

## Indiana Supreme Court Suggests Religious Affiliation May Be An Impermissible Basis For Peremptory Strike

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In *Highler v. State*, 854 N.E.2d 823 (Ind. 2006), the Indiana Supreme Court considered a criminal defendant's appeal on the grounds that the State's peremptory strike of a particular juror violated the Federal Constitution because it was based on race and religion. The State struck Juror 92, who was the only African American

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in the venire. When faced with a Batson challenge, the Prosecutor stated, “first of all your Honor, in his profession, he is a Pastor and I never take any Pastors, Ministers, Reverends, Priests on my jury panels because they are more apt for forgiveness.” *Id.* at 827.

In reviewing the decision, the Indiana Supreme Court stated, “although the issue is not yet resolved by the Supreme Court of the United States, we think the Court of Appeals was correct in concluding that religious affiliation, like race and gender, is an impermissible basis for striking a perspective juror.” *Id.* at 829. Nonetheless, the Court upheld the trial court's ruling, finding as follows: “Although we agree with the Court of Appeals that strikes based on religious affiliation are impermissible, we believe that Judge Robb was correct in upholding the trial court's ruling because the State's justification for striking Juror 92 was not his religious affiliation, but his occupation. As a general proposition, striking a juror because of a juror's occupation is not unconstitutional.” *Id.* at 830 (citations omitted).

The Court's position on the applicability of Batson to religious affiliation is consistent with the majority of courts that have considered the issue in recent years, including courts in Arizona, California, and Connecticut.