

FREEDOM TO KILL: THE PROBLEM WITH APPLYING RFRA TO ABORTION BANS

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I. INTRODUCTION

America has a rich tradition of protecting religious freedom. The First Amendment of the United States Constitution prevents Congress from “prohibiting the free exercise” of religion.¹ The Supreme Court has interpreted the Free Exercise Clause liberally, particularly in recent years.² This has not always been the case. Tellingly, though, when the Court did narrow protections for religious exercise, Congress intervened. In *Employment Division v. Smith*, the Supreme Court held that the Free Exercise Clause does not warrant heightened scrutiny for facially neutral and generally applicable laws that burden religious exercise.³ In response, Congress passed the Religious Freedom Restoration Act (“RFRA”), restoring heightened scrutiny for such laws. Under RFRA, if a law substantially burdens someone’s religious exercise, the state must “demonstrate[] 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.”⁴ Following suit from the federal RFRA, 29 states now have their own RFRA.⁵

RFRA has indeed proven restorative. Pursuant to RFRA, courts have protected practices ranging from consuming hallucinogens⁶ to growing out one’s hair while serving in the military.⁷ Despite these expansive protections for religious exercise, most of us would probably intuit that religious freedom cannot justify killing someone. A recent Indiana state court case, however, casts doubt on this intuition.

II. CASE BACKGROUND

In 2022, the Supreme Court held that the Constitution did not protect the right to abortion.⁸ Accordingly, said the Court, states could decide for themselves whether to preserve or ban abortion. That is exactly what happened. After the Court

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¹ U.S. CONST. amend. I.

² See, e.g., *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Carson v. Makin*, 596 U.S. 767 (2022).

³ 494 U.S. 872, 878–79 (1990).

⁴ 42 U.S.C. § 2000bb-1 (1993).

⁵ *Federal & State RFRA Map*, BECKET FUND, <https://becketfund.org/research-central/rfra-info-central/map/> (last accessed Mar. 20, 2026).

⁶ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006).

⁷ *Singh v. Carter*, 168 F.Supp. 3d 216, (D.D.C. 2016).

⁸ *Dobbs v. Whole Women’s Health*, 597 U.S. 215 (2022).

decided *Dobbs*, various states curbed or effectively banned abortion access.⁹ Indiana is one of these states.

Following *Dobbs*, Indiana enacted a restrictive abortion law. Indiana Code § 16-34-2-1 (hereinafter “abortion law”) criminalizes abortion at every stage of pregnancy with three exceptions. First, up to fetal viability or twenty weeks (whichever is earlier), the state permits abortion in the case of “a lethal fetal anomaly[.]”¹⁰ Indiana defines “lethal fetal anomaly” as “a fetal condition that . . . will with reasonable certainty result in the death of the child not more than three . . . months after the child’s birth.”¹¹ Second, up to ten weeks, abortion is permitted if “the pregnancy is a result of rape or incest[.]”¹² Third, at any point in the pregnancy, the state allows abortion if it “is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman’s life[.]”¹³

In 2022—before the law took effect—a group of plaintiffs sued. The plaintiffs, two anonymous women and a group called Hoosier Jews for Choice, alleged that abortion constitutes a sincere religious exercise, on which the abortion law would pose a substantial burden.¹⁴ In *Anonymous Plaintiff v. Medical Licensing Board of Indiana*, the trial court granted them a preliminary injunction.¹⁵ The state appealed. During the pendency of the appeal, the trial court certified the case as a class action, which the appeals court upheld.¹⁶ In 2024, the Indiana Court of Appeals upheld the injunction, but remanded the case to narrow its scope.¹⁷ That remand resulted in the case inspiring this discussion.¹⁸

The first anonymous plaintiff claimed that “according to her Jewish beliefs, if her health or wellbeing—physical, mental, or emotional—were endangered by a pregnancy, a pregnancy-related condition, or a fetal anomaly, she must terminate the pregnancy.”¹⁹ The second contended that “[o]ne of her central spiritual beliefs is that people are endowed with bodily autonomy that should not be infringed upon[.]” and that it is her “spiritual obligation to determine whether to remain pregnant.”²⁰

Hoosier Jews for Choice maintained that their majority-Jewish “members believe that under Jewish law, an abortion is directed to occur if necessary to prevent physical, mental, or emotional harm to a pregnant person[.]”²¹

⁹ *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans> (last updated Apr. 27, 2026).

¹⁰ Ind. Code § 16-34-2-1(A)(ii) (2025).

¹¹ Ind. Code § 16-25-4.5-2 (2025).

¹² Ind. Code § 16-34-2-2(A) (2025).

¹³ Ind. Code § 16-34-2-3(A) (2025).

¹⁴ *Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056, 6-10 (Ind. Super., Dec. 2, 2022).

¹⁵ *Id.* at 21.

¹⁶ *Individual Members of Med. Licensing Bd. Of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 427–28 (Ind. Ct. App. 2024).

¹⁷ *Id.* at 428.

¹⁸ *Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056 (Ind. Super., Mar. 5, 2026).

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

Finally, the certified class comprised adherents of beliefs including Islam, Unitarian Universalism, Paganism, and Episcopalianism, which reportedly “direct abortions to occur in circumstances not permitted by the statute.”²²

Pursuant to RFRA, the plaintiffs and the certified class sought an exemption from the law. Under RFRA, if a government action substantially burdens a plaintiff’s “sincere exercise of religion,” then the government must satisfy strict scrutiny.²³ This means that the government must demonstrate that it has a compelling state interest accomplished by applying the challenged action to the plaintiff.²⁴ In the case at bar, that interest is “protecting prenatal life.”²⁵

The plaintiffs prevailed. The Marion County Superior Court granted the plaintiffs and the certified class a permanent injunction, blocking Indiana’s abortion law as applied to them. According to the judge, the abortion law’s exceptions amounted to an “inconsistent approach to prenatal life.”²⁶ As such, the court held, Indiana failed to demonstrate a compelling interest in protecting prenatal life “from the moment of fertilization . . . and under all circumstances.”²⁷ The court’s logic proceeds as follows. First, under the abortion law, a pregnancy resulting from rape would justify an abortion, but a religious belief would not. Indiana did not “establish[] that its interest in the same prenatal life changes based upon the reason for terminating a pregnancy.”²⁸ Moreover, the law explicitly permits abortions “in other circumstances,” one of which allows abortions “at any gestational age.”²⁹ Given these exceptions, Indiana must not have a truly compelling interest in protecting prenatal life “under all circumstances and from fertilization.”³⁰

III. DISCUSSION

The court’s logic does not withstand scrutiny. None of the abortion law’s three exceptions justifies the conclusion that Indiana lacks a compelling interest in protecting fetal life—even under RFRA’s more demanding compelling interest test. Accordingly, the state should have prevailed. Part I critiques the court’s compelling state interest analysis and examines the evidence supporting the state’s case—most of which the court omitted. Part II walks through each of the abortion law’s exceptions, explaining why none justifies religious exemptions under RFRA. Part III explains why the *Anonymous Plaintiff* case fundamentally differs from *Gonzales v. O Centro*, a RFRA case involving hallucinogen use, where the plaintiffs prevailed. Finally, Part IV addresses the possible implications of this successful pro-abortion RFRA challenge.

PART I

The Indiana courts did not adequately assess the state’s asserted compelling interest in prohibiting abortion from the moment of fertilization.

No definitive test exists to evaluate whether a state interest is compelling. Instead, RFRA precedent suggests a fact-specific inquiry, where the court

²² *Id.* at 6.

²³ See 42 U.S.C. § 2000bb-1(a) (1993).

²⁴ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 420 (2006).

²⁵ *Anonymous Plaintiff 1*, No. 49D01-2209-PL-031056 at 14.

²⁶ *Id.* (internal quotation marks omitted).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

“searchingly examine[s] the interests that the State seeks to promote[.]” and assesses “the impediment to those objectives that would flow from” exempting the claimant.³¹ The Indiana trial court appears to have conducted no searching examination. Neither did the appeals court that remanded this case to the trial court in 2024.

In *Gonzales*, another RFRA case that the Indiana court favorably cites, the federal district court expressly considered evidence on both sides when evaluating the government’s allegedly compelling interest in prohibiting hallucinogen use as applied to the claimants.³² By contrast, the Indiana appeals court cited evidence favoring only one side—the claimants. Rejecting the state’s case law,³³ the court relied on statutory evidence to conclude that Indiana lacks a compelling interest in protecting fetal life from the moment of fertilization. But the court’s statutory analysis was far too narrow.

In addition to the abortion law’s exceptions, discussed in Part II, the court confined its evidence to the following. First, the court noted that Indiana’s legislature “has declined to explicitly define human beings to include zygotes, embryos, or all fetuses.”³⁴ Second, the court observed that “[t]he [a]bortion [l]aw . . . does not designate the exact point during pregnancy when the State’s interest in a zygote, embryo, or fetus becomes compelling.”³⁵

In its oversimplified analysis, the court omitted important statutory evidence favoring the state. In fact, considerable evidence in Indiana’s legal code indicates that the state values fetal life from the moment of fertilization. Besides part of the abortion law itself, the court mentioned none of it. While no piece of evidence is independently dispositive, altogether, it paints a different picture than the court’s.

First, Indiana understands life as beginning at fertilization. The state requires a woman seeking an abortion to be informed “[t]hat human physical life begins when a human ovum is fertilized by a human sperm.”³⁶ Though, as the appeals court pointed out, Indiana’s legislature did not *explicitly* define embryos as human beings, the language “human physical life” to describe embryos in chapter two of Indiana’s abortion law suggests that the court makes too much of this omission.

Next, turn to Indiana’s criminal law. For a stark example of how the state views life from the moment of fertilization, consider Indiana’s feticide law: “A person who . . . knowingly or intentionally kills a fetus *in any stage of development* . . . commits

³¹ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 431 (2006).

³² *Id.* at 426 (“[t]he District Court heard evidence from both parties on the health risks of hoasca [a hallucinogen] and the potential for diversion from the church. The Government presented evidence to the effect that the use of hoasca . . . can cause psychotic reactions, cardiac irregularities, and adverse drug interactions. The UDV [members of the respondent church] countered by citing studies documenting the safety of its sacramental use of hoasca and presenting evidence that minimized the likelihood of the health risks raised by the Government.”).

³³ *Individual Members of the Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 451–52 (Ind. Ct. App. 2024) (citing *Cheaney v. State*, 285 N.E.2d 265 (Ind. 1972)) (differentiating *Cheaney* by observing that it “involved a federal constitutional challenge to an Indiana criminal statute outlawing abortion, rather than a claim brought under state law[.]” and that it “predat[ed] *Roe v. Wade* . . .”); *Id.* at 452 (citing *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw.*, 285 N.E.3d 957 (Ind. 2023)) (arguing that *Planned Parenthood* “did not fully explain [Indiana’s] post-*Dobbs* view of the State’s interest under the Indiana Constitution . . . [because] neither the . . . plaintiffs nor the Court pinpointed exactly when that interest [in protecting prenatal life] begins or the full extent of the State’s interest in zygotes, embryos, and fetuses.”).

³⁴ *Id.* at 452.

³⁵ *Id.*

³⁶ Ind. Code § 16-34-2-1.1(E) (2025).

murder[.]”³⁷ (Emphasis added.) If the state assigned less value to a four-week-old embryo than a thirty-six-week fetus, why would killing either incur the same criminal liability? And, of course, there’s Indiana’s abortion law, among the most restrictive in the nation. The fact that Indiana criminalizes the practice in most cases gives rise to the inference that the state views abortion as a grave offense—at every stage.³⁸

Notably, Indiana’s restrictions on abortion exceed its criminal law. Indiana also forbids the state and local governments from funding *any* abortions that are not necessary to protect a pregnant woman’s life.³⁹ Moreover, Indiana prohibits any health plans from covering abortions outside of the narrow circumstances named in its abortion law.⁴⁰ The implication is clear. Indiana bans political or economic support to most abortions out of moral opposition to the practice.

Dobbs admonished lower courts “not [to] substitute their social and economic beliefs for the judgment of legislative bodies.”⁴¹ Given its strikingly selective use of statutory evidence, it is not clear that the Indiana Court of Appeals heeded this admonition. Contrary to the court’s claim, the evidence points to a compelling state interest in banning the practice—even from the moment of fertilization.

PART II

A response might go something like this. “Maybe Indiana has a generally compelling interest in protecting fetal life. But RFRA requires a deeper inquiry.⁴² Because Indiana’s abortion law contains exceptions, it has failed to demonstrate that it has a compelling interest in protecting fetal life *as applied to the plaintiffs*.”

But this argument is unavailing. Start with the maternal life and physical health exception. To understand the absurd outcomes the court’s logic as applied to this exception would produce, consider homicide law.

Indiana’s homicide law teems with mitigating circumstances and affirmative defenses. Mitigating circumstances—factors relating to defendants—include provocation, the absence of a history of criminal activity, and imprisonment “result[ing] in undue hardship to the [perpetrator] or the[ir] dependents[.]”⁴³ Affirmative defenses—arguments that defendants may raise to negate criminal liability—include mental disease, duress, and self-defense.⁴⁴ Notably, Indiana has a “Stand Your Ground” law, providing that a person may use “deadly force” and “does not have a duty to retreat” if the person “reasonably believes that [deadly] force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony.”⁴⁵

³⁷ Ind. Code § 35-42-1-1(4) (2024).

³⁸ Ind. Code § 16-34-2-3(A) (2025).

³⁹ Ind. Code § 16-34-1-2 (2025).

⁴⁰ Ind. Code § 16-34-1-8 (2025).

⁴¹ 597 U.S. 215 at 289 (quoting *Ferguson v. Skrupa*, 372 U.S. 726, 729-30 (1963)). *But see* Individual Members of the Med. Licensing Bd. of Ind., 233 N.E.3d 416, 453 (Ind. Ct. App. 2024) (citing the same *Dobbs* portion to argue that the state *lacks* a compelling interest in protecting fetal life from the moment of conception).

⁴² *See* *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 430 (2006).

(“RFRA . . . contemplate[s] an inquiry more focused than the Government’s categorical approach.”)

⁴³ Ind. Code § 35-38-1-7.1(b)(5), (6), (10) (2025).

⁴⁴ Ind. Code § 35-41-3-11, 3-8, 3-2 (2025).

⁴⁵ Ind. Code § 35-41-3-2 (2025).

Imagine a plaintiff who raises a RFRA challenge to Indiana's homicide law. This plaintiff's religion requires her to conduct periodic human sacrifices. By the court's logic, if the plaintiff demonstrates that human sacrifice is a sincere religious exercise, the state must grant her an exemption from the homicide law. Because the homicide law has various exceptions—even affirmatively allowing killing in some cases—the state must not have a compelling interest in prohibiting murder in all cases. In turn, the state cannot prevent the plaintiff from conducting human sacrifice as her religion commands.

Surely, no American legal doctrine would tolerate such a morally repugnant outcome. It should go without saying that the state has a compelling interest in protecting human life, which underlies its homicide law. This interest is no less compelling because Indiana's homicide law allows killing in some cases. The abortion law's exceptions for maternal life and health stand for a similar principle as the state's "Stand Your Ground" law. You may kill to protect yourself. Just as Indiana's "Stand Your Ground" law does not negate its interest in protecting life, neither does its maternal life and physical health exception.

Next, turn to the abortion law's lethal fetal abnormality exception. Contrary to the court's claim, this exception does not cast any doubt on the state's interest in protecting fetal life. In tragic situations when an unborn child is "reasonabl[y] certain[]" to die either during pregnancy or shortly thereafter, the state's interest in protecting fetal life plausibly applies with less force.⁴⁶

To be sure, the pro-life movement's support for this exception is far from unanimous. Indeed, various state abortion laws lack a lethal fetal abnormality exception.⁴⁷ But the fact that Indiana has adopted a comparatively moderate position on this deeply contentious issue does not diminish its interest in protecting fetal life. Policy differences between states are extremely common. Such variation does not necessarily open the door to RFRA challenges.

A good-faith effort to minimize fetal suffering animates the lethal abnormality exception. Only by straining common sense can we then justify religion-motivated abortions of perfectly healthy pregnancies.

Finally, consider the abortion law's rape exception. The court stands on firmer ground here compared to the other two exceptions. An unborn child conceived through rape has no less value than an unborn child conceived from consensual sex. So, as the court put it, the state should have an equal interest in both lives.⁴⁸ And yet, the abortion law exempts only the former. Unlike either of the other exceptions, the rape exception contemplates terminating healthy pregnancies. Accordingly, this exception seems inconsistent with the state's interest in protecting fetal life.

Despite the apparent contradiction, Indiana's rape exception reflects the state's effort to balance competing interests. On the one hand, the state has an

⁴⁶ Ind. Code § 16-25-4.5-2 (2025).

⁴⁷ *State Bans on Abortion Throughout Pregnancy*, Table 2. Exceptions to Bans Based on Gestational Duration, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans> (last updated Apr. 27, 2026) (showing that states without a lethal fetal abnormality exception include Arkansas, Mississippi, Oklahoma, South Dakota, Tennessee, and Texas).

⁴⁸ See *Anonymous Plaintiff 1 v. Individual Members of the Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056, 14 (Ind. Super., Dec. 2, 2022). (observing that Indiana did not "establish[] that its interest in the same prenatal life changes based upon the reason for terminating a pregnancy.").

interest in protecting fetal life. On the other hand, the state has an interest in limiting the trauma that results from rape.⁴⁹ Arguably, this interest balancing involves unique considerations that are categorically different from cases where courts have recognized RFRA exemptions.

But assume the rape exception is inconsistent. If so, all the court demonstrates is a single example of inconsistency. Standing alone, this is not enough to void the state's compelling interest—even under the more demanding RFRA standard. Inconsistency abounds in our legal system. From traffic law to tax law, the state carves out numerous exceptions intended to strike a balance between competing interests. In some cases, these exceptions seem inconsistent with the laws' broader aims. But these inconsistencies do not justify RFRA exemptions.⁵⁰

None of Indiana's exceptions supports religiously motivated abortions. But the flaws in the Indiana courts' reasoning do not end there. The Court of Appeals of Indiana erred in another way—one that strikes at the very heart of its argument.

PART III

The Court of Appeals of Indiana drew heavily on *Gonzales*, where the Supreme Court upheld a RFRA challenge to permit use of a drug prohibited by the Controlled Substances Act.⁵¹ But drugs and abortion fundamentally differ.

The federal government did not pass the Controlled Substances Act because it views drugs as inherently immoral. Instead, a concern about the *effects* of drugs underlies the CSA. Reflecting this concern, the CSA prescribes a list of factors determining whether a drug should be controlled or removed as a controlled substance—all explicitly or implicitly describing effects. These factors include “[s]cientific evidence of [the drug’s] pharmacological effect,” “risk . . . to the public health,” and “psychic or physiological dependence liability.”⁵²

On the other hand, Indiana’s legislature *did* pass its abortion law because it views abortion as inherently immoral. The abortion itself—the killing of an unborn child—is the evil the state seeks to purge with its abortion law. Unlike the CSA, the abortion law’s text gives no impression that concerns about abortion’s physical or psychological consequences principally motivated the Indiana legislature to effectively ban the practice.⁵³

This distinction bears directly on RFRA’s compelling interest analysis. It is possible, as the lower court in the *Gonzales* litigation believed, that supervised,

⁴⁹ See “A daily reminder of an ugly incident . . .”: analysis of debate on rape and incest exceptions in early abortion ban legislation in six states in the southern US, NATIONAL LIBRARY OF MEDICINE: PUBMED CENTRAL, (May 3, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10158537/>.

⁵⁰ The author would like to thank the thoughtful legal volunteers at Secular Pro-Life for inspiring this point.

⁵¹ *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 423 (2006).

⁵² 21 U.S.C. § 811(b), (c)(2), (c)(6), and (c)(7).

⁵³ This is not to say that the abortion law ignores physical health altogether. For example, the law prohibits the prescription of abortion-inducing drugs “to a pregnant woman after eight . . . weeks of postfertilization age.” Ind. Code § 16-34-2-1(a). Though this provision did not mention physical health concerns explicitly, such concerns may have contributed to this prohibition. Relatedly, the abortion law explicitly prohibits telehealth and telemedicine abortions, which may reflect health concerns. Ind. Code § 16-34-2-3(d). Finally, the law requires that abortions be performed in hospital or outpatient surgical centers. Ind. Code § 16-34-2-1(ii)(B), 2-2(C), 2-3(C). But these are considerations, not the core of the law. The fact that abortion is safer when performed in a hospital than at home did not motivate the Indiana legislature to pass an effective abortion ban. Instead, considerations like this helped create the conditions under which abortion is permissible.

ceremonial use of psychedelic drugs mitigates the health consequences and risks of diversion for recreational use.⁵⁴ Conversely, no such mitigation principle carries over into abortion. This is because death is binary. Performing an abortion safely does not make a fetus any less dead. Accordingly, allowing religion-motivated abortions of healthy pregnancies subverts the state's interest in a way that allowing religiously motivated psychedelic drug use does not. Given the impossibility of diminishing death, Indiana clearly has a compelling interest in applying its abortion ban to religious objectors.

PART IV

Finally, consider the implications of this pro-abortion RFRA challenge. This part first briefly addresses the upcoming steps in the *Anonymous Plaintiff 1* litigation. Second, it discusses the long-term implications for abortion laws nationwide. Lastly, this part explores the possible consequences for RFRA.

Indiana's attorney general has appealed the Marion County judge's permanent injunction.⁵⁵ Because the Court of Appeals of Indiana upheld the Marion County court's preliminary injunction in 2024, "already express[ing] its views on the principal issues in th[e] case," the Supreme Court of Indiana granted the attorney general's request to hear the case directly.⁵⁶ The Court will hear oral arguments in September.

This may not be the last pro-abortion RFRA challenge. The Indiana plaintiffs' successful RFRA challenge may very well inspire similar lawsuits in other red states. If so, the Marion County court's ruling could create incentives that will harm the very plaintiffs it is designed to protect.

Assume other state courts follow the Indiana courts' logic. In summary, the logic goes like this: If a state's abortion law contains non-religious exceptions, then the state lacks a compelling interest in protecting fetal life as applied to plaintiffs seeking a religious exception. In other words, the exceptions undermine the state's case that it has a compelling interest in protecting fetal life. By this logic, the more exceptions an abortion law permits, the more vulnerable it is to a RFRA challenge. This means that states with moderately—as opposed to highly—restrictive abortion laws are the most susceptible to religious-based injunctions. The most vulnerable states are those with abortion laws containing exceptions for situations like rape and lethal fetal abnormalities.

Now, imagine a pro-life legislator considering the prospect of a similar RFRA challenge in her own state. Perhaps this legislator is based in Florida, another state with a moderately restrictive abortion law. Florida permits abortions resulting from rape or incest up to fifteen weeks gestation.⁵⁷ Up to the end of the second

⁵⁴ See *Gonzales*, 546 U.S. at 426–27 ("The District Court concluded that the evidence on health risks was 'in equipoise,' and similarly that the evidence on diversion was 'virtually balanced.' In the face of such an even showing, the court reasoned that the Government had failed to demonstrate a compelling interest justifying what it acknowledged was a substantial burden on the UDV's sincere religious exercise.")

⁵⁵ Niki Kelly, *Indiana Attorney General's Office appeals religious freedom ruling on state abortion ban*, INDIANA CAPITAL CHRONICLE (Mar. 6, 2026), <https://indianacapitalchronicle.com/briefs/indiana-attorney-generals-office-appeals-religious-freedom-ruling-on-state-abortion-ban/>.

⁵⁶ Leslie Bonilla Muniz, *Indiana Supreme Court to take up RFRA-based lawsuit against abortion ban*, WFYI INDIANAPOLIS (Apr. 21, 2026), <https://www.wfyi.org/health/2026-04-21/indiana-supreme-court-to-take-up-rfra-based-lawsuit-against-abortion-ban>.

⁵⁷ §390.0111(1)(d), Fla. Stat. (West 2023).

trimester, Florida permits abortions in cases of lethal fetal abnormalities.⁵⁸ Under the Indiana courts' understanding of RFRA, Florida's abortion law is highly susceptible to a similar lawsuit. Given the possibility of a permanent injunction that exempts potentially thousands of women from Florida's abortion law, this pro-life representative has a strong incentive to narrow these exceptions, or perhaps excise them from the statute altogether.

One might respond by pointing out that lawmaking requires consensus. It is unlikely that the will of a single legislator—or even several—is enough to pass a new law, certainly on a subject as contentious as abortion. That's true. Perhaps instead, what will happen is that these pro-abortion RFRA challenges will upset the uneasy compromises various state legislatures have achieved by preserving rape and lethal fetal abnormality exceptions.⁵⁹ Rather than enacting more restrictive abortion laws, maybe states like Florida and Indiana will simply become more polarized. But it is hard to view this as a successful outcome. If the result of pro-abortion RFRA challenges is more legislative discord and gridlock, does anyone win?

Finally, more widespread use of RFRA to protect abortion access could undermine public support for this law. In some spaces, anti-RFRA sentiment is already growing. For example, in its criticism of the Indiana court's holding, an organization called Secular Pro-Life argued, “[i]f courts are going to interpret RFRA in the womb to allow murder . . . then Indiana lawmakers must repeal RFRA.”⁶⁰ Among nonreligious pro-lifers, RFRA opposition under these circumstances is somewhat predictable. But given the substantial overlap between evangelicalism and opposition to abortion,⁶¹ RFRA could very well lose support on the Christian right as well.

It seems that RFRA has taken on a life of its own. This piece has argued that the Indiana lower courts got the law wrong. But other state courts could adopt *Anonymous Plaintiff 1*'s expansive understanding of RFRA. If that is the case, higher courts should clarify that RFRA does not protect abortion. And if they do not, state legislatures may intervene.

⁵⁸ §390.0111(1)(c), Fla. Stat. (West 2023).

⁵⁹ Again, the author would like to thank the legal volunteers at Secular Pro-Life for inspiring this discussion.

⁶⁰ Kelsey Hazzard, *Indiana Court: State Law Allows Faith-Justified Killing*, SECULAR PRO-LIFE (Mar. 11, 2026), <https://secularprolife.org/2026/03/indiana-court-state-law-allows-faith-justified-killing/>.

⁶¹ *Public Opinion on Abortion – Views on abortion by religious affiliation*, 2026, PEW RESEARCH CENTER (Mar. 12, 2026), <https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion/>.