

1-1-2009

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Recommended Citation

Scott St. Amand, *Protecting Neglect: The Constitutionality of Spiritual Healing Exemptions to Child Protection Statutes*, 12 RICH. J.L. & PUB. INT. 139 (2008).

Available at: <http://scholarship.richmond.edu/pilr/vol12/iss2/5>

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PROTECTING NEGLECT:
THE CONSTITUTIONALITY OF SPIRITUAL HEALING
EXEMPTIONS TO CHILD PROTECTION STATUTES

*Scott St. Amand**

I. INTRODUCTION

On Easter Sunday of 2008, as other members of the Unleavened Bread Ministries gathered to pray and to celebrate Christ's resurrection, Dale and Leilani Neumann sat by their eleven-year-old daughter's bedside, praying for a different kind of miracle.¹ Madeline Kara Neumann had slipped into a coma, a result of what medical authorities now know to be diabetic ketoacidosis—a serious, life threatening complication if left untreated.² Kara, as she was known to her friends and family in the small, rural town of Weston, Wisconsin, suffered from undiagnosed Type I diabetes, which could have been managed by simple insulin therapy.³ Kara was not given insulin, nor taken to a doctor, even as she slipped into a coma.⁴

The Neumanns are followers of the Unleavened Bread Ministries, a largely internet-based Christian sect,⁵ whose tenets include the rejection of conventional medical treatment in favor of faith-based spiritual healing.⁶ Charged with second-degree reckless homicide,⁷ the Neumanns

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1. Suzanne Sataline, *A Child's Death and a Crisis for Faith*, WALL ST. J., Jun. 12, 2008, at D1; David Schoetz, *Parents' Faith Fails to Save Diabetic Girl*, ABCNEWS.COM, Mar. 27, 2008, <http://abcnews.go.com/Health/DiabetesResource/Story?id=4536593&page=1> (last visited Nov. 22, 2008).

2. Sataline, *supra* note 1; Schoetz, *supra* note 1.

3. Schoetz, *supra* note 1; see Janet M. Torpy, *Type I Diabetes*, 298 J. AM. MED. ASS'N 1472, 1472 (2007), available at <http://jama.ama-assn.org/cgi/content/full/298/12/1472>.

4. Schoetz, *supra* note 1.

5. See *id.*; Unleavened Bread Ministries, <http://www.unleavenedbreadministries.org> (last visited Nov. 22, 2008).

6. Press Release, David Ellis, Press Release from Unleavened Bread Ministries Regarding the Death of 11 Year-Old Madeline Kara Neumann (Mar. 27, 2008), available at

have now placed their faith, not in spiritual healing, but in a spiritual healing exemption to Wisconsin's child abuse statute.⁸ The exemption provides that "[a] person is not guilty of an offense . . . solely because he or she provides a child with treatment by spiritual means through prayer alone for healing"⁹

Exemptions, like the one found in the Wisconsin statute, are not rare. Indeed, with forty-five states having "some legal accommodations in child-protection laws for parents who use spiritual healing,"¹⁰ the Wisconsin statute is indicative of the wave of spiritual exemption statutes that followed on the heels of the Child Abuse Prevention and Treatment Act ("CAPTA") of 1974.¹¹

Motivated by the desire to slow the tide of abuse and neglect related deaths in the late 1960s and early 1970s, and recognizing a need "to provide financial assistance . . . for the prevention, identification, and treatment of child abuse and neglect,"¹² Congress passed CAPTA in 1974.¹³ The bill was designed, among other things, to provide monetary incentives for states to create similar statutory measures, yet heavy lobbying by religious groups, such as the Christian Scientists,¹⁴ compelled the bill's framers to include a spiritual exemption clause.¹⁵ The gravamen of the clause was articulated in the House Report that accompanied the bill, which stated that "no parent or guardian who in good faith is providing to a child treatment solely by spiritual means—such as prayer—according to the tenets and practices of a recognized church through a duly accredited practitioner shall for that reason alone be considered to have neglected the child."¹⁶

Such state spiritual exemption clauses, whose passage was monetarily rewarded through CAPTA funding, allow religious parents and faith-healers to escape criminal prosecution if their child was injured or died

<http://www.unleavenedbreadministries.org/?=pressrelease> ("We are not commended in scripture to send people to the doctor but to meet their needs through prayer and faith. As anyone here will tell you, we are not against doctors for those we have their faith there and never condemn or restrict them in any way. But we know that the best one to trust in for healing is Jesus Christ.")

7. Sataline, *supra* note 1.

8. WIS. STAT. ANN. § 948.03(6) (West 1996).

9. *Id.*

10. Sataline, *supra* note 1.

11. Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5107 (2000)).

12. H.R. REP. 93-685, at 1 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 2763–64.

13. Pub. L. No. 93-685, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5107).

14. *See infra* notes 64–72 and accompanying text.

15. 45 C.F.R. § 1340.1–2(d)(ii) (2007).

16. H.R. REP. 93-685, at 3, *as reprinted in* 1974 U.S.C.C.A.N. 2767.

because the parents relied on spiritual healing in lieu of requisite conventional medical attention. In a twenty-year period following the passage of CAPTA, and the subsequent passage of state-by-state religious exemptions, an empirical study noted that an estimated 172 children have died as a result of the faith-based denial of medical care.¹⁷

Since the end of the nineteenth century, courts in England and America have wrestled with the delicate balance between church and state as it concerns the health and welfare of children whose parents, on religious grounds, elect to reject life saving medical care.¹⁸ Although American parents have the constitutional right to freely practice their religion, afforded to them by the Free Exercise Clause of the First Amendment,¹⁹ “the constitutional protection accorded to religious beliefs does not extend to practices inconsistent with the peace or safety of the state, which has a recognized interest in protecting the lives and health of its children.”²⁰

Although an incredibly complex and important issue concerning national interests, the Supreme Court of the United States has not directly addressed spiritual exemptions to state child protection statutes.²¹ This lack of attention is increasingly troublesome, as more and more of the highest state courts are faced with questions of the constitutionality of spiritual exemption statutes.²² Although some state supreme courts have held that the state’s interest, as *parens patriae*, to

17. Richard A. Hughes, *The Death of Children by Faith-Based Medical Neglect*, 20 J.L. & RELIGION 247, 247 (2004) (citing Seth Asser & Rita Swan, *Child Fatalities From Religion-Motivated Medical Neglect*, 101 PEDIATRICS 625, 625–29 (1998)). Dr. Asser is a professor of pediatric medicine at the University of California, San Diego, School of Medicine, and Dr. Swan is the founder of Child Healthcare is a Legal Duty (CHILD), as well as a former Christian Scientist, whose son died as a result of the failure of spiritual healing intervention. See Asser & Swan, *supra*, at 625.

18. *Compare* Prince v. Massachusetts, 321 U.S. 158, 167 (1944) (stating “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, to some extent, matters of conscience and religious conviction”), *People v. Pierson*, 68 N.E. 243, 247 (N.Y. 1903) (Cullen, J., concurring) (upholding a conviction of misdemeanor child neglect and stating, “The state, as *parens patriae*, is authorized to legislate for the protection of children”), *Regina v. Senior*, 19 Cox Crim. Cas. 219, 224 (1898) (U.K.) (affirming a manslaughter conviction for a parent who denied his child medical care, which resulted in the child’s death), and *Regina v. Downes*, 13 Cox Crim. Cas. 111, 115 (1875) (U.K.) (holding that parents who deny medical attention to their sick child, even when based on religious beliefs, are guilty of manslaughter), with *Regina v. Wagstaffe*, 10 Cox Crim. Cas. 530, 533–34 (1868) (U.K.) (holding that parents who deny medical attention to their child based on firmly held religious beliefs were not guilty of homicide).

19. U.S. CONST. amend. I.

20. Baruch Gitlin, Annotation, *Parents’ Criminal Liability for Failure to Provide Medical Attention to Their Children*, 118 A.L.R.5th 253, 272 (2004).

21. Paula 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, 321 (1991).

22. See *infra* notes 113–17 and accompanying text.

protect the welfare of children

outweighs the parents' right to freely exercise their religion, a significant number of states have either not addressed the issue in court or have, in the alternative, held fast to their spiritual healing exemptions.²³

This comment examines the historically uncertain balance between an individual's right to freely exercise his religious beliefs and the state's countervailing interest to protect the welfare of its youngest and most vulnerable citizens. By detailing the history of this fragile relationship through its statutory and judicial renderings, this comment will illustrate that spiritual exemptions to child protection statutes violate the Establishment Clause of the First Amendment,²⁴ as well as the Equal Protection Clause of the Fourteenth Amendment,²⁵ and conflict directly with multiple landmark Supreme Court decisions.²⁶

II. A HISTORY OF NEGLECT: EARLY BRITISH AND AMERICAN APPROACHES

In the 1944 Supreme Court decision of *Prince v. Massachusetts*,²⁷ Justice Rutledge, delivering the opinion of the Court, stated that “[t]he right to practice religion freely does not include liberty to expose the community or the child . . . 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”²⁸ Justice Rutledge's words seem unequivocal, yet the fervid debate between a parent's free exercise of religion in regards to his child's well-being and the state's vested interest in preserving the life of minor children continues to this day.

23. See *infra* notes 113–17 and accompanying text.; see also Children's Healthcare is a Legal Issue, Religious Exemptions From Healthcare for Children, <http://www.childrenshealthcare.org/legal.htm> (last visited Nov. 22, 2008) [hereinafter CHILD, Religious Exemptions].

24. U.S. CONST. amend. I.

25. U.S. CONST. amend. XIV, §1.

26. See *Doe v. Bolton*, 410 U.S. 179 (1973); *Roe v. Wade*, 410 U.S. 113 (1973); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Walz v. Tax Comm'n of New York*, 397 U.S. 664 (1970).

27. 321 U.S. 158 (1944).

28. *Id.* at 166–67, 170.

Although serving as the foundation for subsequent decisions regarding a state's interest in safeguarding children's well-being from being martyred on the altar of their parents' religious beliefs,²⁹ the *Prince* case was by no means the earliest examination of the issue of the death of a minor due to the denial of medical treatment on religious grounds. In 1868, an English court, deciding the case of *Regina v. Wagstaffe*,³⁰ held that parents, who belonged to a religious sect called "The Peculiar People," reasonably believed that the remedial spiritual treatment of praying and rubbing oil on the chest of their fourteen-month-old daughter,³¹ who subsequently died of inflamed lungs, would cure her of a persistent cough.³² Because the child died as a result of the parents' reliance on their reasonable religious beliefs, and not "any intention to avoid the performance of their duty," the court dismissed the homicide charges against the couple.³³

Discouraged by this decision and spurred by public disapproval, the English Parliament, in the same year as the *Wagstaffe* decision, passed the Poor Law Amendment Act ("PLA"),³⁴ which stated, "When any Parent shall willfully neglect to provide adequate Food, Clothing, Medical Aid, or Lodging for his Child . . . whereby the Health of such Child shall have been... injured, he shall be guilty of an Offense"³⁵ Although Parliament did not directly state that the PLA was in response to spiritual neglect, the subsequent criminal cases illustrate this end.

In 1875, with deference to the newly enacted PLA, the criminal courts of England reversed their stance on religious-based neglect: "Since the [passage of section thirty-seven of the PLA]... it is no answer to the charge of manslaughter that the parent so neglected from a conscientious religious belief that it was wrong to call in medical aid... and not from any intention to disobey the law."³⁶ The opinion expresses the view that but for the new Act, the court would have

29. Monopoli, *supra* note 21, at 319.

30. 10 Cox Crim. Cas. 530 (1868) (U.K.).

31. The justification for such spiritual healing techniques, cited by most spiritual healers, including Christian Scientists, is taught in the Epistle of James, 5:14-15, which says, "Is any one of you sick? He should call the elders of the church to pray over him and anoint him with oil in the name of the Lord. And the prayer offered in faith will make the sick person well; the Lord will raise him up" (New International Version).

32. *Wagstaffe*, 10 Cox Crim. Cas. at 531.

33. *Id.* at 530.

34. Poor Law Amendment Act, 1868, 31 & 32 Vic. c. 122, § 37 (Eng.).

35. *Id.*

36. *Regina v. Downes*, 13 Cox Crim. Cas. 111, 111 (1875) (U.K.).

decided *Downes* as they had decided *Wagstaffe*.³⁷

Nearly contemporaneous with the decision of *Downes* in England, the United States Supreme Court decided the case of *Reynolds v. United States*.³⁸ Although it was not a response to the PLA or *Downes*, *Reynolds* became one of the first examinations of the conflict between federal criminal regulations and the free exercise of an individual's religion.

Reynolds, a Mormon and a polygamist, was arrested and charged with violating the federal prohibition on bigamous marriages.³⁹ The Court was faced with the question of whether the Establishment Clause protected Reynolds, whose polygamous practices were part and parcel of his religious beliefs.⁴⁰ The Court refused to introduce a new element into criminal law: the exception of persons, who, on the genuine basis of their religious beliefs, willfully violate criminal law.⁴¹

Chief Justice Waite, delivering the opinion of the Court stated “[l]aws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.”⁴² The opinion went further, glibly addressing martyrdom in much the same way that Justice Rutledge did in his *Prince* decision:

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?⁴³

The Court answered the question of martyrdom in the affirmative:

37. *Id.* at 114–15.

38. 98 U.S. 145 (1878).

39. *Id.* at 146. The statute read:

Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have [sic] exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than \$500, and by imprisonment for a term not more than five years.

Id. (quoting REVISED STATUTES OF THE UNITED STATES § 5352 (1874)).

40. *Id.* at 166.

41. *Id.* (stating, “[T]he only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law.”).

42. *Id.*

43. *Id.*

“To permit [excusing a man’s criminal practices because of his religious belief] 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. Government could exist only in name under such circumstances.”⁴⁴ Although the decision in *Reynolds* was not dispositive on the issue of criminal neglect, vis-à-vis spiritual healing, many of the core concepts translate into the debate sparked by *Downes*.⁴⁵

Indeed, if *Wagstaffe* and *Downes* sparked the American debate, the fire found fuel with the 1903 decision in *People v. Pierson*.⁴⁶ The details of the case tragically mirrored those of *Wagstaffe* and *Downes*: an infant died of pneumonia due to the denial of conventional medical care, based upon the father’s belief in the teachings of the Christian Catholic Church of Chicago.⁴⁷ Although the faith of the parent was different than that of the parents in *Wagstaffe* and *Downes*, the Court of Appeals of New York nonetheless held the father criminally liable for the death of his daughter.⁴⁸ The court held:

A person cannot, under the guise of religious belief, practice polygamy, and still be protected from our statutes constituting the crime of bigamy. He cannot, under the belief or profession of belief that he should be relieved from the care of children, be excused from punishment for slaying those who have been born to him.⁴⁹

Fearing that the court’s language parsed words, Justice Haight’s opinion went on to state:

[T]he law of nature, as well as the common law, devolves upon the parents the duty... of doing whatever may be necessary for their [children’s] care, maintenance, and preservation, including medical attendance, if necessary; and an omission to do this is a public wrong, which the state, under

44. *Id.* at 167.

45. The Court, though not acknowledging *Downes*, cited *Wagstaffe* as standing for the proposition that an omission of care is excusable, whilst a positive neglectful act is punishable. *Id.* The *Reynolds* Court stated:

[T]he parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of manslaughter But when the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made.

Id. (distinguishing the omission of care in *Wagstaffe* from the positive neglectful act in *Reynolds*).

46. 68 N.E. 243 (N.Y. 1903).

47. *Id.* at 244.

48. *Id.* at 247.

49. *Id.* at 246.

its police powers, may prevent.⁵⁰

III. THE ADVENT OF CHRISTIAN SCIENTISTS

The *Pierson* decision sounded a death knell to many faith healers, as it effectively stated that “the courts had moved toward the opinion that parents broke the law when they did not provide medical care for their children,”⁵¹ despite religious beliefs. With Mary Baker Eddy’s formation of the Christian Science Church in 1879, the question of proper medical care shifted from that of omission to that of adequacy.⁵²

While spiritual-based neglect seemed clearly anathema to core state interests under the *Downes-Pierson* doctrine, after the formation and staunch lobbying of Christian Scientists, such neglect has gained a penumbra of ambiguity that kindles the ongoing legal debate, even today. Though strikingly and tragically similar to the tenets of the Peculiar People,⁵³ the Christian Catholic Church of Chicago,⁵⁴ and even the Unleavened Bread Ministries,⁵⁵ the spiritual healing beliefs of Christian Scientists do not challenge the necessity of medical attention, but the very definition thereof.⁵⁶

Following directly on the heels of *Pierson* came *People v. Quimby*,⁵⁷ which was one of the first in a long line of cases where Christian Scientists stood accused of failing to furnish a child with any medical attendance.⁵⁸ Antithetical to *Pierson*, however, the Appellate Division of the New York Supreme Court in *Quimby* found that John Quimby’s treatment of his daughter’s diphtheria by spiritual means alone satisfied the very statute whose standards *Pierson*’s identical treatment had not met.⁵⁹ Although a grand jury returned indictments on two Christian

50. *Id.* at 246–47.

51. SHAWN FRANCIS PETERS, WHEN PRAYER FAILS: FAITH HEALING, CHILDREN, AND THE LAW 96 (2008) (quoting RENNIE B. SCHOEPFLIN, CHRISTIAN SCIENCE ON TRIAL: RELIGIOUS HEALING IN AMERICA 189 (2002)).

52. *See id.* at 92, 96.

53. *See Regina v. Downes*, 13 Cox Crim. Cas. 111 (1875); *Regina v. Wagstaffe*, 10 Cox Crim. Cas. 531 (1868).

54. *See Pierson*, 68 N.E. at 244.

55. *See Schoetz*, *supra* note 1.

56. PETERS, *supra* note 51, at 96.

57. 99 N.Y.S. 330 (N.Y. App. Div. 1906).

58. *Id.* at 331.

59. *See id.*; *see also supra* notes 47–50 and accompanying text.

Science practitioners, as well as John Quimby, lobbying by the coordinated mass of Christian Scientists pressured the appellate court to dismiss the case with prejudice.⁶⁰

As unremarkable as the two page appellate opinion in *Quimby* seems, the court disregarded, without hesitation, the carefully weighed arguments in *Downes*, *Reynolds*, and *Pierson* concerning the balance between the protections afforded to faith healers under the Establishment Clause and the state's intervening, superseding role as *parens patriae* to protect the welfare of its children.⁶¹ It would take sixty years until this incongruous standard of

the adequacy of faith healing would be codified,⁶² all the while going through inexplicable waves of dismissals and convictions,⁶³ under seemingly identical circumstances.

IV. THE AMERICAN LEGISLATIVE APPROACH

The United States Congress, in order to heighten state standards of enforcement for child protection laws, passed CAPTA with its now infamous spiritual healing exemption.⁶⁴ Before 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.⁶⁵ Since CAPTA, this has changed: "[a]lthough [CAPTA] does not require states to have a faith healing exemption, the Department of Health, Education and Welfare ("HEW") promulgated regulations that require states to enact such an exemption to be eligible for federal funding of child protection programs."⁶⁶ There is mass speculation that Congress added the spiritual healing exemption to CAPTA because of incredibly persistent lobbying efforts by Christian Scientists, including

60. See PETERS, *supra* note 51, at 94–95.

61. See *Quimby*, 99 N.Y.S. at 330–31.

62. See *infra* Part IV.

63. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944).

64. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5107 (2000)).

65. Cf. Hughes, *supra* note 17, at 248.

66. Jennifer L. Rosato, *Putting Square Pegs in a Round Hole: Procedural Due Process and the Effect of Faith Healing Exemptions on the Prosecution of Faith Healing Parents*, 29 U.S.F. L. REV. 43, 59 (1994).

two members of President Nixon's cabinet, John Ehrlichman and H.R. Haldeman, who were prominent Christian Scientists.⁶⁷

CAPTA's spiritual exemption clause allows a parent or legal guardian to refrain from "provid[ing] a child any medical service or treatment against the religious beliefs of the parent or legal guardian."⁶⁸ This clause was the feather in the cap for many religious lobbyists, and a thorn in the side of state legislatures and judges who were now faced with a potential equal protection nightmare. The statute, however, provides an outlet for judicial interaction, with the provision granting "the State... the authority to initiate legal proceedings . . . to provide medical care or treatment for a child when such care or treatment is necessary . . ."⁶⁹

Buoyed by Christian Science lobbyists, the HEW interpreted this exemption broadly and inextricably linked the adoption of such spiritual exemptions to state eligibility for federal funds for child protection programs.⁷⁰ By 1990, forty-seven states exempted faith healers from criminal liability,⁷¹ even though the Department of Health and Human Services removed the requirement in 1983 that each state legislature pass faith healing exemptions to receive federal child abuse prevention funding.⁷²

Due to the rise in the number of child neglect related deaths in the late 1980s and early 1990s, Congress re-examined CAPTA in 1995.⁷³ A Senate report following the 1996 amendments to the Act stated the amendments sought to "clarify that a State's child protection system should be structured so as to ensure that the State is able to prevent the withholding of medically indicated treatment from children with life

67. *Id.* at 59–60 n.82.

68. 42 U.S.C. § 5106i(a) (2000).

69. *Id.* § 5106i(b).

70. Monopoli, *supra* note 21, at 331.

71. *See, e.g.*, ALA. CODE § 13A-13-6(b) (LexisNexis 2005); ALASKA STAT. § 47.17.020(d) (2008); CAL. PENAL CODE § 270 (West 2008); DEL. CODE ANN. tit. 11, § 1104 (2007); IND. CODE ANN. § 35-46-1-4(c) (LexisNexis 2004 & Supp. 2008); IOWA CODE ANN. § 726.6(1)(d) (West 2003 & Supp. 2008); KY. REV. STAT. ANN. § 600.020(1) (LexisNexis 1999 & Supp. 2008); ME. REV. STAT. ANN. tit. 22, § 4010 (2004); MINN. STAT. ANN. § 626.556(2)(c)(5) (West 2003 & Supp. 2008); MISS. CODE ANN. § 43-21-105(I)(i) (West 2008); MO. ANN. STAT. § 210.115(3) (West 2004); NEV. REV. STAT. ANN. § 200.5085 (LexisNexis 2006); N.J. STAT. ANN. § 9:6-1.1 (West 2002); N.Y. PENAL LAW § 260.15 (Consol. 2000); N.D. CENT. CODE § 50-25.1-05.1(2) (2007); R.I. GEN. LAWS § 40-11-15 (2006); VA. CODE ANN. § 18.2-314, -371.1(c) (2004 & Supp. 2008); WYO. STAT. ANN. § 14-3-202(a)(vii) (2007).

72. *See* Monopoli, *supra* note 21, at 331.

73. S. REP. NO. 104-117, at 1 (1995), *as reprinted in* 1996 U.S.C.C.A.N. 3490.

threatening conditions . . . and in cases where the child is in jeopardy of serious harm.”⁷⁴ The report further stated that although the enforcement of current state faith healing exemptions was up to the discretion of each individual state, the Senate nevertheless encouraged each state to take a more proactive approach to prevent death or serious injuries due to the denial of potentially lifesaving medical attention by faith based healers.⁷⁵ Although no longer an eligibility requirement for funding, the language of the revised statute still permits state enacted spiritual exemption statutes.⁷⁶

As a result of the 1996 amendments to CAPTA, the language of section 5106(i)(b) codified Justice Rutledge’s sentiments in *Prince*, stating:

[A] State shall, at a minimum, have in place authority under State law to permit [state authorities] to pursue any legal remedies... to initiate legal proceedings... , to provide medical care or treatment for a child when such care or treatment is

necessary... to prevent the withholding of medically indicated treatment from children with life threatening conditions.⁷⁷

Taken together, Code sections 5106(i)(a) and 5106(i)(b) illustrate the legislature’s unwillingness to declare spiritual exemptions unconstitutional, while realizing that certain government intervention is necessary to provide for the health and welfare of children.

Although nearly every state still maintains a spiritual exemption clause within their child protection statutes,⁷⁸ in the wake of the CAPTA amendments and the continued deaths of children denied medical care, which was supported by strict adherence to the Act’s language, there has been a slow, but growing trend among some states to amend the spiritual exemption statutes to include more explicit language.⁷⁹ Many of these newly revised statutes do not eliminate the spiritual exemption, but instead, by clarifying that the exemption does not apply when the life of a child is threatened, they encourage

74. *Id.* at 19, as reprinted in 1996 U.S.C.C.A.N. 3508.

75. *Id.* at 19–20, as reprinted in 1996 U.S.C.C.A.N. 3508–09.

76. 42 U.S.C. § 5106(i)(a) (2000); Hughes, *supra* note 17, at 248.

77. 42 U.S.C. § 5106(i)(b).

78. Shelli Dawn Robinson, Commentary, *Commonwealth v. Twitchell: Who Owns the Child?*, 7 J. CONTEMP. HEALTH L. & POL’Y 413, 420 n. 44 (1991).

79. *See, e.g.*, COLO. REV. STAT. § 19-3-103(1) (2008); OKLA. STAT. tit. 21, § 852(C) (2002 & Supp. 2009).

government intervention when the child's life is threatened.⁸⁰ Despite the progress of these state statutes, confusion still remains as to the scope and constitutionality of spiritual healing exemptions, creating a due process trap, which the state supreme courts have been forced to reconcile since 1974.⁸¹

V. WHEN FAITH HEALING BECOMES A CRIME: MODERN JUDICIAL PROBLEMS ARISING FROM THE AMBIGUITIES OF SPIRITUAL HEALING EXEMPTIONS

It could be argued that the 1944 decision in *Prince v. Massachusetts*, which declared unconstitutional the martyrdom of children to their parents' religious beliefs,⁸² created the foundation for further spiritual healing cases. But subsequent decisions by the highest state courts, as well as the passage of CAPTA's spiritual healing exemption, illustrate that when an issue arises, particularly one as sensitive as the conflict between church and state, the outcome is never so black and white. Even in the early English cases, before the passage of the Poor Law Amendment Act, there was little continuity, and because no firm common law doctrine⁸³ or statutory doctrine⁸⁴ was established, the ambiguity of the interpretation of "spiritual exemptions" remained a danger to child welfare.

As shown in Part II, the prosecutorial history of faith healing is seemingly and inexplicably bifurcated, yet courts are reticent to adopt a solution that protects both the free exercise of religion and the due process of both parents and infants. Whether on account of lobbying by Christian Scientists or complicated state statutory schemes, which protect a parent from liability for the faith-based omission of medical care in one instance while subjecting them to liability for another, modern state courts have liberally interpreted the legality and constitutionality of spiritual healing exemptions.⁸⁵

80. See Elizabeth A. Lingle, Comment, *Treating Children by Faith: Colliding Constitutional Issues*, 17 J. LEGAL MED. 301, 316 (1996).

81. See *infra* Part V.

82. Monopoli, *supra* note 21, at 319.

83. See *generally* Regina v. Downes, 13 Cox Crim. Cas. 111, 113-16 (1875) (U.K.) (mentioning three other similar cases decided at that time and revealing how those cases had not been determined or used as persuasive precedent).

84. See *generally* Regina v. Wagstaffe, 10 Cox Crim. Cas. 530, 530-32 (1868) (U.K.) (resolving the case without any statutory provisions).

85. See PETERS, *supra* note 51, at 116-18.

In 1988, the California Supreme Court was faced with its first prosecution of a Christian Science parent for child neglect since 1902.⁸⁶ In *Walker v. Superior Court*,⁸⁷ the court denied Walker's motion to dismiss, citing *Prince v. Massachusetts* among other cases.⁸⁸ In what would become a trend of leniency, Walker pled guilty and was assessed a fine of three hundred dollars, a term of probation, and community service.⁸⁹ Though an undoubtedly lenient punishment, for what would have amounted to a felony manslaughter charge if convicted, the *Walker* case set into motion a number of similar California cases, which spurred other state prosecutors brazenly to do what had rarely been done in close to a century: prosecute Christian Scientists.⁹⁰

In *Commonwealth v. Twitchell*,⁹¹ the defendants' two-year-old son, Robyn, died of a bowel obstruction.⁹² At trial, the defendants, a Christian Science couple, relied on the Massachusetts Attorney General's published interpretation of the state's spiritual exemption statute as "precluding criminal prosecution of parents for their failure to 'provide medical care because of religious beliefs.'"⁹³ The Twitchells also relied on the advice of a Christian Science official, who instructed them that dependence upon prayer without seeking medical attention was right in the eyes of the church, as well as in the eyes of the justice system, insofar as he understood the Attorney General's interpretation of the law.⁹⁴

The Church of Christian Science produced a manual entitled, *Legal Rights and Obligations of Christian Scientists in Massachusetts*, in which the Church instructed Massachusetts parents that they will "never suffer the 'imposition of criminal liability as a negligent parent for failure to provide medical care because of religious beliefs'" because of the spiritual exemption clause within the Massachusetts child neglect statute.⁹⁵ Scholars are quick to point out that both the Attorney General's

86. *Id.* at 117.

87. 763 P.2d 852 (Cal. 1988).

88. *Id.* at 869–70, 873.

89. PETERS, *supra* note 51, at 118.

90. *Id.*

91. 617 N.E.2d 609 (Mass. 1993).

92. *Id.* at 612.

93. Robinson, *supra* note 78, at 414 n.7 (quoting Maria Chambers, *Deliberating Faith, Law, and a Life*, NAT'L L.J., July 2, 1990, at 13); see *Twitchell*, 617 N.E.2d at 617–18.

94. See *Twitchell*, 617 N.E.2d at 619.

95. Monopoli, *supra* note 21, at 320 n.3 (referencing CHRISTIAN SCIENCE COMM. ON PUBL'N, LEGAL RIGHTS AND OBLIGATIONS OF CHRISTIAN SCIENTISTS IN MASSACHUSETTS (1983)); see MASS. GEN. LAWS ANN. ch. 273, § 1(4) (West 1992 & Supp. 2008).

interpretation and the subsequent reliance by the Church of Christian Science were never “authoritatively construed by a court of law” before they were proffered as evidence in the *Twitchell* case,⁹⁶ and therein lies the problem.

The court remanded the case to a lower court on due process grounds, but in dicta the Supreme Judicial Court of Massachusetts “conclude[d] that parents have a duty to seek medical attention for a child” if the omission of such treatment would reasonably lead to the child’s death.⁹⁷ Prior to the *Twitchell* decision, other state courts held that parents had an affirmative duty to provide their children with lifesaving medical attention, irrespective of religious beliefs.⁹⁸ Still, the fundamental due process problem remained in *Twitchell*: Should parents be prosecuted for providing spiritual healing treatment, if they are under the mistaken belief that the law protects them?

The dissent in *Twitchell* notes that neither the Attorney General’s interpretation nor the Christian Scientist manual contemplates any crime other than simple negligence, and that relying on both interpretations in the defense of a manslaughter charge fails on its face.⁹⁹ The due process problem, therefore, arises out of confusion surrounding the statute’s scope.¹⁰⁰ At the conclusion of the inquest into Robyn Twitchell’s death, one justice commented that “[t]o the extent the local statutes preserve [this] confusion they should be reviewed and corrected so that all concerned can receive a clear view of their rights and obligations to replace the hazy one now prevailing.”¹⁰¹

The justice’s call for legislative reform was echoed in the case of

96. Monopoli, *supra* note 21, at 320 n.3.

97. *Twitchell*, 617 N.E.2d at 612.

98. *See, e.g.*, Hall v. State, 493 N.E.2d 433, 434–35 (Ind. 1986) (finding parents guilty of reckless homicide of a dependent when their son died of acute bronchial pneumonia after receiving only prayer treatment); Bergmann v. State, 486 N.E.2d 653, 655–56, 660–61 (Ind. Ct. App. 1985) (finding parents guilty of reckless homicide where their nine-month-old daughter died from bacterial meningitis after receiving solely prayer treatment); Funkhauser v. State, 763 P.2d 695, 696, 699 (Okla. Crim. App. 1988) (finding parents guilty of second degree manslaughter when their three-month-old son died of pneumonia after receiving only religious methods of healing), *cert. denied*, 490 U.S. 1066 (1989); Commonwealth v. Barnhart, 497 A.2d 616, 620 (Pa. Super. Ct. 1985) (finding parents guilty of involuntary manslaughter and child endangerment after their child died from an untreated tumor), *appeal denied*, 538 A.2d 874 (Pa. 1988), *cert. denied*, 488 U.S. 817 (1988).

99. *Twitchell*, 617 N.E.2d at 620–21 (Nolan, J., dissenting).

100. *See id.*

101. Monopoli, *supra* note 21, at 326 (quoting Just. Rep. on Inquest Relating to the Death of Robyn Twitchell, Commonwealth of Massachusetts, District Court Department, Suffolk County, Inquest No. 1 of 1986, at 31, 33).

Hermanson v. State.¹⁰² As so often occurs in spiritual exemption cases, the facts of *Hermanson* mirrored those of *Twitchell*.¹⁰³ In *Hermanson*, the Christian Science parents of a minor diabetic child were convicted of felony child abuse and third degree murder for failing to provide their daughter with sufficient medical care.¹⁰⁴ The Florida Supreme Court reversed the conviction on the grounds that the state's spiritual exemption statutes were "ambiguous and result[ed] in a denial of due process because the statutes in question fail to give parents notice of the point at which their reliance on spiritual treatment loses statutory approval and becomes culpably negligent."¹⁰⁵

The *Hermanson* court further stated that "a person of ordinary intelligence cannot be expected to understand the extent to which reliance on spiritual healing is permitted and the point at which this reliance constitutes a criminal offense under the subject statutes."¹⁰⁶ Although the court found that Florida's spiritual exemption statutes were inherently dangerous to the welfare of children, it stopped short of declaring them unconstitutional, choosing instead to defer the question of constitutionality to the state legislature.¹⁰⁷ In 1998, the Florida legislature heeded the court's

advice and repealed the state's spiritual exemption to the child neglect statute that created the *Hermanson* due process trap.¹⁰⁸

Various lesser spiritual exemption statutes, however, remain on the books in Florida, potentially opening the door to another tragic death.¹⁰⁹

Without considering the ethical or constitutional ramifications of spiritual healing exemptions, one is forced to examine the number of children who have, without recompense, lost their lives because of the sublime ambiguity of the very language of such exemptions. Many

102. 570 So. 2d 322, 327, 332, 337 (Fla. Dist. Ct. App. 1990) (per curiam) (indicating a need for clarification regarding parental rights when it comes to religion and caring for one's child).

103. Compare *id.* at 324–27, with *Twitchell*, 617 N.E.2d at 612.

104. *Hermanson*, 570 So. 2d at 324–25. Like Kara Neumann, Amy Hermanson died of diabetic ketoacidosis. See *id.*; Satalin, *supra* note 1.

105. *Hermanson v. State*, 604 So. 2d 775, 776 (Fla. 1992).

106. *Id.*

107. See *id.* (stating, "The statutes have created a trap that the legislature should address.").

108. 1998 Fla. Laws ch. 403 (repealing FLA. STAT. ANN. § 415.503 (West 1996)).

109. CHILD, Religious Exemptions, *supra* note 23.

scholars on both sides of the spiritual exemption issue maintain that defending such exemptions as unduly ambiguous and confusing is to engage in a classic due process bait-and-switch,¹¹⁰ especially in light of recent case law.¹¹¹

Cases like *Twitchell* and *Hermanson*, in which but for the statutory language the courts would have found the exemption unconstitutional and the defendants guilty of, at the very least, involuntary manslaughter, illustrate the need for a more comprehensive, national judicial and legislative examination of the exemptions' ambiguous nature.¹¹²

VI. THE CONSTITUTIONALITY OF EXEMPTIONS

As illustrated, the highest courts in Massachusetts and Florida, although not explicitly condemning the spiritual healing exemptions as unconstitutional, did make progress towards the modification of their states' spiritual healing exemptions.¹¹³ All but extinct are the courts and legislatures that maintain a view that reliance upon spiritual healing, even to the point of death or serious injury, is a valid manifestation of an individual's free exercise of religion.¹¹⁴ Given the lack of acceptance of spiritual healing by scholars and members of the judiciary, the total excusal of guilt in spiritual healing cases has become an aberration.¹¹⁵

Although spiritual healing exemptions, for the most part, do not give religious parents carte blanche to impose their religious beliefs upon their children, certain statutes protecting spiritual healers, only protect certain recognized religious groups, such as Christian Scientists.¹¹⁶ Scholars are quick to point out that the favoring of one religion over another in such statutes is anathema to every major Supreme Court decision regarding the Equal Protection and Establishment Clauses.¹¹⁷

110. See Hughes, *supra* note 17, at 264.

111. See *supra* notes 86–109 and accompanying text.

112. Commonwealth v. Twitchell, 617 N.E.2d 609, 612 (Mass. 1993); *Hermanson*, 604 So. 2d at 776.

113. Cf. *Twitchell*, 617 N.E.2d at 612; *Hermanson*, 604 So. 2d at 776.

114. See, e.g., ARK. CODE ANN. § 5-10-101(a)(9) (2006 & Supp. 2007); OR. REV. STAT. § 163.115(4) (2007); W. VA. CODE ANN. § 61-8D-2(d) (LexisNexis 2005).

115. Cf. Lingle, *supra* note 80, at 321–23.

116. See, e.g., ARIZ. REV. STAT. ANN. § 8-531.01 (2007); CONN. GEN. STAT. ANN. § 17a-104 (West 2006); VA. CODE ANN. § 18.2-314 (2004); WASH. REV. CODE ANN. § 26.44.020 (West Supp. 2008); WIS. STAT. ANN. §§ 448.03(6), 948.03 (West 2005 & Supp. 2007); *Twitchell*, 617 N.E.2d at 614.

117. See Monopoli, *supra* note 21, at 344–45; Lingle, *supra* note 80, at 320–23.

In *Everson v. Board of Education*,¹¹⁸ the Supreme Court held that government cannot “pass laws which aid one religion, aid all religions, or prefer one religion over another.”¹¹⁹ In *Larson v. Valente*,¹²⁰ Justice Brennan, writing for the majority, stated “[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”¹²¹ How, then, can statutes remain that *officially* favor one religious denomination over another and, even more, that *de facto* favor religious defendants over non-religious ones?

The Supreme Court, in the well known cases of *Walz v. Tax Commission*¹²² and *Lemon v. Kurtzman*,¹²³ explicitly held that “a statute violates the establishment clause if it has the effect of fostering an ‘excessive government entanglement with religion,’”¹²⁴ and spiritual exemption statutes have caused such an entanglement since their popularization in 1974. Nevertheless, few state courts have truly addressed the constitutionality of these exemptions and, therefore, continue to maintain such exemptions in their child welfare statutes.¹²⁵

One of the most important Supreme Court cases to deal with the jeopardization of a child’s health or safety based on the parents’ religious beliefs is *Wisconsin v. Yoder*,¹²⁶ in which the Court stated that “the power of the parent, even when linked to a free exercise claim, may be subject to

limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child. . . .”¹²⁷ As in *Prince*, *Lemon*, and *Walz*, the Supreme Court’s language in *Yoder* regards the balance between the state’s interest in preserving child welfare and the free exercise of religion to be extremely explicit.

Scholars are quick to note that the defendants in *Yoder*, Amish parents who did not wish to send their children to public schools, possessed a firm belief that they would “expose themselves to the danger

118. 330 U.S. 1 (1947).

119. *Id.* at 15.

120. 456 U.S. 228 (1982).

121. *Id.* at 244.

122. 397 U.S. 664 (1970).

123. 403 U.S. 602 (1971).

124. Lingle, *supra* note 80, at 318 n.126 (quoting *Lemon*, 403 U.S. at 612–13; *Walz*, 397 U.S. at 674).

125. *See supra* note 98.

126. 406 U.S. 205 (1972).

127. *Id.* at 233–34.

of the censure of the church community [and] endanger their own salvation and that of their children,”¹²⁸ yet the defendants in *Twitchell* “did not believe they would have been censured by their church if they had resorted to conventional medical treatment for their son, nor is there any indication that they believed their salvation, or their child’s, was jeopardized.”¹²⁹ Although the religious convictions in *Twitchell* pale in comparison to those in *Yoder*, Florida’s spiritual exemption seems to trump well-trodden Supreme Court precedent, a clear violation of one of the fundamental tenets of constitutional jurisprudence.

The Amish defendants expressed a deep anxiety that forcing their children to attend public high schools would lead to an extinction of traditional Amish communities, yet the Court in *Yoder* held that the state’s interest in protecting child welfare outweighed the preservation interest.¹³⁰ Like the preservation argument in *Yoder*, Christian Scientists contend that because faith healing is a leading tenet of the religion, without it their religion ceases to exist.¹³¹ The diametric holdings in *Yoder* and *Twitchell* arise out of the fundamental constitutional questions surrounding the implementation and survival of spiritual healing exemptions.

As one scholar notes, “the underlying law in *Yoder* and in *Twitchell*, by threatening parents with criminal sanctions, affirmatively compels both sects ‘to perform acts undeniably at odds with fundamental tenets of their religious beliefs.’”¹³² These acts, nevertheless, are against the state’s countervailing interest to protect child welfare. Moreover, to compel a state, by means of a spiritual exemption statute, to abrogate its strong public policy to protect child welfare is not only unconscionable, but

unconstitutional insofar as the exemption creates a fundamental Establishment Clause conflict.¹³³

Whether because of the strong religious lobbying presence in many state legislatures or merely an unwillingness to strike down statutory law as unconstitutional, many courts have been unwilling to order the total

128. *Id.* at 209.

129. Robinson, *supra* note 78, at 429.

130. *See Yoder*, 406 U.S. at 234.

131. Monopoli, *supra* note 21, at 339 n.118.

132. Robinson, *supra* note 78, at 429–30 (citing *Yoder*, 406 U.S. at 218).

133. *See supra* notes 118–25 and accompanying text; *cf. Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970).

repeal of spiritual healing exemptions.¹³⁴ In *Twitchell*, the Supreme Judicial Court of Massachusetts, though not explicitly declaring the Massachusetts statute unconstitutional, made positive reference to other state court holdings, which unequivocally stated that spiritual healing exemptions were unconstitutional.¹³⁵

In *Walker*, a concurrence noted that not only was the spiritual treatment provision within the state's child neglect statute a "constitutional problem," but he went so far as to conclude "that the California spiritual provision [was] unconstitutional."¹³⁶ Likewise, in the cases of *State v. McKown*¹³⁷ and *State v. Miskimens*,¹³⁸ both of the states' courts held that spiritual healing exemptions within their child welfare statutes were unconstitutional.¹³⁹

The court in *Miskimens* stated that spiritual exemption statutes not only violate the Establishment Clause of the First Amendment, but also the Equal Protection Clause of the Fourteenth Amendment.¹⁴⁰ The opinion further stated that spiritual exemptions create "one standard of behavior for parents of one religious belief and another standard for a different group of parents. It is then inherent that equal protection is thus being denied to the parents not favored by the special exemption."¹⁴¹

The Ohio court, however, did not constrain its analysis of the unconstitutionality of the state's spiritual exemption statute only to parental equal protection.¹⁴² Concerning the equal protection of children whose

parents ascribe to tenets of faith healing, the court found that "if the real purpose of [child welfare statutes] is to protect children from parental defalcation, then the [spiritual] exception creates a group of children who will never be so protected, through no fault or choice of

134. *Cf.* *People v. Rippberger*, 283 Cal. Rptr. 111, 122–23 (Cal. Ct. App. 1991); *Commonwealth v. Twitchell*, 617 N.E.2d 609, 614 (Mass. 1993); *State v. McKown*, 475 N.W.2d 63, 68–69 (Minn. 1991).

135. *See Twitchell*, 617 N.E.2d at 614–15.

136. *Id.* at 614 n.5 (citing *Walker v. Superior Court*, 763 P.2d 852, 873–78 (1990) (Mosk, J., concurring)).

137. 475 N.W.2d 63 (Minn. 1991), *cert. denied*, 502 U.S. 1036 (1992).

138. 22 Ohio Misc. 2d 43 (Com. Pl. 1984).

139. *McKown*, 475 N.W.2d at 67; *Miskimens*, 22 Ohio Misc. 2d at 47.

140. *Miskimens*, 22 Ohio Misc. 2d at 47.

141. *Id.* at 46; *see Larsen v. Valente*, 456 U.S. 228, 244 (1982); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947).

142. *See Miskimens*, 22 Ohio Misc. 2d at 46.

their own.”¹⁴³

Whether the holdings in *Miskimen*, *McKown*, and *Walker* represent a trend towards the abolition of spiritual healing exemption statutes remains to be seen, but it is clear that the highest courts of some states, when explicitly examining the constitutionality of spiritual exemptions, have determined that such statutes are unconstitutional.¹⁴⁴

VII. FORESTALLING DEATH: A STATE’S RIGHT TO TAKE PROACTIVE MEASURES

No universal approach to the application or constitutionality of spiritual healing exemptions exists, and it should therefore come as no surprise that states lack uniform procedure with which to empower their courts to seek proactive intervention in situations of spiritual-based child neglect. Although the 1996 CAPTA amendments provide that the state, at the very least, have measures in place for government intervention, the very same amendments provide that the individual state determine whether spiritual healing is sufficient medical treatment, which ostensibly would negate the requirement for state medical intervention.¹⁴⁵

In *Miskimens*, the Ohio court relied upon the United States Supreme Court’s decision in *Roe v. Wade*¹⁴⁶ to illustrate that while there may be significant personal rights, such as the free exercise of religion, privacy, and the right to terminate a pregnancy, there are also countervailing state interests, which may prevail in some circumstances, such as the welfare of a viable life.¹⁴⁷ The Supreme Court in *Roe* held that,

143. *Id.*

144. *See supra* notes 135–43 and accompanying text.

145. 42 U.S.C. § 5106i(a)–(b) (2000). The amendments stated:

Nothing in this subchapter . . . shall be construed . . . to require that a State find, or to prohibit a State from finding, abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

Id. § 5016i(a). It further provided:

[A] State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions.

Id. § 5106i(b).

146. 410 U.S. 113 (1973).

147. *Id.* at 163; *see Miskimens*, 22 Ohio Misc. 2d at 46–47. This decision was echoed in the case of *Doe v. Bolton*, 410 U.S. 179 (1973).

although there is a right to personal privacy, “a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.”¹⁴⁸

The court in *Miskimens* stated, in regards to the Court’s contention in *Roe*, that “if the highest court in this nation can sanction government intervention in the parent-child relationship to protect a child whose chronological age is still a negative number, then surely... the rights of a [young child] are no less than those of the yet unborn.”¹⁴⁹ Because of this line of reasoning in *Miskimens*, some state courts have held that they are not bound to merely punish parents whose children have died as a result of failed spiritual healing or other denial of medical attention based on religious beliefs, but that state courts can intercede and, acting out of a prevailing state interest, protect the child’s welfare.¹⁵⁰

In *Jefferson v. Griffin Spalding County Hospital Authority*,¹⁵¹ a Georgia court ordered a mother to undergo a Cesarean section, which was against her wishes and religious beliefs, because a failure to undergo the procedure would result in the fetus’ death.¹⁵² Incongruous with the *Jefferson* decision is that of *In re Baby Doe*,¹⁵³ an Illinois decision holding that a mother has the right to refuse a Cesarean section, on religious grounds, even if the fetus may be harmed.¹⁵⁴ *In re Baby Doe* is a questionable decision based not upon a spiritual healing exemption, but upon the equally constitutionally aberrant decision of the Illinois Supreme Court in *Stallman v. Youngquist*,¹⁵⁵ which states that “in Illinois, a fetus cannot have rights superior to those of its mother.”¹⁵⁶

The decision in *Stallman* is clearly at odds with the holding in both *Roe* and *Doe v. Bolton*,¹⁵⁷ and it comes as no surprise that *Stallman*

148. *Roe*, 410 U.S. at 154.

149. *Miskimens*, 22 Ohio Misc. 2d at 46–47.

150. *See, e.g., State v. Wilson*, 987 P.2d 1060 (Kan. 1999); *In re D.R.*, 20 P.3d 166 (Okla. Civ. App. 2001).

151. 274 S.E.2d 457 (Ga. 1981). *But see Newark v. Williams*, 588 A.2d 1109 (Del. 1991).

152. *Jefferson*, 274 S.E.2d at 459–60. Ironically, the procedure would have saved the mother’s life as well, but the court focused upon the interest to save the fetus. *Id.*

153. 632 N.E.2d 326 (Ill. App. Ct. 1994).

154. *Id.* at 326.

155. 531 N.E.2d 355 (1988).

156. *Id.* at 359.

157. 410 U.S. 179 (1973).

neglects to reference either of these cases.¹⁵⁸ However, neither *In re Baby Doe* nor *Stallman* have been followed by subsequent courts.¹⁵⁹

In two separate cases, *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*¹⁶⁰ and *In re Jamaica Hospital*,¹⁶¹ Jehovah's Witness mothers refused to undergo a blood transfusion to save their viable fetuses on the grounds of religious objections.¹⁶² Both courts, relying on the holding of *Roe*, similar to the application in *Miskimens*, declared that the state had a prevailing interest and ordered the mothers to submit to the transfusions.¹⁶³ The correlation between the scope of the state's spiritual exemption statute and the willingness to intervene before the child suffers irreparable harm is not yet known, as the aforementioned cases in this section were decided in states that still maintain spiritual healing exemptions.¹⁶⁴ Courts are armed both with the unconstitutionality of spiritual healing statutes themselves, vis-à-vis the Establishment Clause and Due Process Clause of the Constitution, and the *Roe-Miskimens* balancing test of the state's prevailing interest as *parens patriae*, against the individual's free exercise of religion.¹⁶⁵ Yet courts remain, to this day, inconsistent in their application of the law.

VIII. CONCLUSION

Since *Regina v. Downes* in 1875, English and American courts have been faced with the issue of the government's role in regulating religious practices so far as it relates to the preservation of children's welfare. However, the Supreme Court has not specifically examined the constitutionality of these statutes, nor has it granted certiorari to examine the constitutionality of state courts' applications of these statutes.¹⁶⁶ Because of the Supreme Court's lack of action, the burden of

158. See *Stallman*, 531 N.E.2d at 356–80.

159. See *El-Amin v. Dempsey*, 768 N.E.2d 344, 352 (Ill. App. Ct. 2002) (holding that a cause of action for the death of a newborn brought on behalf of the mother is not hostile to the mother's rights); *In re Brown*, 689 N.E.2d 397, 405 (Ill. App. Ct. 1997) (holding that a mother cannot be forced to accept a blood transfusion for the benefit of her fetus); *Cates v. Cates*, 588 N.E.2d 330, 335 (Ill. App. Ct. 1992) (holding that a parent is not immune from suit brought by a child alleging personal injury proximately caused by the parent's negligent operation by a car).

160. 201 A.2d 537 (N.J. 1964), *cert. denied*, 377 U.S. 985 (1964).

161. 491 N.Y.S.2d 898 (N.Y. Sup. Ct. 1985).

162. *Anderson*, 201 A.2d at 537; *In re Jamaica Hospital*, 491 N.Y.S.2d at 899.

163. *Anderson*, 201 A.2d at 538; *In re Jamaica Hospital*, 491 N.Y.S.2d at 899–900.

164. See CHILD, Religious Exemptions, *supra* note 23.

165. See *supra* note 14.

166. See *Walker v. Superior Court*, 763 P.2d 852, 873 (Cal. 1988) (Mosk, J., concurring); *State v. McKown*, 475 N.W.2d 63, 69 n.9 (Minn. 1991).

progress lies with state judges and legislators, and this burden remains a problem so long as glaring ambiguities and dissimilarities exist in the uncoordinated examination of the scope and application of spiritual healing exemptions.

Due to the cloud of confusion surrounding spiritual exemptions, muddied by strong religious lobbyists, legislators must at the very least clarify and refine the statutes so as to eliminate a shadow of doubt that parents will be liable for a child's serious injury or death as a result of neglect on the grounds of faith healing. Furthermore, the state must uniformly exert its vested interest, as *parens patriae*, in the welfare of the vulnerable children, regardless of the parent's religious objections. As Robyn Twitchell's death makes clear, "parents are being misled by the statutory exemptions and . . . their children are at risk of injury and death as a result."¹⁶⁷ Therefore it is up to the state courts and legislatures to close this due process loophole, which has been the salvation of many faith healers.¹⁶⁸

Clarification, however, may not be the ultimate solution necessary to eradicate the potential danger, which arises out of the very nature of spiritual exemptions. Because faith-based spiritual exemptions violate the Due Process and Equal Protection Clauses by necessarily, yet ambiguously, entangling the government in religion, they may in and of themselves be unconstitutional, and should, in this case, be abolished entirely.

What remains after analysis and application, is an unfinished chapter in a tragic story, indicating the delicate but sometimes lopsided balance between the free exercise of religion and the countervailing state interest to preserve the lives of children. Without an examination by the Supreme Court or an unambiguous revocation of the favorable CAPTA provisions, the issues of constitutionality remain a state-by-state decision. Given the matrix of the interlocking and often antagonistic complexities inherent within spiritual exemptions and the historical landscape of differing viewpoints, no unified national solution seems imminent. State legislatures and courts, therefore, must be considerate of the overwhelming constitutional and ethical arguments against spiritual exemption statutes and proactively seek to protect the welfare of their youngest citizens.

167. *Monopoli*, *supra* note 21, at 326–27.

168. *See Hermanson v. State*, 604 So. 2d 775, 776 (Fla. 1992); *McKown*, 475 S.W.2d at 635; *State v. Miskimens*, 22 Ohio Misc. 2d 43, 938 (Com. Pl. 1984); *cf. Walker*, 763 P.2d at 852; *Commonwealth v. Twitchell*, 617 N.E.2d 609 (Mass. 1993).

