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# A Trend Toward Declining Rigor in Applying Free Exercise Principles: The Example of State Courts' Consideration of Christian Science Treatment for Children

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# A TREND TOWARD DECLINING RIGOR IN APPLYING FREE EXERCISE PRINCIPLES: THE EXAMPLE OF STATE COURTS' CONSIDERATION OF CHRISTIAN SCIENCE TREATMENT FOR CHILDREN

## I. INTRODUCTION

In *Walker v. Superior Court*[1] and *Hermanson v. State*,[2] Christian Science parents were prosecuted for failing to provide medical treatment to their ill children. These parents, in sincere exercise of their religious beliefs, instead provided Christian Science prayer-based treatment. After their children died, they were charged with involuntary manslaughter and child endangerment.[3]

This note addresses two issues: first, whether the *Walker* and *Hermanson* courts were rigorous in applying the Supreme Court's tests regarding the restrictions of the Free Exercise Clause,[4] and second, whether these two courts impermissibly inquired into the reasonableness and validity of the parents' religious beliefs in Christian Science.[5]

## II. A BACKGROUND OF THE FIRST CHURCH OF CHRIST, SCIENTIST

The First Church of Christ, Scientist was founded by Mary Baker Eddy in 1879.[6] It was organized to commemorate the "words and works" of Jesus, including the element of healing that was so important to early Christians.[7]

The Church's theology recognizes one God, who is described as a Father-Mother, and is best defined by Divine Love.[8] It also teaches that

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1. 763 P.2d 852 (Cal. 1988), *cert. denied*, 491 U.S. 905 (1989).

2. 570 So.2d 322 (Fla. Dist. Ct. App. 1990).

3. *See Walker*, 763 P.2d at 855-56; *Hermanson*, 570 So.2d at 325.

4. U.S. CONST. amend. I.

5. One issue that is not addressed in this note concerns possible state violations of due process. In 1976, California enacted a law that permitted parents to give their children spiritual treatment in lieu of medical treatment. *See* CAL. PENAL CODE § 270 (West 1988). Nevertheless, in *Walker*, the defendant was prosecuted under another portion of the Penal Code, which until then had not been used to prosecute parents who relied on spiritual treatment for religious reasons. *See Walker*, 763 P.2d at 871-73 (construing CAL. PENAL CODE § 192.273 (West 1988)).

6. MARY B. EDDY, MANUAL OF THE MOTHER CHURCH 17-19 (1935).

7. *Id.* at 7.

8. MARY B. EDDY, SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES 332 (1934).

God's relation to man is good and tender.[9] It goes on to teach that Christ reveals God's love as divine Principle, expressed through spiritual laws—laws that can be demonstrated by man in the healing of all wrongs, including sickness, sin, and death.[10] This Christly demonstration is viewed as scientific. This means that God's goodness and beneficial government of the universe, including man, are expressed as consistent, universal laws that men, women, and children can prove.[11] Therefore, prayer in Christian Science is not an imploring of God's mysterious mercies, a resignation to an uncertain fate, an exercise in will power, or even faith healing.[12] Rather, it is seeking to understand God's government and laws more profoundly and to live in accord with that understanding. To Christian Scientists, God's laws are viewed as consistently health-maintaining and life-restoring.[13]

In keeping with Christian Scientists' view that God is omnipotent, they exclusively rely on spiritual means for healing. They do not see this practice as a risky reliance on a hopeful miracle, but as a safe and certain means of healing sickness both in children and adults.[14] Christian Scientists believe that this conclusion has been substantiated in the lives of many Christian Scientists, whose families have relied on Christian Science healing for several generations.[15] They have seen it consistently provide a highly successful means of treating and preventing disease while fostering spiritual growth.[16]

## III. STATEMENT OF THE CASES

### A. Walker v. Superior Court

Laurie Walker is a Christian Scientist.[17] When her four-year-old

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9. *See id.* at 330, 332.

10. *See id.* at 330.

11. *See id.* at 37, 496, 546.

12. Christian Scientists distinguish themselves from faith healers, who issue blind faith and submission to disease, in favor of reliance on what they perceive as demonstrable laws of God, laws that establish health. *See* David B. Andrews, *Breaking Stereotypes About Healing*, *in* FREEDOM AND RESPONSIBILITY 12, 12 (1989).

13. *See* EDDY, *supra* note 8, at 2-3, 14.

14. *See* Nathan A. Talbot, *Government Should Not Interfere with Personal Beliefs*, *in* FREEDOM AND RESPONSIBILITY, *supra* note 12, at 7, 7-9 (1989); Nathan A. Talbot, *The Position of the Christian Science Church*, *in* FREEDOM AND RESPONSIBILITY, *supra* note 12, at 18, 18-19 [hereinafter Talbot, *Position of the Church*].

15. *See* Talbot, *Position of the Church*, *supra* note 14, at 18-19.

16. *See id.* at 19.

17. Walker v. Superior Court, 763 P.2d 852, 855 (Cal. 1988), *cert. denied*, 491 U.S.

daughter developed symptoms of the flu, Laurie provided Christian Science treatment instead of medicine.[18] Four days later, the child showed signs of a stiff neck, and later lost weight.[19] In keeping with the tenets of her church, Walker prayed for the child, engaged a Christian Science practitioner to provide Christian Science prayer-based treatment for the child, and hired a Christian Science nurse to supply practical care on three occasions.[20] The child died seventeen days later.[21] An autopsy indicated that the child died from meningitis.[22] There was no indication of any prior related illness.[23]

### B. Hermanson v. State

The Hermansons are also Christian Scientists.[24] When their seven-year-old daughter became ill, they provided Christian Science treatment for her.[25] Pursuant to their beliefs, they engaged a Christian Science practitioner to provide Christian Science prayer-based treatment for their daughter, and a Christian Science nurse to care for their child's physical comfort.[26] When the child died, the medical examiner identified diabetic ketoacidosis due to juvenile-onset diabetes mellitus as the cause of death.[27]

## IV. FREE EXERCISE: THE LEGAL FRAMEWORK

The First Amendment of the Constitution presents the apparently simple statement that Congress shall make no law prohibiting the free exercise of religion.[28] Nevertheless, faced with a steady stream of cases in which religious liberties and state interests came into conflict, the United States Supreme Court gradually developed a standard for

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905 (1989).

18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *See* Hermanson v. State, 570 So.2d 322, 324 (Fla. Dist. Ct. App. 1990).
25. *Id.* at 326-27.
26. *Id.*
27. *Id.* at 325.
28. *See* U.S. CONST. amend. I.

determining when and how a state might properly restrict those liberties. This section will highlight the boundaries that the Court has set.

The Court has long held that religious beliefs are not subject to restriction. One of the clearest statements of this rule was in *Cantwell v. Connecticut*.[29] In this case, the Court held that the state could not charge the defendant with breaching the peace for publicly playing an annoying phonograph record that expressed his religious beliefs.[30] In *Torasco v. Watkins*,[31] a case involving the denial of a state commission to a person who would not declare his belief in God, the Court went on to state that persons cannot be forced to disavow their beliefs.[32] Moreover, in *Fowler v. Rhode Island*,[33] the Court considered a defendant's conviction for holding a religious meeting in a public park, and explicitly recognized that freedom of belief exists, even if the belief is disliked by the majority.[34]

The Court, however, has distinguished freedom of religious *belief* from freedom of religious *exercise*. In *Reynolds v. United States*,[35] the Court pinpointed this distinction. The *Reynolds* Court reiterated that religious beliefs are inviolate, but went on to hold that exercise and actions could be restricted by the state if such actions were in "violation of social duties or subversive of good order."[36]

Although the Court in *Reynolds* recognized the power of the state to restrict free exercise, its holding was limited. Not all state restrictions were constitutionally permissible, and it remained for the post-*Reynolds* courts to map out which were permissible. Over time, the standards the Court developed included four critical elements. The claimant has the initial burden of showing (1) that his religious beliefs are sincere, and (2) that his free exercise of religion would be burdened by the proposed state restriction.[37] The burden of proof then shifts to the state to show (3) that the state has a compelling interest in the restriction, and (4) that the regulation is necessary to achieve that compelling interest and the means chosen are the least burdensome on the claimant's rights.[38] The following section explores these different elements and their constitutional bases.

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29. 310 U.S. 296 (1940).

30. *See id.* at 302.

31. 367 U.S. 488 (1961).

32. *See id.* at 492.

33. 345 U.S. 67 (1953).

34. *See id.* at 69.

35. 98 U.S. 145 (1878).

36. *Id.* at 164.

37. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 14-22, at 1242 (2d ed. 1988) (providing a thorough discussion of these elements).

38. *Id.*

### A. *Sincerity of Belief*

The first hurdle the claimant must surmount before a court will even consider the question whether the state has overstepped its bounds in regulating a religious practice is to demonstrate that his religious beliefs are sincere. In *Thomas v. Review Board of the Indiana Employment Security Division*,[39] the Court highlighted this principle and indicated that this was not likely to be a difficult matter for the claimant to prove. The Court further stated that a claimant's beliefs could be sincere even if they were not clearly developed or articulated.[40] Although this standard is very low, the Court did recognize that some claims might be "so bizarre, so clearly non-religious" as to render them unprotectable.[41]

### B. *Burden on Free Exercise*

The second requirement the claimant must meet is to show that his free exercise of religion would be burdened by the proposed state action. For this requirement, the Court has focused on a range of factors, including how centrally or directly related the regulated action is to the religious exercise.[42] Unfortunately, although the ramifications of the Court's finding of whether there is a significant burden may be far-reaching, the more basic question of how the Court determines what is a constitutionally significant burden remains ambiguous.

One factor that the Court has considered in determining how burdensome a state regulation would be is the centrality of the regulated conduct in relation to the tenets of the faith.[43] Regulation of central conduct is likely to be considered more burdensome than regulation of non-central conduct.[44] The significance of the centrality concept is apparent in a comparison of two Supreme Court decisions, *United States v. Lee*[45] and *Wisconsin v. Yoder*,[46] both involving the Old Order Amish. In *Lee*, the respondent was a member of the Old Order Amish.[47] This religion teaches its members that they are obligated to help fellow members and to provide for one another the type of assistance that was

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39. 450 U.S. 707 (1981).

40. *See id.* at 715.

41. *Id.*

42. *See, e.g.*, Sherbert v. Verner, 374 U.S. 398, 404 (1963) (discussing this factor).

43. *See* Wisconsin v. Yoder, 406 U.S. 205, 215-19 (1972).

44. *See id.* at 218.

45. 455 U.S. 252 (1982).

46. 406 U.S. at 205.

47. *Lee*, 455 U.S. at 254.

intended under the Social Security system.[48] Moreover, the Old Order Amish forbids both the payment of Social Security taxes and receipt of Social Security benefits.[49] Lee employed workers on his farm and in his carpentry shop.[50] Under federal law, he was required to pay Social Security taxes.[51] He asserted, however, that payment of those taxes would violate his right to the free exercise of his religion.[52] In response, the government argued that it was not challenging the sincerity of Lee's beliefs; instead, it argued that the payment of Social Security taxes would not "threaten the integrity of the Amish religious belief or observance."[53] Although it accepted Lee's assertion that participation in Social Security was forbidden by his religion, the Court scarcely weighed this factor at all against the government's interest in nationwide payment into the Social Security system.[54] The Court's opinion implied that although payment of taxes was contrary to the religion, such payment was not so central that it would seriously threaten the religion.[55] As a result, it carried less weight in the balancing process.[56]

In contrast to *Lee*, the Court in *Yoder* found the conduct in question more central to the Old Order Amish. In this case, a Wisconsin statute required children to attend school until the age of sixteen.[57] The Amish parents contesting the statute did not merely assert that the Old Order Amish teachings proscribed sending children to school beyond the eighth grade. They further argued that Amish parents who sent their children to high school would expose both the child and its parents to the risks of church censure and loss of salvation.[58] Moreover, they feared that their children would be drawn away from the church if they were exposed to secular values in the school system.[59] In holding for the Amish parents, the Court stressed the severe burden that compulsory education would

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48. *Id.* at 257.

49. *Id.*

50. *Id.* at 254.

51. *Id.*

52. *Id.* at 255.

53. *Id.* at 257.

54. *See id.* at 258-59.

55. *See id.* at 261.

56. *Id.*

57. *See* Wisconsin v. Yoder, 406 U.S. 205, 207 n.2 (1972); *see also* WIS. STAT. § 118.15 (1990).

58. *See Yoder*, 406 U.S. at 209.

59. *See id.* at 211.

place on the Old Order Amish religion.[60] The Court found the state's compulsory education measure would subjectively "contravene the basic religious tenets and practices of the Amish faith" and would cause "objective danger to . . . the Amish community and religious practice."[61] It should be noted that the court relied heavily on the testimony of expert witnesses in determining the extent of the regulation's burden on the claimants' religious beliefs.[62]

A second means that the Court has used to evaluate the extent of a burden on free exercise focuses on the directness of the burden. For example, in *Braunfeld v. Brown*,[63] the Court considered a Pennsylvania statute that prohibited the sale of certain goods on Sundays.[64] The petitioners, who were Orthodox Jews, sued to enjoin enforcement of the statute.[65] They claimed that because their faith required abstention from business from Friday evening to Saturday evening, the statute would impose serious economic disadvantages on them if they adhered to the requirements of their religion.[66] They also argued that the statute would hinder them in gaining new members.[67]

The Court distinguished the effects of the Pennsylvania law from other types of statutes that would make a religious practice unlawful.[68] In comparison, the Court found that this statute merely would make the petitioner's religious practice more expensive.[69] The Court found such a burden to be only an indirect one.[70] From there, the Court stated that if it struck down legislation that had only an indirect effect on free exercise, the Court would unacceptably restrain legislative latitude.[71] The Court concluded that

> if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's

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60. *See id.* at 218.

61. *Id.*

62. *See id.* at 209-12.

63. 366 U.S. 599 (1961).

64. *See id.* at 600 (construing PA. STAT. ANN. tit. 18, § 4699.10 (1960) (current version at 18 PA. CONS. STAT. § 7363 (1991)).

65. *See id.* at 601.

66. *See id.*

67. *See id.* at 602.

68. *See id.* at 605.

69. *See id.*

70. *See id.* at 606.

71. *See id.*

> secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden.[72]

Thus, a court's finding that a burden is indirect would not invalidate all constitutional claims, but would certainly render it more difficult for the party asserting a free exercise claim to prevail. Unfortunately, the Court in *Braunfeld* did not delineate the point at which a burden becomes so direct as to render a state regulation unconstitutional.

Soon after this case, however, the Court in *Sherbert v. Verner*[73] resolved the inherent ambiguities in the direct/indirect burden analysis. The claimant in *Sherbert* was a member of the Seventh-Day Adventist Church, the tenets of which prohibited her from working on Saturday, the Sabbath.[74] She was discharged by her employer because she would not work on Saturdays and, after she was fired, was unable to find other employment for this same reason.[75] Subsequently, she filed for unemployment benefits, but the State of California denied her claim.[76] The State argued that since the claimant had refused suitable work when it was offered, she was not eligible to collect unemployment benefits.[77]

In evaluating the burden on the claimant's free exercise of religion, the Court recognized that her disqualification might only be an indirect burden because there were not any criminal sanctions actually compelling her to work on Saturdays.[78] Yet the Court proceeded to state that a finding that there was an indirect burden was "only the beginning, not the end" of its inquiry.[79] The Court, relying on *Braunfeld*, recognized that if the effect of a law was to impede the observance of a religion, it was constitutionally invalid.[80] The Court found that because the claimant's ineligibility for benefits exclusively derived from her religious practice, "the pressure upon her to forego that practice [was] unmistakable."[81] In holding the statute unconstitutional,[82] the Court largely erased the

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72. *Id.* at 607.
73. 374 U.S. 398 (1963).
74. *See id.* at 399.
75. *See id.* at 399-400.
76. *Id.* at 400.
77. *Id.* at 401.
78. *See id.* at 403.
79. *Id.*
80. *See id.* at 404.
81. *Id.*
82. *See id.* at 410.

significance between direct and indirect burdens. Instead, the Court proceeded to the heart of the free exercise question: whether the state action places significant pressure on the claimant to forego the practice of her religion.

Despite the clarification in *Sherbert*, a major question remains open. *Sherbert* and subsequent decisions that applied the *Sherbert* rule indicate that the question of religious burdens must be defined from the perspective of the religious claimant. But the Court has failed specifically to address the question of how a court should determine what that religious perspective is. What authority should a court consult to determine what a religion's tenets truly are, so that the court may determine whether that religious claimant would consider his or her exercise substantially burdened?[83]

### C. *The State's Compelling Interest*

Once the claimant establishes that his beliefs are sincerely held and that the proposed statute would burden the free exercise of his religion, the burden of proof shifts to the state to show that it has a compelling interest in the regulation and that the means chosen are necessary to meet that objective. Going as far back as *Reynolds v. United States*,[84] decided in 1878, the Court has differentiated between religious beliefs and the exercise of those beliefs. The *Reynolds* Court noted that although religious beliefs were inviolate and subject to no limitations, the exercise of those beliefs was subject to governmental limitations.[85] Such limitations were allowable, however, only under narrow circumstances: if they were necessary "to reach actions which were in violation of social duties or subversive of good order."[86]

The principle that only certain governmental interests could justify otherwise impermissible limitations on First Amendment rights was articulated again in *Sherbert*. In this case, the Court stated that "'[o]nly

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83. *See id.* at 399.

84. 98 U.S. 145 (1878).

85. *See id.* at 164.

86. *Id.* at 163. In justifying the imposition of governmental limitations, the *Reynolds* Court quoted from Thomas Jefferson's definition of the separate roles of church and state:

> [T]o suffer the civil magistrate to intrude his power into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty. . . . [It] is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

*Id.* (quoting 12 Henning's Stat. 84).

the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'"[87]

One state interest that the Court has long recognized is the well-being of children. The pre-eminent case in this field is *Prince v. Massachusetts*.[88] In *Prince*, the petitioner provided her children and her niece with religious magazines to sell, and was subsequently charged with violating Massachusetts's child labor laws.[89] The Court upheld the state prohibition, asserting that although prior decisions respected the private realm of families, "neither rights of religion nor rights of parenthood [are] beyond limitation."[90] The Court cited examples of compulsory school attendance and vaccination as areas in which it had previously recognized the state's special interest in children.[91] Furthermore, in justifying the state's power to exercise greater restrictive authority over children than over adults, the Court stressed the state's particular interest in children: "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens . . . ."[92]

In addressing the physical and psychological harm that might come to children engaged in distributing such religious literature, the *Prince* Court observed that "[p]arents 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 when they can make that choice for themselves."[93] Thus, the *Prince* Court found a compelling state interest in the well-being of children.

### D. *Least Burdensome Means*

Once the state has demonstrated a compelling interest, the second element it must establish to rebut a prima facie case of impermissible restriction of free exercise rights relates to the means used to implement that interest. Only the least burdensome means of effecting the state's interest will be upheld.[94] The Court addressed this issue in *Cantwell v.*

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87. Sherbert v. Verner, 374 U.S. 398, 406 (1963) (quoting Thomas v. Collins, 323 U.S. 516, 530 (1945)).

88. 321 U.S. 158 (1944).

89. *See id.* at 160 (construing MASS. GEN. L. ch. 149, §§ 79-81 (1939)).

90. *Id.* at 166.

91. *See id.*

92. *Id.* at 168.

93. *Id.* at 170.

94. *See* Wisconsin v. Yoder, 406 U.S. 205, 235-36 (1972); Sherbert v. Verner, 374 U.S. 398, 407 (1963).

*Connecticut*.[95] In this case, the Court struck down a Connecticut statute requiring religious organizations to obtain licenses before soliciting donations.[96] In reaching its conclusion, the Court inquired whether less drastic means were available to meet the state's interest.[97] Similarly, in *Murdoch v. Pennsylvania*,[98] the Court was faced with a local ordinance requiring door-to-door solicitors to pay licensing fees. The petitioners, who were Jehovah's Witnesses, contended that the ordinance violated their religious freedom.[99] The Court held that even though the state's purpose of protecting the public from fraud was compelling, the ordinance impermissibly burdened the petitioners' exercise of religion.[100]

It was in *Sherbert v. Verner*,[101] however, that the Court stated this requirement with particular clarity. Even if the state has demonstrated a compelling interest, the Court said, "it would plainly be incumbent upon the [state] to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights."[102] According to the *Sherbert* Court, the issues whether a state had a compelling interest and whether the means were narrowly tailored to meet the regulation's objectives are distinct matters.[103] A positive finding that the state has a compelling interest in no sense determines whether the means chosen to implement that interest are constitutionally valid.[104]

The Court applied this two-pronged principle in *Wisconsin v. Yoder*.[105] After finding that the claimant's beliefs were sincere and that the burden on the exercise of religious beliefs would be substantial,[106] the Court proceeded to consider the nature of the state's interest in the education of children.[107] Relying on *Prince* and *Sherbert*, the Court reiterated the state's compelling interest in the welfare of children.[108]

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95. 310 U.S. 296 (1940).

96. *See id.* at 303.

97. *See id.* at 305.

98. 319 U.S. 105 (1943).

99. *See id.* at 107.

100. *See id.* at 116-17.

101. 374 U.S. 398 (1963).

102. *Id.* at 407 (footnote omitted).

103. *See id.* at 406-08.

104. *See id.*

105. 406 U.S. 205 (1972).

106. *See id.* at 219.

107. *See id.* at 221.

108. *See id.* at 230.

But the Court did not end its analysis there. The Court put the burden of proof on the state to show that the means it had chosen to implement its interest were necessary. "[D]espite [the] admitted validity [of the state's interests] in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exception."[109] In so doing, the Court warned against the particular danger of assuming that a religious group is failing to meet the objective, simply because its means of accomplishing the goal may be markedly different from the state's proposed means.[110]

The Court in *Yoder* stressed the history of Amish success, particularly with respect to their unique system of education. The Court noted that although the Amish do not send their children to school beyond the eighth grade, they nevertheless adequately train children in a manner suited to their agricultural and rural form of life.[111] The Court found that although the Amish means clearly were different from the state's envisioned means of accomplishing the objective of self-sufficient individuals, the Amish were in fact meeting the state's objective.[112] Therefore, the state's interests would be achieved even if the Amish people did not send their children to school up to age sixteen.[113] The Court said: "There can be no assumption that today's majority is 'right' and the Amish and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."[114] The religion-based means of the Amish might differ from those of the majority, but failure to provide rural education, the means chosen by the state, did not necessarily mean that the state's interest in educating children was not being served.

In finding that the state had failed to demonstrate that the claimant's religion-based means were inconsistent with the state's interest, the Court struck a noteworthy balance. On the one hand, it preserved the state's right to restrict the free exercise of religion if necessary to achieve a compelling objective. But on the other hand, by recognizing that different, and possibly unusual, religion-based means might be consistent with the asserted state interest, the Court ensured the protection of free exercise, particularly among minority religions.

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109. *Id.* at 221.

110. *See id.* at 221-23.

111. *See id.* at 227.

112. *See id.* at 224.

113. *Id.* at 228-29.

114. *Id.* at 223-24.

## V. FREE EXERCISE: APPLICATION OF THE COURT'S STANDARDS

As discussed above, the four-tiered system of analysis of free exercise claims, which involves an evaluation of the sincerity of belief, the burden on religious exercise, the nature of the state interest, and the narrowness of the restrictions, offers the potential to balance compelling state interests with a respect for free exercise. Below is an analysis of how this system was applied in *Walker v. Superior Court.*[115]

In *Walker*, the state alleged that providing prayer in lieu of medicine to a seriously ill child, pursuant to Christian Science teachings, may constitute criminal negligence sufficient to support a charge of involuntary manslaughter and felony child endangerment.[116] The court concluded that prosecution under these statutes did not violate the guarantee of free exercise under the United States Constitution.[117] Walker asserted that her conduct was protected from prosecution by the First Amendment.[118]

In keeping with the United States Supreme Court's standards, the Supreme Court of California first considered whether Walker's beliefs were sincere. The court found that she "unquestionably relied on prayer treatment as an article of genuine faith."[119] The court next considered the extent of the burden on religious practices that would result from the state regulation. As discussed above, the Supreme Court has identified several broad factors to consider in determining whether a state regulation would result in a constitutionally significant burden on free exercise, including the centrality of the religious practice and whether religious observance would be impeded.[120] The court in *Walker* proceeded in a traditional vein, evaluating the nature of the possible burden that might result if the state held a Christian Science parent who provided prayer-based treatment rather than medical treatment to a severely ill child criminally liable for felony child endangerment or involuntary manslaughter.[121] Initially, the court appeared to find that there was a significant burden and that the restriction of Walker's provision of prayer-based treatment would "seriously impinge on the practice of her religion."[122] But what the court gave with one hand, it took away with the other. After concluding there was a serious impingement, it suggested

115. 763 P.2d 852 (Cal. 1988), *cert. denied*, 491 U.S. 905 (1989).

116. *See id.* at 855.

117. *See id.*

118. *See id.* at 869.

119. *Id.* at 869-70.

120. *See supra* notes 37-114 and accompanying text.

121. *See Walker*, 763 P.2d at 869.

122. *Id.* at 870.

that perhaps the burden was not, in fact, so significant. The Court reasoned as follows: "We note, however, that resort to medicine does not constitute 'sin' for a Christian Scientist, does not subject a church member to stigmatization, does not result in divine retribution, and, according to the Church's amicus curiae brief, is not a matter of church compulsion."[123]

In reaching this conclusion, the court relied on a law review article,[124] selected portions of an article by a church spokesman,[125] and a small portion of the church's amicus brief.[126] The court concluded that even if a state measure prohibited exclusive reliance on spiritual healing, it would not represent a significant burden on the claimant.[127]

At no point, however, did the court squarely consider the centrality of the religious practices, the directness of the burden imposed by the state actions or whether the state regulation would impede religious observances. It is at this stage in the analysis that the unresolved question from *Sherbert* becomes critical. What authorities should a court consult to determine whether the regulation of a religious practice will in fact be burdensome to the religion?

An alternative means of determining the significance of religious practices, however, was suggested by Justice Blackmun in *County of Allegheny v. American Civil Liberties Union.*[128] In this case involving religious symbolism, Justice Blackmun referred to the Talmud, "a collection of rabbinic commentary on Jewish law," as an authority on the significance of Chanukah celebrations.[129] To the extent that this provides authority for consulting a religion's own basic writings to determine the significance of its practices, it could be argued that a means for determining the centrality of exclusively spiritual healing in Christian Science would be to examine the church's own authorities: the *Manual of*

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123. *Id.* (citations omitted).

124. *See id.* (citing Steven Schneider, *Christian Science and the Law: Room for Compromise?*, 1 COLUM. J.L. & SOC. PROBS. 81, 87-88 (1965)).

125. *See id.* (citing Nathan A. Talbot, *The Position of the Christian Science Church*, 26 N.E. MED. J. 1641, 1642 (1983)).

126. The court's references to the church's amicus brief seemed selective, ignoring those parts of the brief that stressed that spiritual healing is central to Christian Science and is not merely a minor religious preference. *See Walker*, 763 P.2d at 855 n.2; *see also* Brief of Amicus Curiae Church of Christ, Scientist, in Support of Petitioner at 4, *Walker*, 763 P.2d at 852 (No. 24996).

127. *See Walker*, 763 P.2d at 869-70.

128. 492 U.S. 573 (1989).

129. *Id.* at 583.

*the Mother Church*[130] and its textbook, *Science and Health with Key to the Scriptures*.[131]

These church authorities provide an indication of the centrality of healing far different from the one the *Walker* court found by examining secondary sources or selected sections from the church's amicus brief. According to the *Manual of the Mother Church*, an applicant must exclusively rely on spiritual healing to qualify for membership.[132] Moreover, the Church Tenets[133] and Platform[134] stress the integral role of spiritual healing. And the purpose of the Church is "to commemorate the word and works of our Master [Christ Jesus], which should reinstate primitive Christianity and its lost element of healing."[135]

Christian Scientists stress the importance of spiritual healing based on Jesus's command, "[g]o ye into all the world . . . . [a]nd these signs shall follow them that believe . . . they shall lay hands on the sick, and they shall recover."[136] Their textbook emphasizes this point: "Jesus established in the Christian era the precedent for all Christianity, theology, and healing. Christians are under as direct orders now, as they were then, to be Christlike, to possess the Christ-spirit, to follow the Christ-example, and to heal the sick as well as the sinning."[137] Thus, contrary to the conclusions of the *Walker* court, the church's own basic authorities provide repeated evidence of the centrality of spiritual healing to this faith.

Moreover, based primarily on its reading of a law review article, the *Walker* court concluded that use of medical treatment was not really a sin in Christian Science, because Christian Scientists do not believe that it will result in divine retribution or excommunication.[138] Although an examination of divine retribution and excommunication might in some religions be an accurate measure of the seriousness with which a given act is viewed, such analysis is not particularly well-suited in the context of Christian Science. According to their textbook, God is not viewed as a vengeful source of punishment. On the contrary, although Christian Scientists believe that evil will "punish itself," they view God as a

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130. EDDY, *supra* note 6.

131. EDDY, *supra* note 8.

132. *See* EDDY, *supra* note 6, at 2.

133. *See id.* at 15-16.

134. *See* EDDY, *supra* note 8, at 337-38.

135. EDDY, *supra* note 6, at 17.

136. *Mark* 16:15-18 (King James).

137. EDDY, *supra* note 8, at 138.

138. *See* Walker v. Superior Court, 763 P.2d 852, 870 (Cal. 1988), *cert. denied*, 491 U.S. 905 (1989).

merciful corrector of wrongdoing.[139] This may explain why there are no church provisions for punishing those who resort to medicine. Rather, members are expected to be fully compassionate towards those who might do so.[140] Nevertheless, it would be a mistake to conclude that this indicates in any way that exclusive reliance on spiritual healing is not central to Christian Science.

The foundational Christian Science writings are explicit and consistent in terms of noting the distinction between resort to medicine and reliance on Christian Science treatment. Any attempt to blend the two healing methods is viewed as a departure from Christian Science.[141] Practitioners of Christian Science treatment are enjoined from providing such treatment to patients who are using medical means.[142] Use of spiritual rather than material means for healing is as integral to Christian Science as is obeying Christ's Sermon on the Mount.[143] The textbook stresses that by resorting to material methods of healing, "you render the divine law of healing obscure and void."[144] Finally, Christian Scientists believe that "[o]nly through radical reliance on Truth can scientific healing power be realized."[145]

Although this discussion is not intended to represent a complete and definitive statement of Christian Science, there are two basic points to be made. First, had the *Walker* court looked to the basic authorities of the Christian Science church to determine the principles of the church, as Justice Blackmun did in *Allegheny*, it would have found substantial evidence that exclusive reliance on spiritual healing is central to Christian Science. Second, the *Walker* court's decision to rely on secondary sources to determine what Christian Scientists believe indicates the possible difficulties flowing from the unresolved question of *Sherbert*: If the court seeks to determine what burdens would result from state restrictions on the exercise of religion, what sources should it consult to determine what practices are central to the religion? Here, the court's choice of sources had a definitive impact on the nature of the burden it perceived, and left the court in the position of making highly subjective determinations regarding what is central to a religion. Primarily as a result of the particular authorities consulted by the *Walker* court, its findings of potential burdens were minimized.[146] Since the court's analysis

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139. EDDY, *supra* note 8, at 6, 447.

140. *See id.* at 6.

141. *See id.* at 142-64.

142. *See* MARY B. EDDY, RETROSPECTION AND INTROSPECTION 87 (1920).

143. *See* MARY B. EDDY, RUDIMENTAL DIVINE SCIENCE 4 (1936).

144. EDDY, *supra* note 8, at 445.

145. *Id.* at 167.

146. *See* Walker v. Superior Court, 763 P.2d 852, 870 (Cal. 1988), *cert. denied*, 491

minimized the extent of the burden, from this point on any *Sherbert v. Verner* type of balancing of the claimant's and the state's interests would be weighted against the claimant.

The *Walker* court also considered whether the state had a compelling interest. After a brief discussion, the court concluded that it did:

> Imposition of felony liability for endangering or killing an ill child by failing to provide medical care furthers an interest of unparalleled significance: the protection of the very lives of California's children, upon whose "healthy, well-rounded growth . . . into full maturity as citizens" our "democratic society rests, for its continuance . . . ."[147]

Thus, the court clearly identified the government's interest as the health of children.

Nevertheless, it is helpful at this juncture to recall the *Yoder* Court's warning against assumptions. In *Yoder*, although the Court recognized the state's interest in children, it warned against assuming that the religious group's practices regarding children were inconsistent with the state's interest in their welfare.[148] The mere fact that the religious practices differed from the state's practices did not mean that they should be condemned.[149] On the contrary, the Court looked beyond the differences to see the success of the Amish communities in rearing children who are self-sufficient and concluded that the Amish methods and teachings were adequate means of achieving the same objectives that the state sought to achieve.[150]

In contrast, the *Walker* court concluded that as a general rule imposing felony liability on religiously motivated parents who provided spiritual, rather than medical, treatment was necessary to achieve the state's objective.[151] It made precisely the kind of assumption warned against in *Yoder*.[152] It assumed that the religious means, which differed so dramatically from the majority's secular means, were necessarily inconsistent with the state's interest. Just as the state in *Yoder* had assumed that withholding of traditional education resulted in ignorance among Amish children, so here the court assumed that withholding of traditional

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U.S. 905 (1989).

147. *Id.* at 869 (quoting Prince v. Massachusetts, 321 U.S. 158, 168 (1944)).

148. *See* Wisconsin v. Yoder, 406 U.S. 205, 223-24 (1972).

149. *See id.* at 224.

150. *See id.* at 225-26.

151. *See Walker*, 763 P.2d at 869.

152. *See Yoder*, 406 U.S. at 223-24.

healing methods would result in ill-health among Christian Science children.[153]

Without regard for whether such an assumption is warranted, it is noteworthy that such an assumption is of the type the *Yoder* court warned against; an assumption by the majority that its own means are obviously the only means of accomplishing an important state objective and that a religious group's unusual means are incapable of accomplishing that same objective, albeit in a very different way. The danger of such an assumption is that it could tend to prevent a serious evaluation of religious practices that differ from those of the majority, to determine whether they are in fact inconsistent with accomplishing the state's objectives. It is certainly understandable that the *Walker* court made such an assumption. The state's interest is highly compelling, and the health of children presents a more "immediate danger" than the question of education, important as that may be. Nevertheless, since the effect of *Walker* reaches far beyond the particular dispute resolved in the case, putting all Christian Science parents on notice that they may be criminally culpable if they rely on Christian Science in caring for their seriously ill children, the court's holding should rest on something more substantial than an assumption. A genuine regard for free exercise would seem to require an evaluation of whether, in fact, the Christian Science means of providing for the health of children fail to further the state's interests. *Walker* was decided on the basis of one child, without any empirical evidence that Christian Science healing in general is less effective than medical treatment in promoting the health of children.

It might be argued that there was sufficient proof of the inadequacy of Christian Science treatment in *Walker*: the child died under Christian Science treatment, whereas she very likely would not have died under medical care.[154] Nevertheless, since the effect of *Walker* is to limit the exercise of Christian Science religion by all Christian Science families, it would seem appropriate to rely on more than one instance of the failure of Christian Science healing if there is to be any serious examination as to whether Christian Scientists' methods are adequate to meet the needs of children.[155]

By failing to consider the adequacy of these religious means of meeting the state's concededly compelling interest in the health of children, the *Walker* court nearly blended into one question the two issues of compelling interest and necessary means. Yet, as the Court made clear

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153. *See* DAVID N. WILLIAMS, CHRISTIAN SCIENCE AND THE CARE OF CHILDREN: THE CONSTITUTIONAL ISSUES, CHURCH AND STATE 19 (1989).

154. *See Walker*, 763 P.2d at 867.

155. *See* David B. Andrews, *Breaking Stereotypes About Healing*, *in* FREEDOM AND RESPONSIBILITY, *supra* note 12, at 12, 16.

in *Sherbert*, these issues are distinct. In *Sherbert*, the Court stated that even if the state's interest is compelling, "it would plainly be incumbent upon the [state] to demonstrate that no alternative forms of regulation would combat [the state's interest] without infringing First Amendment rights."[156] Similarly, in *Yoder*, the Court addressed the question whether the religious claimant's means would achieve the state's objective.[157] In *Walker*, as a result of the court's assumption that the state's proposed means and the religious means were incompatible, the court did not examine this question. It merely asserted that the governmental interest "is plainly adequate to justify its restrictive effect."[158] But an analysis of the extent to which Christian Scientists' means of caring for their children's health is in fact consistent with the state's objective of promoting the health of children might have yielded surprising results.

The record of Christian Science healing strongly suggests that provision of Christian Science treatment, in lieu of medical treatment, for seriously ill children is sufficiently successful to warrant a finding that it is fully consistent with the state's interest in promoting the health of children. At a minimum, its record of healing calls into question the *Walker* court's assumption that Christian Science treatment is inconsistent with its goal of promoting the health of children. Over the last twenty years, from 1969 to 1988, the *Christian Science Journal* and the *Christian Science Sentinel* published over 10,000 accounts of healing.[159] Of this total, 2337 had been medically diagnosed.[160] Of the 10,000, 2451 of these healings involved children, twenty-five percent of which involved the healing of problems that had been medically diagnosed.[161] Among the conditions healed subsequent to medical diagnosis are the following: appendicitis, asthma, broken bones, child birth complications, bronchitis, cleft palate, club foot, crossed eyes, croup, curvature of the spine, deformed feet, hips, and legs, eczema, encephalitis, enlarged adenoids, epilepsy, goiter, heart disorder, impacted teeth, kidney disease, leukemia, malaria, mastoiditis, meningitis, pneumonia, polio, rheumatic fever,

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156. *See* Sherbert v. Verner, 374 U.S. 398, 407 (1963).

157. *See* Wisconsin v. Yoder, 406 U.S. 205, 221 (1972).

158. *Walker*, 763 P.2d at 870.

159. *See* Committee on Publication, The First Church of Christ, Scientist, in Boston, Mass., *An Empirical Analysis of Medical Evidence in Christian Science Testimonies of Healing, 1967-1988*, *in* FREEDOM AND RESPONSIBILITY, *supra* note 12, at 110, 118-19, 121 [hereinafter *Empirical Analysis*].

160. *Id.* at 118.

161. *Id.* at 121.

ruptured appendix, scarlet fever, smallpox, tonsillitis, tuberculosis, and typhoid fever.[162]

At this point, some questions may arise concerning the meaning of the word "healing." It is used in this discussion to signify a return to a fully healthy condition. Some questions may also arise about the relevance of healings of such conditions as appendicitis, deformities, leukemia, and pneumonia to the cases under discussion here. They are offered to substantiate the assertion that provision of Christian Science treatment for seriously ill children is consistent with the state's objective of promoting the health of children. Moreover, such examples illustrate the reasonableness of Christian Science parents who rely on Christian Science treatment for their children, parents who often come from families that have successfully relied on Christian Science treatment for several generations.[163]

Given this record of healing, the *Walker* court's mere assumption of the inadequacy of Christian Science treatment seems particularly inappropriate. Moreover, it should be noted that the burden of proof is on the state, not on the religious claimants, to show the necessity of limiting religious practices.[164] The *Walker* court at no point actually required that the state meet this burden of proof.

In summary, the Court has established a four-step standard for determining whether state limitations of free exercise are permissible. This test includes findings of sincerity of belief, a burden on religious exercise, a compelling interest, and means that are least burdensome to achieve that interest. Although the *Walker* court did apply these standards in theory, the method in which it applied them raises two particularly troublesome concerns. First, in its evaluation of whether the practice of religion was significantly burdened, the court was so selective in choosing its sources of information about Christian Science practice as to prevent a full evaluation of the burdens indicated by the church's own basic authorities. This calls into question the court's ability to fully appraise the extent of the burden on the religion. In addition, the *Walker* court failed to impose a rigorous burden of proof on the state to show that its restrictions on free exercise were needed to achieve its objective. On the contrary, the court merely assumed this. But in so assuming, the court fell into the very

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162. ROBERT PEEL, SPIRITUAL HEALING IN A SCIENTIFIC AGE 91-92 (1987).

163. *See generally id.* (discussing specific examples and affidavits of Christian Science Healings); *Empirical Analysis*, *supra* note 159, at 118-21 (documenting Christian Science healings over the past twenty years). Portions of some of the affidavits in Robert Peel's book are excerpted in an appendix to this note. *See infra* at 520.

164. *See* Bowen v. Roy, 476 U.S. 693, 707-08 (1986).

danger that the *Yoder* Court warned of: a furtherance of majority preconceptions at the expense of religious minorities.[165]

## VI. MOST RECENT COURT DEVELOPMENTS: IMPLICATIONS FOR FUTURE CASES INVOLVING CHRISTIAN SCIENTISTS

Since *Walker* and *Hermanson*, the Supreme Court has rendered two major decisions relating to free exercise that may have a significant impact on future state court decisions involving Christian Science treatment. Perhaps the most significant is *Employment Division v. Smith*.[166] In this landmark case, the Supreme Court seemed to reverse its longstanding tests for evaluating the constitutionality of state regulations impinging on the free exercise of religion.[167] The Court held that no compelling governmental interest is required, and that the Court need not balance state interests and possible burdens on religious exercise.[168] Moreover, the Court seemed to indicate that an individual's free exercise right does not relieve him from his obligation to comply with laws that are religiously neutral on their face, unless those laws would also violate other constitutional provisions.[169]

The implications of *Smith* are sobering. The case appears to minimize religious interests not only in relation to governmental interests, but also in relation to other constitutional rights. It purports to restrict constitutional protection primarily to religious *beliefs*, with little protection for religious *exercise*, stating that "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."[170] Also, the decision minimizes the significance of ostensibly religion-neutral laws on free exercise.[171] Both of these elements are likely to have far-reaching effects on future cases involving free exercise.

Nevertheless, this note does not rely on *Smith* in its analysis of the *Walker* and *Hermanson* cases, principally because these cases were decided before *Smith*, so neither the California nor the Florida courts

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165. *See* Wisconsin v. Yoder, 406 U.S. 205, 223-24 (1972).

166. 494 U.S. 872 (1990).

167. *See* Kenneth Marin, Employment Division v. Smith: *The Supreme Court Alters the State of Free Exercise Doctrine*, 40 AM. U. L. REV. 1431, 1465-66 (1991); Edward E. Smith, Note, *The Criminalization of Belief: When Free Exercise Isn't*, 42 HASTINGS L.J. 1491, 1500-02 (1991).

168. *See Smith*, 494 U.S. at 886.

169. *See id.* at 881.

170. *Id.* at 872.

171. *See id.*

applied *Smith* in reaching their decisions. A secondary reason is that it is too early to determine exactly how *Smith* will affect future free exercise cases.

A second significant Supreme Court decision is *Lyng v. Northwest Indian Cemetery Protective Ass'n.*[172] In *Lyng*, the Court considered the free exercise claims of three American Indian tribes in California.[173] The federal government sought to construct a road and permit timbering on lands that, although owned by the federal government, were of religious significance to the Indians.[174]

The Court recognized the sincerity of the respondents' religious beliefs: "It is undisputed that the Indian respondents' beliefs are sincere and that the Government's proposed action will have severe adverse effects on the practice of their religion."[175] Moreover, the Court acknowledged the centrality of these practices to the respondents' religion and the enormity of the impact of the governmental program on the respondents' exercise of religion:

> The Government does not dispute, and we have no reason to doubt, that the logging and road building projects at issue in this case could have devastating effects on traditional Indian religious practices. Those practices are intimately and inextricably bound up with the unique features of the Chimney Rock area . . . . Individual practitioners use this area for personal spiritual development; some of their activities are believed to be critically important in advancing the welfare of the Tribe, and indeed, of mankind itself. The Indians use this area, as they have used it for a very long time, to conduct a wide variety of specific rituals that aim to accomplish their religious goals. According to their beliefs, the rituals would not be efficacious if conducted at other sites than the one traditionally used, and too much disturbance of the area's natural state would clearly render any meaningful continuation of traditional practices impossible.[176]

Despite this direct recognition of the effect of the governmental action on the practice of the respondents' religion, however, the Court concluded that there was no First Amendment concern, and therefore no requirement for the Court to engage in the traditional analysis of determining whether

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172. 485 U.S. 439 (1988).

173. *See id.* at 443.

174. *See id.* at 442-43.

175. *Id.* at 447.

176. *Id.* at 451.

there was a compelling governmental interest and then balancing that interest against the burden on the exercise of religion.[177] The Court based its narrow reading of the First Amendment on *Bowen v. Roy*,[178] in which the Court found that the First Amendment did not prohibit the federal government from requiring recipients of welfare benefits to have Social Security numbers, even if this practice violated certain Indians' religious beliefs. Overall, the *Lyng* Court held that the First Amendment offered protection in just two situations: when individuals "were coerced by the Government's actions into violating their religious beliefs," or when the governmental action would "penalize religious activity."[179] Absent such coercion or penalty, there would be no First Amendment protection.

The impact of *Lyng* on the cases concerning Christian Science is unclear. On the one hand, it could be argued that *Lyng* signals not only a narrowing of the scope of protection under the First Amendment, but also a diminution in the underlying regard for religion—at least for minority religions. A serious question arises whether the Court would have found the matter to have rested within the parameters of the First Amendment had the case concerned a more mainstream religion.[180] On the other hand, however, it could be argued that even under the *Lyng* reasoning, the Court would still apply the traditional First Amendment protection to the Christian Science cases.

The *Lyng* Court did carve out two particular areas in which it recognized First Amendment concerns: the first was situations in which governmental actions would coerce an individual to act contrary to his religious beliefs, and the second was when governmental action would penalize religious practices.[181] On the basis of these two exceptions, the Court used *Wisconsin v. Yoder*[182] as an example of a situation in which the traditional First Amendment protection and framework of analysis would still apply. In *Yoder*, the Court concluded that the state regulation requiring public school attendance violated the claimants' free exercise rights, since the Amish parents in that case would be coerced into sending

177. *See id.* at 456-58.

178. 476 U.S. 693 (1986).

179. *Lyng*, 485 U.S. at 449.

180. *See* Celia Byler, Comment, *Free Access or Free Exercise?: A Choice Between Mineral Development and American Indian Sacred Site Preservation on Public Lands*, 22 CONN. L. REV. 397, 410-14 (1990) (discussing the difficulties encountered by the courts in applying First Amendment protection to Native American religions).

181. *See Lyng*, 485 U.S. at 449.

182. 406 U.S. 205 (1972).

their children to high school, in violation of their religious beliefs.[183] Given the direct parallels between *Yoder* and the Christian Science cases, particularly the similarity of requiring parents to send their children to school in violation of their religion and requiring parents to use material healing methods in violation of their religion, it is reasonable to expect the Court to apply traditional First Amendment protections in the Christian Science cases, as it did in *Yoder*.

## VII. COURT INQUIRIES INTO THE REASONABLENESS OF RELIGIOUS BELIEFS: THE LEGAL FRAMEWORK

Over the years, a series of Supreme Court decisions have identified certain kinds of court inquiries relating to religion as constitutionally impermissible.[184] Although this has had the effect both of limiting judicial discretion and sometimes hindering criminal prosecutions, the Court has concluded that in view of the particular status afforded religion under the First Amendment, such restrictions on court inquiries are justified.[185]

The most basic of these prohibitions is that a court may not inquire into what constitutes the correct religious practice of a religion. In *Engel v. Vitale*,[186] the Court succinctly articulated the policy underlying this requirement. The Court noted that our founding fathers had seen the dangers and suffered the bitter experience of using political power to determine what was the correct interpretation of a religion.[187] "The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence . . . people's religions."[188]

In recent years, the Court applied this rule in *Thomas v. Review Board of the Indiana Employment Security Division*.[189] In this case, the Court considered the claims of Thomas, a Jehovah's Witness. Thomas was initially hired by a company to work in a foundry that fabricated sheet

183. *See id.* at 218.

184. *See, e.g.*, Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 716 (1981) (correctness of perception of the commands of one's faith); United States v. Ballard, 322 U.S. 78, 87 (1944) (truth or credibility of religious doctrine).

185. *See Ballard*, 322 U.S. at 86; *see also* Appellant's Brief at 8-25, Walker v. Superior Court, 763 P.2d 852 (Cal. 1988) (No. 24996), *cert. denied*, 491 U.S. 905 (1989) (discussing appellant's statutory rights and the inappropriate of state inquiries into the reasonableness of parental decisions to rely on spiritual healing).

186. 370 U.S. 421 (1962).

187. *See id.* at 425-26.

188. *Id.* at 429-30.

189. 450 U.S. 707 (1981).

steel for industrial uses.[190] When that foundry was closed, he sought to be transferred to another department, but discovered that each of these departments was engaged in weapons production.[191] Thomas asked to be laid off because, in his view, working in the manufacture of weapons violated the precepts of his religion.[192] When he applied for unemployment benefits, the state board denied his claim, on the ground that he had terminated his employment voluntarily.[193]

One critical factor obscured the question whether the state's decision violated Thomas's right to free exercise of religion. When he learned that the new work would entail weapons manufacturing, Thomas consulted a fellow employee who was also a Jehovah's Witness.[194] This friend told him that working on weapons parts was not "unscriptural."[195] Ultimately, Thomas was not satisfied with his friend's advice, believing that it was based upon a less strict interpretation of church principles than his own.[196] The United States Supreme Court rejected the view that Thomas's claim was based on a mere philosophical choice, which would have forfeited First Amendment protection, rather than a religious choice.[197] It explained: "[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation."[198]

Not only did the Court prohibit inquiries into whether Thomas or some other party had correctly articulated the real religious principles of that church, but the Court proceeded to outline a very limited scope of permissible inquiry in this area. "The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion."[199] Thus, as described above, a court may properly inquire into the sincerity of a claimant's beliefs,[200] but not into whether a defendant's beliefs constitute a correct

190. *Id.* at 710.

191. *Id.*

192. *Id.*

193. *Id.* at 712.

194. *Id.* at 711.

195. *Id.*

196. *Id.*

197. *See id.* at 713-16.

198. *Id.* at 716.

199. *Id.*

200. *See supra* notes 39-41 and accompanying text.

interpretation of his religion's teachings.[201] In other words, a court may not permissibly inquire into what constitutes the true or real precepts of a religion.[202]

In addition, the Court has identified a second area of impermissible inquiry: a court may not inquire into whether religious beliefs are logical or valid. In *Thomas*, for example, the Court specifically held that "religious beliefs need not be acceptable, logical, consistent or comprehensible to others in order to merit First Amendment protection."[203] The Court addressed a similar question in *United States v. Ballard*.[204] In *Ballard*, the Court considered the claims of several defendants who had been convicted of using and conspiring to use the mails to commit fraud.[205] They had solicited funds, based on representations that they and "Guy W. Ballard, . . . alias Saint Germaine, Jesus, George Washington, and Godfrey Ray King had been . . . designated . . . as . . . divine messenger[s]" and that they had cured hundreds of people.[206] Again, the Court restricted the range of inquiries into the validity of religious principles:

> Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. . . . The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.[207]

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201. *See Thomas*, 450 U.S. at 715.

202. *See id.* at 716.

203. *Id.* at 714.

204. 322 U.S. 78 (1944).

205. *See id.* at 79.

206. *Id.*

207. *Id.* at 86-87.

Based on *Ballard*, even if a religious belief is incomprehensible to others, or possibly even incredible and preposterous, it merits First Amendment protection as long as it is sincerely held. When a court attempts in any way to look into its truth or falsity, it enters a "forbidden domain."[208] But the Court did not stop there. It forbade such inquiries even if the state asserted that it needed such information as part of a criminal prosecution.[209] In *Ballard*, the state asserted that it needed to prove that the defendants knew their representations were false, in order to establish that they had fraudulently solicited funds for their religious movement.[210] The Supreme Court did not accept this justification for authorizing inquiries into otherwise forbidden areas. Rather, the Court stated that "[w]hatever this particular indictment might require, the First Amendment precludes such a course."[211]

Combining the Court's holdings in *Thomas* and *Ballard*, even if an inquiry into the validity of religious beliefs is necessary for the state to establish some element of an indictment, the state is prohibited from inquiring into whether such beliefs are comprehensible, logical or valid to others, because the Court has identified these as forbidden inquiries.

## VIII. COURT INQUIRIES INTO THE REASONABLENESS OF RELIGIOUS BELIEFS: APPLICATION TO *WALKER* AND *HERMANSON*

As described above, the Supreme Court has closely delineated the bounds of court inquiry with respect to religious beliefs. On the one hand, a court may properly inquire into whether religious beliefs are sincerely held by the claimant.[212] But on the other hand, courts are specifically enjoined from inquiring into the acceptability, logic or validity of religious beliefs, even if necessary to establish a portion of an indictment.[213] The next issue to be addressed is the extent to which the *Walker* and *Hermanson* courts stayed within these allowable bounds, and the extent to which they entered into the domain forbidden by the Court.

In *Walker*, the California Supreme Court sustained the superior court's decision in which the lower court denied Walker's motion to dismiss the state's involuntary manslaughter and felony child endangerment charges.[214] Under section 192 of the *California Penal Code*, involuntary

208. *Id.* at 87.

209. *See id.* at 86.

210. *See id.* at 83.

211. *Id.* at 86.

212. *See supra* notes 39-41 and accompanying text.

213. *See supra* notes 203-11 and accompanying text.

214. *See* Walker v. Superior Court, 763 P.2d 852, 856 (Cal. 1988), *cert. denied*, 491

manslaughter includes the "commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."[215] The California courts had defined the term "without due caution and circumspection" as the equivalent of criminal negligence.[216] Criminal negligence, in turn, is conduct that is such a departure from the conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life.[217] In addition, it arises when a person takes action even though he might reasonably have foreseen dangerous consequences.[218] In each instance, it requires a showing that the defendant did what a reasonable or ordinarily careful person would not have done, or failed to do what such a person would have done under such circumstances.[219]

With respect to the state's second charge, felony child endangerment, willful endangerment is defined as willfully causing or permitting a child to be placed in a situation in which its person or health is endangered.[220] The California courts have interpreted this provision as requiring a showing that the defendant departed from the *ordinary* standard of due care, such as an ordinarily prudent person would do, so as to be incompatible with a proper regard for human life.[221]

Similarly, the defendants in *Hermanson* were convicted of criminal child abuse.[222] Conviction under this Florida statute, similar to that in California, requires a finding of culpable negligence, again reflecting the standard of what a reasonably prudent person would have done under such circumstances.[223]

In both *Walker* and *Hermanson*, the courts evaluated the defendants' behavior with respect to these negligence-based statutes, after finding that the defendants' behavior was based on religious beliefs.[224] In doing so, the courts appear to have stepped beyond the bounds of permissible inquiry delineated by the Supreme Court. Two principal problems emerge from the courts' inquiries. First, in each case, pursuant to the state

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U.S. 905 (1989).

215. CAL. PENAL CODE § 192 (West 1988).

216. *See* People v. Penny, 285 P.2d 926, 931 (Cal. Ct. App. 1955).

217. *See* People v. Wong, 111 Cal. Rptr. 314, 327 (Ct. App. 1973).

218. *See* People v. Rodriguez, 8 Cal. Rptr. 863, 868 (Dist. Ct. App. 1960).

219. *See id.* at 867.

220. *See* CAL. PENAL CODE § 273a.1 (West 1988).

221. *See* People v. Peabody, 119 Cal. Rptr. 780, 782 (Ct. App. 1975).

222. *See* Hermanson v. State, 570 So.2d 322, 324 (Fla. Dist. Ct. App. 1990).

223. *See* FLA. STAT. ANN. § 827.04 (West 1991).

224. *See Walker*, 763 P.2d at 868-69; *Hermanson*, 570 So.2d at 333-35.

statutes, the court inquired whether the defendants, acting on the basis of their religious beliefs, did what a reasonably prudent person would have done under such circumstances.[225] This is tantamount to inquiring into whether these religious-based actions were reasonable—that is, whether they represented what a prudent person would have done under such circumstances. In *Hermanson*, the court specifically considered the question whether its investigation constituted impermissible inquiry into the reasonableness of religion, and concluded that it was not impermissible.[226] The court stated that "in a criminal prosecution, deciding the reasonableness of an accused's action is a proper function of the jury, even when these actions are based on sincerely held beliefs."[227] Although not explicitly stated as such, this raises the implied inquiry whether an ordinary person would have adhered to such religious principles under such circumstances. Such an inquiry is, at a minimum, highly suspect and perhaps impermissible, based on the Court's holding in *Thomas v. Review Board of the Indiana Employment Security Division*[228] that religious beliefs need not be acceptable or logical.

Furthermore, such inquiries are particularly suspect in view of the Court's recognition in *United States v. Ballard*[229] that because one person's religious experience may be incomprehensible to others, it should not be suspect before the law, and becomes a matter of concern if placed before a jury. According to *Ballard*, such impermissible inquiries are not rendered permissible even if the state considers them necessary to establish an element of a criminal conviction.[230] By considering whether the defendants' religiously based acts met the standard of what a reasonable person might do, the courts in both *Hermanson* and *Walker* appear to have overstepped the bounds of what the Supreme Court has identified as permissible inquiry.

In addition, the courts engaged in a second suspect inquiry concerning what interpretation of a religious teaching is correct. In *Walker*, the court implied that although Walker's decision to provide Christian Science treatment in lieu of medical treatment was based on sincerely held religious beliefs, the use of medicine was not actually prohibited by the teachings of Christian Science.[231] The implication of such a statement is that by going beyond even what her own church required, defendant's

225. *See Walker*, 763 P.2d at 868-69; *Hermanson*, 570 So.2d at 334-35.

226. *See Hermanson*, 570 So.2d at 334.

227. *Id.* at 335.

228. 450 U.S. 707, 714 (1981).

229. 322 U.S. 78, 87 (1944).

230. *See id.* at 86.

231. *See Walker*, 763 P.2d at 870.

actions were especially unreasonable and reckless. According to this implication, not only did Laurie Walker fail to do what most ordinary people would do, she did not even do what a reasonable Christian Scientist would have done.

Similarly, in *Hermanson*, the jury's decision seemed dependent on a finding of what constituted the correct teachings of Christian Science. The trial judge specifically instructed the jury that it was not to decide whether the defendants had correctly interpreted their religion.[232] Nevertheless, in a clear indication of the difficulty of preventing a trial in criminal negligence from slipping into an inquiry into the correctness of an individual's interpretation of his religion, the jury submitted the following three questions to the trial court: "1. As a Christian Scientist do they [the defendants] have a choice to go to a medical doctor if they want to? 2. Or if not, can they call a doctor at a certain point? 3. Do they need permission first?"[233] The significance of these questions is not entirely clear, but they do seem to indicate that the jury was seeking to ascertain whether the defendants' actions, which were admittedly sincere, were taken in accord with Christian Science, or whether the defendants adopted an unreasonably strict view of the religion in electing spiritual healing in lieu of medical treatment at a time of serious illness.

In each case, the court compared the parents' religiously motivated behavior to what the courts implied that "real" Christian Science teachings allowed.[234] In finding that the parents had not followed what the courts believed represented a more "lenient" form of Christian Science, the courts implied that the parents had not done what even a reasonable Christian Scientist would have done under such circumstances. Although never explicitly stated, these implied findings would tend to permeate the record with an impression that the parents were acting unreasonably even within the scope of their own religion.

Based on the *Thomas* holding, however, such an inquiry is impermissible. According to *Thomas*, the only permissible inquiry is whether the defendants' beliefs are sincerely held.[235] Therefore, any further inquiry into their reasonableness or validity in comparison with other asserted "true" teachings of a religion is prohibited. Thus, in both *Walker* and *Hermanson*, the courts overstepped the bounds of constitutionally permissible inquiry by examining whether the defendants'

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232. *See Hermanson*, 570 So.2d at 334.

233. *Id.* at 333.

234. *See Walker*, 763 P.2d at 870; *Hermanson*, 570 So.2d at 336.

235. *See* Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 715-16 (1981).

actions were reasonable, in comparison to ordinary people, and whether their beliefs were in fact the real teachings of their church.

One final issue merits clarification. An assertion by Christian Science defendants that court inquiry into the reasonableness of their religious beliefs is impermissible should not be construed as a "catch twenty-two" admission that Christian Science treatment is therefore unreasonable. On the contrary, although these defendants may choose to rely on constitutional protection against court scrutiny of the validity of their religion, it can be argued that, notwithstanding possible public preconceptions, their reliance on Christian Science treatment is in fact reasonable. As discussed above, there is a record, albeit one not generally expected, that Christian Science treatment has healed thousands of cases of serious illness, including those that have been medically diagnosed.[236] On this basis, it would be entirely reasonable for Christian Science parents, having knowledge of this record of effective healing, and probably having seen it in their own families, to choose to rely on spiritual healing for the care of their own children. These parents would choose Christian Science treatment for their children not out of any expectation that their children would be martyred, but expecting full healing through the practice of Christian Science. With regard to this point, the Court's admonition in *Ballard* takes on particular significance. In *Ballard*, it may be recalled that the Court stated:

> Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom.[237]

No doubt, Christian Science treatment of illness may be incomprehensible to much of the public. But if a record of effective healing is present, and if the state has at no point proven that it is otherwise, it would render constitutional protection of religious freedom meaningless to Christian Scientists if the public's own experience with a more limited view of God and His healing power in relation to physical illness became the basis for finding that Christian Science parents acted unreasonably or with criminal negligence.

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236. *See supra* notes 159-63 and accompanying text.

237. United States v. Ballard, 322 U.S. 78, 86-87 (1944).

## IX. CONCLUSION

Two principal conclusions follow from this discussion. First, the state court in *Walker* was not rigorous in applying the standards that the Supreme Court has developed concerning the narrow range of constitutionally permissible restrictions on the free exercise of religion.[238] One facet of this was apparent in the *Walker* court's treatment of the burden on free exercise. Through its selection of persuasive authorities for statements on what constituted a burden, it greatly diminished any apparent burden on the practice of Christian Science. In addition, the *Walker* court was at best cursory in its application of the Supreme Court requirement that the burden of proof is on the state to show not just that it has a compelling interest, but that the restriction on exercise is necessary to achieve that objective.[239] Rather than considering this question, the court merely assumed that the Christian Science means were inconsistent with the state's objective.[240] Mere assumption replaced rigorous analysis. This assumption raises particular questions in view of the record, albeit a not generally expected one, of the success of Christian Science health care for children.

This assumption becomes all the more troubling because, despite its inaccuracies, it may appeal to the public on the basis of stereotypes regarding minority religions in general, and healing through prayer in particular. Ironically, rather than protecting minority religions from state restrictions, the courts assume the role of promoting such stereotypes and restrictions of free exercise. Already, the *Hermanson* court has cited with approval the *Walker* court's reasoning,[241] failing to note its underlying gaps and assumptions.

Second, the *Walker* and *Hermanson* courts engaged in suspect, and possibly constitutionally impermissible, inquiries regarding both the reasonableness of religious practices as an element in convictions relating to criminal negligence, and what constitutes true or valid religious practices in keeping with the teachings of Christian Science.[242]

These departures from the Supreme Court's standards are particularly troublesome in one principal respect. The First Amendment was intended, in substantial part, to protect religious groups—groups with which the majority of citizens might vehemently disagree.[243] After all, if the

238. *See supra* notes 224-30 and accompanying text.

239. *See supra* note 164 and accompanying text.

240. *See supra* note 234 and accompanying text.

241. *See* Hermanson v. State, 570 So.2d 322, 329, 333 (Fla. Dist. Ct. App. 1990).

242. *See supra* notes 212-37 and accompanying text.

243. School Dist. of Abington Township v. Schempp, 374 U.S. 203, 223 (1963).

majority agreed with the minority, either with respect to the severity of burdens that might flow from limitations on their religious practices, or with respect to the validity and reasonableness of their religious beliefs and practices, First Amendment protection would not be needed. By minimizing considerations of burden and by inquiring into the reasonableness and validity of religious beliefs and practices, the courts may be reflecting majoritarian views of what is reasonable, but are failing to provide the very protection of unusual or minority religions that the First Amendment was intended to provide.

Unless the Court intends to relegate rigorous First Amendment analysis to what it may regard as an interesting relic of the past, such searching analysis must be applied when the interests of both the state and the religious claimant are most important, and when the religious practices seem most unusual to the majority, for it is in these cases that stereotype rather than careful thought may be most prevalent. To the extent that the Supreme Court, as well as the state courts, seek to maintain such rigor, the more unusual the religious practice may appear to the majority, the more compelling is the need for searching analysis in determining whether in fact the burden on religion is significant and whether in fact the limitation on free exercise is necessary to achieve the state's objectives. At least in the two cases considered, the state courts do not appear to have been rigorous in applying the Supreme Court's articulated standards for protection of free exercise rights, and may well have unnecessarily curtailed First Amendment rights.

*Deborah Sussman Steckler*

## APPENDIX

Several sworn affidavits providing first-hand specific accounts of Christian Science healing are included. They are intended to illustrate what is involved when parents decide to rely on Christian Science treatment for a child.

> We were living in Gates Mills, Ohio, when Brent, then sixteen, found he could not walk. We called a Christian Science practitioner immediately. Because of the nature of the symptoms, we consulted a physician to determine whether the condition was communicable and should be reported in compliance with the law. The physician . . . diagnosed the condition initially as polio. Brent was then taken . . . [to the hospital] where he was given extensive tests. The hospital physicians first told us they thought Brent had polio, then that he might have tuberculosis of the hip. They finally determined that the condition was rheumatoid arthritis, and indicated that Brent would need to be in bed, flat on his back, for the next three months.
>
> We were permitted to take Brent home, and continued having Christian Science treatment for him. His condition improved steadily. He received no medication, either at the hospital or at home. The complete healing took place within a month, and our son returned to school. A few days later . . . the physician who made the original diagnosis . . . requested permission to examine Brent. This examination confirmed that the condition had been completely healed.[1]
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> * * *
>
> In April 1969, when our son, Trent, was four years old . . . I put him to bed for a nap. Instead of awakening normally as usual, I found I could not awaken him after several hours rest. I then realized there was evidence of a very high fever and a coma-like condition. I couldn't get him to take nourishment of any kind. I immediately called a registered Christian Science practitioner in Santa Fe, New Mexico, who agreed to pray for him. My husband and I also prayed very earnestly for this child. Late Sunday afternoon there was a condition of paralysis evident, and the child was still unconscious. I called an experienced Christian Science

1. ROBERT PEEL, SPIRITUAL HEALING IN A SCIENTIFIC AGE 91-92 (1987) (quoting affidavit of Lois D. Kleihauer).

teacher. He encouraged me to call the Committee on Publication for information regarding State Laws in New Mexico which I did. In order to comply with the provisions of the law, my husband and I decided it was best to take him to the Medical Center for diagnosis at this time . . . . The physician . . . . was visibly moved by the child's condition and asked our permission to give him a "spinal tap." We agreed and after some time he diagnosed the condition as "spinal meningitis." He tried to prepare us for the child's passing on that evening. He had been the doctor for two small boys from our neighborhood street who had passed on several years before from this same disease. He told us how much sicker Trent was than [these other boys] . . . . Our son was put in the contagious ward for children. . . .

As my husband and I turned wholeheartedly to God in prayer, about midnight our son awakened, asked for his teddy bear, stood up in his bed and wanted something to eat. The paralysis was gone and he was wide awake. . . . The child went into a normal sleep and awakened perfectly all right the next morning.

Dr. _____ said, at the time, that he was convinced of the validity of the original diagnosis. . . . The doctor asked that we let him see the child in a week and we agreed. Two grateful parents said thank-you to the doctor and took our young happy son home. . . .

A week later, I took our son, Trent, for Dr. _____ to see. . . . He was also the County Health Officer for _____ County. . . . The doctor picked [Trent] up and set him on the table, and very firmly, but tenderly said, "Trent, Dr. _____ didn't do anything to help you. It was God who took care of you. Now remember that!" . . . . The child never has had a recurrence of this condition and remains a very athletic, healthy, normal child.[2]

* * *

When my daughter, Mittie Muriel Russell, was twelve, she became ill with a ruptured appendix. She was bedridden for over a year, and then taken three times during this period to Granite Mountain Hospital. . . . The first time she was taken to the hospital, she was there for four months. We were told that she needed an operation, but that her heart was too weak to survive it. She gained some strength in the first month at the hospital,

2. *Id.* at 74-75 (quoting affidavit of Evelyn S. Davey) (names of physicians and locations are omitted in the book, but are included in the affidavit).

then contracted mumps. This delayed the operation still further. She was finally operated on. . . . [The doctors] found, as they informed me, that she had developed peritonitis, fecal fistula, and [a badly infected] intestine. Dr. Junkin stated that he did not understand why the child was alive at all. . . .

The . . . wound did not heal over the next months. The child's weight dropped from 135 to 60 pounds over this time . . . . The tendons in the back of her legs became drawn, and we were told by the doctors on the case that she would never again be able to walk. . . .

The third time I took the child to the hospital. . . . [t]he doctors informed me that the child's bladder could be the next to deteriorate and that this could cause hemorrhaging which would lead to the child's death. . . . She began hemorrhaging shortly thereafter. At this point, as a last resort, my father suggested that Christian Science be tried. I knew almost nothing of Christian Science at the time, but I had, then as now, great faith in the power of prayer.

I called a Christian Science practitioner who lived some distance away. The child had been in intense pain. Within a day the pain disappeared. In three days she could sit up in a chair. Two months from the time Christian Science treatment was begun, she was taking music lessons and could sit up all day. The healing of the crippled legs took somewhat longer. She used crutches at first, but . . . [within a few months] she was able to walk upright.[3]

* * *

When my youngest son, John Norse, was born in November 1946, my husband was stationed at the naval base in Charleston, South Carolina, and we were living nearby. The child arrived six weeks prematurely. His feet were visibly malformed, but I assumed this to be the result of the premature delivery and a condition that would heal as the child grew.

When John was three months old, I took him, in compliance with Navy regulations, to the medical facility on base for the first of a series of immunization shots. The Navy physician who administered the shots examined him and, after taking X-rays, informed me that the child was double club-footed and that one heel, due to a congenital deformity, had no joint whatsoever. He said the child would never be able to walk.

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3. *Id.* at 84-85 (quoting affidavit of Effie L. Russell).

> The doctor indicated that the boy's feet could be straightened only by putting them in a cast for a period of months, and that the bone deformity in the heel could not be corrected at all. He stated that when the boy got older, the foot should be amputated and the boy given an artificial foot. . . .
>
> As a lifelong Christian Scientist I had witnessed the healing of many physical ailments and could not accept the doctor's prognosis as final. I told the doctor that I would rely on Christian Science for the healing and, with the permission of the boy's father, engaged a Christian Science practitioner to pray for the child. When I took the child back to the base hospital for the next shot four weeks after the first, the same Navy doctor who had diagnosed the condition informed me that the feet had straightened by 15 [degrees]. When I took the child for the third required shot after another month, this doctor told me that the feet had straightened another 40 [degrees]. He stated that he could not explain the change, since the feet had not been placed in a corrective cast, but that I should keep up whatever I was doing for the child. He still indicated, however, that the boy would never be able to bend or use normally the one foot that had no heel joint, and that the boy would have difficulties even in standing.
>
> John learned to walk, though at first very pigeon-toed, by the time he was fifteen months. . . . I continued, all during this period, to pray for the complete healing, and the child's activities became increasingly less impaired.
>
> The family moved to Pearl Harbor when my husband transferred there in 1948, and it was there that the complete healing was confirmed. . . .
>
> When the boy was 10, he became a catcher on the Little League baseball team, and many times I went—not to watch the baseball game, really—but to express my gratitude for his absolute freedom from all that had been predicted. He later entered the Air Force, undergoing and passing a complete physical examination. His activities have been entirely unimpaired.[4]

These examples are not intended to be exhaustive, but are meant to draw into question the validity of an assumption that Christian Science treatment is inconsistent with promoting the health of children.

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4. *Id.* at 124-25 (quoting affidavit of Betty L. Brunn).