UNC SCHOOL OF LAW

FIRST AMENDMENT LAW REVIEW

Volume 10 | Issue 3 Article 8

3-1-2012

Faith Healing Exception versus *Parens Patriae*: Something's Gotta Give

Rebecca Williams

FAITH HEALING EXCEPTIONS VERSUS *PARENS PATRIAE*: SOMETHING'S GOTTA GIVE

Rebecca Williams[*]

INTRODUCTION: THE BASICS OF FAITH HEALING

"At birth, the girl, Alayna, was a pink-cheeked bundle, but by 6 months, a growth the size of a baseball had consumed the left side of her face, pushing her eyeball out of its socket."[1] Alyana was afflicted with a hemangioma, a treatable condition resulting from an abnormal build-up of blood vessels beneath the skin.[2] The child's parents, Timothy and Rebecca Wyland, chose to forgo traditional medical care and instead prayed over her, anointed her with oil, and treated her with "laying on of hands."[3]

After the state took custody of the little girl and she had a medical exam, doctors determined that she was practically blind in her left eye, and would likely have lost the eye completely if medical care had continued to be withheld.[4] It appears that things could have been worse.[5] After their daughter was taken into state custody, a doctor who met with the Wylands "said the couple told him they would never seek

---

* Juris Doctor Candidate, University of North Carolina School of Law, 2013.

1. Isolde Raftery, *Changes in Oregon Law Put Faith-Healing Parent on Trial*, N.Y. TIMES (May 29, 2011), http://www.nytimes.com/2011/05/30/us/30followers.html.

2. *See id.*; *see also* Wendy Glauser, *United States Still too Lenient of "Faith Healing" Parents, Say Children's Rights Advocates*, 183 CAN. MED. ASS'N JOURNAL, E709, E709–E710 (August 9, 2011), *available at* http://www.cmaj.ca/content/183/11/E709.full.

3. *See* Glauser, *supra* note 2, at E709.

4. Steve Mayes, *Timothy, Rebecca Wyland Would Never Seek Care for Girl, Doctor Testifies in Faith-Healing Trial*, THE OREGONIAN (June 1, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/06/faith-healing_trial_of_timothy_rebecca_wyland_continues_with_prosecution_witnesses.html.

5. *Id.*

medical treatment for the girl, even if she faced death."[6] In a court proceeding, the Wylands stated that they put their daughter's fate "in God's hands."[7]

Many Americans would label the Wylands' refusal to seek medical treatment for a critically ill child as abhorrent,[8] however, the Wylands' actions are an example of how religion plays a role in the deaths and serious injuries of children across the country through the practice of "faith healing."[9] Faith healers can employ a variety of methods to "cure" a patient; "[t]hey pray, anoint the child with oil, employ the laying on of hands, or conduct exorcisms."[10] While many admit that these practices can be psychologically beneficial,[11] problems arise when parents rely exclusively on this type of treatment, completely forgoing traditional medical care.[12]

The results of parental reliance on faith healing rituals are startling: a study shows that 172 children died following faith healing between 1975 and 1995; 140 of them had ailments that, with proper medical care, would have had a ninety percent survival rate.[13] The number of deaths is likely to be even greater than reported.[14] Due to the closed-off, private nature of many of these faith healing churches, numerous child deaths are presumably undisclosed.[15]

---

6. *Id.*

7. Steve Mayes, *Timothy, Rebecca Wyland Guilty of Criminal Mistreatment in Faith-Healing Trial*, THE OREGONIAN (June 7, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/06/defense_says_state_overreached_in_faith-healing_trial_of_timothy_rebecca_wyland.html.

8. *See, e.g.*, Steve Mayes, *Judge Sends Message with Prison Terms in Faith-Healing Case*, THE OREGONIAN (Mar. 8, 2010), http://www.oregonlive.com/clackamascounty/index.ssf/2010/03/judge_sends_message_with_priso.html.

9. JANET HEIMLICH, BREAKING THEIR WILL: SHEDDING LIGHT ON RELIGIOUS CHILD MALTREATMENT 221 (2011).

10. *Id.*

11. *Id.*

12. *Id.*

13. Seth M. Asser & Rita Swan, *Child Fatalities From Religion-Motivated Medical Neglect*, 101 PEDIATRICS 625, 625 (Apr. 1998), http://childrenshealthcare.org/wp-content/uploads/2010/07/Pediatricsarticle.pdf.

14. *See* SHAWN FRANCIS PETERS, WHEN PRAYER FAILS: FAITH HEALING, CHILDREN, AND THE LAW 11 (2008).

15. *Id.*

Even more shocking, however, is that several religious groups routinely rely on "faith healing" exemptions to state child abuse and neglect laws to free themselves from liability when they fail to seek medical treatment for children.[16] Most of these exemptions are the result of the Child Abuse Prevention and Treatment Act of 1974 ("CAPTA").[17] CAPTA aimed to reduce the number of children affected by abuse and neglect by providing financial incentives for state child abuse prevention and education programs.[18] However, CAPTA contained a regulation from the United States Department of Health, Education, and Welfare ("HEW"),[19] which was lobbied for by the Christian Science Church.[20] This regulation "require[d] states to enact such a[ ] . . . [religious] exemption to be eligible for federal funding of child protection programs."[21] This resulted in practically every state having the religious

16. *See* Am. Acad. of Pediatrics: Comm. on Bioethics, *Religious Objections to Medical Care*, 99 PEDIATRICS 279, 279 (1997), http://aappolicy.aappublications.org/cgi/reprint/pediatrics;99/2/279. At the present time, thirty-eight states have some form of spiritual healing exemption to child neglect or abuse crimes on their books. *See, e.g.*, ALA. CODE § 13A-13-6(b) (LexisNexis 2005) (providing an affirmative defense of spiritual healing to a charge of criminal nonsupport of a child); ALASKA STAT. § 11.51.120(b) (West 2010) (providing an affirmative defense to the crime of criminal nonsupport); COLO. REV. STAT. § 19-3-103 (West 2011) (providing an affirmative defense to child neglect); W. VA. CODE ANN. § 61-8D-2(d) (Lexis Nexis 2010) (indicating that faith healing serves as an affirmative defense to murder of a child).

17. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–07 (2000)); *see also* HEIMLICH, *supra* note 9, at 224.

18. *See* Scott St. Amand, *Protecting Neglect: The Constitutionality of Spiritual Healing Exemptions to Child Protection Statutes*, 12 RICH. J.L. & PUB. INT. 139, 140 (2009); *see also* Child Abuse Prevention and Treatment Act of 1974, *supra* note 17.

19. 45 C.F.R. § 1340.14 (1983).

20. *See* Rita Swan, *On Statutes Depriving a Class of Children of Rights to Medical Care: Can This Discrimination Be Litigated?*, 2 QUINNIPIAC HEALTH L.J. 73, 79 (1998).

21. St. Amand, *supra* note 18, at 147. The Christian Science Church is well known for its belief in using spiritual healing over traditional medical care. *See* David Van Biema, *Faith or Healing?*, TIME, Aug. 31, 1998, at 68. Since the enactment of the spiritual healing exemptions following CAPTA, the Church has dedicated itself to preserving those laws. *See id.*

exemptions on their books by the time the regulation was lifted in 1983.[22] The enactment of these exemptions marked a key shift in the way medical child neglect based on religious beliefs could be punished.[23] Prior to the passing of such exemptions, "courts in this country recognized that the failure to provide a child with medical treatment could result in criminal liability for the child's parents."[24] However, after they were instituted, the clash of the statutory exemptions and traditional criminal law methodology gave rise to conflicts between parental First Amendment free exercise claims and the state's duty to protect vulnerable children, creating substantial confusion as to how cases of extreme religious medical neglect should be approached.[25]

Even though no longer mandated,[26] some form of the exemptions is still good law in the majority of the states.[27] Essentially, most of these states do not require faith healing parents to secure traditional medical care for their children, as long as the child is not dying or at risk of a "permanent disability."[28] Nonetheless, several states allow faith healing to function as an affirmative defense "for felonious child neglect, manslaughter, or murder, where the child's life was sacrificed for religious reasons."[29]

---

22. *See* St. Amand, *supra* note 18, at 148; *see also* Wayne F. Malecha, *Faith Healing Exemptions to Child Protection Laws: Keeping the Faith versus Medical Care for Children,* 12 J. LEGIS. 243, 247 (1985).

23. Paula A. Monopoli, *Allocating the Costs of Parental Free Exercise: Striking a New Balance Between Sincere Religious Belief and a Child's Right to Medical Treatment*, 18 PEPP. L. REV. 319, 328 (1991).

24. *Id.*

25. *Id.* at 329.

26. *See* 45 C.F.R. §1340.2(d)(3)(ii) (1983); *see also* Monopoli, *supra* note 23, at 332 ("These new [1983] regulations provide that nothing in the federal rule should be construed as requiring or prohibiting a finding of neglect when a parent practicing his or her religious beliefs does not, on that basis alone, provide medical treatment for his or her child.").

27. *See* Monopoli, *supra* note 23, at 333–34.

28. MARCI A. HAMILTON, GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW 31 (2005).

29. *Id.* at 32. *See also* ME. REV. STAT. ANN. tit. 22, § 4010 (West 2011) (stating that spiritual healing is an affirmative defense to a charge of abuse or neglect of a child); W. VA. CODE ANN. § 61-8D-2(d) (Lexis Nexis 2010) (indicating that faith healing serve as an affirmative defense to murder of a child); ARK. CODE.ANN.

However, on June 9, 2011, one state took an important step to push back against these practices.[30] Oregon, home of the Followers of Christ, a church that is notorious for numerous preventable child deaths resulting from faith healing,[31] passed a law that "remove[s] the remnants of Oregon's legal protection for parents who rely solely on faith healing to meet their children's medical needs."[32] Before the law was passed, a faith healing defense was allowed in certain homicide charges.[33] The new law eliminates that defense against all homicide charges and mandates sentencing under specific guidelines.[34]

This Note argues that the government has a vested interest in having its children grow to maturity.[35] This interest is strong enough to make it constitutionally permissible for the State to enact statutes that limit the practice of religious acts that are contrary to public policy,[36] in spite of the limitations that the Free Exercise Clause of the First

---

§ 5-10-101(a)(9)(B) (West 2012) (allowing faith healing as a defense to the charge of capital murder).

30. *See* H.R. 2721, 76th Leg., Reg. Sess. (Or. 2011).

31. *See e.g.*, Rafferty, *supra* note 1.

32. Steve Mayes, *Kitzhaber Signs Bill to Eliminate Religious Defense for Faith-Healing Parents*, THE OREGONIAN (June 16, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/06/kitzhaber_signs_bill_to_eliminate_religious_defense_for_faith-healing_parents.html. *See generally* Or. H.R. 2721 (eliminating reliance on spiritual treatment as a defense to certain crimes in which the victim is under eighteen years of age).

33. *See* Ryan Kost, *Oregon House Unanimously Votes to End Faith Healing Exception*, THE OREGONIAN (Mar. 10, 2011), http://www.oregonlive.com/politics/index.ssf/2011/03/bill_ending_faith_healing_exce.html; OR. REV. STAT. §163.115(4) (West 2007), *amended by* OR. REV. STAT. §163.115(4) (West 2011).

34. Mayes, *supra* note 32. *See also* H.R. 2721 (removing language that allowed parents to use affirmative defense of "spiritual healing" after the death of a child under the murder statute); OR. REV. STAT. § 163.118 (West 2009) (removing language that allowed parents to use affirmative defense of "spiritual healing" after the death of a ,minor under the manslaughter statute).

35. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158, 168 (1944) (explaining that the state has an interest in having their youngest citizens live long, healthy lives).

36. *See id.* at 167 ("[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that includes, to some extent, matters of conscience and religious conviction.").

Amendment places on governmental interference in religion.[37] As a result, states should be permitted to enforce criminal sanctions against individuals who violate the law in the name of religion, including those who refuse to secure medical care for critically ill children in the name of their faith.[38]

Additionally, this Note proposes that the failure to set these limits is violative of the state's duty as *parens patriae*.[39] The *parens patriae* doctrine vests a state with the duty to intervene on the behalf of those who are too young or incapacitated to fend for themselves.[40] Many advocates of faith healing argue that state assertion of *parens patriae* rights in cases of religious medical neglect is not only an invasion into the sacred parent-child relationship,[41] but also a restriction on their First Amendment freedom to raise their children under the religion of their choice without government intervention.[42] However, courts have been quite vocal in rejecting these assertions in cases that deal with the critically-ill children of faith healing parents, regularly reaffirming the state's right to intervene on behalf of minors.[43] Therefore, it follows that Oregon's choice to remove the faith healing exemption is not only

37. U.S. CONST. amend. I. *See also* Wisconsin v. Yoder, 406 U.S. 205, 234–35 (1972) (holding that the state's interest in education is not strong enough to override the fundamental rights guaranteed by the Free Exercise Clause); Sherbert v. Verner, 374 U.S. 398, 403–04 (1963) (finding that forcing one to abandon religious beliefs in order to receive government benefits is improperly burdensome to religion).

38. *See, e.g.*, *infra* notes 209–14 and accompanying text.

39. As will be developed later in this Note, *parens patriae* refers to "the state in its capacity as provider of protection to those unable to care for themselves." BLACK'S LAW DICTIONARY 1221 (9th ed. 2009). The doctrine also gives the government "standing to prosecute a lawsuit on behalf of a citizen." *Id.*

40. *See id.*

41. *See generally* Jennifer L. Hartsell, *Mother May I . . . Live? Parental Refusal of Life-Sustaining Medical Treatment for Children Based on Religious Objections*, 66 TENN. L. REV. 499, 515–16 (1999) (stating that parents who wish to be shielded from prosecution for faith healing deaths often claim that their behavior is shielded by the 14th Amendment's protection of the "parental autonomy").

42. *See generally* Janna C. Merrick, *Spiritual Healing, Sick Kids and the Law: Inequities in the American Healthcare System*, 29 AM. J. L. & MED. 269, 280 (2003) (explaining that those in favor of spiritual healing exemptions from prosecution view the right as one that "guarantees them the right to practice their religious beliefs for themselves and their children").

43. *See infra* Part III.

constitutionally permissible, but is in direct accordance with its *parens patriae* duty.

This Note proceeds in four parts. Part I discusses the history of faith healing exemptions, with a focus on the role of the Christian Science Church in the CAPTA regulation. Part II explores the history of the Followers of Christ Church and the progression of the law leading up to the removal of the faith healing exception. Part III examines the history of government interference in religious acts and how the limits of permissible state restrictions are defined under the First Amendment. Part IV argues that the doctrine of *parens patriae* conflicts with the choice of the state to allow faith healing exceptions to remain on the books. Since *parens patriae* is a duty of the state and the adoption of faith healing exemptions is an option of the state, it follows that the doctrine of *parens patriae* can and should be interpreted as compelling the removal of the exemptions.

I. FAITH HEALING EXEMPTIONS: WHOSE IDEA WAS THIS ANYWAY?

The nationwide push for faith healing exemptions began in 1967, when a mother withheld medical treatment from her critically-ill daughter, resulting in the daughter's death.[44] The mother, a Christian Scientist, was charged and convicted of manslaughter after her five-year-old child succumbed to pneumonia.[45] The Christian Science Church responded by initiating a lobbying effort to change the law so that other members of the church would not be subjected to a similar fate.[46] Their lobbying eventually resulted in the enactment of a spiritual healing exception to Massachusetts' child neglect law.[47]

---

44. *See* Swan, *supra* note 20, at 79.

45. *Id.*

46. *Id.*

47. *See* Allison Ciullo, *Prosecution Without Persecution: The Inability of Courts to Recognize Christian Science Spiritual Healing and a Shift Towards Legislative Action*, 42 NEW ENG. L. REV. 155, 188 (2007); *see also* MASS. GEN. LAWS ch. 273, § 1 (1992) (amended 1993) (indicating that the first 1993 amendment to the law removed the sentence that read, in part "[a] child shall not be deemed to be neglected or lack proper physical care for the sole reason that he is being provided remedial treatment by spiritual means alone").

Healing through prayer is at the center of the Christian Science doctrine.[48] It teaches "that sickness is a result of fear and that the symptoms of an illness have no ultimate reality and can be overcome by the spiritual powers of a person's mind."[49] Christian Scientists believe that sickness will be healed by becoming closer with God,[50] which involves "following a way of life involving deep prayer, moral regeneration, and an effort to live in accord with the teachings and spirit of the Bible."[51] The use of traditional medicine, although not deemed a sin, is seen as a hindrance to a true understanding of the religion.[52]

The church was founded in 1879 by Mary Baker Eddy, a woman who had suffered from chronic illness.[53] After a severe fall in 1866 left her badly injured,[54] she asked for her Bible and, while reading an account of Jesus' healing, found herself suddenly well.[55] Eventually, she referred to this as the moment she discovered Christian Science.[56] Currently, the church is "the largest U.S. religious body favoring spiritual healing over medical attention."[57] It also focuses its efforts on protecting faith healing laws.[58] The church is known to be extremely influential in the political realm, with many known members having held important government positions.[59] It also has "spent lavishly on legal fees in court cases and advertising campaigns to promote its positions."[60]

---

48. *See* Merrick, *supra* note 42, at 271.

49. Mark Larabee, *One Denomination Lobbies Ttirelessly*, THE OREGONIAN (Nov. 30, 1998), http://blog.oregonlive.com/clackamascounty/2009/06/faithhealing_deaths_previous_s.html#b.

50. *See id.*

51. Janna C. Merrick, *Christian Science Healing of Minor Children: Spiritual Exemption Statutes, First Amendment Rights, and Fair Notice*, 10 ISSUES L. & MED. 321, 326 (1994).

52. *Id.* at 327.

53. *Id.* at 325.

54. *See Biography of Mary Baker Eddy*, CHRISTIAN SCIENCE, http://christianscience.com/questions/mary-baker-eddy-biography/ (last visited Mar. 17, 2012).

55. *Id.*

56. *Id.*

57. Van Biema, *supra* note 21, at 68.

58. *See id.*

59. HEIMLICH, *supra* note 9, at 249.

60. *Id.*

According to activist Rita Swan, President of Children's Healthcare is a Legal Duty ("CHILD"),[61] the church actively lobbied the Department of Health, Education and Welfare ("HEW") for the inclusion of spiritual healing exemption statutes.[62] In 1974, HEW promulgated the Child Abuse and Neglect Prevention and Treatment Act ("CAPTA"), which mandated the states' inclusion of religious exemptions if they were to receive certain federal funds.[63] HEW stated:

> "[I]t is not the intent of the Committee that parent or guardian legitimately practicing his religious beliefs who thereby does not provide specific medical treatment for a child is *for that reason alone* considered to be a negligent parent. To clarify further, no parent or guardian who in good faith is providing to a child treatment solely by spiritual means such as prayer . . . shall *for that reason alone* be considered to have neglected the child."[64]

The widespread, and practically simultaneous, adoption of these exemptions "cannot be traced to a groundswell of feeling in individual state legislatures that the needs of parents who practice spiritual healing were an important interest that needed protection."[65] Instead, it is almost universally accepted that few states wanted to lose federal funding for their child abuse prevention programs and, as a result, passed the exemptions.[66] Prior to the passage of CAPTA, "state child neglect statutes included, almost universally, the concept that a parent's denial of reasonable medical treatment to a minor child was a punishable offense."[67] Moreover, courts historically were unwilling to accept a

---

61. *See About Us*, CHILDREN'S HEALTHCARE IS A LEGAL DUTY, INC. http://childrenshealthcare.org/?page_id=28 (last visited Mar. 17, 2012).

62. *See* Swan, *supra* note 20, at 79.

63. *Id.* at 80.

64. Child Abuse and Neglect Prevention and Treatment Program, 48 Fed. Reg. 3698, 3699 (Jan. 26, 1983) (quoting H.R. REP. NO. 93-685, at 4–5 (1973)).

65. Monopoli, *supra* note 23, at 334.

66. *See* Asser & Swan, *supra* note 13, at 625; *see also* Swan, *supra* note 20, at 80.

67. St. Amand, *supra* note 18, at 147.

"faith healing" defense to criminal prosecution.[68] After CAPTA, almost every state amended its statutes to include a faith healing exemption.[69]

Although the faith healing requirement was lifted by the U. S. Department of Health and Human Services in 1983,[70] giving states the option to remove the faith healing exceptions from their books, the effects of the Act are still felt today.[71] Prior to 1974, only eleven states had civil or criminal exemptions for spiritual healing.[72] Currently, "most states have a religious exemption to civil dependency or neglect charges or a religious defense to a criminal charge. Many states have religious exemptions in both civil and criminal codes."[73]

The American Academy of Pediatrics (AAP), American Medical Association, and National Committee for the Prevention of Child Abuse are examples of three prominent groups that vehemently oppose these exceptions.[74] The AAP states their position in the following manner:

> The AAP considers failure to seek medical care in such cases to be child neglect, regardless of the motivation. The basic moral principle of justice requires that children be protected uniformly by laws and regulations at the local, state, and federal levels. Parents and others who deny a child

68. *See* Monopoli, *supra* note 23, at 329.

69. *Id.* at 331.

70. *See* 45 C.F.R. §1340.2(d)(3)(ii) (1983). The change stated, in part, "Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child . . . ." *Id.*; *see also* Monopoli, *supra* note 23, at 332.

71. *See* St. Amand, *supra* note 18, at 148–49.

72. *See* Swan, *supra* note 20, at 80.

73. *Id.* at 80–81. *See also* Am. Acad. of Pediatrics, *supra* note 16, at 279.; HAMILTON, *supra* note 28, at 31; ALA. CODE § 13A-13-6(b) (LexisNexis 2005) (providing an affirmative defense of spiritual healing to a charge of criminal nonsupport of a child); ALASKA STAT. § 11.51.120(b) (West 2010) (providing an affirmative defense to the crime of criminal nonsupport); COLO. REV. STAT. § 19-3-103 (West 2011) (providing an affirmative defense to child neglect); W. VA. CODE ANN. § 61-8D-2(d) (Lexis Nexis 2010) (indicating that faith healing is an affirmative defense to murder of a child).

74. *See* Asser & Swan, *supra* note 13, at 629; Am. Acad. of Pediatrics, *supra* note 16, at 279.

> necessary medical care on religious grounds should not be exempt from civil or criminal action that otherwise would be appropriate. State legislatures and regulatory agencies should remove religious exemption clauses from statutes and regulations to ensure that all parents understand that they should seek appropriate medical care for their children.[75]

Essentially, the AAP asserts that children have a right to conventional medical treatment, especially in cases where their lives are at risk.[76] The AAP believes that these exemptions are harmful to children, and the existence of the exemptions actually encourages parents to eschew conventional medical care, in turn, exacerbating the problem.[77]

But even as some states began to rewrite their laws and remove faith healing exemptions from the books, the Christian Science Church continued to fight.[78] For example, after numerous child deaths in the 1980s, Indiana lawmakers aimed to remove the exemptions.[79] The Christian Scientists objected to this change, and made themselves heard.[80] One report states that "[f]our times a bill requiring parents to provide medical care for their children passed the House, but each time it died in a Senate committee after Christian Scientists flooded senators with mail and jammed hearings."[81] One lawmaker stated it "was impossible to get [the bill] by the Christian Science Church."[82] Similar behavior was demonstrated after the conviction of Christian Scientist parents in California, where the church bought "full-page newspaper advertisements that claimed their members [were] being 'persecuted for prayer.'"[83] These facts illustrate why it is often difficult for legislators to change the laws and repeal faith healing exemptions in their individual

---

75. *See* Am. Acad. of Pediatrics, *supra* note 16 at 279.

76. *See id.*

77. *See id.* at 279–80.

78. *See* Larabee, *supra* note 49; *see also* Asser & Swan, *supra* note 13, at 629.

79. Larabee, *supra* note 49.

80. *See id.*

81. *Id.*

82. *Id.*

83. Andrew Skolnick, *Religious Exemptions to Child Neglect Laws Still Being Passed Despite Convictions of Parents*, 264 JAMA 1226, 1226 (1990).

states—the political pressure and issue-framing by the Christian Science Church compel lawmakers to tread lightly in this area.[84] The negative effects of this type of political pressure are clearly evident when analyzing the faith healing tragedies in the State of Oregon.[85]

II: SOMETHING'S WRONG IN OREGON

A. The Followers of Christ

Although often thought to be absolute, the freedoms guaranteed to religious practices under the First Amendment are anything but unqualified.[86] As the United States Supreme Court in *Prince v. Massachusetts*[87] explained:

> The right to practice religion freely does not include the liberty to expose the community or the child to communicable disease, or the latter to ill health or death . . . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion.[88]

This statement arguably "provide[s] lower courts with the authority to reject Free Exercise defenses in the context of issues of religious freedom and faith healing"[89] by eliminating an unrestricted application of the First Amendment's Free Exercise Clause.[90] Numerous court decisions echo this rationale, reaffirming the *Prince* Court's conclusion that religious acts can be subject to State regulation. In *Wisconsin v.*

---

84. *See id.*; *see also* Larabee, *supra* note 49; Asser & Swan, *supra* note 13, at 629.

85. *See infra* Part II.

86. *See* Hartsell, *supra* note 41, at 513.

87. 321 U.S. 158 (1944).

88. *See id.* at 166–70.

89. *See* Hartsell, *supra* note 41, at 513.

90. *See id.*

Yoder,[91] for example, the Court again announced that religious acts are subject to state regulation when they conflict with the state's power to promote the "health, safety, and general welfare" of its citizens.[92] Likewise, in *Walker v. Superior Court*,[93] the court explained that "parents have no right to free exercise of religion at the price of a child's life, regardless of the prohibitive or compulsive nature of the governmental infringement."[94] These decisions provide a framework under which one can then analyze the permissibility of the faith healing practices of religious groups and individuals.[95] One such group, the Followers of Christ, is well known for its systematic rejection of conventional medical treatment as well as for the numerous preventable faith healing deaths of its members' children.[96]

Timothy and Rebecca Wyland are members of the Followers of Christ Church,[97] which is notorious for having "a long history of children dying from curable conditions because parents rejected medical care in favor of spiritual treatments."[98] When a member becomes ill, the congregation limits treatment to prayer and anointing with oil.[99] Former members have indicated that those who decide to break with the restrictions of the faith and seek traditional medical treatment are subject to ostracization.[100]

---

91. 406 U.S. 205 (1972).

92. *Id.* at 220.

93. 763 P.2d 852 (Cal. 1988).

94. *Id.* at 870.

95. *See* Hartsell, supra note 41, at 513 (indicating the courts typically use the reasoning of the Supreme Court to deny the Free Exercise claims of parents in cases of religious medical neglect).

96. *See* Raftery, *supra* note 1.

97. *See id.*

98. Steve Mayes, *Another Faith-Healing Death of a Child Puts Oregon City Parents on Trial*, THE OREGONIAN (Sept.11, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/09/another_faith-healing_case_puts_oregon_city_parents_on_trial.html.

99. *See* Glauser, *supra* note 2, at E709.

100. *See* Steve Mayes, *Oregon Lawmakers Appear Ready to End Legal Protections for Faith-Healing Parents*, THE OREGONIAN (Feb. 20, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/02/oregon_lawmakers_appear_ready_to_end_faith-healing_protections_for_parents_of_dying_children.html.

The Followers of Christ Church was founded in Kansas sometime in the early 1900s.[101] Walter White, described as "an authoritarian, apocalypse-preaching pastor,"[102] moved the Church to Oregon City in the 1940s.[103] White died in 1969, but the Church continues to have a devout following.[104]

The Followers of Christ first gained notoriety in 1998 when it was reported that there were twenty-one children buried in the church's cemetery that "could have survived if they had received medical attention."[105] At the time, it was speculated that the cemetery was "one of the largest concentrations of faith-healing-related fatalities in decades."[106] However, the State was unable to prosecute the parents of these children because Oregon had faith healing exemptions on the books.[107] Those exemptions "gave legal protection to parents who refused because of their faith to seek medical care for their children."[108]

It was only after the public uproar following the cemetery discovery that lawmakers began addressing the double-standard created by the exemptions.[109] It is argued that not only are these exemptions a source of confusion "as to the nature of the parental duty to provide medical assistance to seriously ill children,"[110] but that only through a repeal of these statutory exemptions will the state be free to fully fulfill its *parens patriae* duty to children of faith healing parents.[111]

B. The First Step

The 1998 cemetery discovery prompted a backlash from Oregon legislators, who were able to amend the law the following year, limiting

101. *See* Van Biema, *supra* note 21, at 68–69.
102. *Id.*
103. Raftery, *supra* note 1.
104. *See* Van Biema, *supra* note 21, at 68–69.
105. *See* Raftery, *supra* note 1.
106. Van Biema, *supra* note 21, at 68.
107. *See* Raftery, *supra* note 1.
108. *Id.*
109. *See id.*
110. Monopoli, *supra* note 23, at 322.
111. *See infra* Part IV.

the faith healing exemptions.[112] The new law most notably removed the "spiritual-healing" defense for second-degree manslaughter, and first and second-degree criminal mistreatment.[113] However, faith healing parents were still immune from prosecution for both homicide and first-degree manslaughter.[114]

Although proponents hoped that the Followers of Christ would change their healing practices in response to the 1999 law,[115] the continuing child deaths of congregation members show that this did not occur.[116] Notable incidents of extreme medical neglect include the 2008 death of fifteen-month-old Ava Worthington, followed by the death of her sixteen-year-old uncle, Neil Beagley, later that same year.[117]

Ava died of pneumonia and a blood infection, both of which were treatable with antibiotics.[118] Approximately two hundred people were present during her death, with one witness describing it as

---

112. *See* Jessica Bruder & Dana Tims, *Death of Child may Put Oregon Faith Healing Law to Test*, THE OREGONIAN (Mar. 22, 2008), http://www.religionnews blog.com/20949/ava-worthington-2; *See also* H.R. 2494, 70th Leg. Reg. Sess. (Or. 1999).

113. Or. H.R. 2494.

114. Susan Nielsen, *Faith Healing: Oregon's Double Standard Adds Insult to Injuries*, THE OREGONIAN (Jan.16, 2011), http://www.oregonlive.com/news/ oregonian/susan_nielsen/index.ssf/2011/01/faith_healing_oregons_double_s.html.

115. *See* Bruder & Tims, *supra* note 112.

116. *See, e.g.*, Raftery, *supra* note 1 (detailing recent deaths of church members); *see also* Bruder & Tims, *supra* note 112 (reporting on the death of a fifteen-month-old child from untreated bacterial bronchial pneumonia and infection); Rick Bella, *Teen's Death Renews Scrutiny of Faith-Healing Group; Oregon Law May Protect Followers of Christ Members*, THE OREGONIAN (June 19, 2008), http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/12138549081573 10.xml&coll=7 (examining the death of a teenage member of the church who died from a blocked urinary tract, which could have been easily treated).

117. *See* Nicole Dungca, *Jeffrey and Marci Beagley Sentenced to 16 Months of Prison for Their Son's Faith-Healing Death*, THE OREGONIAN (March 08, 2010), http://www.oregonlive.com/clackamascounty/index.ssf/2010/03/jeffrey_and_marci_ beagley_sent.html; *see also* Kathleen Glanville, *Ava Worthington's Grandfather: Calling a Doctor Shows 'Lack of Faith'*, THE OREGONIAN (July 07, 2009), http://www.oregonlive.com/clackamascounty/index.ssf/2009/07/calling.html.

118. Steve Mayes, *Faithful Filled Home as Girl Died, Medical Examiner Says*, THE OREGONIAN (June 30, 2009), http://www.oregonlive.com/clackamascounty/ index.ssf/2009/06/faithful_filled_oregon_home_as.html.

"standing room only" in the Worthington's home.[119] The Worthingtons "testified they believed their faith-healing rituals—prayer, anointing with oil, fasting and laying on of hands—were working right to the minute the girl died."[120] Following her death, Ava's parents were tried for second-degree manslaughter and criminal mistreatment.[121] Carl Worthington, her father, "was convicted of criminal mistreatment and sentenced to two months in jail."[122] Both parents were acquitted on the manslaughter charges.[123] At the time of the verdict, the spiritual healing exemption was still in place, serving as an affirmative defense to the charge of manslaughter.[124]

Although Neil Beagley was a teenager at the time of his death, his story is no less tragic.[125] According to family members, Neil became seriously ill in March of 2008, but was only treated with faith healing.[126] Although able to recover, he quickly fell ill again, becoming so weak that he was unable to walk or hold down any food.[127] Beagley died of heart failure soon after, the result of a congenital condition that caused multiple urinary tract blockages over the course of his lifetime.[128] During court proceedings, Beagley's parents explained "that they never considered taking their dying son to a hospital or calling 9-1-1, even when he stopped breathing."[129] Doctors explained that a simple catheterization could have removed the blockage and saved his life.[130]

---

119. *Id.*

120. *See* Mayes, *supra* note 100.

121. Dungca, *supra* note 117.

122. Nicole Dungca, *Portrait of Neil Beagley Emerges During Faith-Healing Trial*, THE OREGONIAN (Jan. 30, 2010), http://www.oregonlive.com/clackamascounty/index.ssf/2010/01/portrait_of_neil_beagley_emerg.html.

123. *See* Dungca, *supra* note 117.

124. *See* OR. REV. STAT. § 163.118 (West 2009).

125. Steve Mayes, *Jeffrey, Marci Beagley found guilty in Oregon City Faith-Healing Trial*, THE OREGONIAN (Feb. 2, 2010), http://www.oregonlive.com/clackamascounty/index.ssf/2010/02/beagley_verdict_comes_in_from.html.

126. *Id.*

127. *Id.*

128. Neil Beagley, *Faith-Healing Teen, Dies of Easily Treatable Illness*, THE HUFFINGTON POST (June 18, 2008), http://www.huffingtonpost.com/2008/06/19/neil-beagley-teen-from-fa_n_108052.html.

129. *See* Mayes, *supra* note 100.

130. Beagley, *supra* note 128.

Beagley's parents were convicted of criminally negligent homicide for refusing to seek medical care for their son, and were sentenced to sixteen months in prison for the crime.[131] The presiding judge, Steven Maurer, described the Beagley's actions as a "crime that was a product of an unwillingness to respect the boundaries of freedom of religious expression."[132] The import of this statement is clear—faith healing parents most frequently claim "that the free exercise clause . . . not only protects their decision to treat their children spiritually, but also prohibits the state from prosecuting them if their child dies."[133] However, courts have rejected this argument repeatedly, insisting that a child's right to have a serious medical condition treated with conventional medical techniques overrides parents' free exercise rights.[134] Time and time again, state courts have "held that the Free Exercise Clause does not prevent States from intervening when parents reject conventional medical care for their children."[135] In effect, Judge Mauer felt the need to send this message to the faith healing community in Oregon, reaffirming that there are limitations to the Free Exercise Clause, especially when it comes to the health of children.[136]

The 2008 Oregon deaths were well publicized.[137] The national news media paid close attention, and "[t]he publicity of trials had a dramatic impact on the need to strengthen the law."[138] Even the main

---

131. Dungca, *supra* note 117.

132. *Id.*

133. Elizabeth A. Lingle, Comment, *Treating Children by Faith: Colliding Constitutional Issues*, 17 J. LEGAL MED. 301, 309 (1996).

134. *Id.* at 313.

135. David E. Steinberg, *Children and Spiritual Healing: Having Faith in Free Exercise*, 76 NOTRE DAME L. REV. 179, 186 (2000); *see, e.g.*, Commonwealth v. Barnhart, 497 A.2d 616, 622 (Pa. Super. Ct. 1985) (explaining that an "[a]ssertion of a claim of religious right does not vouchsafe the parents secure from state influence in every aspect of their children's lives"); Walker v. Superior Court, 763 P.2d 852, 855 (Cal. 1988) (holding that criminal liability is a proper punishment for the failure to secure conventional treatment for a child with a serious medical condition); State v. Norman, 808 P.2d 1159, 1163 (Wash. App. Ct.1991) (explaining that the restrictions placed on the defendant's faith healing actions of his child were not a violation of the Free Exercise Clause).

136. *See* Dungca, *supra* note 117.

137. *See* Mayes, *supra* note 100.

138. *Id.* (quotation marks omitted).

proponent of the faith healing movement, the Christian Science Church, began to view the Oregon church's faith healing practices in a different way.[139] Representatives from the Christian Science Church called for a change in the Oregon law, saying that the child deaths of the Followers of Christ had "reached a critical mass."[140] According to one lawmaker, the Worthington and Beagley tragedies were two of the deaths that motivated her to introduce a bill that removes the remnants of the faith healing exemptions in Oregon.[141]

C. House Bill 2721 [142]

When the Oregon Legislative Assembly changed the spiritual healing exemptions by passing House Bill 2721,[143] the urgency and necessity of the law was obvious.[144] The Bill stated, "[t]his 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist . . . ."[145] As such, the 2011 House Bill 2721 expanded the protection of the 1999 law[146] by removing the defense of spiritual healing for all homicide charges.[147] Moreover, if found guilty, parents would be subject "to mandatory sentencing under Oregon's Measure 11."[148] The original text of the Oregon Revised Statute §163.115 read:

> It is an affirmative defense to a charge of [murder] that the child or dependent person was under care

---

139. *See id.*

140. *Id.*

141. *See Bill Targets Church in Faith-Healing Deaths*, RICHMOND TIMES DISPATCH (Feb. 27, 2011), http://www2.timesdispatch.com/lifestyles/2011/feb/27/TDMAIN09-religion-briefs-for-feb-27-ar-870028/; *see also* Mayes, *supra* note 32; H.R. 2721 76th Leg. Assemb., Reg. Sess. (Or. 2011).

142. Or. H.R. 2721.

143. *Id.*

144. *See id.* at § 7.

145. *Id.*

146. OR. REV. STAT. ANN. § 163.115 (West 1999).

147. Steve Mayes, *Prosecutors, Lawmakers Advocate Ending Protections for Faith Healers*, THE OREGONIAN (Feb. 21, 2011), http://www.oregonlive.com/clackamascounty/index.ssf/2011/02/prosecutors_lawmakers_advocate.html.

148. *Id.*

> or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.[149]

The new law makes significant changes. Where previously applicable to the charge of murder of a child, the affirmative defense of spiritual healing is now only available to the guardian of a person who has reached the age of majority.[150] It reads:

> It is an affirmative defense to a charge of [murder] that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.[151]

This change is crucial, for while society normally believes adults have the right to reject medical treatment for religious reasons if they so desire, the Supreme Court has determined that the Free Exercise Clause of the First Amendment does not allow parents to make that same decision for their child.[152] The Supreme Court opinion in *Prince v. Massachusetts*[153] is viewed as the seminal case in limiting the rights of parents to act upon their religion in ways that are harmful to their

---

149. OR. REV. STAT. § 163.115(4).

150. *See* Or. H.R. 2721.

151. *Id.* at §1.

152. *See supra* notes 87–89 and accompanying text; *see also* Or. H.R. 2721. The text of the previous manslaughter statute, Oregon Revised Statute section 163.118 was similarly amended, from, "[i]t is an affirmative defense to a charge of [manslaughter] that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person." OR. REV. STAT. ANN. § 163.118 (West 1999). The version of House Bill 2721 reads:

> It is an affirmative defense to a charge of [manslaughter] that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

Or. H.R. 2721 § 2.

153. 321 U.S. 158 (1944).

children, "provid[ing] lower courts with the authority to reject free exercise defenses in the context of issues of religious freedom and faith healing."[154] The changes in the Oregon bill reflect this reasoning.[155]

Legislative supporters of the Oregon bill claim that they seek to achieve two ends by its passage.[156] First, they aim to eliminate the exemptions that treated faith healing parents as a special class, with their own set of rights.[157] Under the previous laws, members of faith healing groups were given more deferential treatment in criminal responsibility for a child's death.[158] The current law holds all parents to the same standard, regardless of religious belief.[159]

Second, lawmakers also hope that the legislation will induce members of the Followers of Christ Church to seek medical treatment when their children are critically ill,[160] in essence pressuring them to reject faith healing in favor of medical treatment.[161] Oregon Representative Carolyn Tomei explained that the purpose of the law is not to put people in prison, but to send "a certain group of people a message that it's against the law if their child is in grave danger . . . to not give them medical care."[162] Far from intending to simply punish a religion and its followers, the legislation aims to save the lives of children who have had their medical needs ignored.[163] This distinction is key, for while the First Amendment prohibits the punishment of a particular group for their religious beliefs, it has been interpreted to allow limitations to be placed on religious acts.[164]

---

154. *See* Hartsell, *supra* note 41, at 513; *see also Prince*, 321 U.S. at 166–67 (explaining that "[t]he right to practice religion freely does not include liberty to expose the . . . child to communicable disease or . . . to ill health or death").

155. *See* Or. H.R. 2721 at §1.

156. Mayes, *supra* note 147.

157. *Id.*

158. *See id.*

159. *See id.*

160. *Id.*

161. *Id.*

162. *See* Kost, *supra* note 33.

163. *Id.*

164. *See* Reynolds v. United States, 98 U.S. 145, 166 (1878); *see also* Hartsell, *supra* note 41, at 513; *see also* notes 192–202 and accompanying text.

D. The End of an Era? The Case of State v. Hickman

David Hickman, great grandson of the Followers of Christ Church's founder, Walter White, lived for only nine hours.[165] Jurors deliberated for fewer than four.[166] When the verdict came in, his parents, Dale and Shannon Hickman, were found guilty of second-degree manslaughter in David's faith-healing death.[167]

David, who was born two months premature, died of staph pneumonia and underdeveloped lungs.[168] Doctors agree that if David had been taken to a hospital he would have had a ninety-nine percent chance of survival.[169] Instead, David was anointed with oil.[170] "When he turned blue, gasped for breath and lost consciousness, the Hickmans prayed but did not attempt to get medical help."[171] The family's beliefs were summarized during the testimony of a church midwife, who stated, "[i]t wasn't God's will for David to live."[172] Jurors saw it differently, saying that there was still parental responsibility involved.[173]

Oregon's Measure 11[174] sentencing law mandates a minimum prison sentence of six years and three months following a second-degree manslaughter conviction.[175] Since the Hickmans were indicted prior to the removal of the spiritual healing exemption, they were eligible for a lesser penalty of eighteen months in prison and a fine of $250,000.[176]

---

165. Steve Mayes, *Jurors in Faith-Healing Trial Say Evidence Overpowered a Weak Defense*, THE OREGONIAN (Sept. 29, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/09/jurors_in_faith-healing_trial_1.html.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Oregon's Measure 11 is comprised of two statutes which define the minimum prison sentence that must be imposed by the court. *See* OR. REV. STAT. ANN. §§ 137.700, 137.707 (West 2009).

175. *Id.*

176. Steve Mayes, *Jury Convicts Dale, Shannon Hickman of Manslaughter in Faith-Healing Trial*, THE OREGONIAN (Sept. 29, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/09/jury_reaches_verdict_in_faith-.html.

However, Judge Robert D. Herndon was unsympathetic to the parents and unwilling to depart from the sentencing guidelines, imposing the mandatory penalty under Measure 11.[177] He admonished the Hickmans, stating, "this is a sentence you have justly earned," and declared the prison term to be "a modest penalty for causing the death of a vulnerable person."[178]

Although the recent changes to the law will assure that the Hickmans are the last to attempt to take advantage of the reduced sentencing,[179] many still assert that the government is precluded from any and all intervention in religious practices,[180] claiming the protection of the First Amendment.[181] The courts, however, have interpreted the language of the Free Exercise Clause differently.[182]

III. HOW FREE IS FREE EXERCISE? STATE HISTORY OF REGULATING RELIGIOUS PRACTICES DEEMED CONTRARY TO PUBLIC POLICY

Spiritual-healing parents often cite the Free Exercise Clause of the First Amendment to the United States Constitution when defending their rights to reject traditional medical care for their children.[183] The First Amendment states, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[184] Many claim that this provision makes religion untouchable by the government, completely precluding any state intervention in religious matters.[185]

---

177. Steve Mayes, *Dale and Shannon Hickman Receive 6-year Sentence, Harshest Yet for Faith-Healing Church*, THE OREGONIAN (Oct. 31, 2011), http://www.oregonlive.com/oregon-city/index.ssf/2011/10/dale_and_shannon_hickman_of_fo.html.

178. *Id.*

179. OR. REV. STAT. ANN. §§ 137.700, 137.707.

180. *See* Hartsell, *supra* note 41, at 512.

181. U.S. CONST. amend. I.

182. *See infra* Part III.

183. *See* Hartsell, *supra* note 41, at 512.

184. U.S. CONST. amend. I.

185. *See* Hartsell, *supra* note 41, at 509; *see also* Lingle, *supra* note 133, at 309; State v. Norman, 808 P.2d 1159, 1160 (Wash. App. Ct. 1991) (claiming that a parent's refusal to provide medical treatment for his child was protected under the

However, the Supreme Court has determined that even the Free Exercise Clause has its limits, explicitly rejecting the contention that religion is entirely immune from governmental interference.[186]

Case history shows that the state may place limitations on religious practices that are against the public interest.[187] For example, in *Prince v. Massachusetts*, a mother was charged with violating child labor laws after allowing her child to sell religious magazines.[188] In rejecting her contention that the restriction was a violation of her First Amendment right of freedom of religion and therefore not subject to regulation, the Court explained that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes . . . matters of conscience and religious conviction."[189] Here the Court announced the state has an interest in having young people live healthy lives, growing to "full maturity."[190] While acknowledging that there were substantial rights at issue dealing with religious freedoms, the Court ultimately concluded that "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."[191]

---

freedom of religion); Walker v. Sup. Ct., 47 Cal.3d 112, 138–39 (1988) (arguing that mother's faith healing conduct was immune to criminal liability because of its religious nature); Commonwealth v. Barnhart, 497 A.2d 616, 622 (Pa. Super. Ct. 1985) (asserting that parents could not be penalized by the state for putting their child's health in the hands of God).

186. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158 (1944) (explaining that the government has the right to regulate certain religious practices that are against the public interest); Emp't Div. v. Smith, 494 U.S. 872 (1990) (upholding the State of Oregon's refusal to provide unemployment compensation to Native Americans who were fired for using the illegal drug peyote, in spite of the fact the drug is a crucial part of their religious practices); United States v. Lee, 455 U.S. 252, 254 (1982) (rejecting an Amish farmer's contention that he did not have to pay social security taxes because it was contrary to his religious beliefs).

187. *See, e.g.*, *Prince*, 321 U.S. at 166; *Lee*, 455 U.S at 263 (Stevens, J., concurring).

188. *Prince*, 321 U.S. at 160.

189. *Id.* at 167.

190. *Id.* at 168.

191. *Id.* at 166–67. *See also* Lingle, *supra* note 133, at 310–11.

Likewise, in *Reynolds v. United States*,[192] the Supreme Court upheld a federal statute that outlawed the practice of polygamy.[193] George Reynolds, a Mormon, asserted that the government had no power to control the practice because it was a result of his religious beliefs.[194] He argued that since he was compelled by his religion to take multiple wives, the government was completely precluded from interfering with the practice.[195] The Supreme Court rejected this argument outright, explaining that if citizens were able to reject the law in the name of religion, the result "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."[196] The Court also announced that "[l]aws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."[197]

Judicial decisions often hinge on the above distinction between "pure belief," which is protected by the First Amendment, and the "public manifestations" of that belief, which may merit less protection.[198] The text of the First Amendment indicates, most importantly, that the government "may not compel . . . religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status."[199] In essence, this provision safeguards against the government's regulation of religious *beliefs*.[200] However, the practice of religion frequently consists of more than just beliefs, often compelling or prohibiting acts from its adherents.[201] Some religious observers assert that the Free Exercise Clause frees any adherent from the duty to follow a law that conflicts

192. 98 U.S. 145 (1878).

193. *Id.* at 168.

194. HAMILTON, *supra* note 28, at 66.

195. *See id.*

196. *Reynolds*, 98 U.S. at 167.

197. *Id.* at 166.

198. Ivy B. Dodes, *Suffer the Little Children . . . : Toward A Judicial Recognition of A Duty of Reasonable Care Owed Children by Religious Faith Healers*, 16 HOFSTRA L. REV. 165, 174 (1987). *See also Reynolds*, 98 U.S. at 166; Cantwell v. Connecticut, 310 U.S. 296, 303–04 (1940).

199. Emp't Div. v. Smith, 494 U.S. 872, 877 (1990).

200. *Id.*

201. *See id.* at 878.

with his religious beliefs.[202] In an effort to identify the outer limits of this right, courts have undertaken the challenge of analyzing when and why the State can intervene in an "act" of religion.[203]

The Court addressed this issue in *Cantwell v. Connecticut*,[204] describing the First Amendment right as consisting of two parts: "freedom to believe and freedom to act."[205] As in *Reynolds*, the Court deemed the freedom to believe to be absolute, while the freedom to act was seen as warranting less protection.[206] Writing for the majority, Justice Owen Roberts stated, "[c]onduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection."[207] While the restraint cannot be exercised in a way that unreasonably limits the freedom of religion, it is clear that the state may enact restraints that are nondiscriminatory.[208]

These decisions laid the groundwork for several cases dealing with the conflict between religious beliefs and the law, especially where medical treatment is withheld from children.[209] As noted previously, those who practice faith healing believe that the Free Exercise Clause prohibits the state from interfering in their religious decisions, including the decision to allow their children to die instead of seeking medical

202. *See id.*

203. *See, e.g.*, *Reynolds*, 98 U.S. at 167 (noting that the government cannot interfere in the freedom to believe, but can regulate religious acts); *see also* Dodes, *supra* note 198, at 174–76.

204. 310 U.S. 296 (1940).

205. *Id.* at 303.

206. *Id.* at 303–04.

207. *Id.* at 304.

208. *Id.* (stating that the freedom to act upon religious beliefs "must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom").

209. *See, e.g.*, Commonwealth v. Twitchell, 617 N.E.2d 609 (Mass. 2003) (describing the rights and limitations of the spiritual healing exception); Hermanson v. State, 604 So. 2d 775 (Fla. 1992) (examining right of parents to provide spiritual treatment instead of conventional medical care for a child diagnosed with juvenile diabetes).

care.[210] Some claim that limitation would be damaging to their religion as a whole, possibly resulting in its destruction.[211] For example, in *People v. Rippberger*,[212] the appellants argued that since their religion instructs them that sickness is not real and that the use of traditional medical treatment is equivalent to the admission of the existence of illness, "any effort by the state to force Christian Science parents such as appellants to provide medical care for their children will inevitably result in the destruction of the religion of Christian Science itself."[213] Others argue that because faith healing is a central tenet of their religion, the State is precluded from prohibiting the practice in even the most extreme cases.[214]

The aforementioned school of thought is evidenced in *Walker v. Superior Court*.[215] In that case, a mother was charged with felony child endangerment when her child died of meningitis after being denied conventional medical treatment in accordance with her mother's religion.[216] The defendant asserted that she was unequivocally protected from criminal liability based on the protections of the Free Exercise Clause of the First Amendment.[217] She claimed that imposing conventional medical treatment would be a "restriction" of her Christian Science faith healing practices and "would seriously impinge on the practice of her religion."[218] The court, referencing the *Prince* decision, refused to accept the argument that the government was precluded from interfering with the religious practices, stating, "parents have *no* right to

---

210. *See, e.g.*, Walker v. Superior Court, 47 Cal. 3d 112, 138–39 (Cal. 1988) (examining mother's claim that she was immune from punishment after her child died of untreated meningitis).

211. *See* People v. Rippberger, 231 Cal. App. 3d 1667, 1688 (Cal. Ct. App. 1991).

212. 231 Cal. App. 3d 1667 (Cal. Ct. App. 1991).

213. *Id.* at 1688.

214. *See, e.g.*, *Walker*, 47 Cal. 3d at 138–39 (rejecting a mother's argument that her faith-healing conduct was protected from government interference); *Rippberger*, 231 Cal. App. at 1688 (dismissing the petitioners' argument that their faith healing practice was completely protected by the First Amendment).

215. 47 Cal. 3d 112, 138–39 (Cal. 1988).

216. *Id.* at 119.

217. *Id.* at 138–39.

218. *Id.* at 139.

free exercise of religion at the price of a child's life, regardless of the prohibitive or compulsive nature of the governmental infringement."[219] The fact that the court would so emphatically limit the right to participate in religious practices that are harmful to minors emphasizes the importance that courts place on the safety and well-being of children.[220]

Similarly, in *Commonwealth v. Barnhart*,[221] the appellants asked how they could be held "criminally liable for putting their faith in God" after the faith healing death of their two year old son from an untreated tumor.[222] During testimony, the appellant testified that going to the doctor would be the equivalent of abandoning his faith.[223] The court explained that even the guarantee that the First Amendment provides with regards to religion does not "vouchsafe the parents secure from state influence in every aspect of their children's lives."[224] Although it appeared uncomfortable with its decision, the court,[225] ultimately reasoned that the parents had decided "effectively to forfeit their child's life,"[226] and therefore their choice to practice their religion would be "directly penalized."[227]

The opinions in these cases define a clear standard: the state may, at times, interfere in religious practices, particularly in circumstances contrary to public policy.[228] Thus, it is clear that the withholding of medical treatment from critically ill children in the name of religion crosses the line from "pure belief" to "an act" based on that belief.[229] Therefore, when applying the standard announced by the Court regarding the right of the state to interfere in these acts,[230] it follows that

219. *Id.* at 140.
220. *See id.*
221. 497 A.2d 616 (Pa. Super. 1985).
222. *Id.* at 621.
223. *Id.* at 622.
224. *Id.*
225. *See id.* at 621 (stating that there is no "easy answer" in this situation).
226. *Id.* at 624.
227. *Id.*
228. *See supra* notes 165–203 and accompanying text.
229. Dodes, *supra* note 198, at 175.
230. *See supra* notes 165–203 and accompanying text.

the state has a right to place limitations on the practice of the "act" of faith healing.[231]

However, this Note seeks to determine whether the state is compelled to intervene in these situations or if it is permissible for the state to turn a "blind eye" to the abusive religious practices of parents. This is an area of law characterized by the "complex intersection of the Free Exercise Clause, the Parental Control Doctrine, and the state's *parens patriae* power."[232] Therefore the rights and responsibilities of the state under the doctrine of *parens patriae* can serve as a guide to how and when the state may intervene in the decision of parents to treat critically ill children by faith healing alone.[233]

IV. *PARENS PATRIAE* V. FAITH HEALING EXCEPTIONS: CAN THEY COEXIST?

A. The Doctrine of Parens Patriae*: A Common Law Duty*

After determining that it is constitutionally permissible for the state to limit certain religious practices,[234] the state's duty to protect its youngest citizens must be examined.[235] Historically, the Supreme Court has held that parents are generally entitled to make "decisions concerning

---

231. *See supra* notes 165–203 and accompanying text; *see also* Lingle, *supra* note 133, at 311 (explaining that "[m]any states that have dealt with cases involving religious freedom and spiritual treatment of children have followed the Supreme Court's pronouncement in *Prince*").

232. Adam Lamparello, *Taking God Out of the Hospital: Requiring Parents to Seek Medical Care For Their Children Regardless of Religious Belief*, 6 TEX. F. ON C.L. & C.R. 47, 62 (2001).

233. *See infra* Part IV; *see generally* Lamparello, *supra* note 232, at 58–62 (describing a range of cases where the doctrine of *parens patriae* is examined).

234. *See supra* notes 165–203 and accompanying text; *see also* Lingle, *supra* note 133, at 309–11 (outlining key Supreme Court decisions and their limiting effects on religious practices).

235. *See, e.g.*, Leilani Pino, *In the Courts: Recent Decisions Attempt to Balance the State's Best Interest of Children and the Fundamental Rights of Parents*, 30 CHILD. LEGAL RTS. J. 74, 74 (2010) (describing the "response systems" implemented by several states to fulfill their *parens patriae* duties).

the care, custody and control of their children."[236] In *Troxel v. Granville*,[237] the Court described this right as one of the "oldest of the fundamental liberty interests recognized."[238] This statement was based on a long line of Supreme Court cases, dating back to the Court's 1923 decision in *Meyer v. Nebraska*,[239] which established a significant degree of parental autonomy in the rearing of children.[240] Likewise, *Meyer* deemed the right to "marry, establish a home and bring up children, to worship God according to the dictates of his own conscience" to be part of the liberty guaranteed by the Fourteenth Amendment.[241] These parental rights are based on the assumption that parents will act in the best interests of their children, and that they are in a better position to make those decisions than the state.[242]

However, such parental rights are not limitless.[243] For example, courts have held that "parents are not free to make all decisions for their children that they are free to make for themselves."[244] The state, through the doctrine of *parens patriae*, may place restrictions on parental

236. *Id.* at 74; *see also* Prince v. Massachusetts, 321 U.S. 158, 165–66 (1944).

237. 530 U.S. 57 (2000).

238. *Id.* at 65.

239. 262 U.S. 390, 399 (1923) (establishing that the right of parents to raise their own children was a right guaranteed by the Due Process Clause).

240. *See Troxel*, 530 U.S. at 65–67.

241. *Meyer*, 262 U.S. at 399.

242. LESLIE J. HARRIS & LEE E. TEITELBAUM, CHILDEN, PARENTS, AND THE LAW: PUBLIC AND PRIVATE AUTHORITY IN THE HOMES, SCHOOLS, AND JUVENILE COURTS 9 (1st ed. 2002); *see also Troxel*, 530 U.S. at 68 (explaining that as long as the parent is doing a fit job of caring for his children, there is no reason for the state to question whether the parent is acting in the children's best interest); Parham v. J. R., 442 U.S. 584, 602 (1979) (indicating that "historically [the law] has recognized that natural bonds of affection lead parents to act in the best interests of their children").

243. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (explaining that the state may intercede in the parent-child relationship in certain circumstances).

244. HCA, Inc. v. Miller *ex rel.* Miller, 36 S.W.3d 187, 192 (Tex. App. 2000) *aff'd*, 118 S.W.3d 758 (Tex. 2003); *see also Prince*, 321 U.S. at 168 (indicating that the State has greater power to regulate the activities of children than those of their parents); Wisconsin v. Yoder, 406 U.S. 205, 233–34 (1972) (acknowledging that even though the decision of the Amish parents not to send their children to school for religious reasons would not be overruled in this case, the state still has power to intercede in situations that put the health or safety of the child at risk).

autonomy when acting to care for the child's health and well-being,[245] especially "if it appears that parental decisions will jeopardize the health or safety of the child."[246]

The doctrine of *parens patriae*, as applied today, evolved from the English common law view of the king as the ultimate protector of his people.[247] Initially, it was applied in cases of children who had "commenced to go wrong because either the unwillingness or inability of the natural parents to guide that child," providing a basis for the juvenile court system.[248] The doctrine represents the concept that states have a substantial interest in preventing the abuse, neglect, and mistreatment of children, as well as promoting their general welfare.[249] In the United States, *People v. Pierson*,[250] a case involving the death of the child of faith healing parents, eloquently establishes the import of the *parens patriae* doctrine, stating:

> Children, when born into the world are utterly helpless, having neither the power to care for, protect or maintain themselves. They are exposed to all the ills to which flesh is heir, and require careful nursing, and at times, when danger is present, the help of an experienced physician. But the law of nature, as well as the common law, devolves upon the parents the duty of caring for their young in sickness and in health, and of doing whatever may be necessary for their care, maintenance and preservation, including medical attendance, if necessary; and an omission to do this is a public wrong which the state, under its police powers, may prevent.[251]

245. *Prince*, 321 U.S. at 166.

246. *Yoder*, 406 U.S. at 234.

247. *See* George B. Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895, 896–97 (1976).

248. *In re* Hudson, 126 P.2d 765, 777 (Wash. 1942).

249. 42 AM. JUR. 2D *Infants* § 12 (2012).

250. 68 N.E. 243 (N.Y. 1903).

251. *Id.* at 246–47.

While both establishing the need for and permitting the use of the state's police power, *Pierson* gave no indication as to what extent the state is bound to act in cases of religious medical neglect.[252] However, there is ample case law that outlines the *parens patriae* responsibilities of the state in cases of faith healing parents and critically-ill children.[253]

The doctrine of *parens patriae* is defined by many states as more than just a right, but also a duty to protect the interests of children.[254] For example, in *State v. Perricone*,[255] the doctrine is defined as "a sovereign right and duty to care for a child and protect him from neglect, abuse and fraud during his minority."[256] In the case of *In re Long Island Jewish Medical Center*,[257] the court's opinion stated that "the court must act [as] parens patriae" when parents refuse life saving treatment for their children.[258] As indicated earlier in this analysis and affirmed by these cases, the principle interest asserted by the state under *parens patriae* is in preserving the life of those who are unable to make decisions for themselves.[259]

In fulfilling this responsibility to ensure the welfare of children, the government may create and impose restraints on traditional parental freedoms.[260] This is done primarily through the enactment and enforcement child neglect and endangerment laws, which designate a

252. *See id.*

253. *See supra* note 232 and accompanying text; *see also infra* notes 265–85 and accompanying text (discussing cases in which courts have authorized medical treatment despite parents' objections).

254. *See generally* Newmark v. Williams, 588 A.2d 1108, 1116 (Del. 1991) (acknowledging the *parens patriae* role of the state to be a "duty"); *In re* Long Island Jewish Medical Center, 147 Misc. 2d 724, 729 (N.Y. Sup. Ct. 1990) (stating that the court "must act" under its *parens patriae* duty in certain life threatening situations involving a minor); *In re* Hamilton, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983) (per curiam) (describing *parens patriae* as a duty of the state).

255. 181 A.2d 751 (N.J. 1962).

256. *Id.* at 758.

257. 147 Misc. 2d at 724 (N.Y. Sup. Ct. 1990).

258. *Id.* at 729.

259. *See Newmark*, 588 A.2d at 1116.

260. *See Infants*, *supra* note 249, at § 12.

standard level of care a parent must provide to their child.[261] These statutes generally require parents to provide "proper medical care and treatment for their children,"[262] with a failure to do so resulting in punishment ranging from fines to imprisonment.[263] When deciding what level of intervention is necessary, most courts turn to a "best interests" of the child test.[264] Within the context of a child's physical health, this approach traditionally means that courts will authorize medical treatment over a parent's objection if the benefits of such treatment outweigh the dangers of withholding it.[265] Conversely, if the benefits of treatment are minimal, or the likelihood of success is low, it is less likely that the wishes of the parents will be superseded,[266] reflecting the principle "that State intervention in the parent-child relationship is only justifiable under compelling conditions."[267] For example, in cases where the parents, in accordance with their faith, deny their children potentially life-saving blood transfusions, courts have overruled the parents' wishes in an attempt to save the child's life.[268] Courts have reacted similarly in

261. Laura M. Plastine, *"In God We Trust": When Parents Refuse Medical Treatment for Their Children Based Upon Their Sincere Religious Beliefs*, 3 SETON HALL CONST. L.J. 123, 139–40 (1993).

262. *Id.* at 140.

263. *Id.*

264. *Newmark*, 588 A.2d at 1117.

265. *Id*; *see also In re* D.L.E., 645 P.2d 271, 275 (Colo. 1982) (authorizing medication to prevent life-threatening epileptic seizures); Application of Pres. & Dirs. of Georgetown Coll., Inc., 331 F.2d 1000, 1007 (D.C. Cir. 1964), *reh'g denied*, 331 F.2d 1010, *cert. denied*, 377 U.S. 978 (1964) (authorizing blood transfusion when it was deemed necessary to save a child's life); *cf. In re* Seiferth, 127 N.E.2d 820, 823 (N.Y. 1955) (rejecting the assertion that surgery to correct cleft palate and harelip on fourteen year child was necessary because the condition wasn't dangerous or life-threatening).

266. *See Newmark*, 588 A.2d at 1117.

267. *Id.*

268. *See, e.g.*, *In re* Cabrera, 552 A.2d 1114, 1115 (Pa. Super. Ct. 1989) (mandating blood transfusions for minor when it was determined they were ninety percent likely to treat illness); Muhlenberg Hosp. v. Patterson, 320 A.2d 518, 521 (N.J. Super. Ct. 1974) (authorizing blood transfusion to save infant's life) Jehovah's Witnesses In State of Wash. v. King Cnty. Hosp. Unit No. 1, 278 F. Supp. 488, 503 (W.D. Wash. 1967), *aff'd* 390 U.S. 598 (1968) (authorizing blood transfusions for adults and minors when the procedure is both safe and necessary).

situations where cancer treatments are necessary,[269] brain damage may occur,[270] or where severe epilepsy is diagnosed.[271] However, where the procedure is highly invasive, painful, or unlikely to succeed courts tend to respect the parents' wishes to avoid conventional medical treatment.[272]

Moreover, the assertion that a certain type of treatment was chosen because of religious belief does not abrogate the state's duty as *parens patriae*,[273] resulting in a conflict between the doctrine and parents' rights under the First Amendment. Currently, courts extend the doctrine to allow for state intervention in cases where parents have rejected conventional medicine for critically-ill children.[274] For example, in the case of *In re Clark*,[275] the court maintained that when a religious belief held by a parent is in danger of impinging on a similarly paramount right of a child, "the State's *duty* to step in and preserve the child's right is immediately operative."[276] The court went on to clarify this position, stating that "when a child's right to live and his parents' religious belief collide, the former is paramount, and the religious doctrine must give way."[277] This case illustrates a "direct clash between the *parens patriae* directive and parental claims to free exercise,"[278] showing that, in certain circumstances, courts are willing to endorse the

---

269. *See, e.g.*, *In re* Hamilton, 657 S.W.2d 425, 429 (Tenn. Ct. App. 1983) (per curiam) (removing child from custody of her parents when they refused to treat her Ewing's Sarcoma, which had a eighty percent chance of remission with treatment).

270. *See, e.g.*, *In re* Jensen, 633 P.2d 1302 (Or. Ct. App. 1981) (court ordered treament for child with hydrocephalus).

271. *See, e.g.*, *In re* D.L.E., 645 P.2d 271 (Colo.1982) (determining that a child suffering from gran mal seizures to be neglected as a result of denial of medical care by his parents).

272. *See, e.g.*, *Newmark*, 588 A.2d at 1119 (refusing to order medical treatment for a child with cancer where the procedures would be painful and may only result in a forty percent chance of survival); *In re* Seiferth, 127 N.E.2d 820, 823 (1955) (denying request to compel to surgery to correct cleft palate and harelip on fourteen year old minor).

273. *D.L.E.*, 645 P.2d at 276.

274. *Newmark*, 588 A.2d at 1116.

275. 185 N.E.2d 128 (Ohio Com. Pl. 1962).

276. *Id.* at 132 (emphasis added).

277. *Id.*

278. Lamparello, *supra* note 232, at 59.

assertion of *parens patriae* rights by the state over a First Amendment claim.[279]

Similarly, the court in *In re Hamilton*[280] determined that state intervention was appropriate in a case where a father refused potentially life-saving cancer treatments for his daughter on religious grounds.[281] In a *per curiam* opinion, the court declared that the state's duty of *parens patriae* applied, allowing the government to "make vital decisions as to whether to submit a minor to necessary treatment where the condition is life threatening," and indicating that the "state may reasonably limit the free exercise of religion in such cases."[282] Although admitting that the Constitution gives individuals great freedom to make religious choices, the court announced that the state may limit free exercise rights in circumstances where a child's health or well-being is at risk.[283] As such, the overarching principle announced by courts is that there are a variety of instances where the state may assert its interests to "insure that a child is given medical treatment necessary for the protection of its life or limb . . . where the custodian of the child has unreasonably refused to allow such treatment."[284] This extends to cases where the refusal to seek medical treatment for a child is based on religious tenets.[285]

However, is it possible to reconcile the *parens patriae* duty of the State with the spiritual healing exceptions extended to faith healing parents? In cases where the state is aware of an instance of medical neglect of a child, but is unable to act due to a faith healing exemption in the child neglect statutes, the state has limited its ability to exercise its *parens patriae* duty to protect the child.[286] Whether the child is ill and in

279. *See id.* at 60–61.

280. 657 S.W.2d 425 (Tenn. Ct. App. 1983) (per curiam).

281. *Id.* at 429.

282. *Id.*

283. *See* Hartsell, *supra* note 41, at 525.

284. Jay M. Zitter, Annotation, *Power of Court or Other Public Agency to Order Medical Treatment Over Parental Religious Objections for Child Whose Life is Not Immediately Endangered*, 21 A.L.R. 5th 248, § 2a (1994).

285. *Id.*

286. *See generally* Asser & Swan, *supra* note 13, at 629 (explaining that the existence of spiritual healing exemptions acts to promote the withholding of medical care in faith healing communities and also discourages the intervention of state officials).

need of medical care, or has died as a result of the parents' refusal to seek medical treatment, "the courts are faced with interpreting the child neglect statutes in light of the spiritual healing exemptions."[287] While courts are generally disinclined to grant "absolute immunity" based on the exemptions, and go "to great lengths to circumvent the statutes,"[288] the exemptions still impede the state's ability to fully protect the children of faith healing parents.[289]

So, the question is whether the state has a greater interest in keeping faith healing exemptions on their books, and in turn satisfying the Free Exercise claim of the religious minority, or in fulfilling their *parens patriae* responsibilities to the children of the faithful.[290] It is argued herein that one must prevail, as the two cannot coexist.[291]

B. Spiritual Healing Exceptions and Parens Patriae*: The Incontrovertible Conflict*

There are two theories traditionally cited as central goals associated with criminal law sanctions: punishment serving utilitarian objectives and punishment serving as retribution.[292] The utilitarian approach sees punishment as way of serving some beneficial social end, usually deterrence.[293] The central assumption of this theory is that the punishment of a criminal reduces future crime by discouraging either the individual specifically or society as a whole from committing a similar offense in the future.[294] Conversely, the retributionist theory argues that a lawbreaker deserves to be punished for doing the wrong, even if no

287. Plastine, *supra* note 261, at 141.

288. *Id.* at 155.

289. *See* Asser & Swan, *supra* note 13, at 629.

290. *See* Merrick, *supra* note 42, at 297–98 (arguing that faith healing exemptions to the law "create a legal landscape of confusion and contradiction" and must be changed).

291. *See id.*

292. *See* Shiv Narayan Persaud, *Eternal Law: The Underpinning of Dharma and Karma in the Justice System*, 13 RICH. J.L. & PUB. INT. 49, 55 (2009).

293. *See id.*

294. *See id.*

utilitarian end is served.[295] This "just desert" methodology emphasizes that the most important aspect of criminal punishment is "doing justice,"[296] which is "patterned on the principles the community uses in assessing blameworthiness."[297]

The doctrine of *parens patriae*, when examined through the lens of the legal theory of criminal law, most strongly serves utilitarian ends in communities where parents are reluctant to seek traditional medical treatment for children based on religious beliefs.[298] By permitting government intervention in such situations, including the ability to dictate appropriate punishment, it aims to deter the behavior in both the individual and the community.[299] However, when the constraint of criminal punishment is removed, as is the case in states that have faith healing exceptions on their books, the potential of deterrence is abrogated.[300] Most problematic is that, in addition to the destruction of the deterrent effect, the exceptions tend to encourage the use of faith healing practices in religious communities.[301] Parents who rely exclusively on spiritual treatments can see the exemptions either as state endorsement of the practice[302] or can be confused about exactly when the practice violates criminal statutes.[303]

---

295. *Id.* at 56. *See also* United States v. Blarek, 7 F.Supp.2d 192, 200 (E.D.N.Y. 1998) *aff'd*, 166 F.3d 1202 (2d Cir. 1998) (describing the retributionist theory as "just desserts").

296. Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 498 (1997).

297. *Id.*

298. *See, e.g.*, Asser & Swan, *supra* note 13, at 629 (explaining that the existence of spiritual healing exemptions enforces parents' beliefs that the withholding of medical care is acceptable).

299. *See, e.g.*, People v. Pierson, 68 N.E. 243, 247 (N.Y. 1903) (stating that the government may enact such laws to maintain social order through the punishment of offenders); Asser & Swan, *supra* note 13, at 629 (describing how spiritual healing exemptions affect the behavior of the community).

300. *See* Asser & Swan, *supra* note 13, at 629.

301. *See id.*

302. *See id.*

303. *See generally* Merrick, *supra* note 42, at 297–98 (arguing that faith healing exemptions to the law "create a legal landscape of confusion and contradiction" and must be changed).

One study indicates that religious exemption laws "promote the assumption that parents have the right to withhold necessary medical care from their children on religious grounds."[304] This is supported by analysis of the differing approaches taken by the Christian Science Church toward faith healing in the United States and faith healing in Canada, where there is not an exception for the practice.[305] It has been noted that while "Christian Science church leaders advise members in . . . Canada to obey laws requiring medical care of sick children, they have advised US members that the laws allow them to withhold medical care."[306] While Canadian Christian Science practitioners are officially permitted to use prayer and conventional medical care simultaneously, the church says that "such an arrangement would not work in the United States."[307] This leads one to infer that the status of the law in both Canada and the United States strongly influences official church policies regarding faith healing.[308]

It follows that the state's allowance of faith healing exemptions gives the impression that the state not only sanctions such behavior, but endorses it.[309] It is argued that this perceived state endorsement of faith healing violates its duty of *parens patriae.* The state itself acknowledges its *parens patriae* interest in protecting children through the enactment of child abuse statutes, which require parents "to provide [their children] with adequate food, shelter and medical care."[310] It has been argued that faith healing exemptions directly oppose this interest, in fact "thwart[ing] the purpose of the abuse and neglect statutes" by allowing a class of children to be denied the protection of the laws.[311]

Since the religious exemptions are no longer federally mandated,[312] states have no obligation to keep the exemptions on their

304. *See* Asser & Swan, *supra* note 13, at 629.

305. *Id.*

306. *Id.*

307. Andrew A. Skolnick, *Christian Science Church Loses First Civil Suit on Wrongful Death of a Child*, 270 JAMA 1781, 1782 (1993).

308. *See id.*

309. *See supra* notes 306–08 and accompanying text.

310. Monopoli, *supra* note 23, at 349.

311. *Id.*

312. *Id.* at 332.

books.[313] Additionally, courts have emphasized repeatedly that the assertion of the right to free exercise under the First Amendment by faith healing parents is not an interest that overrides the state's interest in protecting the lives of its children.[314] Therefore, the existence of these exemptions is an *option* of the state, and it is within their power to repeal them.[315] Regardless of the motivation to enact or retain them, it is clear that the states have the power to ensure that all parents be held to the same standard when it comes to neglecting to secure proper medical care for critically-ill children.[316]

Conversely, as noted previously, the doctrine of *parens patriae* has been deemed by the states themselves to be a *duty*.[317] When faced with an unavoidable conflict between an "option" and a "duty," it is argued that the "duty" should prevail.[318] This leads to the inevitable conclusion that the common law duty of *parens patriae* should be interpreted as compelling states to remove the spiritual healing exceptions to their child abuse and neglect laws.[319] In so doing, states will more effectively fulfill their duty of protecting all children that are subject to medical neglect (regardless of the religion of their parents) and send a clear message that the health and well being of children is a paramount societal and legal interest.

V. CONCLUSION

Oregon, in repealing its spiritual healing exceptions,[320] is the most recent state to decide that all parents should be held to the same standard when it comes to providing medical care for seriously-ill children. While acknowledging that faith healing can be an important

313. *Id.* (stating that the statutory exemptions "are not constitutionally mandated and it is within the purview of the state legislatures to abolish them").

314. *See* Hartsell, *supra* note 41, at 512–13.

315. *See* Monopoli, *supra* note 23, at 352.

316. *See generally id.* at 322 (stating that the "only way to prevent the unnecessary deaths of children who suffer from disease that is readily and effectively treatable by medical science is by the repeal of the statutory exemptions").

317. *See supra* Part IV.A.

318. *See supra* notes 312–16 and accompanying text.

319. *See supra* notes 312–16 and accompanying text.

320. *See supra* Part II.C.

aspect of religious beliefs, it is clear that the government may place limitations on religious acts that are unquestionably contrary to public policy. The state has a legitimate interest in protecting its youngest citizens and having them grow to maturity and may place limits on practices that place their health at risk. Through the doctrine of *parens patriae*, the state is vested with the duty to intervene on the behalf of those who are too young or incapacitated to fend for themselves. This duty can and should be interpreted as precluding states from allowing faith healing exceptions to child abuse and neglect laws to remain in effect.

Those states that still allow the exceptions are at a critical crossroads, where the parent's First Amendment right to freedom of religion intersects with the state's *parens patriae* duty to ensure a child's right to receive proper healthcare. To resolve this conflict, the states should opt to protect its youngest citizens, giving them the opportunity to live healthy lives to adulthood in accordance with the religion of their own choice.