THE ILLINOIS ANTINOMY: THE STORY BEHIND AMERICA'S UNEXPECTED FREE EXERCISE VANGUARD

INTRODUCTION

Religious liberty, often treated as a right-wing issue,[1] may well find its strongest protection in progressive states. A new report by the Center for Religion, Culture and Democracy ("CRCD") has found that Illinois, a state often seen as a progressive stronghold,[2] leads the nation in religious free exercise protections.[3] Since 2022, the CRCD has been tracking and recording the state-level protections of free exercise.[4] Its annual Religious Liberties in the States ("RLS") Report provides a scorecard and ranking for each state based on its statutory safeguards for religious free exercise.[5] Surprisingly, the 2023 RLS Report ranked Illinois number one in the nation by a noticeable margin for its protection of religious liberties.[6] This Note explores the historical development of Illinois's free exercise protections, using the state as a case study to examine the RLS Report's methodology for measuring religious freedom and to identify which factors behind Illinois's success may be replicable in other jurisdictions.

Part I of this Note outlines the methodology of the RLS Report and the specific metrics it employed to reach its conclusion that Illinois offers the most extensive free exercise protections. Part II examines the legislative history and debates surrounding each of the eight statutes that comprise Illinois's protections. Part III draws on lessons and themes of

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[1] Thomas Berg, *Progressive Arguments for Religious Organizational Freedom: Reflections on the HHS Mandate*, 21 J. CONTEMP. L. ISSUES 279, 284 (2013) ("As the HHS mandate dramatizes, there is an increasingly strong impulse, especially on the left, to limit the free exercise of religious institutions to the narrow confines of the house of worship."). While arguing that there is a progressive basis for supporting religious freedom, Professor Berg acknowledges that there is at least some reason to perceive a tension between progressivism and free exercise. *Id.* at 287–89; *see also* Douglas Laycock, *Sex, Atheism, and the Free Exercise of Religion*, 88 U. DET. MERCY L. REV. 407, 414–15 (2011).

[2] *E.g.*, Edward McClelland, *Illinois is the Most Progressive State*, CHI. MAG. (Aug. 1, 2023, 11:46 AM), https://www.chicagomag.com/news/illinois-is-the-most-progressive-state/.

[3] SARAH ESTELLE, RELIGIOUS LIBERTY IN THE STATES 2023, vii (Ctr. For Religion, Culture, & Democracy 2023) [hereinafter RLS 2023].

[4] *Id.*

[5] *Id.*

[6] *Id.* at 3–4. Since the time of this writing, the RLS Report for 2024 has been completed and published. This new iteration added two safeguards but did not alter Illinois's status as number one in the nation. MARK DAVID HALL & PAUL D. MUELLER, RELIGIOUS LIBERTY IN THE STATES 2024 3, 5 (Ctr. For Religion, Culture, & Democracy 2024) [hereinafter RLS 2024].

Illinois's legislative story to offer recommendations for increasing protection of religious free exercise across the nation.[7]

I. THE RELIGIOUS LIBERTY IN THE STATES REPORT

In 2022, the CRCD released its first RLS Report ranking statutory free exercise protections among the states.[8] The goal of the report was to provide a transparent and objective index that allowed for accessible and meaningful comparisons to be made between states.[9] To accomplish this, the report breaks down free exercise protections into three abstract units: items, safeguards, and groups.[10] Items are the smallest unit of measurement for religious free exercise, comprising a single freedom *from* government interference into one's specific religious practice.[11] To preserve objectivity, items must be an activity that believers of different faiths can practice and that at least one state protects.[12] Examples of items include the ability to obtain an absentee ballot for religious reasons and to refuse to perform an abortion because of religious convictions.[13]

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[7] These recommendations will be consigned to the other states in the Union. The landscape of free exercise abroad is far too diverse for these principles to be extended beyond the shores of the United States. These discussions must be made country-by-country with consideration for the culture and jurisprudence of each. For an example of appropriate country-specific analysis, see Inna Nam Brady, *Religious Freedom in Kazakhstan: Facing the Kazakhstani Law on Religious Activities and Religious Associations*, 1 J. GLOB. JUST. & PUB. POL'Y 227 (2015); Anthony Peirson Xavier Bothwell, *International Standards for Protection of Religious Freedom*, 23 ANN. SURV. INT'L & COMPAR. L. 49 (2019).

[8] RLS 2023, *supra* note 3, at vii, 1.

[9] *Id.* at 1.

[10] *Id.* at 8. These legislative groupings highlight how the RLS Report focuses on more than the *Smith-Sherbert* debate on what test should be applied to free exercise cases, which takes the center stage in most free exercise literature. *See, e.g.*, David H.E. Becker, *Free Exercise of Religion under the New York Constitution*, 84 CORNELL L. REV. 1088, 1092–93, 1095 (1999); Mary Ann Glendon & Raul F. Yanes, *Structural Free Exercise*, 90 MICH. L. REV. 477, 478 (1991); David C. Williams & Susan H. Williams, *Volitionalism and Religious Liberty*, 76 CORNELL L. REV. 769, 775–76, 799, 839–40 (1991). Although important, RLS recognizes that this is not and should not be the only free exercise protection available.

[11] RLS 2023, *supra* note 3, at 13 ("RLS focuses on a liberty defined by the *from what* dimension (namely, the consequences of state power) but remains interested in liberty *for* all religious persons and *for* religious exercise."). It is noteworthy that RLS's focus on *individual* religious liberty distinguishes its program from that of similar research conducted by the Napa Legal Institute, which focuses more on organizational liberty—that is, legal freedoms of religious institutions as corporate entities. *See* Frank DeVito, *Protecting Religion in the States*, NAT'L AFFS. (2024), https://www.nationalaffairs.com/publications/detail/protecting-religion-in-the-states (discussing Napa's program focuses, which include state RFRAs, Blaine Amendments, non-discrimination laws, corporate governance laws, and charitable registration laws).

[12] RLS 2023, *supra* note 3, at 13–14.

[13] *Safeguards*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguards/ (last visited Jan. 23, 2025).

Items are grouped together into safeguards, which represent an area of life involving multiple free exercise activities.[14] Some safeguards include only a single item, while others include multiple.[15] A state's score is the number of safeguards it has in its laws out of the total number of safeguards available.[16] For safeguards that include multiple items, all items must be protected to receive a full point (the state receives partial credit for each protected item if the whole safeguard is not protected).[17] Thus, for the 2023 Report, which features fourteen safeguards, a score is out of fourteen; the score is then converted into a percentage to aid comparison.[18] In 2023, Illinois only lacked two safeguards and one item, so it earned a raw score of 11.05, which came out to 85% on the index.[19]

Safeguards are grouped based on topic; groups have no effect on scoring.[20] The 2022 Report featured seven groups and eleven safeguards.[21] In the 2023 Report, three safeguards and one group were added, bringing the total to seven groups and fourteen safeguards.[22] The seven groups are as follows:

(1) Absentee Voting;
(2) Healthcare Provisions;
(3) Health Insurance Contraceptive Mandate;
(4) Marriage & Weddings;
(5) Religious Ceremonial Life;
(6) Religious Freedom Restoration Act; and
(7) School-Aged Children.[23]

Illinois, having achieved the highest score of all the states, has addressed all seven groups—and eleven of the fourteen safeguards

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[14] RLS 2023, *supra* note 3, at 7.

[15] *Id.* For example, the safeguard "Health-Care Provision: Abortion Refusal" contains seven items: (1) abortion refusal for individuals, (2) abortion refusal for private hospitals, (3) abortion refusal for public hospitals, (4) abortion refusal with immunity from civil liability, (5) abortion refusal with immunity from criminal liability, (6) abortion refusal with protection from government consequences, and (7) abortion refusal not limited in medical emergencies. *Health-Care Provision: Abortion Refusal*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/health-care-provision-abortion-refusal/ (last visited Jan. 23, 2025). Each item is represented by a column under which checkmarks indicate whether a state protects that item. *Id.*; RLS 2023, *supra* note 3, at 37.

[16] RLS 2023, *supra* note 3, at 17.

[17] *Id.*

[18] *Id.* at 17. South Carolina, in second place, scores 67% on the index, with a raw score of 8.71. *Id.* at 64.

[19] *Id.* at 37.

[20] *Id.* at 8.

[21] *Id.* at 1–2.

[22] RLS 2023, *supra* note 3, at 1, 7. The 2024 Report adds two new safeguards: Excused Absences for Religious Reasons in Public Colleges and Universities and Houses of Worship Protected from Closing. RLS 2024, *supra* note 6, at 5, 8.

[23] RLS 2023, *supra* note 3, at 7.

therein—in its statutory protections.[24] Impressively, Illinois addressed these eleven safeguards in a mere seven statutes.[25] Those statutes are the Illinois Election Code, the Right of Conscience Act, the Illinois Marriage and Dissolution Act, the Liquor Control Act of 1934, Illinois Civil Procedure Code, Illinois Religious Freedom Restoration Act, and the Illinois School Code.[26] Part II discusses the legislative history behind each of these laws, dividing the Illinois School Code into two sections based on the distinct safeguards (vaccine exemptions and excused absences) presented in two different parts of the code.[27]

II. THE STORY BEHIND THE EIGHT STATUTES

A. Physician's Freedom of Conscience

The right of medical personnel to object to a particular treatment for religious reasons carries an outsized weight among the other protections listed in the RLS Report, comprising four of the safeguards.[28] A state with all four safeguards has laws codifying the following: (1) general freedom of conscience for physicians; (2) the right to refuse to perform an abortion; (3) the right to refuse to perform a sterilization; and (4) the right to refuse to distribute contraceptives.[29] Illinois covers all of these safeguards, as well as an exemption from contraception mandates (a bonus safeguard) in a single act: the Health Care Right of Conscience Act.[30]

1. Statutory Overview

The Health Care Right of Conscience Act (hereinafter the "HRCA") begins with a finding that it is Illinois public policy "to respect and protect the right of conscience of all persons who refuse to obtain, receive or accept, or who are engaged in . . . health care services," and to prohibit discrimination on the basis of conscientious objection.[31] This finding is

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[24] *Id.* at 37.

[25] *Id.*

[26] *See generally* 745 ILL. COMP. STAT. 70/1 (1977) (amended 1998); 750 ILL. COMP. STAT. 5/209(a-5), (a-10) (1977) (amended 2014); 235 ILL. COMP. STAT. 5/1-2 (eff. 2025); 735 ILL. COMP. STAT 5/8-803.5 (eff. 2012); 775 ILL. COMP. STAT. 35/15 (eff. 2024); 10 ILL. COMP. STAT. 5/19-2 (eff. 2022); 105 ILL. COMP. STAT. 5/26-1(5) (eff. 2025); 105 Ill. Comp. Stat. 5/27-8.1 (2025).

[27] *See infra* Sections F, G.

[28] RLS 2023, *supra* note 3, at 5 fig. 3. Although the report notes that the magnitude of healthcare-provision safeguards decreased from 2022 to 2023 relative to the rest of the safeguards, in absolute terms it is still the set of safeguards that carries the most weight. *Id.*

[29] *Id.* at 77–79.

[30] 745 ILL. COMP. STAT. 70/1–4 (2024).

[31] *Id.* 70/2.

followed by the two key guarantees of the Act: freedom from liability and discrimination.[32]

Regarding liability, the law states, "[n]o physician or health care personnel shall be civilly or criminally liable . . . by reason of his or her refusal to perform, assist, counsel, suggest, recommend, refer or participate in any way *in any particular form of health care service* which is contrary to the conscience of such physician."[33] This broad language means the law acts as both a general conscience protection for physicians and a specific protection against compelled performance of abortions/sterilizations or provision of contraceptives.[34] The law additionally immunizes the owners of healthcare facilities from liability for refusing to provide forms of healthcare that violate the facility's documented principles.[35] However, individuals and institutions may still be liable for breaching specific contract provisions.[36]

Regarding discrimination, the law prohibits discrimination in hiring, licensing, promotion, and similar privileges because of one's conscientious refusal "to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in a particular form of healthcare . . . ."[37] One provision specifically prohibits employment discrimination on the basis of an individual's conscience,[38] while another protects healthcare payers from licensing discrimination on the basis that the payer will not cover certain procedures.[39] Victims of any type of discrimination may sue and be awarded a minimum of $2,500 per violation as well as attorney's fees.[40]

This statute would earn Illinois a perfect score for the healthcare group in the RLS Report, if not for one notable limitation: the emergency medical care exception.[41] Section 6 of the HRCA lists the duties of a physician that must be provided regardless of conscience.[42] The section

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[32] *Id.* 70/4–5.

[33] *Id.* 70/4 (emphasis added).

[34] *Safeguards*, *supra* note 13. Scanning the columns under the relevant safeguard pages will show that this act earns points for safeguarding the right of conscience objection in all procedures. *See* Peter Hancock, *Pritzker Signs Health Care Right of Conscience Change*, CAP. NEWS ILL. (Nov. 10, 2021), https://capitolnewsillinois.com/news/pritzker-signs-health-care-right-of-conscience-change/ (explaining that the statute broadly protects health care service conscience rights).

[35] 745 ILL. COMP. STAT. ANN. 70/9 (West 2024).

[36] *Id.* 70/13.

[37] *Id.* 70/5.

[38] *Id.* 70/7.

[39] *Id.* 70/11.2–11.4.

[40] *Id.* 70/12.

[41] RLS 2023, *supra* note 3, at 37.

[42] 745 ILL. COMP. STAT. 70/6 (1977) (amended 1998 and 2017). Until 2017, this section was uncontroversial, as the duties were limited solely to acts of prognosis and treatment

concludes by stating that "[n]othing in this Act shall be construed so as to relieve a physician . . . from obligations under the law of providing *emergency medical care*."[43] Because of this emergency exception for abortions, Illinois loses an item in this safeguard.[44] More importantly, this provision creates tension with the rest of the document that became the source of most legal challenges mounted against the statute.[45]

2. Legislative History

The HRCA was enacted on July 29, 1977, but the story of the bill actually began four years earlier.[46] In 1973, the Illinois Legislature passed a law protecting physicians' right to refuse to perform abortions.[47] This Abortion Refusal Act directly followed the landmark Supreme Court case *Roe v. Wade*.[48] Concerns were raised in both houses regarding the breadth of the protection and the civil penalty enforcement mechanism attached to it.[49] Despite this, the bill passed with wide support in both houses, receiving a final vote of 120-7-1 in the House and 37-4-2 in the Senate.[50]

Four years later, the HCRCA entered the scene as House Bill 905, and passed through the House with relatively minor discussion.[51] The bill was pitched as a response to an alleged Supreme Court remark that "the

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recommendation. *See generally infra* section A.2 (discussing the legislative history of the HRCA and its amendments).

[43] *Id.* (emphasis added).

[44] *Health-Care Provision: Abortion Refusal*, *supra* note 15.

[45] *See, e.g.*, Morr-Fitz, Inc. v. Quinn, 2012 IL App (4th) 110398 (holding that the "emergency medical services" clause of Section 6 does not override Section 4 protections for pharmacists who object to distributing "emergency contraceptives").

[46] *Compare* 745 ILL. COMP. STAT. 70/1 (1977) (amended 1998), *with* S. Tran. Reg. Sess. No. 80, at 377 (Ill. June 22, 1977) (statement of Sen. Rock). All state congressional transcripts referenced in this Note, including this one, may be found by going to https://www.ilga.gov/previousga.asp, selecting the appropriate year from the dropdown menu, selecting listing by either the house or senate option, and selecting the appropriate day.

[47] S. Tran. Reg. Sess. No. 80, at 377 (Ill. June 22, 1977) (statement of Sen. Rock).

[48] *See generally* Roe v. Wade, 410 U.S. 113 (1973). This trend will be repeated with other Illinois religious freedom statutes. *See infra* Section III.

[49] *See* H.R. Tran. Reg. Sess. No. 78, at 45–56 (Ill. May 7, 1973) (statements of Reps. Kucharski, Wolfe, Katz, Grotberg, Petrovich, Boyle, Mugalian, and Alsup); S. Tran. Reg. Sess. No. 78, at 15–18, 21–26 (Ill. June 22, 1973) (statements of Sens. Rock, Sours, Glass, Netsch, Saperstein, Fawell, and Wooten). Senator Philip Rock raised particular alarm concerning the lack of an emergency exception. S. Tran. Reg. Sess. No. 78, at 21–22. He would later see to it that his emergency exception would make it into the expanded version of the bill three years later. *Infra* note 56 and accompanying text.

[50] H.R. Tran. Reg. Sess. No. 78, at 56 (Ill. May 7, 1973); S. Tran. Reg. Sess. No. 78, at 25–26 (Ill. June 22, 1973). The notation for final votes is identical to that used in the Illinois legislative transcript and refers to the following: [number of "aye" votes]-[number of "nay" votes]-[number of "present" votes].

[51] H.R. Tran. Reg. Sess. No. 80, at 94–95 (Ill. May 17, 1977) (statement of Rep. Kucharski).

state should individually protect and guarantee the rights of those persons morally and conscientiously opposed to abortions."[52] Although two representatives expressed alarm that the bill was much broader than anticipated,[53] it passed without any further debate and with a final vote of 124-18-0.[54]

The HCRCA was pitched in the Senate as an extension of the 1973 abortion refusal act to broadly codify the physician's right to refuse treatment based on conscientious objection.[55] There was a single floor amendment in the Senate: the emergency services exception in Section 6.[56] This amendment, though it would create problems for future interpretation of the statute,[57] seemingly placated the Senate, which voted almost unanimously in favor of the amended bill.[58] When sent back to the House, the Senate amendment passed without debate, the final vote being 102-13-14.[59]

For roughly forty years following the passage of this bill, physicians exercised the right to refuse performance of certain treatments without significant legal impediment. A single case during this time only clarified that the act covered religious or similar conscientious objections, not those merely rooted in ethical objections.[60] The first amendment to the Act, passed in 1998, was largely formal—merely adusting the Act's language in most provisions to match modern standards.[61] The substantive portion

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[52] *Id.* at 94 (statement of Rep. Kucharski). Although Representative Kucharski attributed this quote to a 1972 Supreme Court ruling, the author has been wholly unsuccessful in finding any quote by the Supreme Court that resembles it.

[53] *Id.* at 94–95 (statement of Rep. Greiman) ("[The bill] indicates to me that . . . we exculpate public officials. Now, if it's limited to private hospitals, I'm in favor of that Bill. But if it talks about public officials . . . I would have to oppose that Bill."). Representative James Houlihan echoed Representative Greiman's concern, but only after it was already too late for his comment to be considered. *Id.*

[54] *Id.* at 95.

[55] S. Tran. Reg. Sess. No. 80, at 377 (Ill. June 22, 1977) (statement of Sen. Rock) ("You will recall that two Sessions ago, we did, in fact, pass a Statute which created this right of conscience for hospitals and medical personnel with respect to the subject of abortion. This bill, frankly, is a little broader.").

[56] H.R. Tran. Reg. Sess. No. 80, at 44–45 (Ill. June 26, 1977) (statement of Rep. Schneider).

[57] *See, e.g.*, Morr-Fitz, Inc. v. Quinn, 2012 IL App (4th) 110398 (two pharmacists and three corporate owners of pharmacies challenge an administrative rule requiring pharmacies to dispense emergency contraception as a violation of the HRCA).

[58] S. Tran. Reg. Sess. No. 80, at 377 (Ill. June 22, 1977) (statement of Sen. Knuppel) ("I think this was a very bad bill which has been made very good with the amendment."). The bill passed the Senate with a vote of 53-1-0. *Id.*

[59] H.R. Tran. Reg. Sess. No. 80, at 44–45. (Ill. June 26, 1977) (statement of Rep. Schneider).

[60] Free v. Holy Cross Hosp., 153 Ill. App. 3d 45, 48, 505 N.E.2d 1188, 1190 (1987).

[61] Act effective Jan. 1, 1998, Ill. Laws 90-246.

of the amendment added protections for healthcare payers who refused to pay for certain procedures.[62]

During its 2015 session, the legislature passed the first of two amendments designed to punch holes in the original statute's protections.[63] This controversial amendment arose from a harrowing case presented to the Senate Judiciary Committee of a young woman forced to endure a painful failed pregnancy because her physician neglected to tell her about abortion services.[64] On the basis of this story, an amendment was written to expand Section 6's mandatory responsibilities of a physician to include informing patients of "legal treatment options . . . and benefits of treatment options."[65] Furthermore, the amendment requires objecting physicians to assist in the transfer of an individual to facilities that will provide treatments.[66]

This amendment was received by a very contentious Senate.[67] Senator Dale Righter argued that it forced crisis pregnancy centers to violate their mission statement by telling patients of the benefits of abortion and assisting patients who wished to be transferred to abortion clinics.[68] Senator Jason Barickman additionally warned that the tension highlighted in the Senate would not go away after the bill's passing.[69] The bill passed the Senate along mostly partisan lines, with a vote of 34-19-0.[70] The House was even more divided on this bill, approving it by only four votes.[71]

Senator Barickman's warning proved correct as crisis pregnancy centers quickly mounted a lawsuit following the passing of the bill.[72] At the time of this writing, the suit remains ongoing.[73] However, the crisis pregnancy centers have been awarded a preliminary injunction, so this amendment does not yet contribute to Illinois's religious freedom score for

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[62] 755 ILL. COMP. STAT. 70/11.2–11.4.

[63] 2016 Ill. Laws 99-690.

[64] S. Tran. Reg. Sess. No. 31, at 183–84 (Ill. Apr. 22, 2015) (statement of Sen. Biss).

[65] 745 ILL. COMP. STAT. 70/6.1.

[66] *Id.* 70/2, 70/6.1(3).

[67] *See* S. Tran. Reg. Sess. No. 31, at 180–205 (Ill. Apr. 22, 2015) (statements of Sen. Biss, Sen. Righter, Sen. Mulroe, Sen. Nybo, Sen. McCarter, Sen. Haine, Sen. Hutchinson, and Sen. Holmes). The bill would only narrowly pass the Senate with a vote of 34-19-0. *Id.* at 207–08.

[68] *Id.* at 188–89 (statement of Sen. Righter). Senator McCarter echoed this point in an admittedly fiery moment of the debate. *Id.* at 194.

[69] *Id.* at 181–82.

[70] *Id.* at 207–08.

[71] H.R. Tran. Reg. Sess. No. 71, at 42 (Ill. July 9, 2015) (statement of Rep. Riley). The final vote was 56-52-0. *Id.*

[72] *See* Nat'l Inst. Fam. & Life Advocs. v. Rauner, No. 16 C 50310, 2017 WL 11570803, at *1, *2 (N.D. Ill. Jul. 19, 2017).

[73] The most recent decision from the court was a denial for motion for summary judgment. *See* Nat'l Inst. Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596 (N.D. Ill. Sept. 3, 2020).

CRCD purposes.[74] The U.S. Supreme Court's decision in *National Institute of Family & Life Advocates v. Becerra* gives some indication that if the Illinois case makes it to the highest court in the country, the injunction will become permanent.[75]

In 2022, in response to the COVID-19 Pandemic, the Illinois Legislature crafted a second and much more dramatic amendment.[76] This amendment created a categorical exception for any mandate or regulation related to decreasing the spread of COVID-19.[77] The scope of this exception swallows the statute itself in some cases, as individuals in non-healthcare settings have also lost the ability to refuse to comply with COVID-19 related mandates.[78] Plenty of litigation has resulted from this new amendment, but the result has been unanimous: this exception trumps all free exercise claims brought against it.[79] The threat to free exercise that this amendment represents has not yet affected Illinois's score on the RLS Report,[80] but given time, this may be the source of Illinois's fall from first place.

B. Minister's Right of Conscientious Objection

The "Marriage & Wedding" group is composed of three safeguards that all relate broadly to an individual's right to refuse to participate in a wedding that violates one's religious convictions.[81] A state gets all three safeguards in this group if its laws guarantees (1) the right of ministers and religious organizations to refuse to perform or host weddings while protecting the tax exemption status of organizations that so refuse; (2) the right of public officials to refuse to perform weddings; and (3) the right of third-party businesses to refuse to offer services for weddings that violate

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[74] *Rauner*, 2017 WL 11570803, at *1.

[75] *See generally* Nat'l Inst. Fam. & Life Advocs. v. Becerra, 585 U.S. 755, 778–79 (2018) (holding that a California law requiring crisis pregnancy centers to advertise abortion clinics violated the clinics' freedom of speech).

[76] 745 ILL. COMP. STAT. 70/13.5 (2022).

[77] *Id.* ("It is not a violation of this Act for any person or public official, or for any public or private association, agency, corporation, entity, institution, or employer, to take any measures or impose any requirements, . . . intended to prevent contraction or transmission of COVID-19 or any pathogens that result in COVID-19 or any of its subsequent iterations. It is not a violation of this Act to enforce such measures or requirements.").

[78] *Id.*

[79] *See* Krewionek v. McKnight, 2022 IL App (2d) 220078, ¶¶ 18, 24, 38; Glass v. Dep't of Corr., 2023 IL App (4th) 230116, ¶¶ 5–6, 28–30, 33–35; Graham v. Pekin Fire Dep't, 2022 IL App (4th) 220270, ¶¶ 15, 17, 31; Goodrich v. Good Samaritan Reg'l Health Ctr., 2023 IL App (5th) 220510-U, ¶¶ 13, 18.

[80] RLS 2023, *supra* note 3, at 2.

[81] *Id.* at 82–83.

their religious convictions.[82] Eighteen states have passed a law that provides at least one of these safeguards.[83]

The bulk of these statutes were enacted between 2012 and 2016, the years surrounding the Supreme Court's landmark decision on same-sex marriage, *Obergefell v. Hodges*.[84] Thus, these statutes originated when the focus was primarily on legalizing same-sex marriage, rather than protecting religious freedom. The free exercise safeguards were often a byproduct of compromise between two sides of the same-sex marriage debate.[85] As the subsection below discusses, Illinois is one such state: its ministerial conscience law arose as part of a 2014 bill granting state recognition of same-sex marriage.[86]

1. Statutory Overview

On the day of the House debate over the 2014 marriage law amendment, Representative Jeanne Ives declared, "[t]he fact is that this

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[82] *Id.* This first safeguard is composed of three items: right of ministers to refuse, right of organizations to refuse, and protection of tax exemption status.

[83] These states, aside from Illinois, are California, Connecticut, Delaware, Florida, Hawaii, Maine, Maryland, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Rhode Island, Texas, Utah, and Washington. CAL. FAM. CODE § 400 (Deering, 2012); CONN. GEN. STAT. ANN. § 46b-22b (West, 2009); DEL. CODE ANN. tit. 13, § 106(f) (2013); FLA. STAT. ANN. § 761.061 (LexisNexis 2016); HAW. REV. STAT. ANN. § 572-12.1 (LexisNexis 2013); ME. REV. STAT. ANN. tit. 19-A, § 655 (West, 2009); 2012 Md. Laws 13; MISS. CODE ANN. § 11-62-5(1), (5), (8) (2016); NEV. CONST. art. I, §21 (2020); N.H. REV. STAT. ANN. § 457:37 (LexisNexis 2010); N.Y. DOM. REL. LAW § 10-b (LexisNexis 2011); N.C. GEN. STAT. ANN. § 51-5.5 (West, 2015); OKLA. STAT. ANN. tit. 43, § 7.1 (2015); 15 R.I. GEN. LAWS § 15-3-6.1 (2013); TEX. FAM. CODE ANN. § 2.601 (2015); UTAH CODE ANN. § 63G-20-301 (LexisNexis 2015); WASH. REV. CODE ANN. § 26.04.010(4)–(6) (LexisNexis 2012).

[84] Obergefell v. Hodges, 576 U.S. 644 (2015). The states that passed laws on marriage equality and ministerial right of refusal prior to *Obergefell* are as follows: California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Nevada, New Hampshire, New York, Rhode Island, and Washington. *See* CAL. FAM. CODE § 400 (2012); CONN. GEN. STAT. ANN. § 46b-22b (West, 2009); DEL. CODE ANN. Tit. 13, § 106(f) (2013); HAW. REV. STAT. ANN. § 572-12.1 (LexisNexis 2013); 750 ILL. COMP. STAT. 5/209 (2014); ME. REV. STAT. ANN. Tit., 19-A § 655 (West, 2009); 2012 Md. Laws 13; NEV. CONST. art. I, § 21 (2020); N.H. REV. STAT. ANN. § 457:37 (LexisNexis 2010); N.Y. DOM. REL. LAW § 10-b (LexisNexis 2011); 15 R.I. GEN. LAWS § 15-3-6.1 (2013); WASH. REV. CODE ANN. § 26.04.010(4)–(6) (LexisNexis 2012). Although not particularly surprising given the partisan split over same-sex marriage, this does lead to an interesting incidental effect where it was only after the *Obergefell* decision that any red states felt they needed to safeguard the right to refuse to perform wedding ceremonies that violated one's conscience.

[85] *See generally* Douglas Laycock & Thomas C. Berg, *Protecting Same-Sex Marriage and Religious Liberty*, 99 VA. L. REV. ONLINE 1, 1, 5 (2013) (explaining how the legislative process resulted in religious liberty protections enacted alongside legalizing same-sex marriage); Robin Fretwell Wilson & Anthony Michael Kreis, *Embracing Compromise: Marriage Equality and Religious Liberty in the Political Process*, 15 GEO. J. GENDER & L. 485, 491–94 (2014) (discussing the inherent link of personal liberty between religious liberty protections and marriage equality).

[86] *Infra* Section B.2.

bill is the worst in the U.S. for protecting religious liberty."[87] In truth, Illinois's statute is completely average in protecting religious liberty when compared to its peers, earning only one of the three safeguards available in this group.[88] The law says that officiants "have total right to refuse to solemnize a wedding, and their refusal may not be used as a basis for any cause of action."[89] Furthermore, "No church [or similar religious organization] whose principal purpose is the study, practice, or advancement of religion is required to provide religious facilities for the solemnization ceremony or [associated celebrations] if [said ceremony or celebrations] is in violation of its religious beliefs."[90] Notably, the statute explicitly rejects the extension of these protections to any "businesses, health care facilities, educational facilities, or social service agencies."[91]

These protections together create one of three available safeguards recognized by the RLS Report.[92] This is—by far—the most common score among the eighteen states that have relevant statutes.[93] Nearly all states who safeguard the right to refuse performing wedding ceremonies are limited to protecting religious ministers and/or organizations, with three noteworthy exceptions.[94]

Mississippi is the only state to have all three safeguards; it is the only state to protect the rights of businesses and other third parties to refuse to participate in wedding ceremonies against their religious convictions.[95]

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[87] Monique Garcia & Ray Long, *Lawmakers Approve Gay Marriage in Illinois*, CHI. TRIB. (Nov. 5, 2013, 10:51 PM), https://www.chicagotribune.com/2013/11/05/lawmakers-approve-gay-marriage-in-illinois-3/; H.R. Tran. Reg. Sess. No. 76 at 10 (Ill. Nov. 5, 2013) (statement of Rep. Jeanne Ives).

[88] RLS 2023, *supra* note 3, at 37; *see also infra* Section B.2.

[89] 750 ILL. COMP. STAT. 5/209(a-5) (1977) (amended in 2014).

[90] *Id.* 5/209(a-10).

[91] *Id.*

[92] RLS 2023, *supra* note 3, at 37.

[93] *Id.* at 2 tbl.1. Eighteen states have safeguards in this area, but twelve of those eighteen only have one of the three safeguards in place. *Compare Marriage & Weddings: Religious Entity Refusal*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/marriage-weddings-refusal-of-religious-entities/ (last visited Apr. 24, 2024), *with Marriage & Weddings: Public Official Refusal*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/marriage-weddings-recusal-of-public-officials/ (last visited Apr. 24, 2024), *and Marriage & Weddings: For-Profit Business Nonparticipation*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/marriage-weddings-non-participation-of-for-profit-business/ (last visited Apr. 24, 2024).

[94] RLS 2023, *supra* note 3, at 2 tbl.1, 48, 57, 68 (noting that Mississippi, North Carolina, and Utah are the three exception states).

[95] MISS. CODE ANN. § 11-62-5(1), (5), (8) (2016). Mississippi is unique for having the most expansive religious liberty protections in controversial areas while neglecting to implement relatively non-controversial protections, leading to an overall rank of 4th place. RLS 2023, *supra* note 3, at 48. It is the opinion of this author that Mississippi has the best chance of any state at usurping Illinois as the state with the greatest free exercise protections.

Utah follows close behind Mississippi with a score of two, only missing the safeguard for third-party businesses.[96] Finally, North Carolina is the only state whose laws *only* protect the right of public officials to recuse from solemnization duties based on religious conviction.[97] Putting aside these three unique statutes, all of which followed *Obergefell*,[98] Illinois's statute remains just as robust as every other state that has passed laws in this group.

2. Legislative History

Illinois's law protecting a minister's right of conscientious objection originated in 2014 in the Religious Freedom and Marriage Fairness Act.[99] The Act contained two amendments to the Marriage and Marriage Dissolution Act: the first recognized same-sex marriage and the second added the safeguard language discussed above.[100] The bill originated in the Senate, where it was indicated that the narrow scope of the free exercise protections was an intentional choice by its drafters.[101] The limits of the free exercise protection in the bill were first noted in an exchange between Senator Mattie Hunter and Senator Heather Steans—the bill's sponsor—wherein Senator Hunter directly asked Senator Steans about protections for third-party businesses.[102] Senator Steans answered that the bill affirmatively excluded businesses its protections.[103] This prompted Senator Dan Duffy to voice concerns about the motives behind the new protections and how that impacted potential longevity of those protections.[104] Senator Dale Righter additionally expressed concerns that

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[96] UTAH CODE ANN. § 63G-20-301 (LexisNexis 2015). Utah ranks eleventh in the nation at protecting religious liberty. RLS 2023, *supra* note 3, at 68.

[97] *See* RLS 2023, *supra* note 3, at 2 tbl.1; N.C. GEN. STAT. ANN. § 51-5.5 (West, 2015). North Carolina ranks thirty-fifth in the nation at protecting religious liberty. RLS 2023, *supra* note 3, at 57.

[98] MISS. CODE ANN. § 11-62-5(1), (5), (8) (2016); N.C. GEN. STAT. ANN. § 51-5.5 (West, 2015); UTAH CODE ANN. § 63G-20-301 (LexisNexis 2015).

[99] Press Release, *Governor Quinn Announces First Day of Marriage Equality*, ILLINOIS.GOV (June 2014), https://www.illinois.gov/news/press-release.12288.html.

[100] The Religious Freedom and Marriage Fairness Act, ch. 40, sec. 905, §§ 201, 209, 2013 Ill. Laws 597. The combination of these two amendments gave the bill its name of "The Religious Freedom and Marriage Fairness Act."

[101] *See* S. Tran. Reg. Sess. No. 12, at 5–13 (Ill. Feb. 14, 2013) (statement of Sen. Steans).

[102] *Id.* at 12 (statement of Sen. Hunter) ("The next question is, can an individual or business refuse to provide facilities for the celebration of a same-sex marriage?").

[103] *Id.* (statement of Sen. Steans) ("No. The bill carves out a specific exemption for religious facilities . . . However, the definition of religious facility does not extend to businesses, health care facilities, educational facilities, or social service agencies."); *see also* 750 ILL. COMP. STAT. 5/209(a-10) (1977) (amended in 2014).

[104] S. Tran. Reg. Sess. No. 12, at 18 (statement of Sen. Duffy) ("This bill originally ignored the Constitution and trampled on our religious liberties. Even though wording was eventually tweaked . . . I'm concerned that this bill, once passed, will be amended in the future . . . to change the wording back to the original version.").

the bill's language in defining a "religious organization" was too vague to amount to real protection.[105] Notwithstanding these concerns, the bill passed a very divided Senate with a vote of 34-21-2.[106]

The debate in the House focused instead on the same-sex marriage legalization issue rather than the religious free exercise protections in the bill.[107] The two notable exceptions were Representatives David Reis and Linda Chapa LaVia. Representative Reis argued that the bill's failure to protect the rights of judges and clerks meant that it failed to protect those most in need of right to recusal.[108] Representative Chapa LaVia, on the other hand, made the rather unique argument that the legalization of same-sex marriage was itself a protection of religious free exercise as it allowed churches to perform ceremonies if they wished.[109] With every other speaker focused on the same-sex marriage debate, the bill narrowly passed the House with a final vote of 61-54-2, making Illinois the last state to adopt such a law prior to *Obergefell*.[110]

C. The Use of Alcohol at Religious Ceremonies

The 2023 edition of the RLS Report includes a new group entitled, "Religious Ceremonial Life."[111] This group is composed of two safeguards: (1) laws protecting the use of alcohol in religious ceremonies and (2) laws preserving clergy-penitent privilege.[112] The religious use of alcohol

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[105] *Id.* at 38 (statement of Sen. Righter) ("The pastor back home in the small church that's got the room in the basement is going to have to ask himself or herself and their board, what keeps us clear in the category of a religious facility as opposed to an education facility[?] . . . I don't know. . . . I don't think Senator Steans knows. Therein lies the problem.").

[106] *Id.* at 62.

[107] *See* H.R. Tran. Reg. Sess. No. 76, at 3–72 (Ill. Nov. 5, 2013) (statements of Rep. Harris, Rep. Reboletti, Rep. Sullivan, Rep. Zalewski, Rep. Morrison, Rep. Williams, and Rep. Ives).

[108] *Id.* at 41, 43 (statement of Rep. Reis) ("[L]et's start with who would sanctify [same sex] marriages. Sure, there's priests and pastors and rabbis, they're going to be exempt, but what about judges? [I have] three judges in my district . . . They're going to call me. Where's my religious individual freedoms? They're not in [the bill].") Representative Reis also briefly touched on concerns about protections for third-party businesses and echoed Senator Righter's concern that the definition of religious facility was too vague. *Id.* at 41–45.

[109] *Id.* at 47–48 (statement of Rep. LaVia) ("[M]any other Christian leaders in my . . . [d]istrict . . . have come to my office and make it very clear that now, right now, the government is blocking their religious freedom to marry people within their religious doctrine. . . . This [b]ill strengthens religious freedom."). This argument seems suspect at best, as churches were not barred from performing these ceremonies prior to the law being passed; the law only granted equal legal status to homosexual and heterosexual marriages.

[110] *Id.* at 72; L.A. Times Staff, *Gay Marriage*, L.A. TIMES (June 26, 2015), https://timelines.latimes.com/gay-marriage/. No cases have been raised under this specific provision of the Illinois marriage statute, leading the Author to believe the safeguard has been enforced by the lower courts.

[111] RLS 2023, *supra* note 3, at 83.

[112] *Id.*

safeguard contains two items: (1) protection of the clergy's right to furnish minors with alcohol during religious ceremonies and (2) protection of the minor's right to consume alcohol during religious ceremonies.[113] Illinois gets the full point for this safeguard, having a complete law that protects all parties in a ceremonial use of alcohol.

Among the thirty-two states that have some kind of protection in this area, Illinois is in the clear majority with an unremarkable, albeit complete, law.[114] What is remarkable is that ten of those thirty-two states only protect *one* of the parties to these ceremonies.[115] This leads to the bizarre result where a minor in Arkansas, Indiana, Kansas, Pennsylvania, or Wisconsin could be charged for underage alcohol consumption in a religious ceremony even though the minister is protected from charges of illegal furnishment.[116] More bizarre still is the fact that clergymen in Colorado, Louisiana, Michigan, Nevada, and South Dakota are liable for furnishing alcohol to minors, even though the minors themselves are allowed to consume alcohol in this context.[117] While it is unlikely that officers will ever kick down a parish door on a Sunday morning and arrest priests or young congregants for violating state liquor laws, it is nonetheless perplexing that such an absurd legal cause of action exists in almost half of the country.[118]

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[113] *Id.*

[114] *Religious Ceremonial Life: Ceremonial Use of Alcohol by Minors*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/religious-ceremonial-life-ceremonial-use-of-alcohol/ (last visited Mar. 22, 2024). Twenty-two other states also protect both parties: Arizona, Connecticut, Delaware, Georgia, Hawaii, Iowa, Maryland, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Washington, and Wyoming. *Id.*

[115] *Id.* These states are as follows: Arkansas, Colorado, Indiana, Kansas, Louisiana, Michigan, Nevada, Pennsylvania, South Dakota, and Wisconsin. *Id.*

[116] *See* ARK. CODE ANN. § 3-3-202 (2024); IND. CODE §§ 7.1-1-2-3 (2024); KAN. STAT. ANN. § 21-5607 (2011); 18 PA. CONS. STAT. § 6310.1 (amended 1988); WIS. STAT. § 125.07 (2023).

[117] *See* COLO. REV. STAT. § 18-13-122 (eff. 2025); LA. STAT. ANN. § 14:93.10 (2015); MICH. COMP. LAWS § 436.1703 (eff. 2018); NEV. REV. STAT. § 202.020 (1967); S.D. CODIFIED LAWS § 35-9-2 (1939). The Author is most surprised that Louisiana, as Catholic as it is, has an incomplete law in this area. *See* Joyce Chepkemoi, *US States by Population of Catholics*, WORLDATLAS (Apr. 3, 2019), https://www.worldatlas.com/articles/us-states-by-population-of-catholics.html (noting that 26% of Louisiana is Catholic, making it 9th in the nation for highest percentage of Catholics).

[118] *Id.* Thirteen states lack any such protections in this area whatsoever, while ten states have only incomplete protections, meaning there are inadequate protections in twenty-three states. *Id.*

1. Statutory Overview

The Illinois Liquor Control Act of 1934 regulates all sale, use, and creation of alcohol in the state.[119] There are two pertinent sections of the Act that safeguard this area of religious liberty. First, Section 6-16, which enforces the minimum drinking age, specifically exempts religious ceremonies from prohibitions on furnishing alcohol to minors.[120] Second, Section 6-20(g) states that "[t]he possession and dispensing, or consumption by a person under 21 years of age of alcoholic liquor in the performance of a religious service or ceremony . . . is not prohibited by this Act."[121] Together these sections protect both items and award Illinois the safeguard point.[122]

2. Legislative History

Statutory exemptions for religious uses of alcohol have existed as far back as the decades leading up to the prohibition on alcohol.[123] Justice Blackmun acknowledged as much in his dissent in *Employment Division v. Smith*, where he noted, "[d]uring Prohibition, the Federal Government exempted [sacramental use] of wine from its general ban on possession and use of alcohol."[124] Justice Blackmun's comment referred particularly to Sections 3 and 6 of Title II of the Volstead Act, which exempted "wine for sacramental purposes" from the Eighteenth Amendment's prohibition on alcohol.[125] Section 6 of the Act went so far as to recognize an exemption for "wine for sacramental purposes, *or like religious rites*," implying the authors sought to protect more than the Catholic version of the Eucharist.[126] This broad federal exemption came about within a state legislative culture that already recognized religious exemptions to alcohol regulation.[127]

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[119] 235 ILL. COMP. STAT. 5/1-2 (eff. 2025).

[120] *Id.* 5/6-16(a-1), (c) ("Nothing in this subsection . . . shall be construed to prohibit the *giving* of alcoholic liquor to a person under the age of 21 years in the performance of a religious ceremony or service in observation of a religious holiday.") (emphasis added).

[121] *Id.* 5/6-20(g).

[122] *Religious Ceremonial Life: Ceremonial Use of Alcohol by Minors*, *supra* note 114.

[123] Michael deHaven Newsom, *Some Kind of Religious Freedom: National Prohibition and the Volstead Act's Exemption for the Religious Use of Wine*, 70 BROOK. L. REV. 739, 741–43 (2005).

[124] Emp. Div., Dep't. of Hum. Res. of Or. v. Smith, 494 U.S. 872, 913 n.6 (1990).

[125] *Id.*; U.S. CONST. amend. XVIII, § 2; National Prohibition Act tit. II, §§ 3, 6, 41 Stat. 308 (1919).

[126] National Prohibition Act tit. II, § 6, 41 Stat. 305, 311 (1919) (emphasis added); Newsom, *supra* note 123.

[127] Newsom, *supra* note 123, at 747 ("Exemptions for the religious use of wine by Christians were fairly common [in the nineteenth and early twentieth centuries].").

Illinois was one such state that recognized religious exemptions to alcohol prohibitions as early as the 1880s.[128] Following the passage of the Twenty-First Amendment and the end of Prohibition, Illinois swiftly enacted the Liquor Control Act of 1934.[129] Pinning down exactly when the religious language entered the statute is difficult, as there is no online access to those early sources. Further archival research would be required to locate exactly when the language originates, but this is likely one of Illinois's oldest protections of religious liberty.[130]

D. Clergy Privilege & Exemption from Mandatory Reporting

The second safeguard falling under the "Religious Ceremonial Life" group deals with legal protections of the Catholic sacrament of Confession and similar practices.[131] Confession, the sacrament in which a penitent individual privately confesses their sins to a priest, is protected under Catholic canon law with a "sacramental seal [that] is inviolable."[132] Priests are absolutely forbidden from revealing any information confessed to them, which can come into conflict with laws mandating professionals report any suspicions of child abuse the moment they arise.[133]

The right of priests to refuse to testify to testimony elicited during confession (hereafter "clergy privilege") was first introduced into American law in the 1813 New York case, *People v. Phillips*.[134] States slowly codified the privilege until it gained recognition in every

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[128] *Id.* at 796 n.284 (citing Revised Statutes of the State of Illinois, ch. 24, art. V, pt. 62 § 1 (1885) as an example of a sacramental wine exemption in the nineteenth century). Interestingly, the federal and state law report created by an architect of the prohibition Wayne Wheeler did not mention anything about this statute in reviewing Illinois. FEDERAL AND STATE LAWS RELATING TO INTOXICATING LIQUOR 30–31 (Wayne B. Wheeler, compiler, 1916).

[129] U.S. CONST. amend. XXI (1933); 235 ILL. COMP. STAT. 5/1-1 (1934).

[130] The only relevant case demonstrates the statute included this provision at least as far back as the 80s; the author infers that the language came into existence around the 60s, when the state established a minimum drinking age. *See* City of Park Ridge v. Larsen, 166 Ill. App. 3d 545, 549, 519 N.E.2d 1177, 1180 (1988) (rejecting defendant's citation to the religious exemption in the 1985 version of the law, since the defendant was clearly drinking at a party and not a religious ceremony).

[131] RLS 2023, *supra* note 3, at 83. Although this safeguard protects all ministers performing a function similar to that of the Catholic confessional, the privilege clearly has its roots in protecting a specifically Catholic practice. As such, the Author has chosen to call the privilege the "clergy privilege" and focus on its application in a Catholic setting, even though it very well may be called the "ministerial privilege" and be discussed in a more general setting.

[132] 1983 CODE C. 959, 983, § 1.

[133] 1983 CODE C. 984, § 1; Mark Hall, *Breaking Faith*, L. & LIBERTY (Jan. 27, 2021), https://lawliberty.org/breaking-the-seal-of-confession/.

[134] *See* Hall, *supra* note 133 (noting that prior to this New York case, the idea of clergy immunity did not exist in American law).

jurisdiction in the nation.[135] However, by the dawn of the twenty-first century, an ever-increasing number of child sexual abuse scandals in the Catholic Church led to a widespread movement across the nation to add clergy to the list of mandatory reporters.[136] Although these laws address a horrific problem, they have the potential to force clergy to choose between following state or canon law.[137] The RLS Report considers a state to have this safeguard if its law either continues to exempt clergy from mandatory reporting or at least preserves clergy privilege in the context of Confession despite making clergy mandatory reporters.[138]

1. Statutory Overview

Illinois's law takes the second approach and narrowly preserves clergy privilege for certain situations while generally making clergy mandatory reporters.[139] Clergy privilege is codified in Section 8-803 of the Illinois Civil Procedure Code, which reads as follows:

> A clergyman or practitioner of any religious denomination . . . shall not be compelled to disclose in any court, or to any administrative board or agency, or . . . public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.[140]

This language specifically protects testimony provided to a clergy or spiritual advisor in their specific professional capacity, rather than broadly exempting clergy from ever having to testify.[141] This helps sidestep potential problems in reading this law alongside the mandatory

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[135] *Id.*

[136] *See* Caroline Donze, *Breaking the Seal of Confession: Examining the Constitutionality of the Clergy-Penitent Privilege in Mandatory Reporting Law*, 78 LA. L. REV. 267, 280–82 (2017).

[137] Hall, *supra* note 133.

[138] RLS 2023, *supra* note 3, at 84.

[139] *See infra* notes 140–144 and accompanying text; *see also* RLS 2023, *supra* note 3, at 31, 38, 48, 51, 53–54 57, 60, 63, 66–67, 72, 74. Only thirteen states do not preserve clergy privilege in their state code. Nine of those states—Indiana, Nebraska, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Wyoming—have broad mandatory reporter statutes that do not recognize clergy privilege. The remaining four states—Connecticut, Mississippi, New Hampshire, and West Virginia—include clergy among lists of mandatory reporters but do not recognize clergy privilege. *Id.*

[140] 735 ILL. COMP. STAT. 5/8-803 (1982).

[141] *Id.*

reporting requirement.[142] To further prevent conflicts, the mandatory reporting statute explicitly acknowledges the clergy privilege.[143] This preservation of the clergy privilege, despite a mandatory reporting statute, ensures that Illinois receives full credit for this safeguard.[144]

2. Legislative History

The modern clergy privilege first appeared in Illinois's 1982 consolidation of state civil procedure law.[145] After being approved by the Illinois and Chicago Bar Associations, the bill passed unanimously in the House without any discussion.[146] The bill then passed unanimously in the Senate after a clarification that the bill merely consolidated preexisting practices into a unified document.[147]

Illinois's mandatory reporting law was enacted in a markedly less straightforward manner. The bill originated from the Coalition Against Domestic Violence in 2002 with the goal of reforming criminal penalties.[148] When the bill unanimously passed in the House for the first time, it "increase[d] the penalty for second or subsequent convictions for domestic battery or violating an order of protection from a Class IV felony to a Class III felony."[149]

Upon reaching the Senate, however, the bill was overhauled by Senator Dan Cronin to include clergy amongst professionals required to report whenever suspected child abuse or neglect disclosed to or witnessed by them in their professional capacity.[150] Senator Cronin adamantly insisted that the clergy privilege would still remain for testimony elicited during religious confessionals.[151] After a brief exchange further clarifying that the bill would not change clergy privilege "one iota," the bill passed unanimously.[152]

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[142] *See* 325 ILL. COMP. STAT. 5/4(a)(9), (e) (2023) ("Whenever such person is required to report under this Act in the person's capacity . . . as a member of the clergy, the person shall make report immediately to the Department.").

[143] *Id.* 5/4(g) ("A member of the clergy may claim the privilege under Section 8-803 of the Code of Civil Procedure.").

[144] RLS 2023, *supra* note 3, at 37.

[145] 735 ILL. COMP. STAT. ANN. 5/8-803 (West 1982).

[146] H.R. Tran. Reg. Sess. No. 42, at 23 (Ill. May 15, 1981). The vote was 152-0-0. *Id.*

[147] S. Tran. Reg. Sess. No. 62, at 101 (Ill. June 18, 1981). The vote was 55-0-0. *Id.*

[148] H.R. Tran. Reg. Sess. No. 115, at 253 (Ill. Apr. 5, 2002) (statement of Rep. Bellock).

[149] *Id.*

[150] *See* S. Tran. Reg. Sess. No. 95, at 54 (Ill. May 9, 2002) (statement of Sen. Cronin); 325 ILL. COMP. STAT. 5/4(a)(9) (2023); Act of Aug. 16, 2002, Pub. Act 92-801 § 3; 2002 Ill. Laws 2739.

[151] S. Tran. Reg. Sess. No. 95, at 54 (Ill. May 9, 2002) (statement of Sen. Cronin) ("You should know that we have preserved the sanctity of the privilege, the priest penitent, the confession, the minister communication. We recognize that there is a ministry that religion . . . has, in helping people . . . [a]nd we don't want to intrude.").

[152] *Id.* at 55 (statement of Sen. Cronin, responding to Sen. Sullivan).

The renewed debate in the House over the approval of the overhauled bill demonstrates both the broad consensus among religious organizations that coalesced behind its passage and the skepticism within the Illinois government about its efficacy.[153] On the one hand, the bill was supported by "[t]he Catholic Conference, the Agudath Israel of America, [and many] Episcopal, Presbyterian, African Methodist, [and] American Baptist [organizations]."[154] On the other hand, certain representatives expressed concern that preserving the clergy privilege defeated the purpose of adding the profession to the mandatory reporter statute in the first place.[155] Despite this, the bill concluded its legislative circuit with an impressive record of never receiving a 'nay' vote in either house.[156]

Courts continued recognizing clergy privilege in 2002 despite the passage of the mandatory reporting statute.[157] To ease the tension between the two statutes, courts narrowly interpret Section 8-803 to only apply to confidential admissions or confessions "(1) made for the purpose of receiving spiritual counsel or consolation" or "(2) to a clergy member whose religion requires him to receive admissions or confessions for the purpose of providing spiritual counsel."[158] A review of the case law shows that privilege challenges do not arise from priests who believed that the court forced them to violate their convictions but rather from defendants who wanted to keep priests and pastors from testifying (the majority of whom lost because the communication was never confidential nor made to the clergyman as a counselor).[159]

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[153] *See* H.R. Tran. Reg. Sess. No. 135, at 17–26 (Ill. May 23, 2002) (discussion between Clerk Bolin, Speaker Madigan, Rep. E. Lyons, Rep. Dart, Rep. Mulligan, Rep. Lang, and Rep. Bellock).

[154] *Id.* at 17 (statement of Rep. E. Lyons).

[155] *Id.* at 20 (statement of Rep. Mulligan) ("[T]he Bill is not quite as strong as I would . . . like it to be."); *see also id.* at 24–25 (statement of Rep. Lang) ("[W]hen would the perpetrator, if they could report it to another clergyperson within the confines of the confessional and be sure that it would not be reported to law enforcement . . . [e]ver tell them outside the confines?"). Although both of these representatives ended up voting for the bill, both expressed that their vote was to support something being done, rather than the specific solution offered in the bill. *Id.*

[156] The final vote in the House was 114-0-0 and 56-0-0 in the Senate. *Id.* at 26 (statement of Speaker Madigan); S. Tran. Reg. Sess. No. 95, at 55 (Ill. May 9, 2002) (statement of Sen. Donahue).

[157] *Infra* note 159 and accompanying text.

[158] People v. Campobello, 810 N.E.2d 307, 319–21 (Ill. App. Ct. 2004) (holding that clergy privilege only applied to confidential confessions and admissions and rejecting a broader reading of the statute).

[159] *See, e.g.*, People v. Chapman, 2017 IL App (3d) 140878-U, ¶ 36 (finding clergy privilege did not apply because there was no evidence the communication was confidential or made with intent to seek counsel); People v. Peterson, 2015 IL App (3d) 130157, ¶¶ 198–99 (finding that clergy privilege did not apply because no church bylaw or doctrine mandated confidentiality for confessions made during counseling), *aff'd*, 2017 IL 120331; *see also* People

E. A State Religious Freedom Restoration Act

In 1990, the United States Supreme Court delivered its opinion in *Employment Division v. Smith* and kicked off a brief era of unprecedented bipartisanship that some have termed the "Lobbying Nineties."[160] The decision altered the test used to determine when the government violated one's free exercise of religion.[161] Prior to *Smith*, the Court in *Sherbert v. Verner* held that the government violated free exercise of religion whenever it burdened someone's practices flowing from sincerely held religious beliefs, unless the government showed that its regulation was the least restrictive means necessary to protect a compelling interest.[162] The *Smith* decision unceremoniously abandoned this approach,[163] and in doing so, inspired a torrential downpour of academic articles decrying the new decision.[164]

The outcry was not limited to the academy, as a national movement arose to reverse the decision in *Smith*.[165] The profoundly bipartisan nature of this movement is highlighted in the names of the signatories to

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v. Bole, 585 N.E.2d 135, 147 (Ill. App. Ct. 1991) (finding clergy privilege did not apply because the minister explicitly told the defendant he was not acting as a counselor before defendant confessed). *But see* People v. Burnidge, 664 N.E.2d 656, 659 (Ill. App. Ct. 1996) (finding clergy privilege applied to a private session between the defendant and a pastor-psychologist who incorporated faith in his practice).

[160] Emp. Div., Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872, 921 (1990); Bradley P. Jacob, *Free Exercise in the "Lobbying Nineties,"* 84 NEB. L. REV. 795, 796 (2006).

[161] *Smith*, 494 U.S. at 879 ("[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and *neutral law of general applicability* on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'") (emphasis added).

[162] Jacob, *supra* note 160, at 806; Sherbert v. Verner, 374 U.S. 398, 402–03 (1963). This standard was applied in a number of cases leading up to the Smith decision. *E.g.*, Wisconsin v. Yoder, 406 U.S. 205, 221–36 (1972); Thomas v. Rev. Bd. of Ind. Emp. Sec. Div., 450 U.S. 707, 718 (1981).

[163] *Smith*, 494 U.S. at 883 ("We have never invalidated any governmental action on the basis of the *Sherbert* test except the denial of unemployment compensation.").

[164] *E.g.*, HLRA, *Religious Exemptions from Generally Applicable Laws*, 104 HARV. L. REV. 198, 199, 201–02, 204–05, 208–09 (1990); Richard K. Sherwin, *Rhetorical Pluralism and the Discourse Ideal: Countering* Division of Employment v. Smith*, A Parable of Pagans, Politics, and Majoritarian Rule*, 85 NW. U. L. REV. 388, 392–93 (1991); John Delaney, *Police Power Absolutism and Nullifying the Free Exercise Clause: A Critique of* Oregon v. Smith, 25 IND. L. REV. 71, 71–72, 74–75 (1991); David E. Steinberg, *Rejecting the Case Against the Free Exercise Exemption: A Critical Assessment*, 75 B.U. L. REV. 241, 244–45 (1995); Douglas M. Wright, Jr., *Constitutional Law–First Amendment–Free Exercise Clause–Expression of Cultural and Religious Heritage is not Grounds for Denial of Unemployment Compensation*, 61 MISS. L.J. 223, 225–26 (1991); Sandra Ashton Pochop, Note, Employment Division, Department of Human Resources of Oregon v. Smith*: Religious Peyotism and the "Purposeful" Erosion of Free Exercise Protections*, 36 S.D. L. REV. 358, 359–60 (1991); Michael Farris & Jordan Lorence, Employment Division v. Smith *and the Need for the Religious Freedom Restoration Act*, 6 REGENT U. L. REV. 65, 65–67 (1995).

[165] Jacob, *supra* note 160, at 814.

the petition for rehearing submitted to the Court almost immediately following *Smith*,[166] which brought together such organizations as the American Civil Liberties Union, National Council of Churches, Christian Legal Society, American Jewish Congress, and Americans United for Separation of Church and State.[167] In Congress, this whirlwind of bipartisanship led to the rapid passage of the Religious Freedom Restoration Act ("RFRA") in 1993.[168] RFRA was a straightforward law: it returned free exercise decisions back to the *Sherbert* test.[169] This legislative victory proved only partial, however, as the Supreme Court struck down RFRA's application to state governments only four years later in *City of Boerne v. Flores*.[170]

City of Boerne led to a split among free exercise advocates as to how best to continue resisting the *Smith* decision.[171] Federal advocates continued to push for federal legislation, culminating in the passage of the Religious Land Use and Institutionalized Persons Act in 2000.[172] State legislatures, on the other hand, passed their own codifications of RFRA to circumvent the *City of Boerne* ruling.[173] The RLS Report is interested in the latter approach: a particular state is considered to have this safeguard if it has passed its own version of the RFRA statute.[174]

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[166] *Id.* at 814–15 n.90.

[167] *Id.*; s*ee Smith*, 494 U.S. 872, *reh'g denied*, 496 U.S. 913, 913 (1990) (No. 88-1213).

[168] Jacob, *supra* note 160, at 822 ("RFRA was passed by a unanimous voice vote in the House . . . an amended version [passed in] the Senate . . . by a vote of ninety-seven to three. The House accepted the Senate amendment, again by unanimous voice vote.").

[169] 42 U.S.C.A. § 2000bb-1(b) (West); Sherbert, 374 U.S. at 402–03.

[170] City of Boerne v. Flores, 521 U.S. 507, 507 (1997). RFRA is still valid as it applies to the federal government, however. *E.g.*, Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 717–20 (2014).

[171] Christopher C. Lund, *RFRA, State RFRAs, and Religious Minorities*, 53 SAN DIEGO L. REV. 163, 163–64 (2016).

[172] *See* Jacob, *supra* note 160, at 829 n.145 and accompanying text.

[173] Illinois was one of 23 states who passed a state RFRA. *See* ALA. CONST. art. I § 3.01; ARIZ. REV. STAT. ANN. § 41-1493.01 (2024); ARK. CODE ANN. § 16-123-404 (2023); CONN. GEN. STAT. ANN. § 52-571b (West 2023); FLA. STAT ANN. § 761.03 (West 2024); IDAHO CODE ANN. § 73-402 (West 2024); 775 ILL. COMP. STAT. 35/15 (2024); IND. CODE ANN. § 34-13-9-8 (West 2023); KAN. STAT. ANN. § 60-5303 (West 2024); KY. REV. STAT. ANN. § 446.350 (West 2024); LA. STAT. ANN. § 13:5233 (2024); MISS. CODE ANN. § 11-61-1 (West 2024); MO. ANN. STAT. § 1.302 (West 2023); MONT. CODE ANN. § 27-33-105 (West 2024); N.M. STAT. ANN. § 28-22-3 (West 2023); OKLA. STAT. tit., 51 § 253 (2024); 71 PA. STAT. AND CONS. STAT. ANN. § 2404 (West 2023); 42 R.I. GEN. LAWS ANN. § 42-80.1-3 (West 2024); S.C. CODE ANN. § 1-32-40 (2024); S.D. CODIFIED LAWS § 1-1A-4 (2024); TENN. CODE ANN. § 4-1-407 (2024); TEX. CIV. PRAC. & REM. CODE ANN. § 110.003 (West, 1999); VA. CODE ANN. § 57-2.02 (West 2023).

[174] RLS 2023, *supra* note 3, at 86.

1. Statutory Overview

Like most state codifications of RFRA, Illinois's RFRA is nearly identical to its federal predecessor.[175] The law says that the

> Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling government interest and (ii) is the least restrictive means of furthering that compelling government interest.[176]

The law also provides a cause of action for individuals to bring if they feel the Illinois government has violated the Act.[177]

2. Legislative History

Illinois's RFRA was passed at the perfect moment during the "Lobbying Nineties"—1998.[178] This date placed it squarely in between two moments of factionalism that hindered the federal anti-*Smith* movement. The first split came in early 1998 from the Right when a group of conservative Christian organizations, led by Michael Farris, worried that the proposed federal alternative to RFRA violated principles of federalism.[179] This split, although temporary, delayed the federal lobbying effort without effecting state efforts at all (after all, there is no federalism issue if the states themselves are enacting their own RFRA).[180] The second (and permanent) split came from the Left in 1999 when groups like the ACLU began to fear that RFRA would be used by religious landlords and employers to discriminate based on religion, marital status, and sexual orientation.[181]

Debates in the House demonstrate that Illinois's RFRA bill rode high on a wave of bipartisan enthusiasm, mostly undisturbed by either of the two splits in the federal lobby.[182] Representative Lou Lang proudly

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[175] *Compare* 42 U.S.C.S. § 2000bb-1(b, *with* 775 ILL. COMP. STAT. ANN. 35/15 (West 2024).

[176] 775 ILL. COMP. STAT. ANN. 35/15 (West 2024).

[177] *Id.* 35/20.

[178] *Id.* 35/15.

[179] Jacob, *supra* note 160, at 824–26.

[180] *Id.*

[181] *Id.* at 828. Modern criticism of religious liberty still largely revolves around this same accusation that free exercise protections are mere means of entrenching discrimination. *See* Katherine Stewart, *"Religious Liberty" Used to Uphold Conservative Religious Privileges*, HUM. RTS. MAG. (July 5, 2022).

[182] *See* H.R. Tran. Reg. Sess. No. 107, at 288–92 (Ill. Apr. 1, 1998) (discussion between Speaker Hartke and Sens. Gash, Lang, Scott, and Roskam). The bill originated in the Senate,

proclaimed that the bill enjoyed unique support from such disparate groups as "the Christian Coalition, the Concerned Christian Americans, the Family Institute, the Jewish Community Relations Council, People for the American Way, and the American Civil Liberties Union."[183] Representative Douglas Scott gave a forceful speech in support of the bill, even after his questions evoked concerns that the Left would raise at the federal level the following year.[184] The bill passed unanimously in both the House and the Senate.[185]

There was, however, a holdup when the bill reached the governor's desk, leading to the only 'nay' votes the bill ever received— cast during the House debate over whether to override the governor's amendatory veto.[186] The veto sought to limit the bill from applying to situations involving state prisoners.[187] Although the veto was roundly denounced in both the House and the Senate,[188] a couple of representatives argued prisoners would abuse any right granted to them.[189] These three dissenters could not prevent veto's overide.[190] Thus, Illinois's RFRA

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where it passed with a unanimous vote; the House modified only the date the law went into effect. S. Tran. Reg. Sess. No. 104, at 20 (Ill. May 13, 1998) (statement of Sen. Parker).

[183] H.R. Tran. Reg. Sess. No. 107, at 289 (Ill. Apr. 1, 1998) (statement of Rep. Lang.). The bill's sponsor, Representative Gash, noted also that the bill had fifty cosponsors in the House. *Id.* at 288–89 (statement of Rep. Gash).

[184] *Id.* at 290 (statement of Rep. Scott) (asking whether the Act would "harm public health and safety or . . . undermine . . . discrimination laws or . . . other laws of Illinois protecting people in their employment, public accommodations, housing and education.").

[185] *Id.* at 292 (statement of Speaker Hartke) (recording the final vote as 117-0-1); S. Tran. Reg. Sess. No. 104, at 26 (Ill. May 13, 1998) (statement of Sen. Donahue) (recording the final vote as 56-0-0).

[186] H.R. Tran. Reg. Sess. No. 132, at 44 (Ill. Nov. 17, 1998) (statement of Speaker Brunsvold) (recording the final vote to override the governor's amendatory veto as 110-3-1). The Senate unanimously overrode the veto, but the debate surrounding the vote did little more than describe what the governor intended with his veto. S. Tran. Reg. Sess. No. 117, at 9 (Ill. Dec. 2, 1998) (statement of Sen. Donahue) (recording the final vote as 55-0-2).

[187] S. Tran. Reg. Sess. No. 117, at 8 (Ill. Dec. 2, 1998) (statement of Sen. Parker) ("The Governor's amendatory veto excludes the application of the guarantee of religious freedom to persons in Illinois prisons, jails, and reformatories, whether adults or juveniles, and even persons awaiting trial and still presumed innocent.").

[188] *See id.* at 9 (statement of Sen. Donahue); H.R. Tran. Reg. Sess. No. 132, at 26 (Ill. Nov. 17, 1998) (statement of Rep. Gash) ("There is absolutely no need for this amendatory veto."); H.R. Tran. Reg. Sess. No. 132, at 29 (statement of Rep. Johnson) ("[T]he issues that were raised in the Governor's Amendatory Veto . . . is, in fact, a red herring, was, in fact, a red herring and will for always be a red herring.").

[189] *See* H.R. Tran. Reg. Sess. No. 132, at 37–40 (Ill. Nov. 17, 1998) (statement of Rep. Black) ("So ask yourself, might an inmate misuse this? Well, they've misused lots of things.").

[190] *Id.* at 44 (statement of Speaker Brunsvold); S. Tran. Reg. Sess. No. 117, at 9 (Ill. Dec. 2, 1998) (statement of Sen. Donahue).

remains just as robust as its federal counterpart, giving Illinois yet another safeguard on the RLS Report.[191]

F. Vaccine Exemption

State-mandated vaccination has been a controversial topic since the early days of America.[192] The first vaccination in America may have been performed as early as 1721,[193] but public distrust of the technology delayed implementation of mandatory vaccination laws by nearly a century.[194] In 1905, the U.S. Supreme Court held general vaccine mandates were constitutional.[195] In 1922, the Court officially recognized public school vaccine requirements as constitutional.[196] Prior to the late 1930s, vaccine mandates pertained solely to smallpox.[197] The modern school vaccination scheme did not come into being until the 1960s.[198]

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[191] An exhaustive discussion of Illinois RFRA case law is worthy of its own paper, but a brief glance indicates that Illinois Courts like to either reject RFRA claims or give the religious party a victory on other grounds and not touch RFRA. *Compare* Diggs v. Snyder, 775 N.E.2d 40, 46–47 (Ill. App. Ct. 2002) (holding that taking an inmate's religious pamphlet did not violate the state RFRA), People v. Latin Kings St. Gang, 2019 IL App (2d) 180610-U, ¶¶ 1, 116–17 (rejecting defendants' RFRA allegation and finding the street gang was not a religious organization), Mefford v. White, 770 N.E.2d 1251, 1259–60 (Ill. App. Ct. 2002) (holding that requiring an individual to provide their social security number when applying for a driver's license did not violate the state RFRA), Marsaw v. Richards, 857 N.E.2d 794, 804 (Ill. App. Ct. 2006) (holding that trial court's granting an order to elect new church leaders did not violate the state RFRA), *and* Our Savior Evangelical Lutheran Church v. Saville, 922 N.E.2d 1143, 1158, 1162–67 (Ill. App. Ct. 2009) (holding denial of a permit to the church did not violate state RFRA), *with* City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc., 749 N.E.2d 916, 931 (Ill. 2001) (holding that refusal to grant church a permit was arbitrary and capricious and so did not need to be evaluated under RFRA), Calvary Baptist Church of Tilton v. Dept. of Revenue of Ill., 812 N.E.2d 1, 2, 7 (Ill. App. Ct. 2004) (holding that the church was entitled to a religious-use tax exemption and refusing to evaluate under RFRA), *and* County of Kankakee v. Anthony, 710 N.E.2d 1242, 1249 (Ill. App. Ct. 1999) (deciding the case on zoning law grounds and refusing to indulge in a RFRA analysis).

[192] *See* James G. Hodge, Jr. & Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 KY. L.J. 831, 851–52 (2002).

[193] *Id.* at 838.

[194] *Id.* at 850–51 ("In 1827, Boston became the first city to require all children entering the public schools to give evidence of vaccination.").

[195] Jacobsen v. Massachusetts, 197 U.S. 11, 30–31 (1905) (holding that the Massachusetts general vaccination mandate did not conflict with the Constitution).

[196] Zucht v. King, 260 U.S. 174, 175, 177 (1922) ("[W]e find in the record no question as to the validity of the ordinance [requiring school children to show proof of vaccination prior to entering public school] sufficiently substantial to support the writ of error.").

[197] Charles L. Jackson, *State Laws on Compulsory Immunization in the United States*, 84 PUB. HEALTH REP. 787, 788 (1969).

[198] Walter A. Orenstein & Alan R. Hinman, *The Immunization System in the United States – The Role of School Immunization Laws*, 17 VACCINE S19, S20 (1999). The modern regime arose as a response to outbreaks of measles across the nation. *Id.*

Today, every state school code contains vaccine requirements for public schools.[199] However, almost every state code also contains an exemption for parents who object to the vaccination of their children on religious grounds.[200] Fourteen states even exempt parents who have a mere philosophical objection to vaccinating their children.[201] For the purposes of the RLS Report, a state is considered to have the vaccine exemption safeguard so long as its laws protect the right to refuse to vaccinate children based on religious convictions.[202]

1. Statutory Overview

Illinois's school code requires all students of public, private, and parochial schools to undergo a health examination prior to starting their first, sixth, and ninth grade years.[203] As part of that examination, the child must present proof of required immunizations.[204] However, if parents object to any part of the examination, including the immunization requirement, they may file a form exempting their participation from that step on religious grounds.[205] Notably, the statute explicitly limits grounds for exemption to religious conviction, excluding philosophical or moral objections.[206]

2. Legislative History

Illinois's first law conditioning school attendance on child vaccination was passed in 1882.[207] The law suffered from half-hearted enforcement, and was eventually interpreted to apply only when smallpox actively

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[199] *Id.* at S22.

[200] *Id.* at S23. Only five states provide no such exception: California, Connecticut, Maine, New York, and West Virginia. *School-Aged Children: Exemption from Childhood Immunization Requirement*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/exemptions-for-childhood-immunization-requirements/ (last visited Feb. 10, 2025).

[201] *School-Aged Children: Exemption from Childhood Immunization Requirement*, *supra* note 201. These states are Arizona, Arkansas, Colorado, Idaho, Louisiana, Michigan, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, and Wisconsin. *Id.*

[202] RLS 2023, *supra* note 3, at 86.

[203] 105 ILL. COMP. STAT. 5/27-8.1(1) (2025). Many states do not include parochial or private schools. *See, e.g.*, VA. CODE ANN. § 22.1-270 (2019) (requiring a physical exam for entry into the public school system); N.H. REV. STAT. ANN. § 200:32 (LexisNexis 2009) (also requiring a physical exam for entry into public schools).

[204] 105 ILL. COMP. STAT. 5/27-8.1(3) (2025).

[205] *Id.* 5/27-8.1(8).

[206] *Id.* ("The religious objection stated need not be directed by the tenets of an established religious organization. However, general philosophical or moral reluctance to allow physical examinations . . . immunizations . . . or dental examinations does not provide a sufficient basis for an exemption to statutory requirements.").

[207] Hodge, *supra* note 192, at 851.

threatened the community.[208] Like the vast majority of the nation, Illinois adopted its modern vaccination requirements in the 1960s.[209] The modern language of mandatory health examinations and proofs of vaccination was added in a 1979 amendment to the school code.[210] Encouragingly, the religious exemption to vaccination was already present in this original version of the statute.[211]

The only noteworthy change to the religious exemption came in 2015 with an amendment purportedly designed to combat vaccine misinformation.[212] The amendment modified the process parents used to apply for a religious exemption.[213] Under the 1979 version of the bill, parents only needed a signed note.[214] The 2015 amendment created a standard form for parents to fill out, wherein they explained their religious objection.[215] The form additionally requires a doctor's signature, certifying that he or she explained to the parents the benefits of vaccination.[216] Should doctors refuse to sign the form, parents may simply write that the doctor refused to sign it.[217]

This amendment, although substantively innocuous, was met with a bewildering level of misinformed resistance in both the House and the Senate.[218] Opponents in the House accused the amendment of violating parental rights (despite repeated assurances from the sponsor that the doctor's signature merely signified that he or she had informed the parent)[219] and unnecessary administrative burden (despite the fact it

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[208] *Id.* at 850, 853–54; *see* Labaugh v. Bd. of Educ. of Dis. No. Z, 52 N.E. 850, 850–51 (Ill. 1899); *see also* Potts v. Breen, 47 N.E. 81, 82–83, 84 (Ill. 1897).

[209] Jackson, *supra* note 197, ("Twelve [s]tates–Georgia, Hawaii, Illinois . . . require immunizations against all six diseases for which immunization materials are routinely used: smallpox, measles, poliomyelitis, diphtheria, pertussis, and tetanus."). This vaccine law was enacted in 1968. *Id.* at 789, tbl.1.

[210] Act of Aug. 13, 1979, Pub. Act 81-0184, 1979 Ill. Laws 1, 2–4.

[211] *Id.*

[212] Act of Aug. 3, 2015, Pub. Act 99-249, 2015 Ill. Laws 4691, 4697–98; H.R. Tran. Reg. Sess. No. 52, at 17 (Ill. May 21, 2015) (statement of Rep. Gabel) ("There's a lot of . . . misinformation that goes around about immunizations. . . . [t]he religious exemptions have increased in this state . . . we're the state with the fifth most number of religious exemptions.").

[213] Act of Aug. 3, 2015, Pub. Act 99-249, 2015 Ill. Laws 4691, 4697–98.

[214] Act of Aug. 13, 1979, Pub. Act 81-0184, 1979 Ill. Laws 1, 2, 4.

[215] Act of Aug. 3, 2015, Pub. Act 99-249, 2015 Ill. Laws 4691, 4697.

[216] *Id.*

[217] H.R. Tran. Reg. Sess. No. 52, at 37 (Ill. May 21, 2015) (statement of Rep. Gabel) ("If that doctor . . . refuses to sign the form, then the parent can sign a note under that, and say . . . I went to the doctor, but the doctor refused to sign the form.").

[218] *Id.* at 35–38 (exchange between Reps. Gabel and Flowers).

[219] *Id.* at 37–38, 43 (statements of Reps. Flowers and Morrison) (arguing that the law violates Supreme Court holdings that parents have the fundamental right to direct the upbringing of their children).

required the creation of a single, standardized form).[220] Despite these exchanges, the bill passed the House by a significant majority, with a final vote of 85-28-4.[221] Opponents in the Senate largely echoed concerns about parents' rights,[222] but the debate did allow the sponsor to clarify two moderating changes made to the bill: (1) only requiring the form to be filled out during a physical, and (2) limiting doctors' advice to strictly medical.[223] These clarifications appeared to mollify most of the opposition, and the bill passed 42-14-0.[224] The amended law still contains strong enough protections for Illinois to receive full marks for this safeguard.[225]

Case law on this topic is scant and remains somewhat suspect in light of the COVID-19 amendment to the HRCA previously discussed in this Note.[226] The aforementioned COVID-19 cases all resulted in a loss for the religious objector, but none of those cases involved school-age children.[227] While the only school vaccination case following the COVID-19 pandemic, *In re Marriage of Valus*, also resulted in a loss for the religious objector, it featured a dispute between divorced parents about whether to vaccinate their children, rather than parents jointly objecting to vaccinating their children.[228] Thus, this case is at best an imperfect indication of how Illinois enforces these statutes.[229]

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[220] *Compare id.* at 42–43 (statement of Rep. M. Davis) ("And what happens is, we pay for this as taxpayers. Now the department has to have someone maintain all these records of this immunization . . . of these signatures coming in. . . . It's just extra paperwork. . . . It's overkill."), *with id.* at 43–45 (exchange between Reps. Gabel and Willis), *and id.* at 50 (exchange between Reps. Moffitt and Gabel).

[221] *Id.* at 54 (statement of Speaker Turner).

[222] *See* S. Tran. Reg. Sess. No. 32, at 130–32, 135–38 (Ill. April 23, 2015) (exchange between Sens. Mulroe and Rose, exchange between Sens. Mulroe and Oberweis).

[223] *Id.* at 127 (statement of Sen. Mulroe) ("[T]he original bill said you have to go annually to recertify that you've talked to the doctor. I thought that was excessive, so we changed that to get more in line with physical examinations. . . . [T]he amendment also said, hey, the doctor's not to inject his or her philosophy about the religion or the basis of the grounds."). The amendment also required doctors to inform parents of what health conditions would make vaccines an unwise decision for their child. *Id.*

[224] *Id.* at 140 (statement of Sen. Mulroe).

[225] RLS 2023, *supra* note 3, at 37.

[226] *Supra* Section II.A.

[227] *See* Krewionek v. McKnight, 2022 IL App (2d) 220078, ¶¶ 1, 38; Glass v. Dep't of Corr., 2022 IL App (4th) 210740, ¶¶ 3, 56; Goodrich v. Good Samirtan Reg'l Hosp. Ctr., 2023 IL App (5th) 220510-U, ¶¶ 2, 4, 20.

[228] In re Marriage of Valus, 2023 IL App (3d) 220247-U, ¶ 28.

[229] The two other cases in this area are no more helpful. *See* George v. Kankakee Cmty. Coll., 2016 IL App (3d) 160116-U, ¶¶ 53–56 (holding that the requirement of a religious vaccine exemption for post-secondary educational institutions did not apply to the defendant because the defendant did not meet the statutory definition of a post-secondary educational institution); *In re* Marriage of Lillig, 2018 IL App (5th) 180018-U,¶¶ 23–26, 113 (affirming the trial court's allocation of parental responsibilities where the mother's sudden and unilateral decision to get a religious exemption for vaccinating her daughter was one fact among many considered for giving the father sole decision-making authority for the child's healthcare and education).

G. Excused Absence for Religious Reasons

All states have compulsory school attendance laws.[230] The U.S. Supreme Court has long recognized a government interest in establishing a minimum level of education for all citizens.[231] The Court has also pointed out, however, that states do not have *carte blanche* authority to compel every child to attend public school, particularly if the child's parents have a religious objection.[232] Some states have acknowledged this right of religious parents to remove their children from school by creating religious grounds for excused school absences.[233]

The RLS Report recognizes two items under the safeguard of excused absences for religious grounds: absences based on religious observation (such as holidays) and absences based on religious instruction.[234] Twenty-six states recognize religious observation or instruction as an excusable absence.[235] Only ten states get both points for explicitly recognizing both grounds, with Illinois being one of them.[236]

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[230] Sarah Zimmerman, Comment, *Freedom of Movement, Compulsory Attendance, and the Search for a Federal Right to Education*, 94 TEMP. L. REV. 313, 321–22 (2022).

[231] *See* Wisconsin v. Yoder, 406 U.S. 205, 221 (1972) ("[A]s Thomas Jefferson pointed out early in our history, . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.").

[232] *Id.* at 222 ("[T]he evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocation education would do little to serve those interests."); *see also* Pierce v. Soc'y of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 530, 534–35 (1925) (holding unconstitutional an Oregon state law mandating that children between the ages of eight and eighteen attend a public school after a Catholic private school appealed the case on the grounds that the law violated the 14th Amendment rights of parents with children attending their school).

[233] *See Students: Excused Absences for Religious Reasons*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/school-aged-children-excused-absences-from-public-schools/ (last visited Mar. 18, 2025).

[234] RLS 2023, *supra* note 3, at 87–88.

[235] *Students: Excused Absences for Religious Reasons, supra* note 233. These states are California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. *Id.* The most popular option among these states (the path taken by 14 of them) is to recognize only excused absences for religious observance; such is the case in California, Connecticut, Delaware, Georgia, Louisiana, Maine, Maryland, Minnesota, New Jersey, North Carolina, South Carolina, Tennessee, Texas, and Virginia. RLS 2023, *supra* note 3, at 29, 31–32, 34, 42–44, 46, 54, 57, 64, 66, 67, 70.

[236] RLS 2023, *supra* note 3, at 33, 35, 37, 39, 56, 58, 61, 62, 71, 73. The other states are Florida, Hawaii, Iowa, New York, North Dakota, Oregon, Pennsylvania, Washington, and Wisconsin. *Id.*

1. Statutory Overview

Section 26-1 of the Illinois Code has two provisions that cover both items in this safeguard.[237] The first provision says that children between twelve and fourteen are excused from school while they attend confirmation classes.[238] The second provision broadly permits absence "because of religious reasons, including the *observance of a religious holiday or participation in religious instruction*, or because the tenets of his religion forbid secular activity on a particular day or days or at a particular time."[239] The only limit on this protection is the requirement that parents give the school up to five days' notice prior to the absence.[240]

2. Legislative History

Both exemptions were enacted in a single bill in 1985.[241] The bill began in the House as a narrowly tailored document aimed at forcing universities to accommodate students who could not take an exam because it fell on a religious holiday.[242] The bill received two noteworthy amendments in the House.[243] The first broadened protections beyond testing accommodations to also include absences.[244] The second defined "religion" in the bill to include all aspects of religious observance and practice, not just belief.[245] Despite some worries that students would exploit these opportunities, the bill passed with a considerable majority (the final vote in the House was 97-17-1).[246] When the bill passed the Senate with near unanimity, it required primary, secondary, and higher education institutions to provide accommodation in attendance, testing, and other areas based on religious practices.[247]

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[237] 105 ILL. COMP. STAT. ANN. 5/26-1 (West 2025).

[238] *Id.*

[239] *Id.* (emphasis added).

[240] *Id.*

[241] Act of Aug. 26, 1985, Pub. Act 84-212, 1985 Ill. Laws 1, 2–3; LEGIS. REFERENCE BUREAU, 2 FINAL LEGIS. SYNOPSIS AND DIG. OF THE 1985 SESS. OF THE EIGHTY-FOURTH GEN. ASSEMB. 1319–20 (1986) [hereinafter LEGISLATIVE SYNOPSIS].

[242] H.R. Tran. Reg. Sess. No. 44, at 221–22 (Ill. May 21, 1985) (statement of Rep. Nash) ("[This bill] will allow students to make up tests given on religious holidays.").

[243] LEGISLATIVE SYNOPSIS, *supra* note 241.

[244] *Id.* ("[A] public institution of higher education shall adopt a policy which reasonably accommodates the religious observance of individual students in regard to admissions, class attendance, and the scheduling of examinations and work requirements.").

[245] *Id.*

[246] H.R. Tran. Reg. Sess. No. 44, at 222–23 (Ill. May 21, 1985) (statements of Rep. Mulcahey and Speaker Giglio).

[247] S. Tran. Reg. Sess. No. 20, at 22 (Ill. June 5, 1985) (statements of Sen. Carroll and Sen. Savickas). The final vote was 52-1-0. *Id.*

In 2021, the Illinois Legislature altered the language of this provision to better reflect the broad protections already inherent in the statute.[248] This amendment passed unanimously in both houses alongside numerous other bills through a consent calendar.[249] The inclusion of phrases like "observance of religious holiday or participation in religious instruction," [250] guarantee that this statute receives full marks as a complete safeguard in this area. [251]

H. Absentee Voting

Absentee ballots were initially introduced during the Civil War to allow soldiers to vote while they were away in active duty.[252] By the early part of the twentieth century, a vast majority of states had created similar measures for civilians.[253] Early statutes only allowed absentee ballots for individuals whose work schedule prevented them from being able to vote on election day.[254] However, by the late twentieth century, most states had expanded their laws to include other qualified excuses like physical disability and religious holiday observance.[255]

Twenty-four states have now abolished the excuse requirement entirely and allow anyone to obtain an absentee ballot.[256] The RLS Report considers rights of a religious observer protected where either a specific religious excuse qualifies one for an exemption or the excuse requirement

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[248] *Compare* Act of May 27, 2021, Pub. Act 102-406, 2021 Ill. Laws 7248, 7249–50, *with* Act of Aug. 26, 1985, Pub. Act 84-0212, 1985 Ill. Laws 1, 1–2.

[249] H.R. Tran. Reg. Sess. No. 20, at 39–42 (Ill. Apr. 16, 2021) (statements of Clerk Bolin and Speaker Hoffman); S. Tran. Reg. Sess. No. 51, at 14–21 (Ill. May 27, 2021) (statements of Sen. Muñoz and Sec'y Anderson).

[250] 105 ILL. COMP. STAT. ANN. 5/26-1 (West 2025).

[251] RLS 2023, *supra* note 3, at 37. A complete lack of cases dealing with this topic has led the author to conclude that the law is clear enough not to require extensive litigation to be enforced.

[252] Sean Flynn, *One Person, One Vote, One Application: District Court Decision in* Ray v. Texas *Upholds Texas Absentee Voting Law that Disenfranchises Elderly and Disabled Voters*, 11 SCHOLAR 469, 476 (2009).

[253] *Id.* at 480 ("In 1924, only three states, Rhode Island, Connecticut, and Kentucky, did not have some sort of civilian absentee voting legislation.").

[254] *E.g.*, An Act Concerning Elections of 1943, art. 19, § 19-1, 1943 Ill. Laws 412.

[255] *See Absentee Voting*, RELIGIOUS LIBERTY IN THE STATES, https://religiouslibertyinthestates.com/safeguard/opportunity-for-absentee-voting/ (last visited Mar. 29, 2025) (showing that only eight states still use a qualified excuses scheme for absentee ballots: Connecticut, Delaware, Indiana, Massachusetts, Missouri, New Hampshire, and Tennessee).

[256] *Id.* These states are Alaska, Arizona, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Virginia, Wisconsin, and Wyoming. *Id.* Eight states—California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington—have now switched to only using mail-in ballots. *Id.*

has been altogether eliminated.[257] If a state's election law does either, the state is considered to have this safeguard.[258]

1. Statutory Overview

The Illinois election law no longer requires any specific reason to obtain an absentee ballot.[259] The statute provides that "any [registered Illinois voter] may by mail or electronically . . . make application to the county clerk or to the Board of Election Commissioners for an [absentee ballot]."[260] The statute even allows voters to apply to become permanent mail-in voters.[261] With such a broad law, RLS easily found Illinois to have this safeguard.[262]

2. Legislative History

Illinois's current absentee voting law was the result of steady liberalization until eventually the requirement was eliminated altogether. The first version of the bill was passed in the 1943 Election Code and only applied to registered voters who would not make it to the polls because they had to work on the day of the election.[263] In 1955, the statute was amended to recognize an additional qualified excuse: physical disability.[264] In 1961, a religious observance excuse was added.[265] Between 1961 and 2009, more excuses were added, including one for detained individuals awaiting verdicts during elections, and one for sex offenders.[266] Finally, in 2009 the Legislature overhauled the provision to allow any voter to apply for an absentee ballot without needing to provide an excuse.[267]

The 2009 bill eliminating the excuse requirements for absentee ballots was met with surprising resistance. Despite passing unanimously in the elections committee and the Senate,[268] the bill produced an

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[257] RLS 2023, *supra* note 3, at 75–76.

[258] *Id.* States that now use a mail-only system of voting also have this safeguard.

[259] 10 ILL. COMP. STAT. 5/19-1, -2 (2024).

[260] *Id.* 5/19-2.

[261] *Id.* 5/19-3b.

[262] RLS 2023, *supra* note 3, at 37.

[263] An Act Concerning Elections of 1943, art. 19, § 19-1, 1943 Ill. Laws 412. The original Section 19-3 included an application form that required applicants to state their employment, employer, and location of business venture that would prevent them from being present to vote. *Id.* § 19-3.

[264] Act of July 7, 1955, § 19.1, 1955 Ill. Laws 1.

[265] Act of Aug. 1, 1961, § 19-1, 1961 Ill. Laws 1.

[266] *Id.*; Act of Aug. 22, 2005, Pub. Act 94-0637, 2005 Ill. Laws 4560, 4560–61; Act of Aug. 27, 2007, Pub. Act 95-0440, 2007 Ill. Laws 6478, 6478–79.

[267] Act of Aug. 17, 2009, Pub. Act 96-553, 2009 Ill. Laws 5507, 5507–08.

[268] S. Tran. Reg. Sess. No. 34, at 248–49 (Ill. Apr. 1, 2009) (statements of Sen. Frerichs and Sen. Righter).

extremely heated debate in the House.[269] Opponents of the bill accused it of causing unprecedented levels of voter fraud,[270] destroying the sanctity of election day,[271] and even dishonoring the soldiers at Normandy.[272] Since there already was an excuse for religious observance, religious liberty played no part in the debate. Ultimately, the bill narrowly passed with a party-line vote of 69-48-0.[273] While this was a victory for easier voting access, it did little to alter Illinois's protection enfranchisement of religious observants, which, from RLS's perspective, has been present in the state since the 1960s.[274]

III. LESSONS FROM ILLINOIS

Although each of these eight statutes present a distinct story behind its enactment, studying them alongside one another demonstrates a couple of important traits about Illinois that may help explain its current ranking as America's free exercise leader. First, Illinois is a state that is highly responsive to national trends and major changes in the U.S. Supreme Court.[275] This can be seen in the HRCA, which was passed within the five years following *Roe v. Wade* and expanded on an abortion-

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[269] *See generally* H.R. Tran. Reg. Sess. No. 58, at 103–04 (Ill. May 20, 2009) (statements of Rep. Jakobsson, Speaker Miller, and Rep. Reboletti).

[270] *Id.* at 81–82 (statement Rep. Rose), 84–86 (exchange between Rep. Cole and Rep. Jakobsson), 89–90 (statement of Rep. Durkin).

[271] *Id.* at 79–80 (statement of Rep. Fritchey).

[272] *Id.* at 76–78 (statement of Rep. Black) ("[H]ere I stand on the House Floor in 2009, and out of all I hear is, well, let's make it easier to vote. Let's just do whatever we can. . . . That is an insult to the memory of my father's generation [who served in Normandy], and I won't support that insult.").

[273] *Id.* at 103–04 (statement Speaker Miller). The composition of the Illinois House in 2009 was 70 Democrats and 48 Republicans. *Illinois State Representative–96th General Assembly*, ILL. GEN. ASSEMB., https://www.ilga.gov/house/default.asp?GA=96 (last visited Feb. 16, 2025).

[274] *Compare* Act of Aug. 1, 1961, § 19-1, 1961 Ill. Laws 1, *and* 10 ILL. COMP. STAT. ANN. 5/19-1, -2 (West 2022), *with* RLS 2023, *supra* note 3, at 75. Case law in this area focuses on the validity of absentee ballots in particular elections, leading the author to conclude this statute is unequivocally enforced by the state for the purposes of safeguarding religious liberty.

[275] *See, e.g.*, Press Release, J.B. Pritzker, Governor of Illinois, Signs Legislation Expanding Voting Rights, Rehabilitation in Illinois's Criminal Justice System (Aug. 21, 2019), https://www.illinois.gov/news/press-release.20510.html; Press Release, J.B. Pritzker, Governor of Illinois, Remarks Following the Supreme Court's Decision to Overturn Roe v. Wade (June 24, 2022), https://www.illinois.gov/news/press-release.25105.html; *Your Abortion Rights in Illinois Now that Roe Is Overturned*, ILL. LEGAL AID ONLINE, https://www.illinoislegalaid.org/legal-information/your-abortion-rights-illinois-now-roe-overturned (last visited Mar. 24, 2025); *Executive & Administrative Orders: Governor Issues Disaster Proclamation*, ILLINOIS.GOV (Apr. 28, 2023), https://www.illinois.gov/government/executive-orders (listing Governor Pritzker's executive orders particularly concerning the COVID-19 pandemic).

related protection created less than a year after *Roe* was decided.[276] Similarly, Illinois's RFRA was passed within a year following the Supreme Court's decision in *City of Boerne v. Flores*.[277] Although the Religious Freedom and Marriage Fairness Act preceded *Obergefell*, the law was passed right in the heart of the same-sex marriage legalization movement.[278] Illinois clearly has an active legislature that considers free exercise issues in the midst of larger national discussions.

This pattern invites a deeper question: why has Illinois consistently considered religious interests when addressing major questions of social policy? The answer may lie in part with the notable influence of Catholicism, which springs up throughout the legislative record. An example of this is the House debate over the Religious Freedom and Marriage Fairness Act, which featured delegates paying homage to their Catholic faith while giving their position on the bill.[279] Another example is the lone exchange made during the Senate debate over the mandatory reporting law, which focused entirely on the application to Catholic Confession.[280] Furthermore, a contentious point of discussion in the Senate debate over the 2015 HRCA amendment centered around whether the Catholic Conference supported the amendment.[281] Provisions like a specific excused absence for confirmation classes and an early, comprehensive protection of religious use of alcohol further suggest that distinctly Catholic voices have shaped legislative priorities in Illinois.[282]

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[276] *Supra* Section II.A.

[277] *Supra* Section II.E.

[278] Obergefell v. Hodges, 576 U.S. 644, 681 (2015) (holding that states cannot lawfully refuse to recognize a same-sex marriage otherwise validly entered in another state); Alexi Giannoulias, *100 Most Valuable Documents at the Illinois State Archives: Same Sex Marriage Legalized*, OFF. ILL. SEC'Y STATE (2013), https://www.ilsos.gov/departments/archives/online_exhibits/100_documents/2013-same-sex-marriage-more.html; Religious Freedom and Marriage Fairness Act, 750 ILL. COMP. STAT. 80/1 (2014); *Timeline of Same-Sex Marriage Laws – Student Handout*, PBS NEWSHOUR EXTRA, https://newshour-classroom-tc.digi-producers.pbs.org/uploads/app/uploads/2015/06/Timeline-of-Same-Sex-Marriage-Laws-Student-Handout.pdf (last visited March 22, 2025).

[279] *See* H.R. Tran. Reg. Sess. No. 76, at 20 (Ill. Nov. 5, 2013) (statement of Rep. Zalewski) (discussing his Catholic background in support of the bill); *id.* at 44–45 (statement of Rep. Reis) (arguing the bill did not do enough to protect Catholic organizations like the Knights of Columbus); *id.* at 62–64 (statement of Rep. Yingling) (referencing his Catholic upbringing in support of the bill); *id.* at 70–71 (statement of Speaker Madigan) (quoting Pope Francis).

[280] S. Tran. Reg. Sess. No. 95, at 54–55 (Ill. May 9, 2002) (exchange between Sen. Cronin and Sen. Sullivan).

[281] S. Tran. Reg. Sess. No. 31, at 181 (Ill. April 22, 2015) (statement of Sen. Biss) ("This bill, as now amended, represents an agreement reached between the Catholic Conference, the Catholic hospitals, the Medical Society, the ACLU, and Planned Parenthood."); *id.* at 189–90 (exchange between Sen. Biss and Sen. Mulroe) (debating whether the Catholic Conference supported the bill or was neutral towards it).

[282] 105 ILL. COMP. STAT. ANN. 5/26-1 (West 2025); 235 ILL. COMP. STAT. ANN. 5/2-1 (WEst 1934) (amended 1998).

Taken together, these examples suggest that Illinois is a state where Catholic voices are often heard in debates surrounding relevant issues of social policy, often following landmark Supreme Court rulings.[283]

The remarkable presence of these last two laws is underscored when compared to Illinois's chief rival to the spot for the state with the greatest number of free exercise protections: Mississippi.[284] Mississippi—despite having the most robust protections in both the healthcare and marriage groups—only achieves the rank of fourth place, primarily because it lacks measures like alcohol and school attendance exceptions.[285] It may be the case that Mississippi has not yet implemented less controversial measures because it lacks a sizable Catholic voice to advocate for them.[286] Such a conclusion requires a more careful look at both the real influence of Catholic voices in the Illinois Legislature, as well as an examination of Mississippi's legislative history. However, even at this stage one may intuit from Illinois's performance that states that consider the practices of religious minorities (such as Catholics) offer more robust safeguards and achieve higher scores on the RLS Report.

Illinois's legislative history shows that religious liberty need not be—and historically was not—a hyper-partisan issue. The majority of the statutes discussed in this Note were passed with strong support during periods of Democratic control in the Illinois Senate—with some even passing unanimously.[287] It is only in the last twenty years that votes on these issues began consistently resembling party-line divisions.[288] Although Healthcare and Marriage Conscience—the two highest-weighted groups of the RLS Report—involve two of today's most controversial topics, five relatively uncontroversial safeguards remain available for states seeking to improve their performance. As new iterations of the RLS Report continue to add safeguards in other areas, the weight of noncontroversial measures will only increase.[289] All states have room to grow in the area of religious liberty protections, and many states can achieve this growth without generating a cultural firestorm.

The fact that Illinois led the nation in free exercise protections in 2023 may never cease to surprise—but only time will tell what lessons

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[283] The influence of Catholic citizens and elected officials in protecting religious liberty in Illinois in the past century should be studied in more depth; such a study would require access to archives and sources currently unavailable to the author.

[284] RLS 2023, *supra* note 3.

[285] *Id.* at 48. In fact, Mississippi only achieves a score of 64% as it lacks five different safeguards: excused absences, vaccine exemption, absentee ballots, clergy privilege, and ceremonial use of alcohol exemptions. *Id.*

[286] *See* Joyce Chepkemoi, *supra* note 117 (noting that Illinois is 8th in the nation for percentage of population that is Catholic, while Mississippi is 49th).

[287] *Supra* Section II.E.

[288] *See supra* Sections II.A, II.B, II.H.

[289] *See* RLS 2024, *supra* note 6, at 2–3.

other states draw from this seeming antinomy. If the 2022 HRCA amendment is of any indication, the Illinois Legislature currently shows a declining interest in religious liberty issues.[290] If other states take away from Illinois's story that religious liberty need not be confined to one side of the aisle, the next decade may witness a flourishing of free exercise like never before—across both conservative and progressive states.

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[290] *Supra* notes 76–79 and accompanying text.

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