



Marci A. Hamilton: Author, *God vs. the Gavel: Religion and the Rule of Law*

[By Charisse Dengler]

Author of *God vs. the Gavel: Religion and the Rule of Law* and an expert on constitutional and copyright law, Marci A. Hamilton said it was her involvement in *Boerne v. Flores* that ultimately determined the path of her career. Ever since the landmark case, she has been devoted to issues involving the separation of church and state.

Upon graduation from Penn Law School in 1988, where she graduated *magna cum laude* and served as Editor-in-Chief of the *Penn Law Review*, Hamilton clerked for Judge Edward R. Becker and Justice Sandra Day O'Connor. She then began teaching and helped found the Cardozo School of Law (Yeshiva University) Intellectual Property Law Program, serving as the program's director until passing it on to Professor Justin Hughes.

Currently, she holds the position of Paul R. Verkuil Chair in Public Law, teaches at the law school, and spends her sabbaticals at Princeton Theological Seminary. In addition, she is a wife and a dedicated mother of two, and she's also busy working on another book.

"Finding the time in the day to do all that is necessary to do the best I possibly can, while preserving my best time for my family [is one of the more difficult things about being a lawyer]," she said. "I am very fortunate because both Judge Becker and Justice O'Connor set sterling examples of dedication to their careers coupled with intense family devotion."

Hamilton, who was the lead litigator before the U.S. Supreme Court for the City of Boerne, TX, in *Boerne vs. Flores*, refers to her involvement in the case as life-changing.

"The question in the case was whether the Religious Freedom Restoration Act [RFRA] was constitutional," she said. "Our team—which included Lowell Denton, a great attorney in San Antonio, TX, and local city attorney Gordon Hollon, who has

unfortunately passed away—was successful in persuading the Court that RFRA was unconstitutional because it violated federalism—sometimes called states' rights—and was an attempt to amend the First Amendment through simple majority vote."

Hamilton wrote one of the first articles to attack RFRA's constitutionality, which appeared in the *Cardozo Law Review*. Denton, Boerne's city attorney, contacted her when he learned her article was forthcoming. It was her involvement in the case that led her to write *God vs. the Gavel*, a book that deals with the controversial subject of separation of church and state.

"The first half of *God vs. the Gavel* documents the reality that religious entities harm others and that, too often, they do so with legal protection," Hamilton said. "For example, children in faith-healing homes have been medically neglected to their deaths in states where there are religious exemptions to the medical neglect laws."

"It is to be expected that religious entities lobby elected representatives and flex their muscle," she continued. "The problem with the system is that elected representatives fail to ask the hard questions when they are approached by a religious entity. They blindly assume that if it is good for religion, it is good for society. *God vs. the Gavel* establishes that that is not true empirically, and, therefore, the right rule is to apply the laws that apply to everyone else to religious entities. Exemptions for religiously motivated action are only deserved where the conduct permitted does not harm others."

In the first chapter of the book, Hamilton explains her switch from being a person who believed in strong protection of religious entities to being someone whose career is dedicated to both monitoring and fighting religious entities that have too much freedom to harm.

"My work with RFRA in the Boerne case brought me into contact with many groups that lobby against religious entities in various contexts, including many children's advocates," she said. "The more I learned about the dark side of religious entities in American culture and the harm they are capable of generating, the more devoted I became to ensuring that the United States hold them accountable for the harm they do. Personal responsibility is the American way, after all."

Hamilton is currently an advisor to clergy-abuse victims around the nation on constitutional issues, and she also advises Congress and state legislatures on pending legislation.

"Most recently, I have testified in numerous states regarding the constitutionality of legislation intended to aid victims of childhood sexual abuse," she said.

Led to the field of law by admiration for her grandfather, William Wehrli, who was the Casper, WY, City Attorney during Prohibition and who represented Wyoming in a water rights case before the Supreme Court, Hamilton thoroughly enjoys her choice of profession.



"Lawyers are very lucky because they have an endless variety of mental challenges before them," she said. "There is interesting variety within individual arenas—intellectual property, corporate, tax, or real estate. But lawyers also have a greater capacity than other professionals to change course if that is where their hearts take them. For myself,

it is a very satisfying blend of intellectual challenge, practical problem solving, and real-world issues."

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