2 (E.D. Mo. June 5, 2015), *aff'd,* 854 F.3d 1033 (8th Cir. 2017) ("Whether the government has a compelling interest in preventing drug abuse can hardly be disputed.") (quoting United States v. Israel, 317 F.3d 768, 771 (7th Cir. 2003)).

56. Grief v. Quay, 701 Fed. App'x. 64, 65 (2d Cir. 2017).

57. *Id*.

58. Caprice v. United States, No. 1:16-CV-3344-RWS, 2017 WL 5244182, at *2 (N.D. Ga. April 12, 2017).

which the judge deemed not to be a religious feeling.[59] In *Armstrong v. Jewell*, members of the Healing Faith, a cannabis-based religion, were denied a permit to use marijuana on the grounds of a national park that was a sacred site for their religion.[60] In deciding that practicing their religion at a different site was not a substantial burden, the court noted that, "the Church is 'new and barely corporate,'" and questioned the significance of the requested site because it could not find such mention in the plaintiffs' Bible.[61]

In determining that a white supremacy belief qualified as a religion, one case examined a range of factors that, it seems in some ways, amounted to a general feeling. The court looked at indicators such as whether the belief system "addresses fundamental and ultimate questions of deep and imponderable matters," and whether it is "accompanied by accoutrements of religion such as holidays, prophets, writings, ceremonies, or diets."[62] The court noted that while religions need not be "acceptable, logical, consistent, or comprehensible,"[63] they must not be, "purely personal, political, ideological, or secular."[64] If these factors feel like a mishmash, it may be because they are—and they help account for the low success rate of secular or non-traditional religions before the courts. This may stem from the definition of "religious exercise," contained in RLUIPA, which included, "any exercise of religion whether or not compelled by, or central to, a system of religious belief."[65] This essentially defines a religious exercise as an exercise of religion.

It may also be a direct result of the Supreme Court's explicit delegation of discretion to lower courts. In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, the Court discussed the discretion that district courts are able to exercise under the RFRA burden shifting test in balancing the burden on the claimant against the government's justifications.[66] The Court opined: "We have no cause to pretend that the task assigned by Congress to the courts under

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59. *Id*.

60. Armstrong v. Jewell, 151 F. Supp. 3d 242, 250 (D.R.I. 2015).

61. *Id.* at 249–50.

62. Hale v. Fed. Bureau of Prisons, No. 14-CV-00245-MSK-MJW, 2015 WL 5719649, at *7 (D. Colo. Sept. 30, 2015) (citing United States v. Meyers, 95 F.3d 1475, 1483 (10th Cir. 1996)).

63. *Id*. (citing United States v. Seeger, 380 U.S. 163, 184–85 (1965)).

64. *Id*. (quoting United States v. Meyers, 95 F.3d 1475, 1503 (10th Cir. 1996)).

65. 42 U.S.C. §2000cc—5(7)(a).

66. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 439 (2006).

RFRA is an easy one… courts should strike sensible balances."[67] This illustrates the freedom that courts have in striking that balance. As a result, neither the law nor the Court have lower courts with much guidance and judges are left on their own to decide whether a litigant presents with something that feels like religion.

C. Other Implications for RFRA's Operation

This analysis produced several other results, some of which are encouraging. First is the heartening conclusion that judges are not deciding RFRA cases based on the exemption sought, the context in which cases occur, whether a litigant is pro se, or where cases are geographically biased by circuit. This increases the chances that judges decide cases truly on the merits. It also supports the reassuring conclusion that litigants are not disadvantaged merely because they are in prison, for example, or without paid counsel.

This Note conflicts with the study by Goodrich and Busick, which found Christians to be underrepresented among litigants.[68] There may be a very simple explanation for that study's findings, which also included finding a high percentage of Native American litigants: that research was conducted exclusively within the Tenth Circuit, rather than nationwide, which may have biased the sample of cases. The Tenth Circuit comprises Wyoming, Utah, Colorado, Kansas, Oklahoma, and New Mexico.[69] Nationally, Christians make up 70.6% of Americans.[70] Interestingly, there are similar or higher percentages of Christians in most of the Tenth Circuit states.[71] However, of the six Tenth Circuit states, New Mexico and Oklahoma have the second and third highest populations of Native Americans, and all six states are in the top twenty among all states.[72] This would, potentially, make Christians a relatively smaller share of cases. This finding is a useful, if oft-repeated reminder to future researchers to select data sets with

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67. *Id*.

68. Goodrich and Busick, *Sex, Drugs, and Eagle Feathers*, *supra* note 7, at 353.

69. *Geographic Boundaries of United States Courts of Appeals and United States District Courts*, U.S. COURTS, https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf [https://perma.cc/TU5L-ZTR5].

70. *Religious Landscape Study*, PEW RESEARCH CENTER, http://www.pewforum.org/religious-landscape-study/ [https://perma.cc/G5RR-2QJY].

71. *Id*.

72. *Native American Population by State 2017*, WORLD POPULATION REVIEW, http://worldpopulationreview.com/states/native-american-population/ [https://perma.cc/C8UR-Y4RN].

caution, and to limit generalizability of results drawn from limited data.

D. Going Forward: Redefining "Religion" and Consideration of Third Parties

Two main suggestions for modifications to RFRA emerge from these data. The first is the need for a clearer definition of what qualifies as a "religion" for RFRA claims, most effectively accomplished by a statutory change to the definitions section of the statute, as was done with RLUIPA. The second is the need for RFRA analyses to account for harm to third parties.

The first step would be to explicitly define atheism or agnosticism as religions. There were a number of secular religions included in the data, but almost all plaintiffs of these religions lost—largely because they were mostly attempting to access either marijuana or heroin, which judges refused to allow. Rather than focusing on closely held beliefs, a more administrable definition of religion might focus on morality and how to live a good life. The main reason for such a definition is clear: to exclude beliefs such as white supremacy from the category of religious beliefs. It is hard to conceive of an exercise of a white supremacy belief that should be tolerated, much less accommodated by the federal government as a religious belief. It is true that this would create a statutory value judgement about what beliefs are deserving of protection. This is already happening, though: judges hold some beliefs as more deserving of protection than others because they are familiar, involve a central deity, or otherwise conform to traditional notions about religion.

A clearer definition of religion would also have the advantage of creating more consistency across cases. As discussed above, while judges seem to have somewhat consistent gut feelings about what should be considered a religion, a clear definition that provides greater certainty to litigants would be advantageous. It would reduce transaction costs by allowing for better predictability of case outcome, and constrain the discretion of judges who may have personal biases.

The second major consideration that emerged from this research was the effect of exemptions on third parties. As noted, the most frequently granted exemption, for contraceptive mandate excusal, is the only one that notably burdens third parties that were intended beneficiaries of the challenged statute. While individuals who are burdened by a company's contraceptive mandate exemption may have other sources for reproductive healthcare, as provided for by the

Affordable Care Act in some contexts, this is an issue that could arise in the future. The fact that judges are granting these exemptions more frequently than any other exemptions, without even *considering* the third-party impact, is striking. In *Hobby Lobby* itself, the disparate costs of preventative coverage for men and women, and the necessity of contraceptives to the ability of women to participate in the public sphere, were raised only in the dissent of Justice Ginsburg.[73] The dissent also noted that previous religious exemptions to laws of general applicability had not significantly impinged on the interests of third parties.[74]

RFRA is only part of the picture: consideration of third-party harm may become even more relevant in the considerations of the rights of disadvantaged groups moving forward. The Trump Administration has proposed regulations to increase protections for health care providers who have conscience objections to providing certain types of health care.[75] The regulations would create a Division of Conscience and Religious Freedom within Health and Human Services to protect healthcare providers who refuse to perform certain procedures, particularly abortions.[76] The regulations could even extend to protect healthcare workers from providing referrals to alternate providers for the procedure at issue.[77] A background jurisprudence grounded in RFRA that accounts for harm to third parties would help challengers of these regulations make the case that they are unconstitutional. Challengers could argue that the substantial government interest of protecting free exercise of religion must be balanced against the government interest of preventing that third-party harm.

Thus, case law that ensures third parties are not seriously harmed by religious exemptions would be an improvement going forward. The most straightforward way to incorporate this

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73. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2788 (2014) (Ginsburg, J. dissenting).

74. *Id.*

75. 45 C.F.R. § 88 (2018) (titled "Protecting Statutory Conscience Rights in Healthcare; Delegations of Authority").

76. Alison Kodjak, *Trump Admin Will Protect Health Workers Who Refuse Services on Religious Grounds*, NATIONAL PUBLIC RADIO (Jan. 18, 2018), https://www.npr.org/sections/health-shots/2018/01/18/578811426/trump-will-protect-health-workers-who-reject-patients-on-religious-grounds [https://perma.cc/NM34-RTXP]. A deputy director from the ACLU was quoted suggesting that the regulations could also extend to denying healthcare to members of the LGBTQ+ community. *Id.*

77. *Id.*

consideration would be to adjust the second two prongs of the RFRA test judicially, ideally in Supreme Court precedent. In considering whether a substantial governmental interest exists, courts should assess whether harm will result to third parties if the exemption is granted. Then, the fact that the existing law prevents harm to third parties should be factored into whether it is tailored closely enough to its purpose, such that if the harm to third parties could not be avoided with the rule as is, then an exemption should not be granted, because it would not meet the tailoring requirement.

CONCLUSION

This study presents the novel finding that certain religious beliefs are predictive of whether a litigant is successful in a RFRA case. This research further assists in highlighting serious issues still to be considered. Specifically, RFRA in the post-*Hobby Lobby* context is largely a tool of prisoners and Christians objecting to the contraceptive mandate. Taking into account harm to third parties and introducing a more particularized definition of a qualifying religion could help ensure a functioning RFRA that does more good than harm.

APPENDICES

Appendix A: Descriptive Statistics

Result	Frequency	Percent
Lost	65	56.5
Won	50	43.5

Circuit	Frequency	Percent
First	3	2.6
Second	8	7
Third	8	7
Fourth	6	5.2
Fifth	13	11.3
Sixth	6	5.2
Seventh	6	5.2
Eighth	18	15.7
Ninth	9	7.8
Tenth	18	15.7
Eleventh	9	7.8
DC	11	9.6

Pro Se	Frequency	Percent
No	64	55.2
Yes	51	44

Context	Frequency	Percent
Criminal	11	9.6
HHS	23	20
Immigration	6	5.2
Military	7	6.1
Other	21	18.3
Prison	47	40.9

Religion	Frequency	Percent
Amish	1	0.9
Asatru	2	1.7
Atheist	3	2.6
Baptist	2	1.7
Catholic	13	11.3
Christian	14	12.2
Hebrew Yisraelite	1	0.9
Humanist	2	1.7
Jewish	8	7
Latter Day Saints	1	0.9
Muslim	22	19.1
Native American	5	4.3
Pentecostal	1	0.9
Rastafarian	4	3.5
Santeria	4	3.5
Secular	12	10.5
Sikh	4	3.5
Unspecified	12	10.4
White supremacy	3	2.6

Wiccan	1	0.9

Exemption Sought	Frequency	Percent
Appearance	6	5.2
Bankruptcy	1	0.9
Burial	1	0.9
Contraceptive mandate	21	18.3
Drug use (Heroin)	1	0.9
Drug Use (Marijuana)	5	4.3
Eagle[78]	1	0.9
Employment	7	6.1
Food	8	7
Housing	1	0.9
Immigration	5	4.3
Incarceration	1	0.9
Judge	1	0.9
Kidnapping[79]	1	0.9
Land use	3	2.6
Medical Testing	2	1.7
Photo	1	0.9
Practicing	33	28.7
Protective services mandate	1	0.9
Recycling	1	0.9
Same sex marriage	1	0.9
Search[80]	2	1.7

78. The use of eagle feathers, typically in Native American religious practices.

79. Cases of individuals claiming a religious motivating for kidnapping a family member.

80. Individuals arguing that personal searches violated their religious beliefs.

SNAP	1	0.9
Speech	9	7.8
Transitions/Abortions[81]	1	0.9

81. An employer arguing it should not have to provide health insurance to cover these procedures due to religious beliefs.

Appendix B: Crosstab Results

Pro Se versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	1.444[a]	1	.229		
Continuity Correction[b]	1.025	1	.311		
Likelihood Ratio	1.451	1	.228		
Fisher's Exact Test				.260	.156
N of Valid Cases	115				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 22.17.

b. Computed only for a 2x2 table

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	-.112	.229
	Cramer's V	.112	.229
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Religion versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	20.805[a]	19	.348
Likelihood Ratio	26.751	19	.111
N of Valid Cases	115		

a. 30 cells (75.0%) have expected count less than 5. The minimum expected count is .43.

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	.425	.348
	Cramer's V	.425	.348
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Exemption versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	39.558[a]	24	.024
Likelihood Ratio	50.469	24	.001
N of Valid Cases	115		

a. 45 cells (90.0%) have expected count less than 5. The minimum expected count is .43.

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	.587	.024
	Cramer's V	.587	.024
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Context versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	23.524[a]	6	.001
Likelihood Ratio	28.322	6	.000
N of Valid Cases	115		

a. 7 cells (50.0%) have expected count less than 5. The minimum expected count is .43.

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	.452	.001
	Cramer's V	.452	.001
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Circuit versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	14.688[a]	11	.197
Likelihood Ratio	17.375	11	.097
N of Valid Cases	115		

a. 15 cells (62.5%) have expected count less than 5. The minimum expected count is 1.30.

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	.357	.197
	Cramer's V	.357	.197
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Stage of Litigation versus Outcome

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	13.044[a]	8	.110
Likelihood Ratio	16.058	8	.042
N of Valid Cases	115		

a. 11 cells (61.1%) have expected count less than 5. The minimum expected count is .43.

Symmetric Measures[c]

		Value	Approximate Significance
Nominal by Nominal	Phi	.337	.110
	Cramer's V	.337	.110
N of Valid Cases		115	

c. Correlation statistics are available for numeric data only.

Appendix C: Regression Results

Binomial Logistic Regression

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1[a]	Profile(1)	.578	1.021	.320	1	.571	1.783
	Circuit	.031	.106	.085	1	.771	1.031
	Sumjudge	-1.318	1.801	.536	1	.464	.268
	Dismissal	-1.558	1.771	.774	1	.379	.211
	Preliminj	-2.040	1.788	1.303	1	.254	.130
	Permitj	-1.694	2.050	.683	1	.408	.184
	Appeal	-20.746	11964.025	.000	1	.999	.000
	Criminal	-24.328	9710.498	.000	1	.998	.000
	HHS	.248	1.935	.016	1	.898	1.282
	Military	-3.019	2.374	1.618	1	.203	.049
	Prison	-3.010	1.886	2.547	1	.111	.049
	Immigration	19.628	40192.964	.000	1	1.000	334574756
	Speech	-23.501	12014.701	.000	1	.998	.000
	ContraceptiveMandate	.918	1.661	.305	1	.581	2.504
	DrugUse	4.962	41349.148	.000	1	1.000	142.835
	Appearance	-20.275	27966.239	.000	1	.999	.000
	EX_Immigratoon	-19.358	40192.964	.000	1	1.000	.000
	LandUse	-25.607	22402.335	.000	1	.999	.000
	Employment	2.209	1.720	1.649	1	.199	9.103
	Practicing	.299	.990	.091	1	.763	1.348
	Christian	-3.564	1.721	4.289	1	.038	.028
	Catholic	-2.618	1.642	2.542	1	.111	.073
	Jewish	-.339	1.395	.059	1	.808	.712
	Muslim	-.642	.898	.511	1	.475	.526
	Rastafarian	-21.294	18935.727	.000	1	.999	.000
	Unspecified	-1.694	1.729	.960	1	.327	.184
	Secular	-4.992	1.814	7.570	1	.006	.007
	Sikh	19.357	27966.240	.000	1	.999	254991060
	Constant	4.373	2.459	3.162	1	.075	79.255

a. Variable(s) entered on step 1: Profile, Circuit, Sumjudge, Dismissal, Preliminj, Permitj, Appeal, Criminal, HHS, Military, Prison, Immigration, Speech, ContraceptiveMandate, DrugUse, Appearance, EX_Immigration, LandUse, Employment, Practicing, Christian, Catholic, Jewish, Muslim, Rastafarian, Unspecified, Secular, Sikh.