

9-2022

## Parading the Horribles: The Risks of Expanding Religious Exemptions

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### Recommended Citation

Law, Rights, and Religion Project, *Parading the Horribles: The Risks of Expanding Religious Exemptions*, (2022).

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## **Parading the Horribles: The Risks of Expanding Religious Exemptions**

**September 2022**

People of faith now have a constitutional right to practice their religion—even when doing so conflicts with a government law or policy—that is [more rigorously](#) protected than nearly any other right.<sup>1</sup> Some states have passed bills that provide an even *broader* right to such “religious exemptions” from the law than provided under the U.S. Constitution. Other religious exemption bills have been introduced and await consideration.

Among the most expansive state exemption bills are those modeled on the federal Religious Freedom Restoration Act (RFRA), which provides a robust framework for gaining religious exemptions from *any* law, policy, or act of the federal government.<sup>2</sup> State RFRA provide a similar means of gaining religious exemptions from state and local policies. [South Dakota](#) and [Montana](#) passed RFRA in 2021, the first since the contentious battle over Indiana’s RFRA in 2015.<sup>3</sup> A third state, [Arkansas](#), will vote on a referendum in November 2022 that would incorporate RFRA-style language into its state constitution.<sup>4</sup> Advocates expect a concerted effort over the next few years to pass RFRA in additional states. Other, somewhat narrower exemption bills include those (introduced in the wake of the COVID-19 pandemic) that exempt religious activities from [public health laws](#), and bills that allow medical providers to refuse certain types of [health care](#), such as contraception.<sup>5</sup>

**This article corrects the common misconception that religious exemption measures pose a threat to only a narrow set of issues—namely LGBTQ and reproductive health.** The continual expansion of the right to religious exemptions has been granted at the expense

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<sup>1</sup> This explainer was made possible with the support of the Rights, Faith, and Democracy Collaborative of the Proteus Fund. Thanks to Alison Gill and Dan Furmansky for invaluable feedback.

<sup>2</sup> Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et. seq.*

<sup>3</sup> S.D. Codified Laws § 1-1A-4 (2021); Montana Religious Freedom Restoration Act, Mont. Code Ann. § 27-33-101 (2021).

<sup>4</sup> Don Byrd, *Arkansas Legislature Refers Troubling Version of RFRA for Public Referendum in 2022 As Amendment to State Constitution*, BAPTIST JOINT COMMITTEE ON RELIGIOUS LIBERTY (May 3, 2021), <https://bjconline.org/arkansas-legislature-refers-troubling-version-of-rfra-050321/>.

<sup>5</sup> For more on public health exemptions, see DANGEROUS EXEMPTIONS, <https://www.dangerousexemptions.org/> (last visited Oct. 8, 2021). In 2022, Kentucky passed H.B. 43, deemed the “Church Is Essential Act.” This law was pitched as preventing the government from closing churches during states of emergency if other businesses remained open. However, the Act also contained the vague and seemingly much broader requirement that “A governmental entity shall not take any discriminatory action against a religious organization.” Ky. Rev. Stat. § 39A.100(6)(c). For more on religious healthcare refusals, see GUTTMACHER INSTITUTE, *Refusing to Provide Health Services* (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>.

of countless rights and liberties of others, far beyond these two issues. By citing real cases, we demonstrate that nearly *any* law or policy, including those protecting crucial interests like workers' rights, public health, environmental welfare, emergency response, and religious pluralism, may be limited and/or significantly undermined by religious exemptions. Thus, we sideline religious exemptions as solely a "culture war" issue at our own risk.

Those who have long been sounding the alarm about the risks of overly broad exemptions often trot out a so-called "parade of horrors." An expansive right to exemptions, they claim, could permit religious adherents to ignore countless civil, and even criminal laws. The deeply religious Supreme Court Justice Antonin Scalia [once argued](#) that a far-reaching right to exemptions would "open the prospect" of "religious exemptions from civic obligations of almost every conceivable kind."<sup>6</sup> In response to these hypothetical warnings, many question whether religious groups would *really* seek exemptions from, say, minimum wage, race discrimination, or child welfare laws.

This article demonstrates the reality: **such cases have already been brought, and sometimes won.** For years now, exemptions have been used to—among other things—narrow union and workers' rights, sanction child endangerment, and allow discrimination against racial and other minorities. Thankfully, many of these troubling cases have been decided by lower federal and state courts, meaning that there are still opportunities to stem the tide of such extreme and harmful religious exemptions.

It's also true that many of the exemption demands outlined below were rejected by courts. Over the past decade, however, the legal right to religious exemptions has vastly expanded, the judiciary has become far more conservative, and large and established religious exemption law firms have taken on new issues, such as fighting for religious exemptions from [COVID-19 vaccine](#) mandates.<sup>7</sup> It is worth noting that recent Supreme Court decisions radically expanding the scope of First Amendment protections for religious exercise—which were analyzed in a [2021 report](#) from the Law, Rights, and Religion Project—seemed implausible only a few years ago.<sup>8</sup> Conservative religious liberty advocates lost many such claims, including demands that houses of worship be exempt from COVID stay-at-home orders, when they were first brought. Yet they persisted in pressing the courts to accept their approach to religious liberty, and have been rewarded for the perseverance. Thus, even some of the most egregious religious exemption demands in the "parade of horrors" discussed in this report would have a far better chance of being granted today.

There has been a movement in recent years to pull back this vast expansion of religious exemptions, returning to a standard that robustly protects religious freedom, diversity, and

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<sup>6</sup> *Employment Division v. Smith*, 494 U.S. 872, 888 (1990).

<sup>7</sup> LIBERTY COUNSEL, LEGAL HELP FOR RELIGIOUS EXEMPTIONS FROM VACCINATIONS (2021), <https://lc.org/exempt>.

<sup>8</sup> LAW, RIGHTS, AND RELIGION PROJECT, WE THE PEOPLE (OF FAITH): THE SUPREMACY OF RELIGIOUS RIGHTS IN THE SHADOW OF A PANDEMIC 10-16 (2021), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/We%20The%20People%20%28of%20Faith%29%20Report.pdf>.

pluralism without threatening the rights and liberties, including the religious rights, of others. For example, the proposed federal [Do No Harm Act](#) would limit the application of RFRA in certain contexts in which religious exemptions can injure others—such as public health, workers’ rights, child protection, and civil rights.<sup>9</sup> [Several states](#) have eliminated longstanding religious exemptions from mandatory school vaccination laws in order to shield children from contagious disease.<sup>10</sup> [Other states](#) have passed various measures to protect patients from religiously motivated denials of medical care.<sup>11</sup> While the “parade of horrors” presents a very real threat, it is not an inevitable one. By correcting our course on religious *exemptions*, we can secure a far more just and inclusive version of religious freedom.



## 1. Minimum Wage & Workers’ Rights

In the infamous 1985 case [Tony & Susan Alamo Foundation v. Secretary of Labor](#), the Supreme Court rejected a religious group’s argument that it should be exempted from the Fair Labor Standards Act (FLSA), which among other things establishes a legal minimum wage.<sup>12</sup> The faith-based organization argued that it need not pay its workers at several affiliated businesses, who were described as “drug addicts, derelicts, or criminals before their conversion and rehabilitation by the Foundation,” and who were compensated only with “food, clothing, shelter, and other benefits.”<sup>13</sup> Since then, religious employers have (sometimes successfully) defended against lawsuits alleging violations of [minimum wage law](#) by arguing that their workers were not employees but *volunteers*.<sup>14</sup>

In other cases, religious employers have argued that [their workers were ministers](#), and that ministers should be exempt from the minimum wage.<sup>15</sup> This argument derives from the “ministerial exception” rule that was formally adopted by the Supreme Court in the 2012 case [Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC](#).<sup>16</sup> The ministerial exception limits

<sup>9</sup> Do No Harm Act, H.R.1378, 117th Cong. (2021).

<sup>10</sup> Susan Haigh, *Connecticut Becomes 6th State to End Religious Exemption from Childhood Immunization Requirements for School*, CHI. TRIB. (Apr. 28, 2021), <https://www.chicagotribune.com/nation-world/ct-aud-nw-connecticut-religious-vaccine-exemption-20210428-57ufmookhncx7d3423dadnnt7i-story.html>.

<sup>11</sup> Leah Rutman, *Hospitals Now Required by Law to Disclose Which Reproductive Health Services They Offer*, ACLU WASH. (Sept. 24, 2019), <https://www.aclu-wa.org/story/hospitals-now-required-law-disclose-which-reproductive-health-services-they-offer>; Amy Littlefield, *Oregon Will Protect Reproductive Health Care When Hospitals Merge*, THE NATION (July. 19, 2021), <https://www.thenation.com/article/society/oregon-catholic-hospitals/>.

<sup>12</sup> *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985).

<sup>13</sup> *Id.* at 292.

<sup>14</sup> *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761 (6th Cir. 2018); *Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996); Jonathan Crotty, *U.S. Labor Department Says Religious Community Members Are Not Employees*, JD SUPRA (Jan. 10, 2019), <https://www.jdsupra.com/legalnews/u-s-labor-department-says-religious-59587/>.

<sup>15</sup> *Su v. Stephen S. Wise Temple*, 32 Cal. App. 5th 1159 (2nd App. Dist. 2019); *Alcazar v. Corp of the Catholic Archbishop of Seattle*, 627 F.3d 1288 (9th Cir. 2010); *Schleicher v. Salvation Army*, 518 F.3d 472 (7th Cir. 2008); *Shaliesabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299 (4th Cir. 2004).

<sup>16</sup> *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).

the application of some employment laws to employees performing religious duties. Since 2012, the Court has broadened the rule to cover more workers. As the Supreme Court expands both the “ministerial exception” from labor laws as well as religious exemptions more generally, we are likely to see an increase in demands for religious exemptions from the FLSA.

In addition to minimum wage laws, religious entities have sought religious exemptions to avoid compliance with [bans on child labor](#), the requirement to [pay equal wages and benefits](#) to women, to offer [employee health insurance](#) (in a case brought by Liberty University), and to pay [workers’ compensation](#).<sup>17</sup> While many—though not all—of these efforts have failed, religious employers have in some cases gained exemptions from [whistleblower protection laws](#), [sexual harassment laws](#), the requirement to [fully fund](#) employee pension plans, and the requirement to cover [contraception](#) and [PrEP](#) (an HIV prevention drug) in employee health insurance plans.<sup>18</sup>



## 2. Race Discrimination

While [claims involving a faith-based right](#) to exclude or segregate Black people in employment, education, and public accommodations were far more common in earlier decades, similar claims are still brought today.<sup>19</sup> Further—although the Supreme Court in 2014 [dismissed](#) the idea that broad religious exemptions would lead to race discrimination—several cases have in fact allowed such discrimination by religious entities.<sup>20</sup> In the 2018 case *Beans v. Trinity Episcopal School*, for example, a judge [dismissed](#) a lawsuit that accused a religious school in Texas of

<sup>17</sup> Brock v. Wendell’s Woodwork, Inc., 867 F.2d 196 (4th Cir. 1989); Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518 (6th Cir. 2011); Reich v. Shiloh True Light Church of Christ, 85 F.3d 616 (4th Cir. 1996); Dole v. Shenandoah Baptist Church, 899 F.2d 1389 (4th Cir. 1990); EEOC v. Fremont Christian School, 781 F.2d 1362 (9th Cir. 1986); EEOC v. Tree of Life Christian Schools, 751 F. Supp. 700 (S.D. Ohio 1990); Liberty Univ., Inc. v. Lew, 733 F.3d 72 (4th Cir. 2013); Big Sky Colony, Inc. v. Mont. Dep’t of Labor & Indus., 2012 MT 320 (2012); South Ridge Baptist Church v. Industrial Com. of Ohio, 911 F.2d 1203 (6th Cir. 1990).

<sup>18</sup> Weishuhn v. Catholic Diocese, 287 Mich. App. 211 (Mich. Ct. App. 2010); Demkovich v. St. Andrew the Apostle Par., 3 F.4th 968 (7th Cir. 2021); Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017); Burwell v. Hobby Lobby Stores, Inc. 573 U.S. 682 (2014); Memorandum Opinion & Order, Braidwood Management v. Becerra, No. 4:20-cv-00283-O (N.D. Tex. Sept. 7, 2022), *available at* [https://storage.courtlistener.com/recap/gov.uscourts.txnd.330381/gov.uscourts.txnd.330381.92.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.txnd.330381/gov.uscourts.txnd.330381.92.0_2.pdf) (“Defendants do not show a compelling interest in forcing private, religious corporations to cover PrEP drugs with no cost-sharing and no religious exemptions”).

<sup>19</sup> Goldsboro Christian Schools, Inc. v. United States, 436 F. Supp. 1314 (E.D.N.C. 1977); Bob Jones Univ. v. United States, 461 U.S. 574 (1983); Brown v. Dade Christian Schools, Inc., 556 F.2d 310 (5th Cir. 1977); Fiedler v. Marumsko Christian Sch., 631 F.2d 1144 (4th Cir. 1980); Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1986).

<sup>20</sup> Burwell v. Hobby Lobby, 573 U.S. at 692-93 (“The principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction... Our decision today provides no such shield. The Government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.”).

failing to protect a student from racist bullying.<sup>21</sup> The court agreed with the school’s claim that it could not “intrude upon a religious institution’s management of its internal affairs.”<sup>22</sup>

Other race discrimination suits brought by a [seminary professor](#) in Kentucky, an addictions counselor at the [Salvation Army](#) in Michigan, and [others](#) have also been dismissed because the employees were deemed “ministers” and therefore unprotected by antidiscrimination law.<sup>23</sup> In a 2002 [case](#) from Wisconsin, a for-profit company’s decision to remove a manager from a role in which he supervised non-white employees because of his membership in a white supremacist church was found to constitute religious discrimination.<sup>24</sup> As the Supreme Court expands the right of religious entities to be exempt from government regulation, the types of workers [considered “ministers,”](#) and which entities count as “religious” (including some for-profits), more and more institutions could gain a right to engage in—or ignore—racist discrimination and harassment.<sup>25</sup>



### 3. Other Discrimination

Dozens of cases have been brought by institutions seeking the religious right to deny jobs, housing, and services to certain classes of people, including LGBTQ people, religious minorities and atheists, unmarried couples and parents, women, people with disabilities, and others. The results of these cases have been mixed, but some have led to the creation of religious exemptions from civil rights laws of all kinds.<sup>26</sup> In 2019, an Arizona [calligraphy](#)

<sup>21</sup> *Beans v. Trinity Episcopal School*, 2018 WL 8369030 (Tex. Dist. 2018); John Suayan, *Bullying Lawsuit Against Galveston Private School Ends, State District Judge Grants Defendants’ Plea of Jurisdiction*, SOUTHEAST TEXAS RECORD (Mar. 27, 2018), <https://setexasrecord.com/stories/511370815-bullying-lawsuit-against-galveston-private-school-ends-state-district-judge-grants-defendants-plea-of-jurisdiction>.

<sup>22</sup> Suayan, *supra* note 21.

<sup>23</sup> *Kirby v. Lexington Theol. Seminary*, 426 S.W.3d 597 (Ky. 2014); *Rogers v. Salvation Army*, 2015 U.S. Dist. LEXIS 61112 (E.D. Mich. 2015); Leslie C. Griffin, *The Ministerial Exception Allows Racial Discrimination by Religions*, JUSTIA (Jul. 16, 2020), <https://verdict.justia.com/2020/07/16/the-ministerial-exception-allows-racial-discrimination-by-religions>.

<sup>24</sup> *Peterson v. Wilmur Communs., Inc.*, 205 F. Supp. 2d 1014 (E.D. Wis. 2002).

<sup>25</sup> Ian Millhiser, *The Supreme Court Stripped Thousands of Teachers of Their Civil Rights*, VOX (Jul. 8, 2020), <https://www.vox.com/2020/7/8/21317223/supreme-court-ministerial-exception-religion-morrissey-berru-samuel-alito>.

<sup>26</sup> The Supreme Court will decide in the 2022-2023 term whether a website designer with religious objections to same-sex marriage may violate antidiscrimination law by turning away same-sex couples seeking wedding websites. This case will be decided under the Free Speech rather than the Free Exercise Clause of the First Amendment, meaning the decision could impact even those with *non-religious* justifications for violating civil rights laws. See 303 Creative v. Elenis, SCOTUSBLOG.COM, <https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis/> (last visited Sept. 8, 2022). For an explanation for why a ruling for the website designer would harm rather than protect religious liberty, see Brief of 30 Religious, Civil Rights, and Grassroots Organizations as Amici Curiae in Support of Respondents, 303 Creative v. Elenis, No. 21-476 (filed Aug. 19, 2022) available at <https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis/>.

[company](#) won the right to refuse to sell wedding invitations to same-sex couples.<sup>27</sup> Teachers have sued (with [varied outcomes](#)) for a religious right to refuse to call trans students by their requested names and pronouns.<sup>28</sup> Courts have exempted religious employers from laws prohibiting a [hostile work environment](#).<sup>29</sup> A faith-based [homeless shelter](#) in Alaska successfully litigated for the right to turn away transgender people seeking help, and a [Salvation Army shelter](#) in Massachusetts is currently arguing for a First Amendment right to turn away people who use medication-assisted treatment for opioid-use disorder.<sup>30</sup> In [an ongoing case](#), a government-funded child welfare agency in South Carolina is defending its ability to refuse to place children (who are wards of the state) with Catholics.<sup>31</sup> The agency has also [turned away Jews](#).<sup>32</sup>

Numerous entities have been permitted to fire pregnant, [unmarried employees](#), with other cases [ongoing](#).<sup>33</sup> Landlords in several states have also sued for—and sometimes won—permission to [refuse housing](#) to unmarried couples, citing a religious exemption.<sup>34</sup> In 2019, a North Carolina police officer who was fired after refusing to train a female colleague argued that he was [religiously obliged](#) to follow the “Billy Graham rule,” which bars unmarried men and women from spending time alone together.<sup>35</sup> The case was later settled. Finally, several “[ministerial exception](#)” cases—including the foundational [Hosanna-Tabor](#) case mentioned above—have allowed religious organizations to discriminate against teachers and certain other

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<sup>27</sup> *Brush & Nib Studio, LC v. City of Phoenix*, 244 Ariz. 59 (Ariz. Ct. App. 2018). *See also* *Chelsey Nelson Photography, LLC v. Louisville*, 2022 WL 3972873 (W.D. Ky. 2022) (exempting a Kentucky photographer from compliance with local nondiscrimination law).

<sup>28</sup> *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823 (S.D. Ind. 2020); *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021); Rebekah Riess & Alaa Elassar, *Teacher gets \$95,000 to Settle Lawsuit Over Refusal to Use Student’s Preferred Name*, CNN.COM (Sept. 1, 2022), <https://www.cnn.com/2022/09/01/us/kansas-teacher-suspend-settle/index.html>. *See also* *Loudoun County School Board v. Cross*, 2021 WL 9276274 (Va. 2021).

<sup>29</sup> Demkovich, *supra* note 18.

<sup>30</sup> *Downtown Soup Kitchen v. Municipality of Anchorage*, 576 F.Supp.3d 636 (D. Alaska 2021); *Tassinari v. Salvation Army National Corporation*, 2022 WL 2397542 (D. Mass. 2022).

<sup>31</sup> AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, *MADONNA V. DEPT. OF HEALTH AND HUMAN SERVICES* (2020), <https://www.au.org/how-we-protect-religious-freedom/legal-cases/cases/madonna-v-department-of-health-and-human-services/>. In 2021, the Supreme Court ruled in *Fulton v. Philadelphia* that a city’s refusal to contract with a child welfare agency that refused to certify same-sex couples as foster parents violated the Free Exercise Clause. However, this unanimous decision hinged explicitly on the Court’s determination that the nondiscrimination clause in the relevant city contract was not universally applicable, and already allowed for exceptions. The opinion did not create a general right for faith-based government contractors to violate nondiscrimination rules. *Fulton v. Philadelphia*, 141 S.Ct. 1868 (2021).

<sup>32</sup> Lydia Currie, *I was Barred from Becoming a Foster Parent Because I Am Jewish*, JEWISH TELEGRAPHIC AGENCY (Feb. 5, 2019), <https://www.jta.org/2019/02/05/opinion/i-was-barred-from-becoming-a-foster-parent-because-i-am-jewish>.

<sup>33</sup> LAW, RIGHTS, AND RELIGION PROJECT, UNMARRIED AND UNPROTECTED (2017), <https://lawrightsreligion.law.columbia.edu/unmarriedandunprotected>; Tracey Tully, *An Unmarried Catholic Schoolteacher Got Pregnant. She Was Fired*, THE NEW YORK TIMES (Jun. 28, 2021), <https://www.nytimes.com/2021/06/28/nyregion/pregnant-catholic-school-teacher.html>.

<sup>34</sup> Rebecca A. Wistner, *Cohabitation, Fornication and the Free Exercise of Religion: Landlords Seeking Religious Exemption from Fair Housing Laws*, 46 CASE W. RES. L. REV. 1071 (1996).

<sup>35</sup> Ben Kessler, *North Carolina Police Officer Fired for Following the ‘Billy Graham Rule,’ Lawsuit Says*, NBC NEWS (Aug. 23, 2019), <https://www.nbcnews.com/news/us-news/north-carolina-police-officer-fired-following-billy-graham-rule-lawsuit-n1045706>.

employees based on age and disability, in violation of the Americans with Disabilities Act and the Age Discrimination in Employment Act.<sup>36</sup>



#### 4. Access to Divorce

Cases have been brought by Christians [in Texas](#), [Pennsylvania](#), [Maryland](#), [Connecticut](#), [Kansas](#), [North Dakota](#), and [Oklahoma](#) arguing that no-fault divorce laws violate their right to religious liberty.<sup>37</sup> In *Pankoe v. Pankoe*, for example, a husband argued that he and his wife had “entered into a Christian marriage contract, which Pennsylvania cannot invalidate.”<sup>38</sup> So far, no state has granted a spouse a religious right to force their partner into a binding “biblical” or “covenant” marriage, although several states have passed laws allowing partners to voluntarily enter a “covenant” marriage with a more restricted right to divorce.<sup>39</sup>



#### 5. Child Welfare

Religious exemption laws in many states have allowed parents to withhold necessary medical care from their children, or provide only “faith healing,” without being charged with neglect. While all U.S. states prohibit child abuse and neglect, [over half](#) of states have exemptions for denials of medical care due to religious belief.<sup>40</sup> Such denials have led to numerous [documented](#) child deaths from treatable conditions.<sup>41</sup> A number of states have, over the past several decades, [repealed](#) earlier religious exemptions from child neglect laws.<sup>42</sup> In recent years,

<sup>36</sup> *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor*, *supra* note 16.

<sup>37</sup> Elizabeth Reiner Platt, *Texas Woman Opposes Divorce Citing ‘Blood Covenant’; Will Anti-Sharia Law Get in the Way?*, REWIRE NEWS GROUP (Jan. 31, 2019), <https://rewirenewsgroup.com/religion-dispatches/2019/01/31/texas-woman-opposes-divorce-citing-blood-covenant-will-anti-sharia-law-get-in-the-way/>; *Waite v. Waite*, 150 S.W.3d 797 (Tex. App. 14th Dist. 2004); *Pankoe v. Pankoe*, 222 A.3d 443 (Pa. Super. Ct. 2019); *Melki v. Melki*, 2020 Md. App. LEXIS 947 (Md. Ct. Spec. App. 2020); *Grimm v. Grimm*, 276 Conn. 377 (Conn. 2005); *Sharma v. Sharma*, 8 Kan. App. 2d 726 (Kan. Ct. App. 1983); *Martian v. Martian*, 328 N.W.2d 844 (N.D. 1983); *Williams v. Williams*, 1975 OK 163 (Okla. 1975).

<sup>38</sup> *Pankoe*, 222 A.3d at 445.

<sup>39</sup> Platt, *supra* note 37.

<sup>40</sup> Aleksandra Sandstrom, *Most States Allow Religious Exemptions from Child Abuse and Neglect Laws*, PEW RESEARCH CENTER (2016), <https://www.pewresearch.org/fact-tank/2016/08/12/most-states-allow-religious-exemptions-from-child-abuse-and-neglect-laws/>.

<sup>41</sup> Rita Swan, *Faith-Based Medical Neglect: for Providers and Policymakers*, 13 J. OF CHILD & ADOLESCENT TRAUMA 343.

<sup>42</sup> Emma Green, *When ‘Religious Freedom’ Leaves Children Dead*, THE ATLANTIC (Oct. 6, 2016), <https://www.theatlantic.com/politics/archive/2016/10/child-abuse-religious-exemptions-tennessee/503063/>; SHAWN FRANCIS PETERS, *WHEN PRAYER FAILS: FAITH HEALING, CHILDREN, AND THE LAW* 197 (2008).



there has been a dedicated effort to [repeal Idaho's](#) medical neglect exemption after a report found numerous instances of preventable childhood deaths in the state.<sup>43</sup>

Religious exemption laws and lawsuits have also allowed parents to refuse required child [immunizations](#), and to pull their children [out of school](#) before the legal minimum age.<sup>44</sup> Moreover, certain religious exemption laws (and [lawsuits](#)) shield religiously affiliated [schools](#) and [childcare facilities](#) from government licensing, regulation, and oversight in ways that can put children at risk.<sup>45</sup> For example, it took years of complaints of violent abuse at one religiously affiliated reform school before Alabama passed a [law](#) requiring state oversight of such facilities.<sup>46</sup>



## 6. The Right to Union Organizing

Faith-based colleges have been granted religious exemptions from provisions of the National Labor Relations Act (NLRA) requiring them to [recognize unions](#).<sup>47</sup> In 2020, for example, a federal [court ruled](#) that the National Labor Relations Board, which enforces U.S. labor laws, had no jurisdiction over a Catholic university in Pennsylvania, stymying an effort to unionize adjunct faculty members.<sup>48</sup> This ruling could easily be extended to other large, religiously affiliated organizations such as religious hospital systems, which employ thousands of people. Moreover, recent court cases have extended some religious exemption policies to cover even *for-profit companies*. In [Burwell v. Hobby Lobby](#), the Supreme Court held that RFRA exempted a large, for-profit chain of crafting stores from a provision of the Affordable Care Act mandating that employers cover contraceptives in employee health plans.<sup>49</sup>

<sup>43</sup> Olivia Heersink, *Panel Calls for Changes to Idaho's Faith-healing Exemption During 2020 Session*, IDAHO PRESS (Jan. 16, 2020), [https://www.idahopress.com/news/local/panel-calls-for-changes-to-faith-healing-exemption-during-2020-session/article\\_1289b333-9ebc-59c6-99f5-520934fc6e13.html](https://www.idahopress.com/news/local/panel-calls-for-changes-to-faith-healing-exemption-during-2020-session/article_1289b333-9ebc-59c6-99f5-520934fc6e13.html); Sandstrom, *supra* note 40.

<sup>44</sup> NATIONAL CONFERENCE OF STATE LEGISLATURES, STATES WITH RELIGIOUS AND PHILOSOPHICAL EXEMPTIONS FROM SCHOOL IMMUNIZATION REQUIREMENTS (2021), <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>; *Wis. v. Yoder*, 406 U.S. 205 (1972).

<sup>45</sup> Janet Heimlich, *Have Texas Parents Lost the Right to sue Faith-based Schools that Abuse Their Children?* HOUSTON CHRONICLE (Sep. 5, 2018), <https://www.houstonchronicle.com/opinion/outlook/article/Have-Texas-parents-lost-the-right-to-sue-13207402.php>; Tyler Kingkade et al., *Legal Loopholes Allow Abuse to Go Undetected at Religious Boarding Schools, Advocates Say*, NBC NEWS (Feb. 11, 2021), <https://www.houstonchronicle.com/opinion/outlook/article/Have-Texas-parents-lost-the-right-to-sue-13207402.php>; Amy Julia Harris, *Religious Day Cares Get Freedom From Oversight, With Tragic Results*, REVEAL NEWS (Apr. 12, 2016), <https://revealnews.org/article/religious-day-cares-operate-with-little-oversight-and-accountability/>.

<sup>46</sup> Alabama Youth Residential Facility Abuse Prevention, Alabama Department of Human Resources Social Services Division Administrative Code Chapter 660-5-54 (adopted Dec. 28, 2017), <https://dhr.alabama.gov/wp-content/uploads/2019/07/Attachment-A.pdf>.

<sup>47</sup> Amy Littlefield, *Union-Busting in the Name of God*, THE NATION (Mar. 31, 2020), <https://www.thenation.com/article/society/religious-universities-unions-labor/>.

<sup>48</sup> *Duquesne Univ. of the Holy Spirit v. N.L.R.B.*, 947 F.3d 824 (5th Cir. 2020) *rehearing en banc den'd* 975 F.3d 13 (2020).

<sup>49</sup> *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. 682 (2014).

Thus, we may see exceptions from labor laws like the NLRA extend far beyond nonprofit religious schools. Enormous faith-based healthcare systems and other nonprofits—and even for-profit companies with religious owners—could claim that recognizing unions would violate their religious faith.



## 7. Public Services

Several cases have been brought by [public employees](#) who, for religious reasons, refuse to perform certain duties of their position.<sup>50</sup> In 2014, for example, a police captain in Oklahoma [brought suit](#) alleging a religious objection to attending a “Law Enforcement Appreciation Day” at a mosque.<sup>51</sup> Among [many other cases](#), two police officers refused to [stand guard](#) outside an abortion clinic or arrest anti-abortion protestors, a public school [biology teacher](#) refused to teach evolution, and an [IRS agent](#) refused to certify groups that supported abortion or LGBTQ rights as tax exempt.<sup>52</sup> Since marriage equality was broadly recognized in 2015, [clerks](#) and [judges](#) have brought suits demanding religious exemptions from the duty to marry same-sex couples.<sup>53</sup>



## 8. Public Health

[Almost every state](#) allows religious exemptions from vaccination requirements for schoolchildren.<sup>54</sup> Over the past several years, however, several states have [repealed](#) religious exemptions from their vaccine laws in order to reduce the transmission of serious diseases, including measles.<sup>55</sup>

In most states and at the federal level, religious exemption [laws](#) also shield medical providers, including large hospital systems, which refuse to offer certain health services – most

<sup>50</sup> Caroline Mala Corbin, *Government Employee Religion*, 49 ARIZ. ST. L.J. 1193.

<sup>51</sup> *Fields v. City of Tulsa*, 753 F.3d 1000 (10th Cir. 2014).

<sup>52</sup> Corbin, *supra* note 50, *Rodriguez v. City of Chicago*, 156 F.3d 771 (7th Cir. 1998); *LeVake v. Indep. Sch. Dist.* #656, 625 N.W.2d 502 (Minn. Ct. App. 2001); *Haring v. Blumenthal*, 471 F. Supp. 1172 (D.D.C. 1979).

<sup>53</sup> *High Court Won't Take Up Ex-Kentucky Clerk Kim Davis' Case*, AP NEWS (Oct. 5, 2020), <https://apnews.com/article/lawsuits-kentucky-us-supreme-court-kim-davis-marriage-9d57d84ffa0b9a7fc9bbc42c6f7a1b24>; Patrick Dorrian, *Judge Who Won't Oversee Same-Sex Weddings Wants Suit Revived*, BLOOMBERG LAW (Jul. 6, 2021), <https://news.bloomberglaw.com/daily-labor-report/judge-who-wont-oversee-same-sex-weddings-wants-suit-revived>.

<sup>54</sup> NATIONAL CONFERENCE OF STATE LEGISLATURES, STATES WITH RELIGIOUS AND PHILOSOPHICAL EXEMPTIONS FROM SCHOOL IMMUNIZATION REQUIREMENTS (2021), <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

<sup>55</sup> Dave Collins, David Cray, and Michael Melia, *Momentum Grows for Closing Gaps in US Vaccine Requirements*, ASSOCIATED PRESS (May 1, 2021), <https://apnews.com/article/coronavirus-lifestyle-health-government-and-politics-religion-c6cf4e14efc6b5d8159a5f9f01752270>.

commonly contraception, sterilization, and abortion.<sup>56</sup> These exemptions have even been applied to withhold care during [medical emergencies](#), such as when a patient who is miscarrying needs to fully remove a pregnancy to prevent excessive bleeding and possible sepsis.<sup>57</sup> When one patient was turned away from a Catholic hospital in Michigan while miscarrying, she sued and subsequently [lost her case](#), in part because the court determined it did not have jurisdiction over the religious defendants.<sup>58</sup>

Advocates in several states have fought for a number of different legislative measures to help mitigate the harms of religious medical refusals. For example, in 2017, [a bill](#) was introduced in New Mexico to require hospitals to provide reproductive healthcare during a medical emergency regardless of their religious identity.<sup>59</sup> In 2019, Washington enacted [a law](#) requiring hospitals to provide notice of what reproductive health services are available at their facilities.<sup>60</sup> And in 2021, Oregon passed the “[Equal Access to Care Act](#),” which among other things will create a rigorous review process for any healthcare mergers (including ones involving religiously owned corporations) that could impact access to reproductive healthcare.<sup>61</sup>

While some states are passing measures to reduce the impact of religious exemptions on public health, other states are creating new exemptions. In the wake of the COVID-19 pandemic, several states have [introduced or passed laws](#) broadly excusing religious activities and institutions from compliance with public health requirements.<sup>62</sup> For example, in 2021, Texas passed [two](#) separate [laws](#) prohibiting public officials from ordering religious organizations to close – even during an emergency or disaster.<sup>63</sup> In addition to state laws, [dozens of lawsuits](#) were filed during the pandemic to prevent government officials from enforcing stay-at-home health orders on religious activities.<sup>64</sup> In April 2021, the Supreme Court issued a [ruling](#) in one of these cases that hugely expanded the right to religious exemptions – even from laws

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<sup>56</sup> GUTTMACHER INSTITUTE, REFUSING TO PROVIDE HEALTH SERVICES (2021), <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>. See also *Franciscan Alliance v. Becerra*, 2022 WL 3700044 (5th Cir. 2022).

<sup>57</sup> PUBLIC RIGHTS PRIVATE CONSCIENCE PROJECT, BEARING FAITH: THE LIMITS OF CATHOLIC HEALTH CARE FOR WOMEN OF COLOR (2017), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/BearingFaith.pdf>.

<sup>58</sup> *Means v. U.S. Conference of Catholic Bishops*, 836 F.3d 643 (6th Cir. 2016); Curtis Skinner, *Appeals Court Rejects Michigan Woman’s Lawsuit Over Catholic Hospital Care*, REUTERS (Sep. 8, 2016), <https://www.reuters.com/article/michigan-catholic/appeals-court-rejects-michigan-womans-lawsuit-over-catholic-hospital-care-idUSL1N1BK276>.

<sup>59</sup> S.B. 282, 53rd Leg., 1st Sess. (N.M. 2017); Joey Peters, *Lawmakers Introduce Bills to Expand Reproductive Health Access, Protections*, NM POLITICAL REPORT (Feb. 7, 2017), <https://nmpoliticalreport.com/2017/02/07/lawmakers-introduce-bills-to-expand-reproductive-health-access-protections/>.

<sup>60</sup> Rutman, *supra* note 11.

<sup>61</sup> Littlefield, *Oregon Will Protect Reproductive Health Care When Hospitals Merge*, *supra* note 11; H.B. 2362, 2021 Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2362>.

<sup>62</sup> DANGEROUS EXEMPTIONS, <https://www.dangerousexemptions.org/> (last visited Oct. 8, 2021).

<sup>63</sup> H.B. 1239, 87th Leg. Sess. (Tex. 2021); H.B. 525, 87th Leg. Sess. (Tex. 2021).

<sup>64</sup> THE LAW, RIGHTS, AND RELIGION PROJECT, WE THE PEOPLE (OF FAITH): THE SUPREMACY OF RELIGIOUS RIGHTS IN THE SHADOW OF A PANDEMIC (2021), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/We%20The%20People%20%28of%20Faith%29%20Report.pdf>.

intended to prevent the spread of a deadly disease.<sup>65</sup> Since then, additional COVID religious exemption cases have been brought, including by a Catholic school in Michigan challenging a COVID [mask](#) mandate.<sup>66</sup> Members of the military, healthcare personnel, students, teachers, and others have also sued for—and in [some cases](#), [won](#)—exemptions from COVID-19 vaccine mandates.<sup>67</sup> Many of these cases are ongoing.



## 9. Criminal Laws

Religious exemption claims have been brought by claimants seeking a faith-based right to engage in serious criminal activities, including [kidnapping](#), [sexual assault](#), dissemination of [child pornography](#), [corporal punishment](#), and [criminal threats](#).<sup>68</sup>

For example, [United States v. Epstein](#) involved a group of Orthodox Jewish men charged with kidnapping husbands who refused to provide their wives with a document known as a “get,” which serves as a proof of divorce under Jewish law. The defendants submitted evidence that helping a woman obtain a get “is a ‘mitzvah’” or religious commandment, “even if force is necessary to secure the husband’s expression of consent.”<sup>69</sup> In [Diez v. Boyd](#), a defendant argued that “he is an adherent to ‘Creationist Naturism’ and his post of a nude child on Pinterest.com was religious in nature.”<sup>70</sup> Thankfully, none of these cases have succeeded.

<sup>65</sup> Tandon v. Newsom, 141 S. Ct. 1294 (2021).

<sup>66</sup> Resurrection School v. Hertel, 35 F.4th 524 (6th Cir. 2022).

<sup>67</sup> For cases involving members of the military, *see, e.g.*, Rachel S. Cohen, *Court Blocks Air Force From Punishing Unvaccinated Troops Seeking Religious Waivers*, AIRFORCETIMES (Aug. 1, 2022), <https://www.airforcetimes.com/news/your-air-force/2022/08/01/court-blocks-air-force-from-punishing-unvaccinated-troops-seeking-religious-waivers/>; *Doster v. Kendall*, 2022 WL 982299 (S.D. Ohio 2022) (ruling for Air Force vaccine objectors); *U.S. Navy SEALs 1–26 v. Austin*, 2022 WL 1025144 (N.D. Tex. 2022) (ruling for Navy vaccine objectors) (appeal filed); *Short v. Berger*, 2022 WL 1203876 (D. Ariz. 2022) (ruling against marine vaccine objector) (appeal filed). For cases involving healthcare providers, *see, e.g.*, Kelly Gooch and Nika Schoonover, *NorthShore Reaches \$10.3M Settlement in Vaccine Mandate Case*, BECKER’S HOSPITAL REVIEW, <https://www.beckershospitalreview.com/legal-regulatory-issues/northshore-reaches-10-3m-settlement-in-vaccine-mandate-case.html>; *Doe 1 v. NorthShore University HealthSystem*, 2021 WL 5578790 (N. D. Ill. 2021) (Title VII religious discrimination challenge to vaccine policy at private hospital); *Dr. A v. Hochul*, 142 S.Ct. 2569 (2022) (declining to review a lower court opinion upholding a COVID-19 vaccine mandate for healthcare workers); *Does 1-3 v. Mills*, 142 S.Ct. 1112 (2022) (same). For cases involving teachers and students, *see, e.g.*, AP, *WMU Gives Up Lawsuit Fight Over Vaccines for Athletes* (Nov. 16, 2021), <https://apnews.com/article/coronavirus-pandemic-sports-religion-education-lawsuits-cacd71671a578875f3c7c457810fa1c5>; *Dahl v. Board of Trustees of Western Mich. Univ.*, 2021 WL 4618519 (6th Cir. 2021); *Keil v. City of New York*, 142 S.Ct. 1226 (2022); *Kane v. De Blasio*, 2022 WL 3701183 (S.D.N.Y. 2022) (denying a COVID-19 vaccine exemption for teachers).

<sup>68</sup> *United States v. Epstein*, 91 F. Supp. 3d 573 (D.N.J. 2015); *Bedell v. Menard*, 2018 U.S. Dist. LEXIS 138867 (D. Vt. 2018); *Diez v. Boyd*, 2020 U.S. Dist. LEXIS 148783 (W.D. Tex. 2020); *Clark v. Stone*, 998 F.3d 287 (6th Cir. 2021); Kristine Phillips, *She Beat Her Son With a Hanger – And Said Indiana’s Religious Freedom Law Gave Her the Right*, THE WASHINGTON POST (Sep. 1, 2016), <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/09/01/she-beat-her-son-with-a-hanger-and-said-indianas-religious-freedom-law-gives-her-the-right/>; *United States v. Nissen*, 2020 U.S. Dist. LEXIS 71888 (D.N.M. 2020).

<sup>69</sup> *United States v. Epstein*, 91 F. Supp. 3d 573, 580-81 (D.N.J. 2015).

<sup>70</sup> *Diez v. Boyd*, 2020 U.S. Dist. LEXIS 148783 \*1 (W.D. Tex. 2020).

Claimants have also sought to use their religious identity as a defense in civil suits related to past criminal activity. In June 2021, a [court ruled](#) that religious liberty protections did not shield a Catholic Diocese in Massachusetts from a lawsuit brought by a man who alleged that he was sexually abused by a bishop and two priests in the 1960s.<sup>71</sup>



## 10. And More

Some religious exemption claims are less corrosive than confounding, or even irreverent. Exemption claims have been brought on behalf of people claiming a religious obligation to eat [cat food](#) in the workplace, [dress “like a chicken”](#) at a court hearing, and wear a [colander on one’s head](#) in a driver’s license photo.<sup>72</sup> While not necessarily harmful, such claims underscore the challenges of a regime in which religious exemptions are too often seen as a license to get out from every conceivable law or policy.

\* \* \*

The “parade of horrors” that could result from broad religious exemption laws is not as far-fetched as it may initially seem. Religious exemptions have already been used to curb oversight of religious childcare facilities, limit union organizing, allow refusals of emergency medical care, and undermine laws prohibiting discrimination and harassment. Many more exemptions have been requested and denied under earlier legal standards far less protective of religious exercise than our current constitutional test.

None of this is to say that religious exemptions are never warranted. Religious exemptions have also been used, for example, to ensure that people in prison have access to kosher and halal food; that schoolchildren and members of the military are able to wear religious head coverings and hairstyles; and that members of small religious groups, including indigenous religions, are not criminally prosecuted for the ritual use of substances like hoasca and peyote. Crucially, none of these exemptions threaten the rights of third parties. As the right to religious exemptions continually expands in ways that infringe on important rights and liberties, the public must be clear-eyed about the impact of broad exemptions across a wide swath of issues, from workers’ rights to child safety.

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<sup>71</sup> *Judge Denies Church’s Bid to Dismiss Sex Abuse Lawsuit*, AP NEWS (Jun. 25, 2021), <https://apnews.com/article/ri-state-wire-ma-state-wire-lawsuits-sexual-abuse-by-clergy-religion-b67476e225777057c699e812beb1d76f>.

<sup>72</sup> *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977); *State v. Hodges*, 695 S.W.2d 171 (Tenn. 1985); Jessica Durando, *Pastafarian Can Wear Strainer on Head in License Photo*, USA TODAY (Nov. 16, 2015), <https://www.usatoday.com/story/news/nation-now/2015/11/16/church-flying-spaghetti-monster-massachusetts-religion/75862946/>.

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*The Law, Rights, and Religion Project is a law and policy think tank based at Columbia Law School that promotes social justice, freedom of religion, and religious pluralism. We analyze and develop strategies to address the complex ways in which religious liberty rights interact with other fundamental rights.*