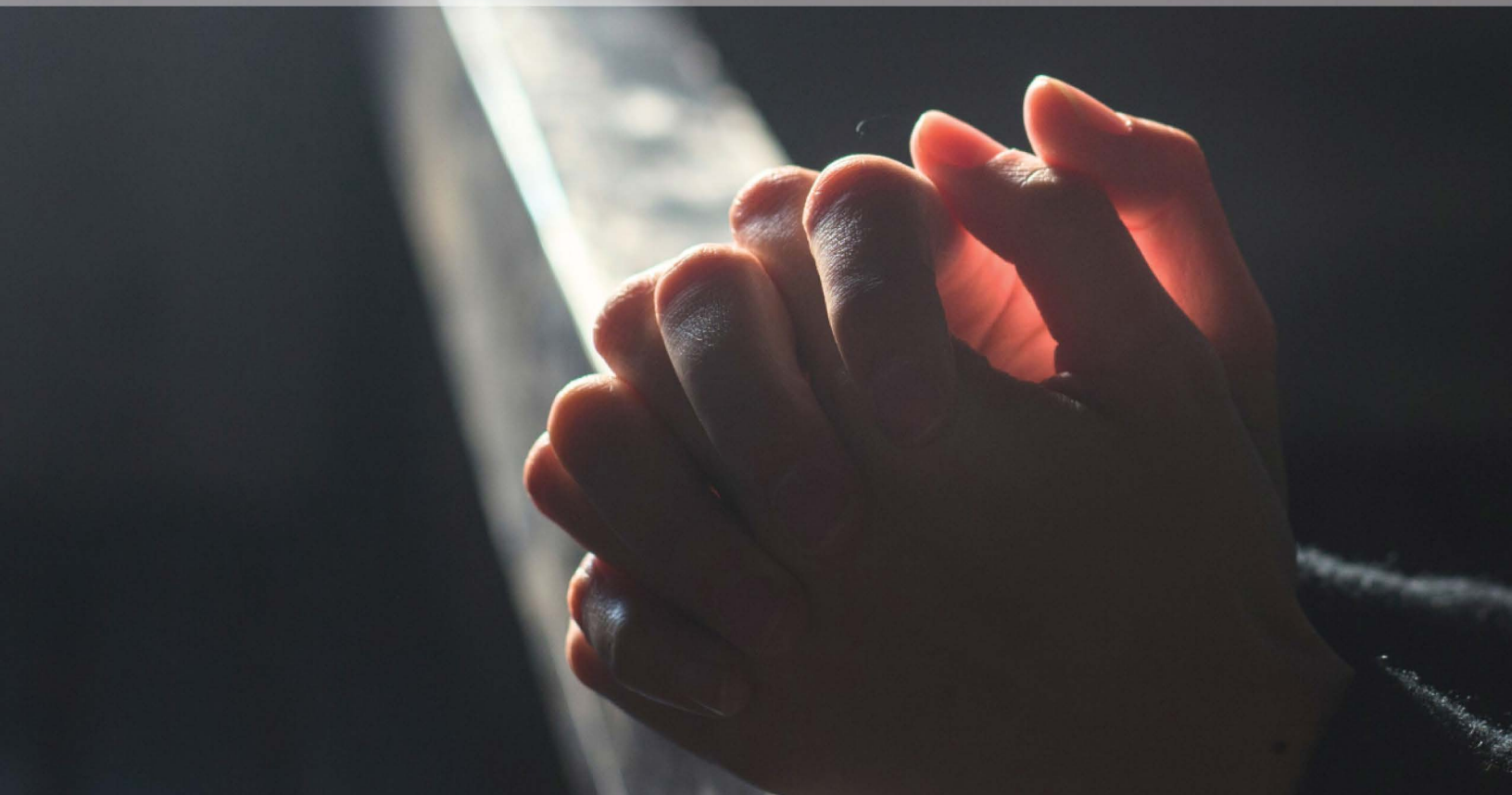




CHURCHES' BILL OF RIGHTS

A LEGAL GUIDEBOOK FOR CHURCHES AND CHURCH LEADERS OF INDIANA
2025



Attorney General Todd Rokita •



Lieutenant Governor Micah Beckwith

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A Message From The Attorney General and Lieutenant Governor

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”

First Amendment; United States Constitution

“All people shall be secured in the natural right to worship ALMIGHTY GOD, according to the dictates of their own consciences.”

Article 1, Section 2; Indiana State Constitution

To the Churches and Church Leaders of Indiana:

The religious liberty guaranteed to all Americans by the U.S. and Indiana Constitutions is foundational to our Republic. Some of the earliest settlers of the thirteen colonies came to North America to escape religious persecution in the Old World. As the U.S. Supreme Court has recognized, those “historical instances of religious persecution and intolerance” guided the Founding Fathers “who drafted the Free Exercise Clause of the First Amendment.”¹ The religious liberty we enjoy today as Americans thus has been an essential part of our legal and cultural heritage for centuries. America was founded as and remains a refuge for churches and religious orders to practice their faiths free from governmental interference and oppression.

Likewise, the United States was founded on the recognition that religion is central to ensuring the success of our country. As President Washington said in his farewell address, “reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.” John Adams similarly noted that “our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.” Or, as a European visitor to the United States once observed, “[r]eligion in America . . . facilitates the use of free institutions” and is considered by Americans “to be indispensable to the maintenance of republican institutions.”² America is a prosperous nation—a “city on the hill” that sets an example for the entire world—because it is a nation rooted in faith.

¹ *Bowen v. Roy*, 476 U.S. 693, 703 (1986).

² Alexis de Tocqueville, *Democracy in America* (1831).

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For these reasons, our laws provide robust protection for religious freedom generally and special protection for churches and other houses of worship specifically.³ Those protections ensure that churches not only are tolerated but allowed to flourish and contribute fully to the common good. In a variety of contexts, churches are viewed in the eyes of the law as unique institutions entitled to unique treatment and consideration.

In an increasingly secular world that is often hostile to religious practices and beliefs, these safeguards are of paramount importance. Churches and church leaders should know their legal rights and what tools they have available to resist improper government coercion.

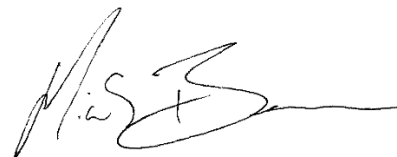
To that end, we are providing this document—the Churches' Bill of Rights—as guidance to Hoosiers of faith. The materials that follow present, through a series of questions and answers, critical information about the rights and protections afforded to churches by our laws. It is our hope that, by familiarizing yourself with this guidance, you will be emboldened to practice your faith and participate in civil society to the fullest extent possible.

While this document provides general information about how churches are treated and protected under federal and state laws, it should not be used as legal advice. Where your rights are concerned, please seek your own legal counsel.

Sincerely,

A blue ink signature of Todd Rokita, written in a cursive style.

Todd Rokita
Attorney General of Indiana

A blue ink signature of Micah Beckwith, written in a cursive style.

Micah Beckwith
Lieutenant Governor of Indiana

³ Various laws that protect religious organizations, such as the Internal Revenue Code, use the term “church” to describe all houses of worship and religious orders. This document follows that convention, and all references to churches herein should be understood also to include other houses of worship, such as synagogues and mosques.

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Questions and Answers

Freedom of Speech and Election-Related Activities; Tax-Exempt Status

Q: How can churches participate in the electoral process?

A: There are many ways in which churches may participate in the electoral process, including by helping register voters, educating the public on election-related and public policy issues, inviting all filed or known candidates to speak before their congregations or at other church events, and expressing their views on matters of public policy. Just because an activity is related to an election or is political does not mean that churches are prohibited from engaging in it.

Q: Can churches engage in partisan activities?

A: No. Churches may not engage in “partisan” activities if they wish to maintain their tax-exempt status. But they can conduct activities that involve all candidates who have filed to run in an election. And the bar on partisan activities does not prevent churches from engaging in a variety of election-related activities, as detailed below.

Partisan activity is any conduct that favors or opposes one candidate or party over another in an election. Examples of partisan activity include using church resources to endorse or support a specific candidate or political party, inviting only candidates from one party to speak at church functions, donating church funds to a political campaign, and using church services to encourage members of the church to vote for a specific candidate. However, church leaders are not prohibited from supporting or opposing candidates or political parties if they are acting in their non-official, individual capacities.

Q: Are churches exempt from taxation?

A: Yes. Churches are generally exempt from taxation and are not required to file federal tax returns. See 26 U.S.C. § 6033(a). This is true regardless of whether a church seeks recognition as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. See 26 U.S.C. § 508(c)(1).

Similarly, Indiana law exempts from state taxation any “organization described in Section 501(a) of the Internal Revenue Code.” Ind. Code § 6-3-2-2.8(1). Thus, if a church qualifies as tax-exempt for federal tax purposes, it is also exempt from paying Indiana income taxes.

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Q: Do churches have to apply to the Internal Revenue Service (IRS) to become tax-exempt?

A: No. “Although most organizations seeking tax-exempt status are required to apply to the Internal Revenue Service . . . for an advance determination that they meet the requirements of section 501(c)(3), a church may simply hold itself out as tax-exempt and receive the benefits of that status without applying for advance recognition from the IRS.” *Branch Ministries v. Rossotti*, 211 F.3d 137, 139 (D.C. Cir. 2000) (citations omitted). In other words, a church typically may obtain tax-exempt status automatically just by virtue of the fact that it is a church, and a church does not have to interact with the IRS to obtain that status.

Q: Are there any criteria that churches must satisfy for tax-exempt status?

A: To be exempt from taxation, churches still must satisfy the criteria for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. That means a church must be organized and operated “exclusively for religious or charitable purposes.” *Church of Scientology of California v. Comm’r*, 823 F.2d 1310, 1315 (9th Cir. 1987).

Q: How do courts determine whether a church is being operated exclusively for a religious or charitable purpose under Section 501(c)(3)?

A: Many courts apply a four-part test to determine whether an organization is operated exclusively for a religious or charitable purpose:

1. The organization must engage primarily in activities that accomplish one or more of the exempt purposes specified in § 501(c)(3).
2. Its net earnings may not be for the benefit of private shareholders or individuals.
3. It must not expend a substantial part of its resources attempting to influence legislation or political campaigns.
4. The organization must serve a valid purpose and confer a public benefit.

Nationalist Movement v. Comm’r, 37 F.3d 216, 219–20 (5th Cir. 1994) (quoting *Church of Scientology*, 823 F.2d at 1315).

Q: How does the IRS determine whether a church is being operated exclusively for a religious or charitable purpose under Section 501(c)(3)?

A: The IRS test for determining if an organization qualifies for tax-exempt status as a religious or charitable organization is very similar to the test used by courts. IRS regulations describe three criteria an organization must satisfy to qualify for tax-exempt status: (1) The organization must “engage[] primarily in activities which accomplish one or more . . . exempt purposes;” (2) Its “net earnings [must not] inure in whole or in part to the benefit of private shareholders or individuals;” and (3) It must not be an “action organization,” which means, among other things, an organization that “participates or

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intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.” 26 C.F.R. § 1.501(c)(3)-1(c).

Q: Can a church lose its tax-exempt status?

A: Yes. An organization can lose its tax-exempt status by participating in any political campaign on behalf of any candidate for public office. *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981). It also cannot “selectively promote” certain political parties over others and keep its tax-exempt status. *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 629 (2d Cir. 1989) (emphasis in original). For instance, a church cannot sponsor a debate for candidates of a specific party in an election while refusing to extend the same invitation to other political parties.

Q: What kinds of issues can church leaders talk about and discuss without jeopardizing their churches' tax-exempt statuses?

A: Church leaders may deliver homilies, preach sermons, and talk with their congregations about issues of public interest or importance, including controversial social and cultural issues, without jeopardizing their churches' tax-exempt statuses. Churches are free to express their views on any issue of public policy, even if the issue is closely intertwined with an election or associated with a specific party or candidate, so long as they do not endorse or oppose a particular party or candidate as that would be considered “partisan.” See *Ass'n of Bar of City of New York v. Comm'r*, 858 F.2d 876, 881 (2d Cir. 1988); see also IRS, *Frequently Asked Questions About the Ban on Political Campaign Intervention by 501(c)(3) Organizations: Organization Position on Issues*, (May 21, 2020) (An “organization may take positions on public policy issues, including issues that divide candidates in an election for public office.”). IRS regulations make clear that the “fact that an organization . . . advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3).” 26 C.F.R. § 1.501(c)(3)-1(d)(2).

Thus, churches can speak on matters relevant to church tenets, such as sexual orientation, marriage, and pro-life matters, without fear of government interference. While some of these issues may be considered political in nature the church's speech will not affect the church's tax-exempt status if the church is not endorsing or supporting a specific candidate or party, i.e. being “partisan.” For instance, a Catholic priest delivering a homily on pro-life matters is not engaging in impermissible partisan activity. Likewise, a Baptist pastor preaching a sermon on the importance of maintaining marriage as an institution between a woman and a man also would not be jeopardizing his church's tax-exempt status.

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Q: What kinds of election-related activities may a church engage in without risking the loss of its tax-exempt status?

A: Activities directly related to an election that are “conducted in a non-partisan manner, or which do not favor a particular political candidate, are permitted.” *New York ex rel. TZAC, Inc. v. New Israel Fund*, 520 F. Supp. 3d 362, 368 (S.D.N.Y. 2021). Thus, for instance, churches may engage in a wide variety of voter education activities. See Rev. Rul. 78-248, 1978-1 C.B. 154 (1978) (“Certain ‘voter education’ activities conducted in a nonpartisan manner by an organization recognized as exempt under section 501(c)(3) of the Code will not constitute prohibited political activity disqualifying the organization from exemption.”). For example, a church may publish materials that describe political candidates’ positions on issues important to the church so long as the materials “contain[] no express statements in support of or in opposition to any candidate.” *Id.*

Other election-related activities such as voter registration and “get-out-the-vote” drives are also permitted if they are conducted in a non-partisan manner. Likewise, a church may invite a political candidate to speak before its congregation, if it also offers other candidates in the election in question an equal opportunity to speak. See Rev. Rul. 74-574, 1974-2 C.B. 160 (1974). However, a church may invite a public official to speak in his or her official capacity without inviting other public officials to speak, even if the official also happens to be a candidate for office, so long as the speech is not campaign related.

Ultimately, whether an activity constitutes participation in a political campaign on behalf of a candidate that could jeopardize a church’s tax-exempt status is a fact-specific inquiry. See Rev. Rul. 86-95, 1986-2 C.B. 73 (1986) (“Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case.”). The context in which politically related activities are undertaken is key to determining whether the activities are consistent with an organization’s tax-exempt status, and churches should not assume that an activity is categorically off-limits simply because it is related to a political campaign. See *Fulani*, 882 F.2d at 629. As noted, many activities related to campaigns are fully consistent with a church’s tax-exempt status.

Q: Can the IRS investigate the tax status of a church?

A: Yes, but federal law recognizes the unique status and importance of churches in the context of IRS investigations. As a result, there are “special restrictions on the IRS’s ability to investigate the tax status of a church.” *Branch Ministries*, 211 F.3d at 139. Under the Church Audit Procedures Act, the IRS may investigate a church’s tax-exempt status only if a “high-level [U.S. Department of] Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church” engaged in activities that are inconsistent with its tax-exempt status and the Treasury Department “provides written notice to the church” that the Department is undertaking an investigation. 26 U.S.C. § 7611.

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Q: What effect would revocation of a church's tax-exempt status have?

A: "Because of the unique treatment churches receive under the Internal Revenue Code, the impact of [a] revocation" of tax-exempt status "is likely to be more symbolic than substantial." *Branch Ministries*, 211 F.3d at 142. Because a church is not required to seek the IRS's approval to operate as a tax-exempt entity, a church that is found by the IRS to have engaged in impermissible partisan activity may nonetheless later "hold itself out as a 501(c)(3) organization and receive all the benefits of that status" so long as it "does not intervene in future political campaigns." *Id.* In other words, the IRS's revocation of a church's tax-exempt status may not have any significant tax consequences beyond the year in which the revocation occurred, so long as a church does not engage in partisan activities in the future.

Q: Are there other ways in which the Internal Revenue Code provides special consideration for churches?

A. Yes, the Internal Revenue Code provides special treatment for certain forms of compensation paid to ministers and other church leaders. For example, if a church provides a minister with a home as part of his compensation, the rental value of the home does not have to be included in the minister's gross income for tax purposes. See 26 U.S.C. § 107.

Q: Does the First Amendment offer any protection to churches when they engage in election-related activities?

A: Yes. Churches are protected by the First Amendment in various ways when they engage in election-related activities. In particular, the First Amendment ensures that a church will not be subject to discriminatory treatment in the event the IRS decides to investigate a church's actions. See *Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015) ("[I]n administering the tax code, the IRS may not discriminate on the basis of viewpoint."); *Big Mama Rag, Inc. v. United States*, 631 F.2d 1030, 1034 (D.C. Cir. 1980) ("[A]lthough First Amendment activities need not be subsidized by the state, the discriminatory denial of tax exemptions can impermissibly infringe free speech.").

For instance, the IRS would violate the First Amendment were it to single out certain organizations applying for tax-exempt status for more intense scrutiny because they hold "conservative" or "anti-administration" views. *True the Vote, Inc. v. Internal Revenue Serv.*, 831 F.3d 551, 555 (D.C. Cir. 2016). Thus, a church could claim the protection of the First Amendment if, for example, it had reason to believe that an IRS investigation of its election-related activities was motivated by the church's position on social or cultural issues.

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Freedom of Worship and the Religious Freedom Restoration Acts

Q: What is the Indiana Religious Freedom Restoration Act (RFRA)?

A: Indiana's RFRA is a state law that protects individuals' religious freedom from being unduly burdened by state government action. It requires courts to use a legal standard called "strict scrutiny" when evaluating whether a government policy or law burdens religious exercise. Ind. Code § 34-13-9-8.

Q: What does the strict scrutiny test require?

A: The law requires that if the government substantially burdens someone's exercise of religion, it must prove that: (1) The burden furthers a compelling governmental interest, and (2) The action is the least restrictive means of achieving that interest. Ind. Code § 34-13-9-8. The test is stringent and difficult for the government to satisfy. "[O]nly those [government] interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

Q: Why was Indiana's RFRA passed, and how does it apply to civil lawsuits?

A: The Indiana General Assembly passed the Indiana RFRA in 2015 to ensure that government action does not impede or restrict religious people and entities from exercising their freedom to practice their faith. The law was, in part, a response to growing concerns that government actions in other states were undermining freedom of worship, especially in situations involving compelled speech or participation in activities contrary to a person's religious beliefs. One of the most widely publicized cases involved a Christian baker in Colorado. Jack Phillips, the owner of Masterpiece Cakeshop, declined to create a custom wedding cake for a same-sex couple because doing so would have violated his religious beliefs. He did not refuse to sell the couple a cake, but stated he could not design a cake that conveyed homosexual messaging. The U.S. Supreme Court ultimately ruled under the First Amendment in Phillips' favor. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018). Indiana's RFRA gives extra protection to Indiana churches to ensure that our state cannot pass laws like the one in Colorado.

Q: What does the federal RFRA do?

A: The federal RFRA, enacted in 1993, likewise prohibits the federal government from substantially burdening a person's exercise of religion unless the government can prove that doing so furthers a compelling governmental interest and uses the least restrictive means to do so. See 42 U.S.C. § 2000bb-1.

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Q: Who is protected by the federal RFRA?

A: RFRA protects both individuals and organizations, including corporations and associations. The U.S. Supreme Court has ruled that even certain for-profit businesses can invoke RFRA protections if they operate according to religious principles. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

Q: When does a government action create a 'substantial burden' on religion?

A: A substantial burden occurs when the government bans a religious practice, compels someone to act against their faith, or substantially pressures someone to alter or abandon their religious observance. For example, government regulations that penalize religious employers for not covering contraceptives in their insurance plans may impose a substantial burden, in violation of RFRA. *Burwell*, 573 U.S. 682 (the Affordable Care Act's contraceptives mandate, as applied to for-profit closely held corporations, substantially burdened the exercise of religion for purposes of RFRA).

Q: What was the Hobby Lobby case about?

A: In *Burwell v. Hobby Lobby*, the U.S. Supreme Court considered whether the federal government could require a closely held for-profit company to provide health insurance coverage for contraceptives that violated the company owners' religious beliefs. The company challenged the mandate under the federal RFRA. The Court ruled in favor of Hobby Lobby, holding that the contraceptive mandate substantially burdened the company's religious exercise, and that the government had not used the least restrictive means to achieve its interest. The Court emphasized that the federal RFRA applies to closely held corporations as well as individuals. *Burwell*, 573 U.S. 682.

Q: What does the Hobby Lobby case mean for religious liberty today?

A: The Hobby Lobby decision reaffirmed the strength of RFRA's protections, showing that even in the context of federal regulations involving healthcare, sincerely held religious beliefs must be accommodated. Courts now more closely scrutinize government mandates that infringe on religious practices, giving religious claimants, such as churches, stronger legal protections. *Burwell*, 573 U.S. at 682.

Q. How do federal and state RFRA laws protect churches?

A: Both the federal and Indiana RFRAs protect churches in a variety of ways, including their right to engage in sacramental practices or other faith-based activities that may otherwise be prohibited or regulated by law. For example, in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), the government sought to prohibit a church's use of a controlled substance in its religious ceremonies. The Supreme Court ruled in favor of the church's RFRA claim and found that the government failed to

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demonstrate that its prohibition was the least restrictive means of furthering a compelling interest.

This decision highlights RFRA's power to shield religious exercise from unnecessary government interference. Federal and state RFRAs provide that the government cannot substantially burden a church's religious exercise unless it can prove that doing so furthers a compelling governmental interest and uses the least restrictive means of achieving that interest. Strict scrutiny analysis ensures that religious practices receive strong protection under state and federal regulations. In this case, even the government's interest in banning a controlled substance could not outweigh a church's freedom of worship. Thus, RFRA laws serve as an important safeguard for churches, preventing government actions that interfere with their religious practices without a compelling justification.

Q: What other protections for freedom of worship exist for churches and church-affiliated entities?

A: In addition to RFRA, the First Amendment to the U.S. Constitution protects churches' freedom of worship in a variety of ways, including by prohibiting the government from discriminating against religious organizations. In *Fulton v. City of Philadelphia, Pennsylvania*, the U.S. Supreme Court held that the City of Philadelphia violated the First Amendment by refusing to contract with Catholic Social Services, an entity affiliated with a Roman Catholic Archdiocese, to provide foster care services unless the organization agreed to certify same-sex couples as foster parents, contrary to its religious beliefs. 593 U.S. 522 (2021). The Court emphasized that government officials may not burden religious practice by forcing a church to choose between "curtailing its mission" to engage in charitable work, such as by providing foster care services, or "approving relationships inconsistent with its beliefs" if the government does so in a way that treats religious organizations differently from other entities *Id.* at 532. Regulations that burden religious practices must be generally applicable and neutral as to religion. Because Philadelphia's refusal to contract with the Archdiocese's organization burdened religious exercise and did so in a way that treated the organization differently from secular groups by denying it an exemption from the City's nondiscrimination requirements, the refusal violated the First Amendment.

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Churches and Public Health and Safety Matters

Q: Are religious objections to vaccines protected in the workplace?

A: Yes. Under Title VII, employees may seek religious accommodations from vaccine mandates. Employers must provide accommodation unless it creates undue hardship. *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1007–1010 (7th Cir. 2024); *Halczenko v. Ascension Health, Inc.*, 750 F. Supp. 3d 947, 963 (S.D. Ind. 2024).

Q: What steps must a church take to ensure compliance with Indiana's vaccination exemption laws?

A: To claim a religious exemption from vaccination requirements in Indiana:

For students: Parents must submit a written, signed statement to the child's teacher or school official, explicitly citing religious objections. Ind. Code § 20-34-3-2.

For teachers: A written, signed objection must be delivered to the school principal. Ind. Code § 20-34-3-2.

For medical exemptions based on spiritual practices: Parents must notify the school in writing, stating reliance on prayer or spiritual means. Ind. Code § 20-35-4-6. Religious organizations should ensure these objections are clearly documented and meet statutory requirements.

However, exemptions may sometimes be overridden during public health emergencies, and unvaccinated individuals may be excluded from school or other settings for public safety reasons. See *Blue v. Beach*, 56 N.E. 89, 92–94 (Ind. 1900); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). These are the same requirements for evaluating vaccine exemption claims that apply to public, non-religious schools.

Q: Can the church offer pastoral counseling without a behavioral health license?

A: Yes. A member of the clergy, a church employee, or a religious volunteer may offer counseling services through the church if the individual does not advertise or claim to hold a behavioral health license. Ind. Code § 25-23.6 *et seq.*

Q: Can state or local officials pass an order or other regulation that prohibits or restricts churches from conducting worship services or other church activities during a public health emergency?

A: Government officials cannot pass an order or regulation that is more restrictive as to churches than other business or organizations. Any regulation must be neutral as to religion and of general applicability, meaning that a regulation cannot target a church or affect it more negatively than the regulation affects other entities. While “stemming the spread” of a communicable disease may be a compelling government interest in some cases, a regulation that arbitrarily restricts the number of attendees at a worship service or other religious activity, while not limiting customers of other business entities, is not a

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“narrowly tailored” measure and violates the First Amendment. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17-19 (2020). “[E]ven in a pandemic, the Constitution” and its protections for religious liberty “cannot be put away and forgotten.” *Id.* at 19.

Q: Do public safety interests always override religious liberty?

A: No, the First Amendment and RFRA laws ensure that religious freedom cannot be curtailed just because the government invokes public safety to justify its actions. For example, in *Holt v. Hobbs*, a prisoner sought to grow a ½ inch beard as part of the practice of his Islamic faith, but the beard violated the prison’s grooming policy. 574 U.S. 352 (2015). The Supreme Court rejected the prison’s argument that the beard was a safety and security risk and determined that the prison’s grooming policy substantially burdened the prisoner’s religious exercise. *Id.* at 369. Similar principles would apply if the government burdened the religious practices of a church for reasons of public safety.

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Participation in Government Programs and Activities

Q: Are churches in Indiana disadvantaged when applying for public benefits?

A: No, churches are guaranteed by law equal standing when applying for public benefits, such as grants.

Q: What do the Indiana Constitution and federal case law say about public funding for churches?

A: The Indiana Constitution states that “[n]o money shall be drawn from the treasury, for the benefit of any religious or theological institution” (Ind. Const. art. I § 6). However, the First Amendment guarantees that churches cannot be excluded from government programs just because they are religious organizations. As the U.S. Supreme Court has held, “the exclusion of [a religious organization] from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution ... and cannot stand.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017).

Likewise, the U.S. Supreme Court has held that public funding for school vouchers used at religious schools does not violate the Establishment Clause. See *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002). The Court has also held that the First Amendment protects religious schools from being excluded from public scholarship funds. “A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 487 (2020); see also *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 781 (2022) (A state policy of paying tuition for certain students at private schools “as long as the schools are not religious” is “discrimination against religion.”). In other words, once a public benefit is offered by the government, the government cannot exclude churches from applying for and receiving the benefit just because they are religious organizations.

Thus, churches and other religious entities are not only *not* excluded from government programs but are in fact guaranteed by law the ability to compete for and obtain state funding for benefits like school vouchers and scholarships on an equal footing with secular organizations.

Q: Are there any court cases interpreting the Indiana Constitution regarding public funding for churches?

A: Yes. In *Meredith v. Pence*, 984 N.E.2d 1213, 1227 (Ind. 2013), the Indiana Supreme Court ruled that public funding can benefit religious institutions if the expenditure directly benefits the public.

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Q: Are churches allowed to minister to prisoners in state and local incarceration facilities?

A: Yes, church officials have the right to be present in prisons, even at executions. Prisoners are entitled to “audible prayer” and “religious” touching, such as laying hands on one’s body in prayer, which churches and their employees may provide. *Ramirez v. Collier*, 595 U.S. 411, 436 (2022).

Q. Are church leaders allowed to participate fully in all aspects of federal and state government?

A. Yes, it is well-settled that priests, ministers, pastors, and other church leaders may not be excluded from serving in government office just because of their status as clergy. See *McDaniel v. Paty*, 435 U.S. 618, 628 (1978). Throughout U.S. history, church leaders have often held important public offices.

Q: What resources does Serve Indiana provide for churches?

A: Serve Indiana is a division of Indiana’s Department of Workforce Development. Its mission is to advance service and volunteer activities that enrich the lives of Hoosiers. Serve Indiana offers various resources to promote service and volunteerism, including information and connections for community and faith-based initiatives, through its website: [Serve Indiana: Resources & Trainings](#). Churches and other faith-based organizations are fully eligible to participate in Serve Indiana programs and we encourage them to do so.

Q: Are there any federal resources for churches that wish to participate in government programs?

A: Yes, several federal centers for faith offer resources for churches, including the Departments of Commerce, Education, Health and Human Services, Housing and Urban Development, Homeland Security, International Development, Small Business Administration, Labor, Justice, and Veterans Affairs.

Additionally, President Trump recently signed an executive order creating The White House Faith Office (Exec. Order No.14205, 90 FR 9499 (February 7, 2025)). The Faith Office aims to enhance collaboration between the federal government and faith-based organizations, community groups, and houses of worship. The order emphasizes the role of churches in effectively supporting individuals and families while promoting work, self-sufficiency, and religious freedom.

President Trump’s order outlines provisions for:

- Providing support for churches in strengthening American families and communities.



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- Recognizing the distinct effectiveness of churches, along with the necessity for fair federal funding opportunities.
- Ensuring compliance with the Constitution's guarantee of religious liberty and preventing religious discrimination by the federal government.
- Updating previous executive orders to reflect the establishment of the Faith Office.
- Establishing a new office within the President's Executive Office to empower faith-based and community organizations.
- Regularly engaging with church leaders to address various social issues, including family strengthening, religious liberty, crime reduction, and education.
- Promoting initiatives in collaborating with churches on areas such as marriage, adoption, education, crime prevention, and recovery programs.

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Church Governance and Autonomy

Q: What is the “ministerial exception”?

A: The “ministerial exception” is a legal doctrine rooted in the First Amendment’s Free Exercise and Establishment Clauses that ensures that certain employment actions taken by churches and other religious organizations are not subject to the restrictions contained in various civil rights laws. The doctrine prevents courts from adjudicating employment discrimination claims brought by individuals who qualify as “ministers” against their religious employers. It is thus an important safeguard for protecting churches’ ability to govern themselves and choose whom they employ to carry out their mission. The U.S. Supreme Court interprets the term “minister” broadly to include those who perform any essential religious functions, regardless of their formal title. See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188, 196 (2012); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 738 (2020).

Q: How does the ministerial exception protect religious organizations?

A: The ministerial exception protects religious organizations from government interference in employment decisions involving “ministers” — employees who perform essential religious functions, even without a formal ministerial title. This allows churches and other religious institutions to hire, fire, or manage employees who carry out their religious mission without facing employment discrimination lawsuits. *Hosanna-Tabor*, 565 U.S. at 181, 182; *Our Lady of Guadalupe*, 591 U.S. at 738.

Q: Who is considered a “minister” under this exception?

A: The definition of “minister” extends beyond ordained clergy. Courts consider various factors, including the employee’s job responsibilities, religious training, whether they teach religious subjects, and their role in the religious mission of the organization. For example, teachers in religious schools who are entrusted with the religious education can be considered ministers. *Our Lady of Guadalupe*, 591 U.S. at 738; *Fitzgerald v. Roncalli High Sch., Inc.*, 73 F.4th 529, 531 (7th Cir. 2023); *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 703 (7th Cir. 2003)

Q: How does the ministerial exception affect employment decisions in churches?

A: The ministerial exception allows religious organizations to make employment decisions concerning their ministers based on religious doctrine and moral standards without government interference. This includes the ability to dismiss employees who do not adhere to the institution’s teachings, such as employees who enter into a same-sex marriage. *Hosanna-Tabor*, 565 U.S. at 196; *Fitzgerald*, 73 F.4th at 531; *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 944 (7th Cir. 2022).

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Q: What is the “church autonomy doctrine”?

A: The church autonomy doctrine is a First Amendment principle that protects religious institutions from government interference in internal matters of governance, faith, doctrine, and discipline. While the ministerial exception specifically safeguards the discretion churches need to make employment decisions involving ministers, the church autonomy doctrine applies more broadly to decisions like church governance or moral standards. For instance, the Indiana Supreme Court has held that an Archdiocese’s decision to enforce Catholic teachings regarding marriage was protected by the church autonomy doctrine. *Payne-Elliott v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 193 N.E.3d 1009, 1014 (Ind. 2022); *Dwenger v. Geary*, 113 Ind. 106, 115 (1888); 123 A.L.R.5th 385.

Q: How do the ministerial exception and church autonomy doctrine work together?

A: These doctrines operate in tandem to safeguard the ability of religious organizations to control employment decisions central to their religious mission and to manage their internal affairs without undue government entanglement. *Hosanna-Tabor*, 565 U.S. at 181; *Our Lady of Guadalupe*, 591 U.S. at 738; *Payne-Elliott*, 193 N.E.3d at 1014.

Q: Can a church terminate an employee for violating its moral teachings?

A: Yes, under the ministerial exception, religious organizations can terminate employees who perform religious functions if they violate the institution’s moral or doctrinal standards. For example, the Seventh Circuit has upheld the termination of a teacher who was terminated due to being in a same-sex marriage, citing the ministerial exception. *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 944 (7th Cir. 2022).

Q: Are there situations where the ministerial exception or church autonomy doctrine does not apply?

A: Yes, these doctrines may not be applicable in cases involving:

Criminal conduct: Courts may intervene in illegal acts, even if tied to religious doctrine.

Tort liability: Churches may be liable for ministers’ actions, such as negligence or abuse.

Property disputes: Courts may resolve disputes using neutral principles of law.

Non-ministerial roles: Employment discrimination claims for employees not performing religious functions may proceed.

Regulations: Zoning laws, health and safety regulations, and taxation requirements, if generally applicable, typically apply to churches in the same way they apply to other entities.

Hochstetler v. State, 215 N.E.3d 365, 376 (Ind. Ct. App. 2023); *Konkle v. Henson*, 672 N.E.2d 450, 455 (Ind. Ct. App. 1996); *Jones v. Wolf*, 443 U.S. 595, 603 (1979); *E.E.O.C. v. Pac. Press Pub. Ass’n*, 676 F.2d 1272, 1278 (9th Cir. 1982); *Tony & Susan Alamo*

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Found. v. Sec'y of Labor, 471 U.S. 290, 305–06 (1985); *United States v. Lee*, 455 U.S. 252, 261 (1982).

Additional Resources

- Establishment of the White House Faith Office: <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-establishes-white-house-faith-office/>.
- Fair Housing Act and Religious Discrimination: <https://www.fairhousingnc.org/wp-content/uploads/2019/04/Fair-Housing-and-Religious-Discrimination.pdf>.
- Guidance on Religious Discrimination in the Work Setting from the Equal Opportunity Employment Commission (EEOC): <https://www.eeoc.gov/religious-discrimination>.
- Internal Revenue Service, Tax Guide for Churches and Religious Organizations 7 (2015), available at <https://www.irs.gov/pub/irs-pdf/p1828.pdf>.
- Serve Indiana is a division of Indiana's Department of Workforce Development (DWD): [Serve Indiana: Resources & Trainings](#).
- U.S. Department of Labor (DOL), Religious Discrimination and Accommodation: https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/religious_discrimination_and_accommodation.
- U.S. Department of Justice (DOJ), Civil Rights Division, Religious Discrimination: https://www.justice.gov/d9/2024-03/combating_religious_discrimination.pdf.



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Office of the Attorney General

The Office of the Attorney General welcomes your feedback on this document. Please visit www.in.gov/AttorneyGeneral for additional information.



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Appendix I Relevant Laws and Regulations

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United States Constitution, First Amendment

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Indiana Constitution, Article 1

Section 2. All people shall be secured in the natural right to worship ALMIGHTY GOD, according to the dictates of their own consciences.

Section 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Section 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

Section 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

Section 9. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.

Federal Codes and Regulations

26 U.S. Code § 107 - Rental value of parsonages

In the case of a minister of the gospel, gross income does not include—

- (1) the rental value of a home furnished to him as part of his compensation; or
- (2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

26 U.S. Code § 501 - Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

[...]

(c) List of exempt organizations

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The following organizations are referred to in subsection (a):

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

[...]

(d) *Religious and apostolic organizations*

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

[...]

(h) *Expenditures by public charities to influence legislation*

(1) *General rule* In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) *Definitions* For purposes of this subsection—

(A) *Lobbying expenditures*: The term “lobbying expenditures” means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) *Lobbying ceiling amount*: The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

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(C) Grass roots expenditures: The term “grass roots expenditures” means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount: The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

[...]

26 U.S. Code § 7611 - Restrictions on church tax inquiries and examinations

(a) *Restrictions on inquiries*

(1) *In general* The Secretary may begin a church tax inquiry only if—

(A) the reasonable belief requirements of paragraph (2), and

(B) the notice requirements of paragraph (3), have been met.

(2) *Reasonable belief requirements* The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church—

(A) may not be exempt, by reason of its status as a church, from tax under section 501(a), or

(B) may be carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities subject to taxation under this title.

(3) *Inquiry notice requirements*

(A) *In general* The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.

[...]

42 U.S. Code § 2000e-2 - Unlawful employment practices

(a) *Employer practices* It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

[...]

(e) *Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion* Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for

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an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

[...]

(m) *Impermissible consideration of race, color, religion, sex, or national origin in employment practices* Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

42 U.S. Code § 2000bb-1 Free exercise of religion protected

(a) *In general* Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) *Exception* Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Indiana Code

Ind. Code § 16-31-1-3 Religious objections to medical treatment

This article or a rule adopted under this article does not authorize transporting to a hospital or medical treatment of a person who objects to medical treatment on religious grounds.

Ind. Code § 20-34-3-2 Religious objections

(a) Except as otherwise provided, a student may not be required to undergo any testing, examination, immunization, or treatment required under this chapter or IC 20-34-4 when the child's parent objects on religious grounds. A religious objection does not exempt a child from any testing, examination, immunization, or treatment required under this chapter or IC 20-34-4 unless the objection is:

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- (1) made in writing;
 - (2) signed by the child's parent; and
 - (3) delivered to the child's teacher or to the individual who might order a test, an exam, an immunization, or a treatment absent the objection.
- (b) A teacher may not be compelled to undergo any testing, examination, or treatment under this chapter or IC 20-34-4 if the teacher objects on religious grounds. A religious objection does not exempt an objecting individual from any testing, examination, or treatment required under this chapter or IC 20-34-4 unless the objection is:
- (1) made in writing;
 - (2) signed by the objecting individual; and
 - (3) delivered to the principal of the school in which the objecting individual teaches.

Ind. Code § 20-35-4-6 (a) Religious objection to medical examination

Except as provided in subsection (b), this chapter does not require a student to:

- (1) undergo physical or medical examination or treatment; or
- (2) be compelled to receive medical instruction;

if the parent of the student, in writing, notifies the teacher or principal or other person in charge of the student that the parent objects to the medical examination, treatment, or instruction because the parent relies in good faith on prayer or spiritual means for the treatment of sickness or affliction.

Ind. Code § 25-23.6-3-2 (a) Exemptions

This article may not be construed to limit the marriage and family therapy services performed by a person who does not use a title specified in this article and who is one (1) of the following:

[...]

(4) A rabbi, priest, Christian Science practitioner, minister, or other member of the clergy.

(5) An employee of or a volunteer for a nonprofit corporation or an organization performing charitable, religious, or educational functions, providing pastoral counseling or other assistance.

Ind. Code § 25-23.6-4-2 (a) Exemptions

This article may not be construed to limit the social work or clinical social work services performed by a person who does not use a title specified in this article and who is one (1) of the following:

[...]

(4) A rabbi, priest, Christian Science practitioner, minister, or other member of the clergy.

(5) An employee or a volunteer for an organization performing charitable, religious, or educational functions, providing pastoral counseling, or other assistance.

Ind. Code § 25-23.6-4.5-2 (a) Exemptions

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This article may not be construed to limit the mental health counseling services performed by a person who does not use a title specified in this article and who is one (1) of the following:

[...]

(4) A rabbi, priest, Christian Science practitioner, minister, or other member of the clergy.

(5) An employee or a volunteer for an organization performing charitable, religious, or educational functions, providing pastoral counseling, or providing other assistance.

Ind. Code § 25-23.6-10.1-2 (a) Practice by individuals who are not licensed

This article may not be construed to limit addiction counselor or clinical addiction counselor services performed by a person who does not use a title specified in this article and who is any of the following:

[...]

(4) A rabbi, priest, Christian Science practitioner, minister, or other member of the clergy.

(5) An employee or a volunteer for an organization performing charitable, religious, or educational functions or providing pastoral counseling or other assistance.

Ind. Code § 30-5-5-16 (a) Health care powers; religious tenets

This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in good faith under the religious tenets and practices of the individual requiring health care.

Ind. Code § 34-13-9-8 Exercise of religion

(a) Except as provided in subsection (b), a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability.

(b) A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.