THE PROS AND CONS OF EMPOWERING RELIGIOUS EXEMPTIONS FOR PROGRESSIVE ACTIVISM

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I. Introduction

> *"For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in . . . whatever you did for one of the least of these brothers and sisters of mine, you did for me."*[1]

On August 13, 2017, Natalie Hoffman, Oona Holcomb, Madeline Huse, and Zaachila Orozco-McCormick drove through the Cabeza Prieta National Wildlife Refuge in Arizona.[2] The women were volunteers for No More Deaths, a humanitarian organization founded to provide food, water, and medical care in the desert.[3] After learning of numerous deaths of individuals passing the Refuge while crossing the Mexican border into the United States, the women left bottles of water and cans of food along known migrant trails.[4] The women knowingly violated federal law by entering the Refuge without a permit and were arrested and ultimately convicted.[5] The permit explicitly prohibits individuals from leaving water, food, and other supplies in the Refuge.[6]

Appealing their convictions, the women argued that their actions, while in violation of federal law, were "sincere exercises of religion" to mitigate death and suffering.[7] Although the women didn't consider themselves a part of any specific congregation or organized religion, they had "a spiritual calling to help other

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[1] *Matthew* 25:35-40.

[2] United States v. Hoffman, 436 F.Supp.3d 1272, 1277 (D. Ariz. 2020).

[3] *Id.*

[4] *Id.*

[5] *Id.* at 1277-78.

[6] *Id.* at 1278.

[7] *Id.* at 1277.

people."[8] Therefore, they argued that their prosecution was barred by the Religious Freedom Restoration Act ("RFRA").[9]

Over the past twenty years, RFRA has become synonymous with anti-abortion and anti-LGBT rights activism in the name of free exercise.[10] Shortly after RFRA's passage, the Supreme Court ruled that its application to states was unconstitutional.[11] Scholars declared RFRA "all but dead."[12] The Supreme Court's decision in *Burwell v. Hobby Lobby* decision, however, breathed new life into RFRA. In *Hobby Lobby*, the Court held that the federal government's mandate that employers provide health coverage for certain contraceptive measures was a substantial burden or free exercise violated RFRA.[13] Justice Ginsburg noted that the *Hobby Lobby* majority appears to relax the "substantial burden" standard. "The Court," Ginsburg argues, barely pause[d] to inquire whether any burden imposed by the contraceptive coverage requirement is substantial. Instead, it rests on the [plaintiffs'] 'belie[f] that providing the coverage demanded by the HHS regulations is connected to the destruction of an embryo in a way that is sufficient to make it immoral for them to provide the coverage.'"[14] The full implications of this decision are still unfolding today. In turn, the modern conservative movement has embraced *Hobby Lobby*.[15]

Immigrant rights and protections for undocumented persons, however, are not often associated with these free exercise arguments. However, the *Hoffman* defendants argued that the federal law was a substantial burden on their free exercise and the Arizona District Court agreed.[16] Leaving water and food for individuals crossing the border, according to the Court, was a sincere exercise of religious beliefs and the Government failed to

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[8] *Hoffman*, 436 F.Supp.3d at 1282.
[9] *Id.* at 1277.
[10] *See, e.g.*, Emily London, *Religious Liberty Should Do No Harm*, CAP (Apr. 11, 2019, 9:03 AM), https://www.americanprogress.org/issues/religion/reports/2019/04/11/468041/religious-liberty-no-harm/.
[11] City of Boerne v. Flores, 521 U.S. 507, 536 (1997).
[12] Ira C. Lupu, *The Failure of RFRA*, 20 U. ARK. LITTLE ROCK L.J. 575 (1998).
[13] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 684 (2014).
[14] *Id.* at 758 (2014) (Ginsburg, J., dissenting).
[15] *See, e.g.*, Thomas Scott-Railton, *A Legal Sanctuary: How the Religious Freedom Restoration Act Could Protect Sanctuary Churches*, 128 YALE L.J. 408, 432 (2018).
[16] *Hoffman*, 436 F. Supp. 3d at 1277.

prove that the laws were the least restrictive means of accomplishing a compelling interest.[17]

This success potentially signals a new wave of progressive activism guided by religious freedom. But as anti-abortion and anti-LGBT litigation continues to rise through the courts, this potential pathway for furthering a progressive agenda risks opening the door to additional exemptions. The more exemptions are created, the more individuals on all sides of political and social issues are able to take advantage of them and circumvent laws designed to protect vulnerable minorities. This note will weigh these potential positive and negatives and suggest alternative solutions to protect the civil rights–religious or not–of all.

II. Background

A. The Supreme Court, Religious Freedom, & *Employment Division v. Smith*

The First Amendment states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . "[18] The Supreme Court interpreted this language to prohibit legislation that burdens one's free exercise of their religion in, even incidentally, unless the legislation can survive strict scrutiny.[19] This is often referred to as the *Sherbert* test. In 1990, however, the Supreme Court pulled back on the *Sherbert* test's broad free exercise protections. In *Employment Division v. Smith*, the Court decided that strict scrutiny was inappropriately applied to neutral, generally applicable laws unless the law burdens Free Exercise in conjunction with other constitutional protections.[20] Therefore, neutral, generally applicable laws may burden free exercise even if not supported by a compelling governmental interest.

The *Smith* decision upheld an Oregon law that permitted the State to deny unemployment benefits to individuals dismissed from their jobs because of religiously inspired peyote use, despite the fact that peyote is a "vital" sacrament of the Native American Church.[21]

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[17] *Id.*
[18] U.S. CONST. amend. I.
[19] Sherbert v. Verner, 374 U.S. 398, 403 (1963).
[20] Emp. Div., Dep't of Hum. Res. of Oregon v. Smith, 494 U.S. 872, 881 (1990).
[21] *Id.* at 874, 903.

The Court reasoned that applying the *Sherbert* test would essentially grant individuals a constitutional right to ignore neutral laws of general applicability.[22] Religiously-motivated conduct is not free from regulation. The Court recognized this principle as far back as 1878, where the Court said that law "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."[23] Moreover, Supreme Court jurisprudence demonstrates a history of denying similar free exercise claims.

Justices O'Connor, Blackmun, Brennan, and Marshall all disagreed with the *Smith* majority's limiting of the *Sherbert* test, arguing that the test applies in cases where, "a State conditions receipt of a benefit on conduct prohibited by religious beliefs *and* cases in which a State affirmatively prohibits such conduct."[24] Externally, the decision received public outrage from civil liberties groups like the ACLU, who saw the decision as limiting vulnerable, minority faith's religious rights.[25]

B. Congress Responds: The Religious Freedom Restoration Act

In response to *Smith* and public outrage, Congress passed the Religious Freedom Restoration Act ("RFRA") in 1993 with overwhelming bipartisan support.[26] The Senate voted to pass RFRA with 97 yeas and only 3 nays.[27] Explicitly calling out *Smith*, RFRA states that, ". . . in [*Smith*], the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion . . ." Therefore, the purpose of RFRA is to:

> . . . restore the compelling interest test as set forth in *Sherbert* . . . and to guarantee its application in all cases where free exercise of religion is substantially burdened; and . . . to provide a claim or defense to

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[22] *Smith*, 494 U.S. at 887.
[23] Reynolds v. United States, 98 U.S. 145, 166 (1878).
[24] *Smith*, 494 U.S. at 898 (O'Connor, J., concurring) (emphasis added).
[25] *The Smith Decision*, PEW RSCH. CTR. (Oct. 24, 2007), https://www.pewforum.org/2007/10/24/a-delicate-balance6/.
[26] 42 U.S.C. § 2000bb (1997).
[27] *H.R. 1308 (103rd): Religious Freedom Restoration Act of 1993*, GOVTRACK (Oct. 27, 1993, 10:25 AM), https://www.govtrack.us/congress/votes/103-1993/s331.

> persons whose religious exercise is substantially burdened by government.[28]

In doing so, RFRA recognizes that even neutral, generally-applicable laws can burden free exercise to the point violating constitutional rights, triggering the strict scrutiny *Sherbert* test. Although RFRA has since been deemed unconstitutional as applied to state governments, it still applies to the federal government.[29] Accordingly, RFRA has been a valuable tool for religious-rights and First Amendment advocates to push back against federal law burdening free exercise.

C. RFRA: A Tool for Right-Wing Advocacy

While at first uncontroversial and widely supported, RFRA gradually become associated with the anti-abortion and anti-LGBT movements. Directly, RFRA was central to the Supreme Court's controversial *Burwell v. Hobby Lobby* decision. In *Hobby Lobby*, three closely-held for profit corporations sued the Department of Health and Human Services.[30] The owners of these corporations alleged that it was "immoral and sinful" under their Christian beliefs "to intentionally participate in, pay for, facilitate, or otherwise support" contraceptive drugs.[31] Therefore, an Affordable Care Act provision requiring that specified employers' group health plans to furnish contraceptive care and screenings for women violated RFRA and the Free Exercise Clause.[32]

The Supreme Court agreed. RFRA's language protects "persons" and the U.S. Government's position was that Congress did not anticipate nor intend for RFRA to protect corporations.[33] "No Supreme Court precedent had extended free-exercise rights to

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[28] *Id.*

[29] *See* City of Boerne v. Flores, 521 U.S. 507 (1997) (holding that Congress overstepped its power under the Fourteenth Amendment in passing RFRA. Congress has the power "to enforce" the provisions of the Fourteenth Amendment, not to determine what constitutes a constitutional violation as it attempts to do in RFRA).

[30] *Burwell*, 573 U.S. at 682.

[31] *Id.* at 702.

[32] *Id.* at 701.

[33] Ronni Mott, *Hobby Lobby Wages War on Birth Control*, JACKSON FREE PRESS (Mar. 19, 2014, 2:06 PM) https://www.jacksonfreepress.com/news/2014/mar/19/hobby-lobby-wages-war-birth-control/.

secular, for-profit corporations."[34] However, the Court viewed "persons" under the Dictionary Act, which defines "persons" to include corporations.[35] Once the Court established that RFRA applies closely held corporations, they had "little trouble" concluding that the ADA contraceptive mandate substantially burdened the corporations' exercise of religion[36] or that it was not the least restrictive means of furthering that compelling governmental interest.[37]

Emboldened by the Court's decision in *Hobby Lobby*, multiple states amended or passed laws extending RFRA protections to individuals and companies.[38] Around the same time, the same-sex marriage movement was gaining traction on a national level.[39] Indiana's Religious Freedom Restoration Act, for example, defines "persons" as an individual, corporation, or company that may sue and be sued and exercises practices that are compelled or limited by a system of religious belief held by: an individual or the individuals who have control and substantial ownership of the entity.[40]

Within a week of the Indiana RFRA's passage, a family-owned pizza publicly vowed to not cater same-sex weddings.[41] Citing the law, the owner explained that opposing same-sex marriage, as well as abortion, was a part of their religious beliefs.[42] Accordingly, the law gained national attention and condemnation, including that from Washington Governor Jay Inslee, Apple CEO Tim Cook, and Secretary of State Hillary Clinton.[43] In a vicious cycle, businesses that received negative backlash or lawsuits for religiously-

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[34] *Id*.
[35] *Burwell*, 573 U.S. at 708.
[36] *Id.* at 719.
[37] *Id.* at 728.
[38] MISS. CODE ANN. § 11-61-1 (2014); IND. CODE. ANN. § 34-13-9-7 (2015).
[39] Brian Miller, *The Age of RFRA*, FORBES (Nov. 16, 2018, 03:46 PM), https://www.forbes.com/sites/briankmiller/2018/11/16/the-age-of-rfra/#3f732ff577ba.
[40] IND. CODE § 34-13-9-7 (2015).
[41] Curtis M. Wong, *Indiana's Memories Pizza Reportedly Becomes First Business to Reject Catering Gay Weddings*, HUFFPOST (Feb. 2, 2016), https://www.huffpost.com/entry/indiana-pizza-gay-couples_n_6985208.
[42] *Id*.
[43] Erin McClam, *Religious Freedom Restoration Act: What You Need to Know*, NBC (Mar. 30, 2015), https://www.nbcnews.com/news/us-news/indiana-religious-freedom-law-what-you-need-know-n332491.

motivated discrimination can become martyrs for religious freedom.[44]

As a result, RFRA became closely associated with anti-LGBT discrimination. Arizona and Georgia failed to pass similar state RFRA protections due to LGBT discrimination controversy.[45] Yale Law Professor Douglas NeJaime noted that "[a] lot of the states that don't have sexual-orientation anti-discrimination laws also have RFRAs."[46] In his *Obergefell* dissent, Justice Roberts argued that "sincere religious conviction" led voters and legislators to include religious exemptions for same-sex marriage.[47] However, the "majority's decision imposing same-sex marriage cannot, of course, create any such accommodations."[48] The idea that religious freedom and LGBT or abortion rights sit at opposite ends of reality is dangerous for RFRA and the genuine need to protect religious freedom.

D. RFRA: A Tool for Progressive Advocacy?

Despite RFRA's unsavory association with anti-LGBT and anti-abortion movements, there is a new wave of RFRA litigation looking to protect religious beliefs to support vulnerable populations. Traditionally, RFRA claims asserted by progressive activists were rejected in federal court.[49] But recent cases, particularly those regarding religious support for individuals struggling with hunger and homelessness and immigrants stand at a possible new frontier of judicial activism.

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[44] *See, e.g.*, Arlene's Flowers v. Washington, 138 S. Ct. 2671 (2018); Brush & Nib Studios, LLC v. City of Phoenix, 448 P.3d 890 (Ariz. 2019); Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n, 138 S. Ct. 1719 (2018).

[45] *See* Catherine E. Schoichet & Halimah Abdullah, *Arizona Gov. Jan Brewer Vetoes Controversial Anti-Gay Bill, SB 1062*, CNN: POLITICS (Feb. 27, 2014), https://edition.cnn.com/2014/02/26/politics/arizona-brewer-bill/; Elisabeth Rutledge, *Deja Vu: Georgia RFRA Introduced Again*, HRC (Mar. 1, 2019), https://www.hrc.org/blog/deja-vu-georgia-rfra-introduced-again.

[46] Emma Green, *Gay Rights May Come at the Cost of Religious Freedom*, THE ATLANTIC: POLITICS (July 27, 2015), https://www.theatlantic.com/politics/archive/2015/07/legal-rights-lgbt-discrimination-religious-freedom-claims/399278/.

[47] Obergefell v. Hodges, 576 U.S. 644, 710 (2015).

[48] *Id.*

[49] Ryan Devereaux, *Humanitarian Volunteer Scott Warren Reflects on the Borderlands*, INTERCEPT (Nov. 23, 2019), https://theintercept.com/2019/11/23/scott-warren-verdict-immigration-border/.

"The Bible says, 'When I was hungry, you fed me,' and I take that seriously," food truck owner and Christian Joan Cheever explained in an interview.[50] In 2015, Cheever was ticketed by the San Antonio, Texas police for serving food without a permit to individuals in need.[51] Citing Texas' RFRA law and the Bible, Cheever challenged the ticket on the basis that it substantially burdened her religious beliefs.[52] The City ultimately withdrew the ticket and no trial occurred, but Cheever's stance demonstrates an alternative perspective on religious freedom.[53]

This perspective is shared by the No More Deaths group, which has been the subject of media attention and litigation including *U.S. v. Hoffman*. In 2019, one year before *Hoffman* but after the *Hoffman* defendants' arrests and convictions, Scott Warren was found not guilty of harboring after giving two immigrant men food, water, and shelter while they crossed Arizona's Sonoran Desert.[54] Warren's prosecution failed because he lacked criminal intent–he only desired to provide humanitarian aid.[55]

Similarly, the *Hoffman* Defendants were protected by RFRA when they left food and water in the desert without a permit.[56] The court held that the Defendants' beliefs that all life was sacred were religious and sincerely held.[57] "Given Defendants' professed beliefs, the concentration of human remains on the [Federal reserve], and the risk of death in that area, it follows that providing aid on the [Federal reserve] was necessary for Defendants to meaningfully exercise their belief."[58] Moreover, these beliefs were substantially burdened by federal law and the law was not the least restrictive means of achieving a government interest.[59]

Many of these decisions turn the substantial burden question. The Eleventh Circuit in *First Vagabonds Church of God v. City of Orlando* found that a municipal ordinance prohibiting

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[50] Ruth Moon, *Feeding the Homeless is a Religious Liberty Issue Too*, CT (Apr. 30, 2015), https://www.christianitytoday.com/news/2015/april/homeless-meals-religious-liberty-rfra-joan-cheever.html.
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] Devereaux, *supra* note 49.
[55] *Id*.
[56] *Hoffman*, 436 F.Supp.3d at 1285.
[57] *Id*. at 1285.
[58] *Id*. at 1286-87.
[59] *Id*. at 1287-88.

large-scale public food sharing without a permit imposed a "significant," but not substantial, burden on a church group's ability to provide food for the hungry.[60] The ordinance only made the group's conduct "inconvenient," and therefore did not unconstitutionally infringe upon Florida's RFRA.[61] In contrast, the Eastern District of Pennsylvania found that a municipal ordinance prohibiting food sharing without a permit with individuals outside "a relationship that extends beyond sharing food outdoors." The Court held that the ordinance:

> "[i]n effect . . . terminates plaintiffs' longstanding religious practice of sharing food with the homeless outdoors and is therefore a substantial burden under [Pennsylvania's RFRA] because it significantly constrains or inhibits conduct or expression mandated by plaintiffs' sincerely held religious beliefs.[62]

The contrasting decisions can be explained by the contrasting state RFRA's. Pennsylvania's RFRA defines a substantial burden to include actions that "significantly constrain[]" religious expression.[63] Florida's RFRA has no such definition, and the Florida Supreme Court defined it as action that "compels" or "forbids" relevant conduct.[64] Unlike in Florida and Pennsylvania, what is "substantial" under the federal RFRA remains vague.[65] The opportunity for expanding exemptions, therefore, remains open.

As more courts recognize the legitimacy of a RFRA defense for progressive causes, activists can look for new ways to achieve political and social change under RFRA protections. However, expanding protections for progressives can mean expanding protections for their adversaries. It is important to understand the degree to which these recent decisions and their likely successors could assist right-wing groups in achieving political and social

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[60] First Vagabonds Church of God II v. City of Orlando, 2008 WL 2646603, at *2 (M.D. Fl. June 26, 2008).
[61] *Id*.
[62] Chosen 300 Ministries, Inc. v. City of Philadelphia, 2012 WL 3235317, at *26 (E.D. Pa. Aug 9, 2012).
[63] 71 PA. STAT. AND CONS. STAT. ANN. § 2403 (West 2002).
[64] *See* FLA. STAT. ANN. § 761.01 (LexisNexis 1998) (showing no definition for "substantial").
[65] *See* Frederick Mark Gedicks, Article, *Substantial Burdens: How Courts May (And Why They Must) Judge Burdens on Religion Under RFRA*, 85 GEO. WASH. L. REV. 94 (2017).

change of their own, further deviating RFRA from shield to a sword– for better and for worse.

III. Analysis

A. A Progressive Future for RFRA?

The *Hoffman* decision is a victory for the immigrant rights community and expands the possibilities for activists. Still, attorneys and activists are uncertain as to whether progressive activists should weaponize RFRA to achieve political goals.[66] Moreover, not all religious beliefs are treated equally under RFRA. When deciding an earlier motion to compel, a federal magistrate judge claimed that the *Hoffman* Defendants' "proclaimed moral, ethical, and spiritual belief to assist humans in need of basic necessities" was merely "religious garb over political activity."[67] With successes few and far between, the risk of emboldening discrimination and depriving access to vital resources is too great to ignore.

B. Shield, Not Sword: The Do Not Harm Act

Recognizing the double-edged sword of RFRA, House Democrats introduced the Do No Harm Act for the first time in 2016.[68] The most recent incarnation of the Do No Harm Act from 2019 states that RFRA should not authorize (1) "an exemption from generally applicable law that imposes the religious views, habits, or practices of one party upon another;" (2) "an exemption from generally applicable law that imposes harm, including dignitary harm, on a third party;" or (3) "discrimination against other persons . . . ."[69] Specifically, the Bill, if passed, would amend RFRA to prohibit exemptions from anti-discrimination, employment benefit, and healthcare access laws.[70]

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[66] *See* Stephanie Russell-Kraft, *Activists Are Invoking Religious Freedom to Save Migrants' Live*, THE NATION (Apr. 15, 2019), https://www.thenation.com/article/archive/no-more-deaths-migrant-catholic-border/.
[67] Hoffman, 2018 WL 2464115, at *3.
[68] Do No Harm Act, 114 H.R. 5272.
[69] Do No Harm Act, 116 S. 593.
[70] *Id*.

While highly unlikely to pass, the Do No Harm Act offers another answer to the abuse of religious exemptions for discriminatory and harmful purposes. The Bill is a clear response to recent decisions permitting individuals to discriminate and deprive individuals of employment and healthcare under the name of religious freedom. Civil liberties, worker's rights, and even religious organizations support the Do Not Harm Act as a responsible limitation on religious exemptions.[71] What remains unclear, however, is the future of religious exemption for individuals like the *Hoffman* Defendants.

The *Hoffman* Defendants did not appear to impose their religion onto another, inflict harm, or discriminate against anyone when they entered and left supplies on federal land without a permit. The Do Not Harm Act would allow similarly situated criminal defendants and aggrieved plaintiffs to bring their claims to the courts with less fear of the detriment of religious exemptions. But with no legitimate limitations on RFRA likely to pass anytime soon, these individuals must continue to weigh the pros and cons of using RFRA.

C. A Return to *Sherbert*?

Another solution would be amending RFRA to be more in line with pre-Smith jurisprudence. Although RFRA was developed as a return to the pre-*Smith Sherbert* test, the *Sherbert* era was more complicated than RFRA's strict scrutiny test. For example, generally applicable free speech restrictions were not always given strict scrutiny, even if they interfered with religious expression. In *Heffron v. INT'L SOC'Y for Krishna Consciousness*, the Supreme Court held that intermediate scrutiny was the correct standard for analyzing content-neutral speech restrictions facing free exercise challenges.[72]

An amendment would be unlikely to pass just as the Do Not Harm Act failed to pass.. This change would give judges more discretion as to whether a religious exemption should be granted. This change would give the federal and local governments more power to protect individuals with less fear of judicial intervention. However, more discretion may also grant more favorable results for

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[71] Americans United for Separation of Church and State, *Do Not Harm Act*, PROTECTTHYNEIGBOR, http://www.protectthyneighbor.org/do-no-harm-act.
[72] Heffron v. Int'l Soc'y for Krishna Consciousness, 452 U.S. 640, 649, 654 (1981).

one side of the ideological spectrum than the other depending on the court's biases.

VI. Conclusion

Religious exemptions and the desire for exemption are prominent in American life. When President Donald Trump took office in 2017, he emphasized his administration's focus on protecting the "right to religious freedom" in a variety of contexts including prayer in schools.[73] The COVID-19 pandemic sparked further conversation about religious exemptions from vaccinations. Nearly every state allows religious exemptions from vaccinations for students in public schools.[74] And in February 2020, the Supreme Court granted certiorari to hear arguments on Fulton v. City of Philadelphia in which a Catholic foster agency refused to allow same-sex couples to adopt because it conflicted with their religious beliefs regarding marriage.[75] The Trump Administration already green-lighted a federally-funded foster agency in South Carolina to discriminate in 2019.[76]

As this note discussed, RFRA is one of the ways that individuals can assert religious exemption. Despite RFRA's sordid past as a tool for discrimination and denying individuals healthcare and employment benefits, individuals have found recent success using RFRA to provide others in need with food and essential supplies. While RFRA may be a viable tool for circumventing anti-immigrant and anti-homeless laws, it remains a double-edged sword. Individuals can and should continue to exercise their religious rights in the name of kindness and charity. But as RFRA is expanded for charitable acts, there is undoubtably more room for harm.

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[73] Jenna Carlesso, *Lawmakers Advanced a Bill Barring New Religious Exemptions to Vaccines. Here's What it Would Do*, CT MIRROR (Feb. 24, 2020), https://ctmirror.org/2020/02/24/lawmakers-advanced-a-bill-barring-new-religious-exemptions-to-vaccines-heres-what-it-would-do/.

[74] National Conference of State Legislatures, S*tates with Religious and Philosophical Exemptions from School Immunization Requirements*, NCSL (Jan. 3, 2020), https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx.

[75] Fulton v. City of Philadelphia, 922 F.3d 140, 147 (3d Cir. 2019).

[76] Tim Fitzsimons, *S.C. Group Can Reject Gays and Jews as Foster Parents, Trump Admin Says*, NBC (Jan. 24, 2019, 12:00 PM), https://www.nbcnews.com/feature/nbc-out/s-c-group-can-reject-gays-jews-foster-parents-trump-n962306.