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Religious Freedom or Child Abuse? Drawing the Line between Free Excercise and Crimes against Children in Georgia

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RELIGIOUS FREEDOM OR CHILD ABUSE?
DRAWING THE LINE BETWEEN FREE EXERCISE AND CRIMES AGAINST CHILDREN IN GEORGIA

by

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Under the Direction of Isaac Weiner

ABSTRACT

This project examines how Georgia draws the line between religious freedom and child abuse. In Georgia, certain religious parents are granted spiritual exemptions for conduct that would otherwise be prohibited due to its potential harm to children, while other parents must alter their religious practices to conform to the law. An examination of Georgia law governing conduct that is both religiously-motivated and poses a risk of physical harm to children illustrates that Georgia's spiritual exemptions have contributed to producing legally-defined religious orthodoxy, inconsistent regulation of religious conduct, and less stringent state protection from harm for the children of some religious parents.

INDEX WORDS: Faith healing, Spiritual healing, Statutory exemptions, Spiritual exemptions, First Amendment, Religious freedom, Free exercise, Medical neglect, Child abuse, Child neglect

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DEDICATION

This work is dedicated to my family, who sacrificed their time and endured my inattention while I completed this project.

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INTRODUCTION

This study explores how Georgia draws the line between religious freedom and child abuse. Georgia law contains spiritual exemptions that permit some religious parents to engage in conduct that would otherwise be prohibited due to its potential harm to children. However, other religious parents must alter their religious practices to conform to the law. The question about where Georgia draws the line is an intentionally provocative one, but it is meant to position this project as an intervention in broader debates about the use of spiritual exemptions to promote religious freedom and about whether religious practices warrant accommodation. On the one hand, legal scholars such as Douglas Laycock have argued that neutral, generally applicable laws can have a disproportionate impact on religious adherents, and spiritual exemptions therefore are necessary in order to prevent such laws from interfering with these individuals' religious freedom.[1] Laycock argues that religion "should proceed as unaffected by government as possible."[2] Advocates for this position believe that the government should not influence religion either by conferring special benefits or by imposing any burdens. Most people who subscribe to this approach perceive religion to be *sui generis*, and, thus, worthy of special protection from laws which impose a burden on religious practice. Religious conduct is understood to be inherently distinct from and superior to other forms of conduct. Therefore, the free exercise clause of the First Amendment of the United States Constitution is understood to require religious exemptions in order to protect religious conduct.

However, not everyone agrees with this perception of religion as something unique or with the idea that it should be treated separate and distinct from other forms of human conduct.

[1] See Douglas Laycock, "Formal, Substantive, and Disaggregated Neutrality toward Religion," *DePaul Law Review* 39 (1990): 993-1019.
[2] Ibid., 1002

Critics point to various problems that arise from automatically requiring spiritual exemptions for conduct that is otherwise prohibited by legislatures who have determined that regulation is necessary to protect the public welfare. Scholar and author Marci Hamilton acknowledges that, in the abstract, "religious liberty" seems to be of paramount importance. However, she argues that when one "operates from the ground" and applies concrete facts to specific situations it becomes clear that there are many other liberty interests that should trump a right to unrestricted religious conduct.[3] She cites such examples as the prevention of childhood sexual abuse, deterring terrorism, and preserving individual property rights.[4] Hamilton argues that the simple fact that an individual or organization is religious should not give it the automatic right to harm others or infringe upon their respective rights.[5]

Other scholars, such as Winnifred Sullivan, contend that it is simply impossible to justly enforce laws which grant legal rights that are defined with respect to an individual's religious beliefs or practices.[6] In her book, *The Impossibility of Religious Freedom*, Sullivan argues that such laws result in legally-defined religious orthodoxy, as legislatures and judges must first determine what activities count as "real" religion in order to apply these laws. While Sullivan's analysis is based on a single case, she asserts that this problem exists in all circumstances where the law is used as a mechanism to guarantee religious freedom.[7] One aim of this project was to test her theory and to offer a state-specific analysis that either supports or challenges Sullivan's contention.

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[3] Marci Hamilton, *God vs. the Gavel; Religion and the Rule of Law*. (Cambridge, UK: Cambridge University Press, 2005), 8.
[4] Ibid., 8.
[5] Ibid.
[6] Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom*, (Princeton, New Jersey: Princeton University Press, 2005), 8.
[7] Ibid., 10.

An examination of Georgia law governing conduct that is both religiously-motivated and that poses a risk of physical harm to children illustrates that Georgia's spiritual exemptions have contributed to producing legally-defined religious orthodoxy, supporting Sullivan's claim. These exemptions also result in inconsistent regulation of religious conduct and in less stringent state protection from harm for the children of some religious parents. Therefore, while these spiritual exemptions are aimed at promoting religious freedom, the practical effect of these laws is that they promote disparate treatment among religious individuals in Georgia.

Another goal of this project was to obtain a clearer understanding of how the State of Georgia conceptualizes and values religion and religious freedom. This required an examination of the specific instances where spiritual exemptions have been granted and denied by statute, as well as how cases have been interpreted and decided by the courts when the statute is silent.[8] This examination illustrated that what counts as religion is often determined by popular consensus and a connection to foundational Christian tenets. Most significantly, omissions that are grounded in a belief in the power of prayer and the will of God are offered more legal protection than explicit acts that are based on an idiosyncratic interpretation of religious scripture.

This study demonstrates how high the stakes can be when states are determining whether to offer a spiritual exemption, as well as some potential implications of conceiving of religion as

[8] Statutes and case law used in this analysis were chosen based on the specific granting of a spiritual exemption, the explicit denial of a spiritual exemption by the legislature, or instances where the absence of language addressing such an exemption led courts to make a determination in light of the religious-motivation behind the conduct in question. The paper is organized according to these categories of legal data, as this provided a more useful basis for comparison and analysis than a strictly chronological approach. No clear conclusions can be drawn from simply following the historical order of the enactment/amendment of statutes and case decisions. See further discussion of this on p.56. While the goal was to ascertain what we can learn based on the current state of the law in Georgia, historical data is included where relevant. The cases examined continue to represent good law unless otherwise noted. No discretion was taken in choosing the particular statutes and cases discussed, but rather this study presents all relevant data obtained by this author through examination of the Official Code of Georgia Annotated, published case law, and information on unpublished cases obtained through newspaper archive searches, law review and scholarly journal articles, and scholarly books.

sui generis. Determinations regarding spiritual exemptions are not always about whether to exempt a community-based religious organization from residential zoning ordinances or whether to allow a Jewish military officer to wear his yarmulke despite a military regulation against wearing headgear indoors.[9] At times, these decisions can have life or death consequences for children. Conceiving of religion as inherently unique, and thus, deserving of spiritual exemptions, has real life consequences. It may result in the pretty picture so often painted for us by politicians and religious leaders, one involving pluralism, tolerance, and all the benefits that can come from promoting religious freedom in our society. However, this same conception means that religious freedom can also look like a child dying a slow, painful, and, from a different perspective than that of the religious adherent, altogether unnecessary and preventable death.

BACKGROUND

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Determining precisely how and when the government may permissibly accommodate religious behavior or take action to regulate religion without running afoul of either the First Amendment's Establishment Clause or its Free Exercise Clause has been a source of legal debate. When and to what extent must religion be treated as *different* and worthy of special protection? The United States Supreme Court has answered these questions in various ways over the years. However, one principle has been consistently maintained throughout: the Free Exercise Clause does not provide a *carte blanche* for religious individuals to disregard any and all laws which may conflict with their religious beliefs and practices. The following section

[9] See e.g. *Congregation Etz v. Chaim v. City of Los Angeles*, 371 F.3d 1122 (2004) and *Goldman v. Weinberger*, 475 U.S. 503 (1986).

provides a brief synopsis of several United States Supreme Court decisions relevant to the State of Georgia's ability to regulate religion within its borders.

When Can Religion Be Regulated?

In 1878, the United States Supreme Court first acknowledged a belief-conduct distinction in *Reynolds v. United States* when it refused to recognize a religious defense to a bigamy conviction, holding that "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversion of good order."[10] The Supreme Court found that a law regulating marriage, which was perceived to be a fundamental part of society, was not prohibited by the First Amendment of the U.S. Constitution.[11] The Court reasoned that permitting an individual to violate the law based on his or her professed religious beliefs would "permit every citizen to become a law unto himself."[12]

In 1940, in *Cantwell v. Connecticut,* the Supreme Court first held that First Amendment protections of the U.S. Constitution applied to the states through the due process clause of the Fourteenth Amendment.[13] In *Cantwell*, the Court reaffirmed the distinction between religious *belief* and religious *action* in the context of a challenge to regulation of religious proselytizing, stating that "The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."[14] However, in addition to reaffirming this distinction between religious belief and action, the *Cantwell* decision also expanded the scope of free exercise. Specifically, in this case which involved religious proselytizing, the Court

[10] *Reynolds v. United States*, 98 U.S. 145, 164 (1878).
[11] Edward Eagan Smith, "The Criminalization of Belief: When Free Exercise Isn't," *Hastings Law Journal* 42 (1991): 1495.
[12] *Reynolds*, 98 U.S. at 167.
[13] *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
[14] Ibid., 303-304.

held that the state could not ban the dissemination of religious ideas, but it could regulate the time, place, and manner of this religious practice.

Four years later, the Court followed its rationale in *Cantwell* when deciding *Prince v. Massachusetts*, a case in which a Jehovah's Witness parent was prosecuted for violating Massachusetts child labor laws by allowing her nine-year-old niece to distribute religious pamphlets on public streets.[15] Mrs. Prince was the child's legal guardian. Mrs. Prince and her niece both believed it was their religious duty to perform this work, and Mrs. Prince defended her actions in terms of religious freedom.[16] The Court weighed the religious interest of Mrs. Prince to raise her child according to her religious beliefs against the interest of the Commonwealth of Massachusetts in protecting the welfare of its children, and ultimately found in favor of the latter:

> [T]he family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *parens patriae*[17] may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death.[18]

The *Prince* decision confirmed that the Constitution does not prohibit the states from imposing restrictions on religious conduct, especially where such limitations are deemed necessary to ensure the physical health and general welfare of a child. The *Prince* decision also emphasized

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[15] Daniel Kearney, "Parental Failure to Provide Child with Medical Assistance Based on Religious Beliefs Causing Child's Death - Involuntary Manslaughter in Pennsylvania," *Dickinson Law Review*, 90 (1986): 864.
[16] Ibid.
[17] *Parens patriae* is a Latin phrase, meaning "parents of the country." Black's Law Dictionary, Pocket Edition, 1996, s.v. "*parens patriae*."
[18] *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (citations and footnotes omitted).

that the state may limit a parent's control over his/her child, if required to protect the child's well being.

Judges have debated to what extent states may or even must grant exemptions for religious conduct. Even Supreme Court opinions have not always been consistent in their answers to this question. The standard for many years, though not without exception, was that when a law burdened the free exercise of religion, the state was required to demonstrate a compelling interest which justified regulation of the religious conduct.[19] However, in 1990, the controversial *Employment Division, Department Human Resources of Oregon v. Smith* decision eliminated the compelling interest standard and reverted back to the standard set out in *Reynolds*.[20] The Court held that when a law is valid, (religiously) neutral, and generally applicable, accommodations are not constitutionally required.[21] However, while state legislatures are not obligated to grant spiritual exemptions to such statutes, they are permitted to exercise their discretion to do so. These spiritual exemptions allow certain religious adherents to engage in conduct that is otherwise prohibited.

Spiritual exemptions in the area of child welfare law started to receive a great deal of attention starting in 1974, when Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA). The Department of Health, Education and Welfare (HEW, which in 1980 was

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[19] The compelling interest standard was established by *Sherbert v. Verner* in 1963. The *Sherbert* decision also determined that the government had to demonstrate that it used the least restrictive means when enacting legislation that burdened a religious belief or practice. This standard provided a heightened level of protection for religious conduct, and in particular, for the practices of minority religious groups. *Sherbert v. Verner*, 374 U.S. 398 (1963).

[20] *Employment Div. Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872.

[21] Justice Scalia, who wrote the opinion, characterized *Smith* as a clarification of the law, as it had not always been consistently applied. He denied that the decision was overruling any past decisions. The decision sparked a "firestorm of controversy" with critics insisting that the decision had "unseated rather than clarified the twenty-seven year experience of the Court under the guidance of *Sherbert's* compelling interest test…Civil liberty groups and churches lobbied Congress to pass legislation to reverse the effects of *Smith.* The tone of critique grew quite shrill, with some critics going so far as to say that *Smith* had rendered the Free Exercise Clause meaningless and that religious freedom would cease to enjoy constitutional protection." Christopher Eisgruber and Lawerence Sager, *Religious Freedom and the Constitution*, (Cambridge, Massachusetts: Harvard University Press, 2007), 45.

renamed the Department of Health and Human Services, HHS), charged with implementing CAPTA, interpreted it to require an exemption from child neglect liability for parents who treated their children with faith healing, and mandated that states adopt religious exemptions before they could receive federal funding for state child-protection programs.[22] The extensive lobbying of the Christian Science Church was reportedly the source of the religious exemption clause.[23] In 1983, in response to criticism of the religious exemptions, HHS removed the requirement from CAPTA and left the decision of whether to include a religious exemption up to the individual states.[24]

However, while most articles credit CAPTA for the existence of spiritual exemptions to child neglect statutes across the country, CAPTA is not responsible for the spiritual exemptions included in Georgia's statutes. Georgia's spiritual exemption to child medical neglect existed prior to the CAPTA requirement, and it is not the only spiritual exemption which excuses a religious parent from a parental responsibility required of all other Georgia parents. The following section will discuss instances where Georgia grants an explicit spiritual exemption to a neutral, generally applicable law enacted to ensure the safety and welfare of Georgia's children.

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[22] John T. Gaithings, "When Rights Clash: The Conflict Between a Parent's Right to Free Exercise of Religion Versus His Child's Right to Life," *Cumberland Law Review* 19 (1988/1989): 591. The terms faith healing and spiritual healing are used interchangeably by most authors. Therefore, both will appear in this article and generally refer to a reliance on prayer or other religious practices to heal physical ailments in lieu of medical treatment.

[23] Richard Hughes, "The Death of Children by Faith-Based Medical Neglect," *Journal of Law and Religion* 20, no. 1 (2004-2005): 248.

[24] Ibid. The 1983 version of CAPTA made note of the various criticisms to the religious exemptions, which included the following: (i) "some children suffer and die as a result of their parents relying on spiritual healing under circumstances in which medical treatment could have prevented such results;" (ii) "the religious exception impedes discovery of cases so that even if courts retain their power to order medical treatment, the exercise of that power often comes too late;" (iii) "all children deserve the protection of the law;" (iv) "the religious exception served to deny children their constitutional right to life and to equal protection of the law;" and (v) "the religious exception inhibited criminal prosecution of parents, even if their child had died as a result of the failure to provide medical treatment." See Child Abuse and Neglect Prevention and Treatment Program, 48 Fed. Reg. 3698, 3699-3700.

EXPLICIT STATUTORY SPIRITUAL EXEMPTIONS

There are only a few instances where Georgia grants an explicit statutory spiritual exemption. However, one exemption is seen repeatedly, and in multiple contexts. This is an exemption that makes allowances for parents who use spiritual treatment for their children in lieu of medical treatment.

Section 15-11-2 of the Official Code of Georgia Annotated (O.C.G.A), which defines the criteria for determining whether a child is deprived of proper parental care and control, and thus, in need of the state to assume parental responsibility, provides that a deprived child is one who, among other things, is "without other care or control necessary for the child's physical, mental, or emotional health or morals."[25] A deprived child may remain in the parents' custody, subject to conditions and limitations that the court prescribes, or the child may be removed from their custody and placed in the custody of the state or other relatives.[26] Parents must follow certain conditions set out by the court, called a case plan, in order to regain custody of their children.[27] However, the statute contains the following explicit spiritual exemption, which was enacted in its current form in 1971:

> no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall, for that reason alone, be considered to be a 'deprived child.'[28]

This exemption allows certain religious parents to engage in conduct that would otherwise be considered medical neglect, without having to worry about the court restricting or removing their

[25] O.C.G.A.§15-11-2(8)(A). O.C.G.A.§15-11-2(2)(C) defines a child as a an individual who is under the age of 18 years.
[26] O.C.G.A.§15-11-55(a)(1-2).
[27] Ibid.
[28] O.C.G.A.§15-11-2(8)(D). This specific language was adopted in 1971. See Ga. L. 1968, p. 1013, §1. However, a spiritual exemption based on this same criteria, "treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof" is found in the statute as early as 1968.

custodial rights. Advocates of these exemptions argue that they are necessary to protect the parents' right to practice their religion. Otherwise, they would be forced to have their children undergo medical procedures which they feel are contrary to the child's spiritual interests. However, non-religious parents and other religious parents who do not engage in spiritual treatment by prayer alone face the threat of losing their custodial rights if they fail to seek medical treatment for their children when warranted. In addition, they also face the potential for criminal sanctions.

In Georgia, it is a criminal offense when a parent or guardian "willfully fails to act when such act or omission could cause a minor to be found to be a deprived child."[29] The penalties for this crime demonstrate how committed the State of Georgia is to protecting children from medical neglect in other circumstances. A first offense conviction is a misdemeanor offense, and the parent faces a fine of up to $1000 and/or up to twelve months in jail. The second conviction is considered a high and aggravated misdemeanor and is punishable by a fine of not less than $1000 but no more than $5000 and/or not less than one year of imprisonment. The third and subsequent convictions are considered felony offenses, and the fine is not less than $10,000 and/or one to five years imprisonment. If the omission results in serious injury or death to a child, upon the first conviction, the parent shall be guilty of a felony and serve one to ten years in jail with the second or subsequent offense resulting in three to twenty years imprisonment. However, because a child who is being treated "by spiritual means through prayer" cannot "for that reason alone, be considered to be a deprived child," that child's parents cannot be held criminally liable under this statute. Put another way, by virtue of their religious beliefs and practices alone, the law exempts these parents from both civil and criminal liability for conduct

[29] O.C.G.A. §16-12-1(b)(3).

that is prohibited for all other Georgia parents due to the state's interest in protecting children from harm. This same explicit spiritual exemption is seen in several other statutes as well. For example, the statute governing the mandatory reporting of child abuse was amended to include the same exemption language, simply substituting "abused child" for "deprived child."[30] This explicit spiritual exemption to the definition of an "abused" child is also found in the statute governing child abuse and deprivation records,[31] as well as the statute governing the Central Child Abuse Registry for Georgia.[32]

A consequence of these spiritual exemptions is that mandatory reporters in Georgia are not required to report incidents of parental failure to seek medical treatment, that would otherwise be considered child abuse or deprivation.[33] Even if these incidents were reported, the Department of Family and Children's Services (DFCS) has no authority to investigate such incidents as, based upon this statutory definition, there would be no suspected "abuse," and no records of such allegations will be entered into the Central Child Abuse Registry. Accordingly, cases involving allegations of medical neglect by parents who are opting to treat their children with prayer alone may never be reported, much less see the inside of a courtroom.

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[30] O.C.G.A. §19-7-5(3)(D). The statute was amended to include the exemption clause in 1993.

[31] O.C.G.A. §49-5-49(a)(3)(d). The exemption language was added in 1993. This statute was amended in 2009, including a change to the spiritual exemption section. Previously, the exemption was contained in a subsection of its own, (e). The amendment eliminated subsection (e) and the exemption now follows subsection (d) but it is no longer a separate subsection.

[32] O.C.G.A. §49-5-180(5)(C). A spiritual exemption was added in 1995. The current language was adopted in 1996.

[33] O.C.G.A. §19-7-5(c) identifies the following individuals as mandatory reporters, "(A) Physicians licensed to practice medicine, interns, or residents;(B) Hospital or medical personnel; (C) Dentists;(D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;(E) Podiatrists; (F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 24 of Title 43;(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43; (H) School teachers; (I) School administrators; (J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20; (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12; (L) Child-counseling personnel; (M) Child service organization personnel; or (N) Law enforcement personnel."

Defining Religion

In addition to distinguishing between religious and non-religious parents, analysis of the particular language used in these spiritual exemptions lends support to Sullivan's claim that laws which grant legal rights that are defined with respect to an individual's religious beliefs or practices inevitably result in legally defined religious orthodoxy. The statutes provide no further guidance as to how the language of the exemption should be interpreted and applied. Therefore, a juvenile court judge would have to make a preliminary finding as to whether the treatment was provided in sufficient "accordance with the tenets and practices of a recognized church or religious denomination," which in itself requires a judicial determination of whether the religious group should be "recognized." The judge must also determine whether the treatment by prayer is being performed by a "duly accredited practitioner."[34] While courts are generally loathe to intervene and assess the legitimacy of religious behavior for fear of engaging in "excessive government entanglement with religion,"[35] application of this exemption requires the courts to make legal determinations on the "correctness" of religious practice. Reliance on the judicial system to determine what will be accepted and protected as "religion" is in sharp contrast with the individualism that is often cited at the heart of religious freedom protections.

The lack of statutory guidance on how to determine whether the exemption criteria are met means that the standard could vary from county to county, judge to judge, potentially resulting in very different treatment of the same religious behavior. No Georgia appellate court

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[34] While the phrase "duly accredited practitioner" is not defined by the statute, it should be noted that Christian Scientists refer to individuals who have completed a course in spiritual healing given by an authorized teacher of Christian Science, who devote themselves full time to helping and healing others through prayer, as "practitioners."

[35] *Waltz v. Tax Commission*, 397 U.S. 664, 674 (1970). See also, *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). Also, in *Employment Div., Dep't of Human Resources of Oregon,* 494 U.S. at 887, Justice Scalia stated, "Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim" (citations omitted).

has issued rulings that would provide precedent for the lower courts, and there are no published juvenile court decisions to offer specific guidance to a judge facing the issue for the first time.

While no appellate court has addressed the issue, the specific language used in the spiritual healing exemption clearly appears to favor certain religious individuals over others. The statute grants an exemption to parents who are part of a recognized church or religious denomination, but not to parents who are part of "unrecognized" denominations, or who, because of their own idiosyncratic religious beliefs, choose spiritual treatment by prayer in lieu of medical treatment. This explicit preference for institutional forms of religious practice effectively denies equal religious freedom to individuals who perceive themselves to be religious, but who do not claim to be affiliated with a particular religious institution or to subscribe to a particular religious doctrine or creed. The mere granting of the exemption also implies that the Georgia legislature subscribes to the view of religion as unique and worthy of special protection. The law holds non-religious parents to one standard of parental conduct, while exempting certain kinds of religious parents from these same requirements.

Other state courts have found precisely this problem. In 1984, Ohio had a religious exemption to a criminal child endangerment statute with similar language to the Georgia exemption discussed above. The relevant part of the statute read:

> It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of a child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.[36]

In *State v. Miskimens*, the Court of Common Pleas of Ohio, Coshocton County, ruled that the statute violated the United States Constitution, in part, because it found that Ohio's General Assembly impermissibly engaged in the establishment of religion because the exemption showed

[36] Ohio Rev. Code Ann. §2919.22(A).

clear "preferential favoring of one group of potential offenders over another group based upon that group's self-proclaimed religious tenets."[37] It also found the statute to be unconstitutionally vague. In his written decision, Judge Evans enumerated his concerns about how a parent would be unable to reasonably determine whether they are covered by the exemption.

> What is a 'religious body?' What is a 'recognized religious body?' By whom must it be recognized? Must its 'tenets' be somewhere written down? If not, then how will the tenets be proven in court? Who will decide what its tenets are? What is meant by 'spiritual' means? Does 'by spiritual means through prayer alone' mean that if we use some prayer and then also employ some form of non-spiritual treatment such as medicine or some traditional home remedy that we forfeit our right to claim exemption under this provision?

As Judge Evans points out, the language of both the Ohio and Georgia exemptions contain powerful assumptions about the nature of religion. Inherent in the statutory requirements for exemptions is a conception of religion as organized, doctrinal, hierarchical, and authoritarian. The lack of explanation or guidance by the legislatures on how these terms are to be defined indicates an assumption that everyone agrees on what they mean and what real religion looks like.

With the language of Georgia's faith healing exemption so similar to Ohio's statute, one has to wonder whether, if challenged in court, it too would also crumble under close constitutional scrutiny. However, the bigger question, for the purposes of this paper, is why has it not been challenged? Is the fact that there are neither appellate court decisions on the proper interpretation of this statute, nor even any reported trial court decisions meriting significant media interest or legal commentary in the decades since its original passage, telling in regard to how this statute is being applied? Are the actions of these Georgia faith healing families simply going unnoticed? Are these parents going out of their way to make sure their actions are

[37] *State v. Miskimens*, 490 N.E.2d 931, 934, (Ohio Ct.Com.Pl. 1984).

unnoticed? Is it only individuals who clearly meet the exemption requirements who are engaged in these faith healing practices? Are child welfare agencies and prosecutors engaging in a liberal interpretation of the statute and making the election not to pursue these cases where parents explain that they are opting to treat their children with prayer instead of medicine, foregoing any more rigorous scrutiny of the authority and mechanisms by which this spiritual treatment is being administered?

How Practitioners Understand Their Conduct

While some Georgians may say that the spiritual exemption for faith healing essentially gives certain parents permission to neglect the medical needs of their children, this is not how practitioners of spiritual healing understand their actions. They do not see themselves as failing to care for the medical needs of their child. Instead, they are acting in a manner which they believe to be in the best interest of their child. Various religious groups base their objection to medical care on different theological foundations. As discussed above, the most well-known and vocal faith-based objections to modern medicine come from members of the Christian Science Church. The Christian Science church has a salaried representative in each state to lobby for religious exemptions to medical care.[38] Christian Scientists believe that their healing techniques provide the best way to preserve the health of their children.[39] For Christian Scientists, seeking traditional medical treatment is not a sin, but such action is deemed counterproductive to recovery.[40] Christian Scientists view illness as illusory.[41] According to their public website,

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[38] Rita Swan, "On Statutes Depriving a Class of Children of Rights to Medical Care: Can This Discrimination Be Litigated?" *Quinnipiac Health Law Journal* 2 (1998): 75.
[39] Ibid., 208.
[40] Allison Ciullo, "Prosecution Without Persecution: The Inability of Courts to Recognize Christian Science Spiritual Healing and A Shift Towards Legislative Action," *New England Law Review* 42 (2007): 155.
[41] Disease is understood to be impossible, as "God's love is all that there is." Christie Hanzlik-Green, "Seeing Through the Illusion," *Christian Science Sentinel*, October 15, 2007, accessed March 11, 2011,

> Christian Science teaches that all problems, no matter how material they may appear, have a mental basis. This means that the patient is actually not the body, but the thought of the person. Therefore, a quick solution through medicine would not address the real issue, since such a treatment doesn't deal with the mental aspect of the condition. Mary Baker Eddy summed up this phenomenon in *Science and Health with Key to the Scriptures*: 'Disease is always induced by a false sense mentally entertained, not destroyed. Disease is an image of thought externalized.'[42]

Practitioners help those who seek their services find answers and healing through prayer. An individual tells the practitioner the problem, and the practitioner offers spiritual concepts for the individual to work with, and the practitioner prays for the individual as well.[43] Christian Scientists claim to "use spiritual sense to draw inspiration from God, and thereby find that we are not creating health but finding it."[44]

> The reason that Christian Science treatment, or prayer, heals is that it opens human thought to what is actually there, to God's infinite goodness, which includes no sickness, evil, or fear, and to God's man, who is deserving of all good. Christian Science treatment persists in affirming the presence of God and the man made in His image and likeness.[45]

Christian Scientists have argued that medicine is "just another belief system derived from the material world."[46] Some Christian Scientists claim that state requirements that parents seek medical care for their children are essentially an attempt to establish a "religion of medicine in violation of the Establishment Clause."[47]

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http://www.arautocienciacrista.com/articleprint.jhtml?ElementName=&ElementId=/repositories/shcomarticle/Oct2007/1191341283.xml&ElementReturnPage=/tte/article_display.jhtml.

[42] Christian Science, "About Christian Science," accessed January 4, 2011, http://christianscience.com/questions-and-answers/2007/10/18/your-questions-and-answers/. Citing Mary Baker Eddy, *Science and Health with Key to the Scriptures* (Boston: Published by the Author, 1887), 411.

[43] Christian Science, "Healing," accessed January 5, 2011, http://christianscience.com/spiritual-healing-practitioner.html.

[44] Christian Science. "About Christian Science," accessed January 4, 2011, http://christianscience.com/questions-and-answers/2007/10/18/your-questions-and-answers/.

[45] Allison W. Phinney, Jr., "Why Does Christian Science Treatment Work and How Does it Heal," *Christian Science Sentinel*, October 11, 2007, accessed January 5, 2011, http://christianscience.com/articles-sentinel/2007/10/11/why-does-christian-science-treatment-heal-and-how-does-it-work/.

[46] Hughes, "The Death of Children," 258.

[47] Ibid. This strategy is similar to that used by conservative Christians who argued against secular humanism on establishment clause grounds. At their foundation, these strategies assume that a lack of religious belief is in itself a form of religious belief that the state cannot impose through legislative restrictions on religion.

The language of the Georgia statute appears to bear the hallmark of Christian Science lobbying.[48] However, while they may be the largest and most politically powerful of the religious groups who practice faith healing, they are not alone. Scientologists also practice a form of faith healing. The Followers of Christ, Church of the Firstborn, End Time Ministries, Faith Tabernacle, and Faith Assembly are Pentecostal sects that also are known to practice faith healing, rather than seek traditional medical treatment.[49] The majority of the members of these Pentecostal denominations are located outside of Georgia, but transplant or convert practitioners from these groups, or others like Scientologists, could make an argument that their actions are covered by the exemption. However, some scholars have argued that terms like "tenets," "practitioners," "spiritual treatment," and "well-recognized church" tend to privilege the Christian Science Church and may not be interpreted to apply to newer religious organizations and smaller denominational sects.[50]

Members of the Pentecostal sects listed above reject medicine because they believe that "going to a doctor turns a sick person away from God and serves Satan."[51] The founder of the Faith Assembly, Hobart Freeman (1920-1984), taught that "the principle methods by which Satan rules the physical world are pain, sickness, and medicine." Freeman forbade members of Faith Assembly from seeking medical treatment. Instead, when Satan was thought to have attacked members of the church through sickness or pain, they were told to follow James 5:14

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[48] The language used in the Georgia spiritual healing statute, "by spiritual means through prayer alone" is the identical language that was passed with the advice of Christian Science lobbyists to a 1976 amendment to section 270 of the California Penal Code. Rennie D. Schoepflin, *Christian Science on Trial* (Baltimore, MD: John Hopkins University Press, 2003), 206.

[49] A full list of all religious groups practicing faith healing is nearly impossible to ascertain. Many of these groups do not often publicize this practice for fear of persecution. In addition, in the age of the internet, congregants may live in one state while the church's home base is located in another state (see example of Remnant Fellowship *infra*). Also, some smaller sects may engage in faith healing, while the larger majority of their denomination does not (see example of Shiloh Sanctified Holiness Baptist Church *infra*).

[50] Schoelpflin, *Christian Science on Trial*, 264.

[51] Ibid., 249.

and "call for the elders of the church and have them pray over them, anointing them with oil in the name of the Lord."[52] When children died, Freeman placed blame at the hands of the parents for their lack of belief, and warned them not to report the deaths to child welfare authorities, "lest the fellowship be persecuted by the state."[53] In this case, Faith Assembly members do not see themselves as acting in a manner that is abusive or neglectful of their child's medical needs. They see themselves as doing what is best for the spiritual needs of their child. The medical ailment is merely a symptom of estrangement from God. The cure is not medicine, but faith.

Christian Scientists certainly see their actions as very different from those of the Faith Assembly and other Pentecostal sects. Robert Peel, a historian of the Christian Science movement and a practitioner himself, has even gone so far as to blame the Faith Assembly and its "dubious practices" for "creating a political backlash against spiritual healing, and strengthening the alliance between medicine, government agencies, and the courts against the Christian Science church."[54] Christian Scientists reject the term faith healing to describe their practice. According to the church's website, "Christian Science does not involve pleading with God to heal the sick and then accepting His will, good or bad. Nothing in Christian Science theology says it's God's will that anyone suffer, be sick, or die. Christian Science shows God to be entirely good, and therefore His will for each individual is only health and life."[55]

The Christian Science church has been very successful in their lobbying efforts seeking what they call "accommodations within the law" to engage in practices which are consistent with their beliefs about illness. Their success demonstrates the influence that religious groups can have on the law. The Christian Science church represents a powerful political force, which has

[52] Ibid., 252.
[53] Ibid.
[54] Ibid., 258.
[55] Christian Science, "Frequently Asked Questions About Christian Science," accessed January 5, 2011, http://christianscience.com/questions/questions-christian-science-faq/.

succeeded in altering the legal definition of child abuse in many states. As a result, religious behavior which was prohibited has become permissible. Clearly, the Georgia legislature has been persuaded to view these exemptions as a necessary form of religious tolerance. These spiritual exemptions highlight that the relationship between religion and law is not just one of theoretical discourse, but rather, it has real life consequences for religious individuals.

Other Explicit Exemptions: Immunizations and Newborn Testing

There are two other instances where Georgia offers an explicit spiritual exemption to a statutory requirement involving the welfare of a child, and both also involve medical care. Section 31-12-7 of the O.C.G.A. requires the Department of Human Resources to promulgate appropriate rules and regulations governing required testing of newborn infants for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders. The statute makes it clear that the goal is to identify "as nearly as possible all newborn infants" who are susceptible or likely to have one of these conditions, so that they can be tested and have treatment initiated.[56] The legislature has determined this diagnosis and treatment of sickle cell disease or trait to be so important to the health and welfare of its children that it mandates free counseling be made available to anyone requesting it regarding "the nature of the disease, its effects, and its treatment."[57] It also sets a limit on the costs associated with the newborn "screening, retrieval and diagnosis" at no more than $40 for the calendar year, and states that "no services shall be denied on the basis of inability to pay."[58] However, despite the legislature's clear interest in making sure that children who have sickle cell or other metabolic and genetic disorders are identified and treated to avoid unnecessary heath complications, the statute contains an

[56] O.C.G.A. §31-12-7(a).
[57] O.C.G.A. §31-12-7(c).
[58] O.C.G.A.§31-12-7(d).

exemption that states "this code section shall not apply to any infant whose parents object thereto on the grounds that such tests and treatment conflict with their religious tenets and practices."[59]

Furthermore, Section §20-2-771 of the O.C.G.A. governs the immunization requirements for children attending public or private day-care/nursery, or educational programs for kindergarten through twelfth grade.[60] The statute creates a requirement that all students are required to obtain certain immunizations in order to attend a day-care facility or school. The importance the legislature places on these immunizations is clear, as the code states that "any responsible official permitting a child to remain in a school or facility in violation of this Code section, and any parent or guardian who intentionally does not comply with this Code section shall be guilty of a misdemeanor" and face a $100 fine and up to 12 months in jail.[61] Parents whose children are not admitted to school because they lack the appropriate vaccinations also face criminal prosecution for the truancy of their child.[62]

However, despite the seeming importance of protecting all children from preventable diseases, the statute provides the following religious exemption:

> This Code section shall not apply to a child whose parent or legal guardian objects to immunization of the child on the grounds that the immunization conflicts with the religious beliefs of the parents or guardian; however, the immunization may be required

[59] O.C.G.A. §31-12-7(a). The spiritual exemption was originally enacted in 1966.
[60] This law does not extend to institutions of higher education. According to the University System of Georgia's Board of Regents Policy manual, each secondary institution which belongs to the University System of Georgia (state-funded) "shall implement immunization requirements for all new students (first-year, transfers, and others) as directed by policy consistent with recommendations provided by the Advisory Committee on Immunization Practices, developed collaboratively by the Board of Regents of the University System of Georgia and the Division of Public Health of the Georgia Department of Human Resources. Such policies shall be on file in each institution's office of student affairs." §4.82 University System of Georgia, Board of Regents Policy Manual, accessed on March 11, 2011, http://www.usg.edu/policymanual/section4/policy/4.8_immunizations/. Institutions may choose to offer religious exemptions, however, in the case of an epidemic, "any individual who cannot show proof of immunity or adequate immunization and refuses to be immunized shall be excluded from any USG institution or facility until such time as he/she presents valid evidence that he/she is immunized against the disease or the epidemic or threat no longer constitutes a significant public health danger" (BoR Minutes, 1989-90, p. 406). See §4.82 University System of Georgia, Board of Regents Policy Manual).
[61] O.C.G.A.§31-12-7(h).
[62] O.C.G.A. §20-2-690.1(c).

> in cases when such disease is in epidemic stages. For a child to be exempt from immunization on religious grounds, the parent or guardian must first furnish the responsible official of the school or [childcare] facility an affidavit in which the parent or guardian swears or affirms that the immunization required conflicts with the religious beliefs of the parent or guardian.[63]

The newborn testing and vaccination exemptions certainly seem to make more allowances for individual religious belief than the spiritual treatment exemptions. The same preference for institutional religion that is evident in those exemptions does not exist here. Religious beliefs of any kind are enough to allow a parent the option of choosing whether to test their newborn for metabolic disorders or vaccinate them against disease. It is only if the children fall ill as a result of these decisions and choose to treat their child with prayer alone that the parent must demonstrate a connection to a form of institutional "recognized" religion to be granted the choice to rely on their religious beliefs in lieu of medicine. However, application of these exemptions still necessitates a determination of what amounts to "tenets and practices" in the newborn exemption and what beliefs qualify as "religious" for the vaccination exemption. These exemptions clearly allow religious parents a kind of parental autonomy that is unavailable to non-religious parents. Without proper guidance on how they are to be interpreted and applied, there is again the potential for the same religious conduct, i.e. abstaining from newborn testing or immunization of children because of one's spiritual beliefs, to be treated very differently on a case by case basis.[64] This once again sets the stage for the creation of legally defined religious orthodoxy, and inconsistent regulation of the same religious conduct.

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[63] O.C.G.A. §20-2-771(4)(E). A religious exemption for the vaccination requirement has existed in various forms since 1957. However, this is the first version which allows individual religious belief to serve as a basis for the exemption. The previous version of the statute required the objection to be based on "religious tenets of a recognized church or denomination" of which the parents had to be "adherent members." Ga.L.1968, p. 1436 §1. The current version of the statute was enacted in 1973.

[64] It should be noted that there are many people who object to immunization for other reasons, such as a concern for adverse side effects (most notably a belief in an unsubstantiated connection between the MMR vaccine and autism).

EXPLICIT DENIAL OF A SPIRITUAL EXEMPTION

In contrast to the explicit exemptions granted for spiritual treatment by prayer, vaccination requirements, and newborn testing, Georgia has explicitly denied a spiritual exemption for female genital mutilation.[65] An examination of this statute demonstrates that the free exercise of religion is not always given statutory precedence over the State's interest in protecting children from physical harm.

Background on the Practice of FGM/FC

Female genital mutilation (FGM) is also known as female circumcision (FC) by those who engage in the practice.[66] According to author David Guinn, who devotes a chapter to the practice in his book, *Faith on Trial: Communities of Faith, The First Amendment, and the Theory of Deep Diversity*, the practice of FGM/FC is not a single practice, but encompasses four different types of ritual genital surgery. Type 1 involves pricking to draw blood or removing the clitoral hood or prepuce. This procedure results in a low incidence of medical complications and should not preclude sexual intercourse or orgasms. Type 2 involves removal of the clitoris. In Type 3, the clitoris and parts of the labia minora are removed. In Type 4 procedures, the clitoris, parts of the labia minora and labia majora are removed and "the gaping wound to the vulva is stitched together, often leaving only a small opening through which urine and menstrual flow may be evacuated."[67] Type 4 procedures require ongoing maintenance and the scar tissue covering the vulva must be cut to allow child-birth and then re-sewn to maintain its character.

However, unlike some other states, Georgia does not make allowances for personal beliefs of *any* kind, rather, the exemption is only available if the immunization conflicts with the religious beliefs of the parents.

[65] O.C.G.A. §16-5-27.

[66] David Guinn, "A Test Case: Female Circumcision/Female Genital Mutilation," in *Faith on Trial: Communities of Faith, The First Amendment, and the Theory of Deep Diversity*, (Lanham, Maryland: Lexington Books, 2002), 179. Following Guinn's example, both terms will be used to refer to the practice in an effort to refrain from taking a normative position. The practice is also commonly referred to as female genital cutting.

[67] Ibid., 180

Medical complications are more frequent with Types 2-4, the most commonly practiced forms of FGM/FC, and in these instances a woman's capacity for sexual pleasure is reduced or eliminated.[68] The surgery generally takes place on young girls ranging in age from 6-12 years of age and is often associated with her initiation into womanhood. FGM/FC, typified by Types 2-4 above, has been condemned as a violation of women's rights by a number of international forums, as critics believe that FGM/FC seeks to deny and control women's sexuality by removing the organs of sexual pleasure.[69] Supporters of the practice emphasize that "the practice simply supports non-Western values, including the belief that FGM/FC promotes female beauty."[70] Women who have undergone the procedure and endorse the practice state that the ritual is "an important part of their cultural heritage or their religion."[71] Third World feminists often argue that the West is hypocritical in condemning the practice "when it condones plastic surgery that, in many cases, may be equally harmful."[72] FGM/FC has been condemned as a health hazard by the World Health Organization.[73] However, "the level of harm caused to a female by Type 1, may in fact be less than the harm caused to a male child who undergoes circumcision."[74]

Religious Motivation

FGM/FC is performed by certain groups who claim no religious motivation, as well as by individuals who claim that their religious beliefs are at the heart of their desire to have their

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[68] Ibid.
[69] Ibid., 180,186. International forums referenced include the 1994 United Nations International Conference on Population and Development in Cairo, Egypt and the 1995 United Nations World Conference on Women in Peking, China, as well as international medical organizations noted infra.
[70] Ibid., 186.
[71] Richard Shweder, "What About Female Genital Mutilation? And Why Understanding Culture Matters in the First Place," in *Engaging Cultural Difference*s, ed. Richard Shweder, Martha Minow, and Hazel Rose Markus (New York: Russell Sage Foundation, 2002), 223.
[72] Guinn, *Faith on Trial*, 186.
[73] Ibid., 180. The practice has also been condemned by the World Medical Association and the Council on Scientific Affairs, American Medical Association.
[74] Ibid., 186.

daughters undergo the procedure. FGM/FC is most commonly identified with Muslims, though the practice also occurs among Christians, animists, and one Jewish sect.[75] However, critics have argued that while it occurs among religious groups, it is not a true religious practice because "no religion requires it."[76] For instance, while the Qur'an does not mention the practice, there are two *hadith* on which some practitioners rely as a religious basis for FGM/FC. The Prophet reportedly stated: "Circumcision is an ordinance in men and an embellishment in women."[77] In another instance, the Prophet reportedly said the following in a conversation with women who circumcised girls in Mecca, "reduce but do not destroy. This is enjoyable to the woman and preferable to the man."[78]

Similarly, the practice of FGM/FC has not been adopted by most Christians or Jews. However, Guinn explains that while no clear authority for the practice exists in the Hebrew or Christian Bible, "Judaism and Christianity generally interpret biblical commands that may in the original text be written in the masculine tense as applicable to both men and women."[79] Therefore, Guinn believes this to be the basis for some groups interpreting the biblical command supporting male circumcision to also be supportive of female circumcision.[80]

The Statute

Under Georgia law, there is no distinction between the types of female circumcision discussed above. O.C.G.A. §16-5-27 states,

(a) Any person:

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[75] Ibid., 180, citing Frances Althaus, "Female Circumcision: Rite of Passage or Violation of Rights?" *International Family Planning Perspectives*, 23 no. 3 (1997), accessed December 28, 2010, http://www.guttmacher.org/pubs/journals/2313097.html#f1.
[76] Althaus, "Female Circumcision," http://www.guttmacher.org/pubs/journals/2313097.html#f1.
[77] Guinn, "Test Case," 184, citing Asma El Dareer, *Woman Why Do You Weep: Circumcision and Its Consequences*, (London: Zed Press, 1992), 72.
[78] Guinn, "Test Case," 184.
[79] Ibid.
[80] Ibid.

> (1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of 18 years of age;
> (2) Who is a parent, guardian, or has immediate custody or control of a female under the age of 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulations, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or (3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, exising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female shall be guilty of female genital mutilation.

A person who is convicted of female genital mutilation shall be punished by imprisonment for not less than five and not more than twenty years.[81]

The legislature has also made clear that religious motivation, no matter how central, does not change the state's position on the criminality of the act. Subsection (d) states

> consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.

The statute developed in response to the case of *State v. Adem*, in which the State of Georgia became the first in the nation to prosecute and convict an individual for female genital cutting.[82] Khalid Misri Adem is an Ethiopian immigrant who, in 2003, was accused by his wife, Fortunate, of circumcising their two-year-old daughter's clitoris with a pair of scissors.[83] On the witness stand, Adem's wife, Fortunate, stated the following,

> [H]e said there is a cultural tradition at home that all the little girls and all the women have to go through. And if it's not done it brings shame to the family. And that he wanted

[81] O.C.G.A. §16-5-27(b); Subsection (c) states that the code section does not apply to procedures performed by or under the direction of a physician, registered professional nurse, certified nurse, midwife or licensed practical nurse when necessary to preserve the health of the female.
[82] *State vs. Adem*, Gwinnett County Superior Court Georgia, 2006 (unpublished); Charles G. Steffen, *Mutilating Khalid: The Symbolic Politics of Female Genital Cutting,"* (Trenton, New Jersey: The Red Sea Press, 2010), 129. Khalid was charged with aggravated battery and cruelty to children, as there was no law specifically against female genital mutilation/female circumcision at that time. The term female genital cutting is used in this instance, as this is the term Steffen uses.
[83] Steffen, *Mutilating Khalid*, 1.

> to have her clitoris cut out so that it could preserve her virginity. And that was, it was the will of God.[84]

Adem maintained his innocence throughout the trial, claiming he had not committed the act. Therefore, he never raised a religious defense. The prosecutor did not focus on the fact that Adem was Muslim; instead he focused on Adem's "culture," though he never defined exactly what constituted the term.[85] There are no constitutional protections for the free exercise of culture. Therefore, representing undefined "culture" as the culprit allowed the prosecutor to indict Adem's overall worldview and way of life without having to specifically discuss religion or worry that he may be treading on First Amendment ground. He was able to disparage Ethiopian culture without appearing anti-Muslim in the wake of 9/11.

In her essay "Culture," Tomoko Masuzawa explains the different perceptions that exist regarding the relationship between religion and culture:

> In the contemporary use of the terms, the relationship between "culture" and "religion" appears to be multiple, complex and contradictory to some extent. First, in a highly ordinary sense, religion is seen as one of the cultural aspects or institutions of a given society…If at times religion is to culture as a part is to the whole, at other times the synecdochic relation amounts to a plain equation, with the result that in such cases culture is considered more or less synonymous with religion…On the other hand, most notably in the language of theologians and other partisans of religion, religion is claimed to be that which always and necessarily exceeds culture, something essentially distinct from, surpassing, and sometimes standing decidedly against culture.[86]

Under the Georgia statute that criminalizes FGM (the term used in the statute), religion is named along with ritual, custom, and standard practice, as distinct elements, none of which, amount to a defense for the commission of the act. Religion was not originally included in the first version of the bill, which stated only that "neither ritual nor custom shall be a defense."[87] The more

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[84] Ibid., 161.
[85] Ibid.,186. The prosecutor stated only that "It happens a lot, so people do it, and that's our culture."
[86] Tomoko Masuzawa, "Culture," in *Critical Terms for Religious Studies*, ed. Mark C. Taylor (Chicago: University of Chicago Press, 1998), 70.
[87] Steffen, *Mutilating Khalid,* 131.

sweeping terminology which includes religion was added after further consideration and was "intended to prevent the cultural defense from sneaking in" under another name.[88] While naming each of these separately, one could argue that Georgia is making clear that no single part, or the collective whole, of a person's culture shall serve to allow them to engage in FGM/FC. In this instance, religion is not treated as something that exceeds culture, but rather is equivalent to it. In contrast, in the other instances where we have seen spiritual exemptions, such as for the spiritual treatment of illness, the law seems to imply that religion is something distinct from, and, indeed, surpasses the ordinary customs, practices, and legal obligations of the larger American society. The result of these different ways of understanding religion and culture is that practitioners of FGM/FC must alter their religious practice in order to conform to the law, whereas the law has conformed to those who practice spiritual healing.

Why would religion be treated so differently under different circumstances? Is it the *kind* of religion that changes the treatment of it under the law? It is certainly not based on the potential for physical harm to a child. The risk of medical complications and physical suffering from Type I FGM/FC is significantly less than the risk of harm from untreated diabetes or bacterial meningitis, which are likely to cause death without medical intervention. In terms of the way the participants understand their conduct, each are acting in accordance with their religious beliefs. Yet spiritual healing has been granted an exemption and female circumcision, even when performed for religious reasons, has been deemed a criminal act. If the risk of harm to children is not the underlying determinate, then what is? Steffen believes that the evidence against Khalid Adem was extremely questionable and that he now "passes his days in a medium-security prison not because the prosecution in his case proved his guilt beyond a reasonable doubt, but because

[88] Ibid.

he came to symbolize the Other, or rather Others."[89] Adem came to represent the unfamiliar, the unknown, and the undesired. His kind of "culture," whatever that included, was not our culture, and no one advocated an expansion of our definition to include his. People often fear and reject that which they do not understand and cannot relate to, while they treasure and celebrate that which is familiar. This is likely the reason that religion in the form of prayer explicitly serves as a defense to child abuse, but religion is explicitly rejected as a defense to FGM/FC.

WHEN THE STATUTE IS SILENT

Thus far, we have been looking at spiritual exemptions, or denials of such, that are made clear by the black letter of the law. But what about when the statute does not offer or deny an exemption in its plain language? How do Georgia child welfare workers, police officers, prosecutors and courts handle cases where religion is clearly a motivating factor behind conduct that is otherwise prohibited? Once again, it seems to depend on the *kind* of religious conduct. Judicial interpretation based on personal beliefs and popular consensus appears to strongly effect which forms of religious conduct are protected and which are not.

What Counts As Religion?

Individual conceptions of what counts as "religion" undoubtedly influence whether judges recognize spiritual exemptions when the statute is silent on the matter. Consider the following example. In a 1986 case, *Hunt v. State*, the defendants appealed a conviction for child molestation which stemmed from their participation in a Wicca religious ceremony.[90] Judge P.J. Deen called the ceremony "a Wicca 'religious' ceremony of witchcraft and nudity adding up to

[89] Personal interview with Charles Steffen, September 16, 2010; Steffen, *Mutilating Khalid*, 204. There was evidence that perhaps Adem's wife, or his mother-in-law, actually committed the crime.
[90] *Hunt v. State*, 348 S.E.2d 467 (1986).

almost a sexual orgy involving little children."[91] In his special concurrence, Judge Deen discussed his belief that the Wicca tradition does not amount to a real religion. Deen stated that "it should be observed that an assembly place for adherents of the Wicca 'faith,' qualified by the Supreme Court as a religion, may be exempt from state taxation…but neither the place of Wicca 'worship' nor the Wicca adherents are exempt from the criminal code of the State of Georgia."[92] Deen comments on the decision by the United States Supreme Court to define a religion for tax exempt purposes as non-theistic traditions as well as theistic traditions, and the decision of the Georgia Supreme Court to grant tax exempt status to Ravenwood Church of Wicca in 1982, stating "While we are bound by the Georgia Supreme Court, the writer does not believe the U.S. or Georgia Constitutions mandate providing tax exemptions for non-theistic religions. Wicca witch-warlock worship was not within the original intent of the founding fathers."[93] Deen described the Wicca ceremony at issue in *Hunt* as an example of "the definition of 'religion' having been stretched beyond recognition" adding that "it is fast becoming impossible to ignore some of the evils of religion, or rather doing whatever one cherishes or feels good about doing, but which conduct violates the criminal code of conduct under the guise of 'religion.'"[94]

Judge Deen made no effort to hide his contempt for the Wicca tradition. For him, it did not amount to *real* religion, worthy of protection. Defining religion often seems to be a matter of distinguishing "good" religion from "bad" religion. Judge Deen made it clear that because the Wiccan defendants violated a criminal statute, their "religion" would offer them no protection. Other judges have similarly refused to consider religious motivation as a defense for otherwise criminal conduct.

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[91] *LeGallienre v. State*, 348 S.E.2d. 471, 475. (1986), discussing *Hunt v. State*.
[92] *Hunt*, 348 S.E.2d at 471(internal citation omitted).
[93] *Hunt*, 348 S.E.2d at 471 fn1. Referring to *Roberts v. Ravenwood Church of Wicca*, 292 S.E.2d 657(1982).
[94] *LeGallienre*, 348 S.E.2d at 475.

Religiously-Motivated Discipline

Other judges have been similarly unwilling to recognize spiritual exemptions where the religious motivation for the conduct is not widely shared or accepted by other religious individuals in Georgia. One of the most widely publicized cases in Georgia history involved House of Prayer, a northwest Atlanta church, whose pastor advocated "whippings" for "unruly" children.[95] In 2001, an investigation began after a 10-year-old boy and a 7-year-old boy were found to have welts and bruises on their bodies, which the 10-year-old reported were the result of beatings he received at his church.[96] The whipping of children was commonplace at House of Prayer, and the punishment was administered at the direction of Reverend Arthur Allen, Jr. Children who were being punished were suspended in the air by their hands and arms and beaten with switches, sticks or belts.[97] Allen said the beatings were simple discipline. "The Bible says that if you spare the rod you're going to spoil the child," Allen said.[98] "I have the Scriptures that give me the right to do it."[99] However, the State of Georgia disagreed. In total, forty-nine children were removed from their parents' custody and placed into foster care, and five members of the church, including Reverend Allen were convicted of cruelty to children.

In 2001, Georgia permitted the use of physical forms of discipline without it constituting child abuse, "as long as there is no physical injury to the child."[100] The fact that these beatings occurred as part of the House of Prayer church services and were performed in accordance with

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[95] Alan Judd, "Church Disputes Claims of Abuse," *Atlanta Journal-Constitution*, March 18, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.
[96] Ibid.
[97] Joshua Good and Ron Martz, "Pastor, 5 Church Members Arrested in Child Beating," *Atlanta Journal-Constitution*, March 21, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.
[98] Associated Press, "Judge Takes 41 Children From 'Cult,'" *The Charleston Gazette*, March 29, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.
[99] Ibid.
[100] This language remains in effect today. See O.C.G.A. §19-7-5(b)(3)(A).

their religious beliefs based on their interpretation of the Bible was irrelevant to the judges. Juvenile Court Judge Sanford Jones, who authorized the placement of forty-one of the children into foster care, stated, "I hate to see these children jeopardized by what I consider to be a cult."[101] Juvenile Court Judge George Blau, who authorized the removal of an additional seven House of Prayer children from the custody of their parents stated, "Our country was founded basically on freedom of religion…Freedom of religion is freedom of belief---not necessarily freedom of practice. The overdiscpline of children is not allowed."[102]

Clearly, Judge Jones would not have considered granting a religious exemption in this case because he did not consider the House of Prayer to be a legitimate religious organization. This example reinforces that only those religions deemed to be "real" by a judge, e.g. the *right kind* of religion, are eligible to receive special protection. If religion is treated as unique and therefore deserving of special protection, a judicial determination of what constitutes a religion is required. Judge Blau, on the other hand, seemed to accept the House of Prayer as a religious organization, but he simply did not find the fact that the congregant's actions were rooted in their religious beliefs sufficient to warrant special legal protection. The congregants may believe in the spiritual necessity of corporal punishment. However, because they acted upon this belief in a manner that resulted in physical harm to a child, they were subject to legal consequences.

House of Prayer church members fared no better in their criminal cases. Convicted of aggravated assault and cruelty to children for causing cruel and excessive physical or mental pain, Allen and other church members who participated in the beatings were sentenced to serve time in jail and pay fines. Allen's sentence was the greatest. He received ninety days in jail and

[101] Associated Press, "Judge Takes 41 Children" From 'Cult,'" *The Charleston Gazette*, March 29, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.
[102] Alan Judd, "Judge Allows State to Take More Children In House of Prayer Case," *Atlanta Journal-Constitution*, May 7, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

an $8,000 fine. He was also sentenced to ten years probation. As a condition of their probation, Judge T. Jackson Bedford ordered each of the defendants to "restrict any spanking to their own children, generally only in the presence of immediate family members, to use only an open hand on a child's buttocks during such punishment, and to complete an intensive counseling program."[103] He also banned them from bringing their children to the House of Prayer for punishment and from advising or assisting other parents with punishing their children.[104] These terms required that the convicted members alter their religious practices as they pertain to child discipline. "It doesn't allow me to preach all the Bible, so that's just ungodly," Allen said.[105] Similarly, all House of Prayer parents had to alter the extent of the biblically-based corporal punishment of their children, or they risked the loss of their custodial rights. Religious motivation was not enough to exempt these individuals from the laws that all other Georgia parents must follow, nor from the consequences that result if these laws are broken.

Demonic Possession - What's a Parent to Do?

The case of Sonya and Josef Smith provides yet another example where a court did not allow the religious motivation of the parents to exempt them from liability for causing harm to their child. The Smiths, who lived in Mabelton, Georgia, were members of the Remnant Fellowship, a church based in Williamson, County Tennessee, but which has a national following via the internet. Remnant Fellowship was founded by Gwen Shamblin, who developed a following of thousands with a Christian diet plan called the Weigh Down Workshop. The Remnant Fellowship advocates corporal punishment for children and, in a video obtained by

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[103] Steve Visser and Jill Young Miller, "Church Members Sent to Jail for Whipping Kids; House of Prayer Pastor Says He'll Follow the Bible," *Atlanta Journal-Constitution*, October 18, 2002, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.
[104] Ibid.
[105] Jill Young Miller, "House of Prayer's Preacher Leaves Jail," *Atlanta Journal-Constitution*, January 26, 2003, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

WTVF News Channel 5 out of Nashville, Tennessee, Shamblin was heard advising parents, "If they're not scared of a spanking, you haven't spanked them. If you haven't really spanked them, you don't love them. You love yourself."[106] One Remnant Fellowship member explained that while she first hesitated to use physically discipline with her children for fear of hurting them, she now utilizes such methods "in order to save their souls from hell rather than being concerned about their flesh."[107] One former member explained to Channel 5 that "glue sticks are actually sort of common within the Remnant Fellowship culture to be used to discipline children."[108] He explained that the glue sticks hurt like switches, but do not leave marks on the children. In addition to corporal punishment, other methods of discipline, which the Smiths employed upon the advice of church leaders, included locking their child in a small room with only a Bible for days at a time. [109]

According to police reports, Josef Smith believed his eight-year-old son Josef was "a soldier of the devil," and Josef was routinely whipped and often locked in a closet for days or even weeks at a time.[110] At trial, Josef's older brother Mykel Booth, age 16, testified that on October 8, 2003, the family was watching a webcast of a Remnant Fellowship Church Service, when Josef began screaming and cursing, as he typically did when the family engaged in religious activity. Mykel was told by the Smiths to put Josef inside a wood-lined chest. An extension cord was wrapped around the box to keep Josef inside. After ten or fifteen minutes, Josef became silent. When his brother opened the chest, Josef was unresponsive. He died in a

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[106] "Religious Movement at Center of Child Death Investigation," *NewsChannel5.com* , February 4, 2004, accessed March 3, 2011, http://www.newschannel5.com/story/5412250/religious-movement-at-center-of-child-death-investigation.
[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Rita Swan, "Parents Get Life Plus Thirty Years in Fatal Beating," *Children's Healthcare is a Legal Duty, 1* (2007): 2, accessed December 31, 2010, http://childrenshealthcare.org/wp-content/uploads/2010/10/2007-01finallayout.pdf.

hospital a few hours later.[111] The exact cause of death was debated among medical examiners, but what they did agree on was that Josef's death was the result of homicide, not accident or illness.[112]

Police reported that Josef and Sonya Smith "showed no remorse" and were "very defensive about their religion."[113] The Smiths were ultimately found guilty of felony murder, felony involuntary manslaughter, child cruelty, and aggravated assault.[114] None of these crimes have a religious exemption.[115] Despite the fact that the boy's body was covered with bruises and scars, the family contended that the boy's death was the result of an infection brought on by a skin condition. They defended their actions saying that they did nothing wrong, only spanking him, "repeatedly but harmlessly, based on what they believe the Bible teaches about corporal punishment."[116] The jury, however, disagreed. "'I think the jury sent a message to the community' said the prosecutor, Senior Assistant District Attorney Eleanor Dixon, 'that they're not going to allow this type of child abuse to happen here in Cobb County.'"[117] In 2007, on the anniversary of their son's birthday, the Smiths were sentenced to life plus thirty years.[118]

Interestingly, this case also demonstrates the different ways that child welfare workers interpret and react to religious beliefs involving demon possession. Josef's half sister had made a report to the Henry County DFCS office, the county where she resided, to warn them that she

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[111] Ibid., 2.
[112] Jon Shirek, "Parents Convicted on Dead Son's Birthday," *11Alive.com*, February 16, 2007, accessed December 31, 2010, http://www.11alive.com/news/article_news.aspx?storyid=92302&provider=top.
[113] Swan, "Parents Get Life," 2.
[114] Jon Shirek, "Parents Convicted on Dead Son's Birthday,"*11Alive.com*, February 16, 2007, accessed December 31, 2010, http://www.11alive.com/news/article_news.aspx?storyid=92302&provider=top.
[115] The legislature decided not to include a religious exemption of any kind to the Child Endangerment Act of 2004, which included the statute governing cruelty to children. See discussion on p. 45-47 *infra.*
[116] Ibid.
[117] Ibid.
[118] Swan, "Parents Get Life," 1.

suspected Josef was being abused.[119] She described Josef "as 'demon-possessed' with 'his eyes rolling in the back of his head as if he were going through some transformation.'...She reported that the parents also claimed the boy was demon-possessed, had placed video cameras around the home to observe him and were providing no mental health services."[120] Henry County DFCS forwarded the report to Cobb County, where the Smiths resided, but no action was taken. Henry County DFCS repeated the request, but still no action was taken. Cobb County DFCS Director, Catherine Anderson, defended her agency's decision stating, "There's nothing in that memo that says the parents might beat a child to death."[121]

This explanation from Ms. Anderson may be interpreted simply as a *post ex facto* exculpation. However, it also seems to demonstrate that child welfare workers sometimes disagree as to whether the belief that one's child may be possessed by the devil warrants a DFCS investigation. In Henry County, DFCS workers would have looked into the situation, whereas in Cobb County they did not feel the situation was a cause for concern. They are not alone. On June 12, 2009, Sandra Alfred of Lilburn, Georgia was arrested on charges of false imprisonment and cruelty to children for using handcuffs on her 15-year-old son, and denying him food and water for periods of up to twelve hours, while she performed an exorcism on him. Alfred believed her son to be possessed by Satan and told officers who responded to complaints of an unruly child that they "were sent by God as angels to help her."[122] Doctors who later examined the boy believed he was suffering from the onset of schizophrenia.[123] Gwinnett County Magistrate Judge

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[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Chip Towers, "Charges Dropped against Mother Restraining, Performing Rites on Psychotic Teenage Son," *Atlanta Journal-Constitution*, June 25, 2009, accessed December 31, 2010, http://www.americanfreethought.com/wordpress/2009/06/25/exorcistchild-abuser-scot-free-in-ga/.
[123] "Charges Dropped in Gwinnett Exorcism," *wsbtv.com*, June 25, 2009, accessed December 31, 2010, http://www.wsbtv.com/news/19856729/detail.html.

Robert Mitchum made headlines when he dismissed the warrants against the mother, citing as rationale in part, "I have a hard time believing you're going to get anybody to say in Gwinnett County, Georgia, that Satan doesn't exist, that the Bible doesn't exist, that the actual Biblical descriptions of possession are not true…You're not going to get anybody to say that that's all false. So it's going to be really hard to claim that the basic precept behind any of her actions were false, malicious, or criminal."[124]

Mitchum's determination that the mother's belief in demonic possession was unquestionably true, based on his perception of a public consensus, demonstrates the role that popular opinion plays in making these determinations. Presumably, a parent who handcuffed their schizophrenic teenager, and deprived them of food and water in order to rid them of the spirit of Elvis Presley, would not be likely to get off so easy. They would be expected to have sought medical/mental health treatment for their child. Mitchum's rationale was based on his assessment that everyone in Gwinnett County would agree that there is a devil and that what the Bible says about possession is true. The fact that he believed there to be a consensus among the residents of Gwinnett County regarding the truth of Alfred's beliefs was sufficient for him to determine that neither her beliefs nor her actions were wrong, and therefore, they could not be criminal. By contrast, the religious basis for the conduct of the House of Prayer parents who allowed their children to be subjected to excessive physical discipline, as well as those who actually doled it out, was not enough to decriminalize their actions. They were even deemed a "cult" by one judge, and their actions were viewed as nothing more than abuse, cloaked in the garb of religion. The House of Prayer congregants and the Smiths represented the "other," fringe

[124] Andria Simmons and Chip Towers, "Judge rules on side of religious rights in exorcism case. Charges dropped against mother restraining, performing rites on psychotic teenage son," *Atlanta Journal Constitution*, June 25, 2009, accessed March 3, 2011,http://www.ajc.com/services/content/metro/gwinnett/stories/2009/06/25/exorcism_charges_dropped.html.

religious groups, whose practices warranted no protection. Alfred's actions, while not commonplace, were based upon a belief shared by the majority, and this made her religious actions *real* religion and thus deserving of protection.

RELIGIOUS FREEDOM IN GEORGIA

It should be evident by now that not all religious conduct is treated equally under the law in Georgia. Some religious conduct is explicitly offered protection by statute, other conduct is specifically outlawed by statute, and other conduct must undergo the scrutiny of a judge who will determine whether the conduct is in fact religious, and, if so, whether it is deserving of special protection. The form of religious conduct which receives the most legal protection is, of course, that which is statutorily guaranteed. This section will explore what the existence of these statutory exemptions can tell us about religious freedom in Georgia: What value is placed on it? When and how may it be limited? What are the practical results of offering religious freedom in the form of spiritual exemptions? Can any historical trends be discerned?

The Value of Religious Freedom

One can infer from the existence of the explicit spiritual exemptions discussed above (spiritual treatment, newborn testing, and vaccination exemptions) that the Georgia legislature places an extremely high value on the freedom of *certain kinds* of religious parents' to choose prayer in lieu of medical treatment, faith in lieu of science. All of the explicit spiritual exemptions are contrary to Georgia's public policy on protecting its children from suffering unnecessary physical harm or death. Children are the future citizens of the state and the nation; therefore, the legislature has set very clear standards on parental behavior which are meant, in part, to ensure that these children live safe and healthy lives, so that they may grow up to become productive adults. Therefore, the fact that the Georgia legislature has granted these spiritual

exemptions is indicative of the value the legislature has placed on freedom of religion in this context. This is particularly true since it is under no constitutional obligation to do so and these spiritual exemptions stand in contradiction to the state's interest in protecting Georgia's current and future citizens. In fact, it appears that this freedom of religion, assuming you are found to be practicing the *right kind* of religion, is valued above the life of a child in these circumstances.[125] In all instances where Georgia law contains an explicit spiritual exemption, a child's life could foreseeably end as a result. All other parents are statutorily required to seek medical care when their child is sick, they must have their children screened for serious illnesses at birth, and they must vaccinate their children to prevent them from contracting a preventable disease that could lead to their death. However, by virtue of their religion, some parents are exempted from these parental duties despite the potential for harmful consequences. This clearly suggests a legislative commitment to religious tolerance for these practices that outweighs Georgia's commitment to protecting these children from medical neglect.

These exemptions allow religious parents to make medical decisions for their children in accordance with their faith, but in the case of the vaccination exemption the potential impact of these decisions goes beyond a parent's relationship to his/her own child. Failure to vaccinate one's child affects not only that child, but other members of the greater community with whom that child may come into contact. For instance, in January 2008, an intentionally unvaccinated

[125] Certainly the possibility exists that spiritual treatments will not result in a negative outcome for the child. However, studies indicate that there is, at the very least, a substantial risk that these treatments will not prevail. A study of child fatalities resulting from religious based medical neglect from 1976-1995 identified 172 child deaths related to religious based medical neglect. One hundred forty of these fatalities were from conditions for which survival rates with medical care would have exceeded ninety percent. See Seth Asser, M.D., and Rita Swan, "Child Fatalities From Religion-Motivated Medical Neglect," *Pediatrics* 101 no. 4 (1998): 628. Thus, Georgia is making a value judgment that a parent's right to exercise their religious beliefs is worth the clearly identified risk that a child may not survive a physical ailment that is treated solely by spiritual means.

child from San Diego, California contracted the measles while on a family trip to Switzerland and then unknowingly carried the disease back to the United States. The incident resulted in the exposure of 839 individuals, 11 additional cases, and the hospitalization of one infant too young to be vaccinated. The net public-sector cost for each of the confirmed cases of the illness was $10,376 per case. Forty-eight children too young to be vaccinated against the measles were quarantined, at an average family cost of $775 per child.[126] A similar scenario could easily occur in Georgia as well.

In addition to the risk posed to children who are too young to receive the vaccination, intentionally unvaccinated children also pose a risk to children who cannot receive the vaccine due to medical conditions, such as cancer. Stephanie Tatel, the mother of a two-and-a-half year old with Leukemia, expressed her frustration in an article for *Slate Magazine.*

> Ordinarily, I wouldn't question others' parenting choices. But the problem is literally one of live or don't live. While that parent chose not to vaccinate her child for what she likely considers well-founded reasons, she is putting other children at risk…A single unimmunized child in an ordinary child care setting is the equivalent of a toddler time bomb to him…Because what's 'just a case of chicken pox' for that kid could be a matter of life or death for mine.[127]

Interestingly, these scenarios demonstrate that the negative implications which can be drawn from the use of spiritual exemptions to promote religious freedom are not limited to instances where institutional forms of religion are favored over individualism. Essentially, Georgia's vaccination exemption allows the religious beliefs of one family to potentially affect the health of a child in another family.

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[126] David Sugarman, et al., "Measles Outbreak in a Highly Vaccinated Population, San Diego 2008: Role of the Intentionally Undervaccinated," *Pediatrics* 125 (2010); 747. California has a personal beliefs exemption for school vaccination requirements that allows parents or guardians to claim philosophical or religious opposition to vaccination. Ibid., 748. Georgia does not have a personal belief exemption. Exemptions are only allowed if immunization conflicts with the parents religious beliefs.

[127] Stephanie Tatel, "A Pox on You," *Slate Magazine*, October 20, 2009, accessed January 5, 2011, http://www.slate.com/?reload=true.

Limitations on Religious Freedom

The fact that Georgia legislators place countless children (and adults) at risk for illness or death to preserve the religious liberty of a few unrelated individuals is again demonstrative of the value placed on this form of free exercise in Georgia. On the other hand, tolerance for this kind of religious belief is hardly unlimited. The vaccination exemption explicitly states that "the immunization may be required in cases when such disease is in epidemic stages." So does this mean Georgia's religious tolerance ends when an epidemic begins? If so, the granting of such an exemption seems to be somewhat disingenuous, giving the illusion of tolerance, but in reality, reserving the right to pull the plug on the exemption in times of medical crisis. The value of religious freedom, therefore, appears to be variable and context dependent.

The faith healing exemption may too have its limitations. *Working with Child Deprivation Cases in Georgia's Juvenile Courts: A Reference Manual for Department of Family and Children Services Case Managers,* which was developed by the Georgia Supreme Court Child Placement Project in 2004, states that "Although no court has defined the exact boundaries of this statutory exception, some commentators have suggested that if a child's life or long term health are endangered due to a lack of medical care, state intervention is still appropriate regardless of the justification posed by the parents."[128] This manual is clear that "This issue has yet to be resolved."[129]

While this precise issue remains unresolved, in other circumstances involving religiously-based medical neglect, courts have ordered state intervention when a child's life was at risk. In

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[128] Chris Harris, et al., *Working with Child Deprivation Cases in Georgia's Juvenile Courts: A Reference Manual for Department of Family and Children Services Case Managers,* (Georgia Supreme Court Child Placement Project, 2004) referencing Ferreira, *McGough's Ga. Juvenile Practice and Procedure* (2nd ed.), § 4-7. While the issue is unresolved when a parent's objection to medical treatment is based on their religion, the manual states that "it is clear that when a parent's refusal is not based upon his/her religious beliefs, the state is authorized to intervene in cases of medical neglect, referencing *Bendiburg v. Dempsey*, 909 F.2d 463 (11th Cir. 1990).

[129] Ibid.

Jefferson v. Griffin Spalding County Hospital Authority, the Supreme Court of Georgia upheld a court order by the Butts County Superior Court which transferred temporary custody of an unborn child to the Department of Human Resources. The order also required the mother to undergo an emergency cesarean section after she had refused to do so on religious grounds in a situation where doctors deemed it probable that the child, and quite possibly the mother, would have died during natural delivery.[130] Jessie Mae Jefferson suffered from a condition known as complete placenta previa, in which the placenta blocks the opening of the birth canal. Her examining physician found that it was virtually impossible that the condition would correct itself prior to delivery, and that there was a 99% certainty that the child could not survive a natural delivery. The chances of the mother surviving were cited as no better than 50%. The examining physician gave the opinion that both mother and child had an almost 100% chance of survival if Jefferson delivered via caesarean prior to the beginning of labor.[131]

Ms. Jefferson's husband was the pastor of Shiloh Sanctified Holiness Baptist Church in Butts County, Georgia, and she was reportedly a believer in faith healing.[132] She refused to consent to the cesarean section because she believed that the "Lord has healed her body and that whatever happens to the child will be the Lord's will."[133] The Superior Court found the fetus to be a deprived child, and granted custody of the child to state and county authorities, allowing them to make all medical decisions related to the child. Jefferson was ordered to submit to a caesarean section and all related procedures necessary to save the life of her unborn child.[134] In

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[130] *Jefferson v. Griffin Spalding County Hospital*, 247 Ga. 86 (1981).
[131] *Jefferson* 247 Ga. at 86.
[132] United Press International, "Pregnant Woman Believes Prayers Obviated Caesarean," *New York Times*, January 26, 1981, accessed on December 22, 2010, http://www.nytimes.com/1981/01/26/us/around-the-nation-pregnant-woman-believes-prayers-obviated-caesarean.html.
[133] *Jefferson*, 247 Ga. at 88.
[134] Eric P. Finamore, "*Jefferson v. Griffin Spalding Hospital Authority:* Court-Ordered Surgery to Protect the Life of an Unborn Child," American Journal of Law and Medicine 9 (1983-1984): 83, 85.

making its decision, the court said it "weighed the right of the mother to practice her religion and to refuse surgery on herself, against her unborn child's right to live. We found in favor of her child's right to live."[135] Interestingly, in deciding whether to find the fetus to be a deprived child, the court did not specifically discuss the facts of the case with reference to the spiritual exemption. This is surprising given that in 1981, the definition of a deprived child, which the Superior Court would certainly have considered in its decision-making process, included the identical spiritual exemption language that the statute contains today. In fact, neither the Superior Court in its initial decision, nor the Supreme Court upon its review, makes any mention of the exemption at all. This leads one to the conclusion that the exemption was not seen to as applicable to the facts of this case. Perhaps Jefferson's belief that her prayers would result in divine healing was not seen as equivalent to "treatment by prayer alone." Perhaps her belief was not sufficiently tied to the "tenets and practices of a recognized church or religious denomination." Therefore, while their decision makes clear that there are instances where Georgia is willing to place the life of a child above the right of a parent to practice their religion, it is still unclear how a court will rule in a situation where the practices in question are deemed to fall under the exemption. In an ironic twist in the Jefferson case, when Jefferson reported to the hospital for her court ordered sonogram preceding her caesarean section, it was discovered that her condition had corrected itself, something doctors had deemed "highly and virtually impossible."[136] A spokesperson for Jefferson stated that she believed "prayers moved the placenta."[137]

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[135] *Jefferson*, 247 Ga. at 90.
[136] United Press International, "Pregnant Woman Believes Prayers Obviated Caesarean," *New York Times*, January 26, 1981, accessed on December 22, 2010, http://www.nytimes.com/1981/01/26/us/around-the-nation-pregnant-woman-believes-prayers-obviated-caesarean.html.
[137] Ibid.

One Georgia Juvenile Court Judge, Edward D. Wheeler, has commented on *other* forms of religious-based medical neglect, in a ruling that set a standard by which to measure the state's interests against the parents' First Amendment rights. Deciding *In the Interest of L.O.L.* in 1984, Judge Wheeler authorized a hospital to perform a life saving blood transfusion on a child whose parents refused the treatment on religious grounds. Judge Wheeler held that "the state has a vital interest in preserving the lives and health of its citizens."[138] He recognized, however, that "The First Amendment right to freedom of religion must be recognized and respected when its practice is not contrary to the best interests of the citizens of the State."[139] In authorizing the blood transfusion over the objections of the natural parents, the Court cited *Prince v. Massachusetts*, stating "acting to guard the general interest in a youth's well being, the State as *parens patriae* may restrict the parent's control...the right to practice religion freely does not include liberty to expose the ...child to ill health or death."[140]

As noted, *Jefferson* and *In the Interest of L.O.L.* do not represent binding precedent for decisions involving the spiritual treatment exemption. However, if other courts follow their rationale in determining that state intervention is appropriate where treatment by prayer alone poses a risk to a child's life or long term health, then the courts would essentially be limiting the bounds of the spiritual exemption. Once again, religious tolerance would not be absolute, but would be limited, this time to the point at which a child's life or long term health is placed in danger. For a parent who has no medical knowledge or training, this point may be difficult to ascertain. Since these parents will not seek the advice of medical professionals who could make

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[138] Steven J. Matz et al., *Working with Child Deprivation Cases in Georgia's Juvenile Courts: A Reference Manual for Attorney and Volunteer Guardian Ad Litems* (Georgia Supreme Court Child Placement Project, 2004) citing *In the Interest of L.O.L,* Dekalb County Juvenile Court, Georgia (April 19, 1984), 18.
[139] Ibid.
[140] *Prince*, 321 U.S. at 166.

such a determination, child welfare authorities may not be alerted that they should intervene until it is too late.

Of course, it is possible that the spiritual exemption may be interpreted to preclude state intervention, as one could argue that the legislature has granted special permission to parents who practice spiritual treatment by prayer alone. Such an interpretation would require the court to privilege one form of religious practice over others. Christian Science parents could withhold medical treatment, such as a blood transfusion from their child, if they are using prayer as a treatment instead. However, a Jehovah's Witness parent, who is not opting to use prayer, but simply refuses a blood transfusion for their child on the grounds that taking blood into the body through the mouth or veins violates God's law, would be subject to having their child removed from their custody and the procedure ordered against their wishes by a Juvenile Court, as in the case discussed above.[141] The result would be inconsistent regulation of the same religiously-motivated conduct. Courts would be forced to inquire into the religious rationale of the parent's decision, and ultimately judge some beliefs as more worthy of legal protection than others.

Again, since there are no published decisions (or evidence of unpublished decisions) which specifically address the question of whether the state can intervene and order life-saving treatment when a parent is acting under the auspices of the spiritual exemption, we can only discuss the theoretical implications. However, the lack of such cases raises several questions.

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[141] Jehovah's Witnesses base their belief regarding blood transfusions on the following passages from the Bible: Genesis 9:3-4, "Every moving animal that is alive may serve as food for you. As in the case of green vegetation, I do give it all to you. 4 Only flesh with its soul—its blood—you must not eat." Leviticus 17:14, "For the soul of every sort of flesh is its blood by the soul in it. Consequently I said to the sons of Israel: "you must not eat the blood of any sort of flesh, because the soul of every sort of flesh is its blood. Anyone eating it will be cut off." Act 15: 28-29, "For the holy spirit and we ourselves have favored adding no further burden to YOU, except these necessary things, 29 to keep abstaining from things sacrificed to idols and from blood and from things strangled and from fornication. If you carefully keep yourselves from these things, you will prosper. Good health to you!" (All verses are taken from the Jehovah's Witness Online Bible, *New World Translation of the Holy Scriptures*, accessed on December 22, 2010, http://watchtower.org/e/bible/).

When a child's medical situation begins to deteriorate, are the parents making a concerted effort to keep this from becoming public knowledge for fear of state intervention? Are people who are aware of the situation not reporting it because they believe in a parent's right to engage in spiritual treatment? If it is reported, do local DFCS workers believe that the spiritual treatment exemption gives special permission to these parents to withhold medical treatment, even in life-threatening situations? If DFCS workers are referring these cases to the Special Assistant Attorney Generals (SAGs) who handle such cases, are the SAGs choosing not to pursue these matters, either initially or on appeal because of the uncertainty caused by the exemption statute? Are medical examiners conducting thorough investigations into the deaths of children who die as a result of untreated illnesses? If so, are they determining the cause of death to be "natural" rather than "homicide" even if the deaths could have been prevented had the parents sought medical treatment for the child?[142] Answers to such questions may be difficult to discover, and may vary greatly depending on the circumstances. However, this information would provide a meaningful sense of how the spiritual treatment exemption is being interpreted and applied by religious adherents and law enforcement agents.

Evidence of a Limitation to the Exemption?

There is some evidence that perhaps there are limits to which a parent may rely upon the practice of spiritual healing. In 2004, Georgia became the last state in the nation to pass a Child Endangerment Act. The act amended O.C.G.A. §16-5-70 which defines and criminalizes the offense of cruelty to children.[143] The statute as amended states that "any person commits the

[142] According to the Medical Examiner's Office of the Georgia Bureau of Investigation, a death is ruled a homicide if it is "caused by the actions of another person." A determination of homicide by a medical examiner/coroner does not necessarily mean that the death will meet the legal definition of murder. "Medical Examiner's Office," *Georgia Bureau of Investigation*, accessed March 17, 2011, http://www.georgia.gov/00/channel_title/0,2094,67862954_74028035,00.html.

[143] Ga. L. 2004, p. 57, §3.

offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive physical or mental physical pain."[144] Criminal negligence, in turn, is defined as "an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby."[145] One of the issues the Georgia legislature considered when enacting this legislation was whether to include a spiritual exemption similar to the one found in Georgia's definition of a deprived child.[146] The legislature considered using the specific language of Georgia's existing spiritual treatment exemption. They also considered the fact that other states have opted not to include spiritual exemptions in their Child Endangerment Acts, and that many states have repealed spiritual treatment exemptions to their child abuse/neglect statutes that had been previously passed as a result of the CAPTA requirement.[147] Earlier versions of a proposed Child Endangerment Act in Georgia included a spiritual exemption.[148] Ultimately, however, the statute was enacted without a spiritual exemption.[149] This occurred despite the Christian Science Church's demand for one.[150] According to Rita Swan, President of CHILD, (Children's Healthcare is a Legal Duty), the church's lobbyist, Don Griffith, Ph.D., advocated for an exemption, stating

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[144] O.C.G.A.§16-5-70(c).
[145] O.G.G.A.§16-2-1(b).
[146] Representative Mary Margaret Oliver and Willie Levi Crossley, "Survey of Child Endangerment Statutes Nationally and Analysis of Georgia Legislative Opportunity," Childwelfare.net, The Barton Child Law and Policy Center of Emory University Law School, accessed on December 22, 2010, http://childwelfare.net/activities/legislative2002/endangerment_gbj.html. Interesting, Representative Oliver and Mr. Crossley note that the majority of spiritual exemptions did not exist prior to the 1974 CAPTA requirement, but they do not address the fact that Georgia has had its current spiritual exemption regarding the definition of a deprived child since 1971.
[147] Ibid.
[148] Ibid.
[149] O.C.G.A. §16-5-70. The Act passed the Senate by a vote of 47-0 and the House 161-1. Jeremy Burnette, "Crimes and Offenses," *Georgia State University Law Review*, 21, no.1 (2004), accessed on February 11, 2011, http://law.gsu.edu/lawreview/index/archives/show/?art=21-1/21-1_CrimesOffenses_Burnette.htm.
[150] Rita Swan, "Georgia Passes Endangerment Bill," *Children's Healthcare is a Legal Duty Newsletter* 2 (2004): 9, accessed on December 22, 2010, http://childrenshealthcare.org/wp-content/uploads/2010/10/2004-02finallayout.pdf.

> prayer is the ultimate weapon against child abuse and neglect…It must not be reduced or penalized…It is in this state's best interest to protect those caring, loving parents who have shown over the years that their method of healing deserves respect and appreciation rather than suspicion and persecution.[151]

The legislature's decision not to include a spiritual exemption to the cruelty to children statute may be perceived as an effort to restrict spiritual healing to that which does not cause "cruel or excessive physical or mental pain."[152]

The Catch 22

While many child advocates considered the passage of the Child Endangerment Act without a religious exemption a triumph, there are concerns that because the legislature has not repealed the existing exemptions, it may remain difficult for parents to be prosecuted under this statute for harm caused from spiritual healing.[153] As discussed above, the criminal statute governing the act of contributing to the delinquency of a minor is not applicable to parents who engage in spiritual healing.[154] This exemption makes clear that the parent's conduct is not considered criminal behavior. However, the amended cruelty to children statute would criminalize the same behavior, if it resulted in cruel or excessive mental or physical pain. The discrepancy between these statutes potentially poses a due process/fair notice problem that may well dissuade prosecutors from bringing charges.

For instance, the State of Florida had to address a similar problem in *Hermanson v. State*.[155] When six-year-old Amy Hermanson died of untreated diabetes, the State of Florida charged her parents with third degree murder. The Hermansons were members of the Christian

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[151] Ibid.
[152] O.C.G.A. §16-5-70. No cases involving parents who have been prosecuted under this statute as a result of spiritual healing were found.
[153] Swan, "Georgia Passes Endangerment Bill,"10.
[154] O.C.G.A.§16-12-1(b)(3). See discussion on page 10 *supra*.
[155] *Hermanson v. State*, 604 So. 2d 775 (1992).

Science church, and, in accordance with the tenets of their faith, they chose to treat their daughter's condition with prayer alone. A Florida statute governing child abuse contained a spiritual exemption clause similar to that of Georgia's, which allowed the parents to use prayer in lieu of traditional medical treatment. However, when Amy Hermanson died, the State charged the parents with homicide. The Florida Supreme Court ultimately overturned their conviction finding that "a person of ordinary intelligence cannot be expected to understand the extent to which reliance on spiritual healing is permitted and the point at which this reliance constitutes a criminal offense."[156] The disparity between Georgia's statutes poses a similar problem. Rita Swan of CHILD fears that this disparity "will probably have to be determined by a court over the body of another dead child."[157]

Existing Georgia case law does not provide any helpful guidance on this issue. A thorough search of published case decisions, law review articles, journal articles, and newspaper archives revealed only one documented case where Georgia prosecutors charged a parent/guardian with manslaughter after their child died from religious-based medical neglect.[158] Tommy Hester, 16 years old, died September 17, 1983, of a ruptured appendix and gangrene. Tommy's biological mother had passed away, and he was living with his foster parents, Charles and Judy Long, at the time of his death. Both the Longs and Tommy's biological mother

[156] *Hermanson*, 604 So. 2d at 776. The Florida legislature has not yet amended its statutes to eliminate the problem discussed in *Hermanson.*

[157] Email communication with Rita Swan on September 19, 2010, on file with the author.

[158] The decision is unpublished but was noted in Rita Swan's article "On Statutes Depriving a Class of Children of Rights to Medical Care: Can This Discrimination Be Litigated?" *Quinnipiac Health Law Journal* 2 (1998): 87, ftnt 77, which indicated that Dr. Swan had received information on the case through correspondence with the Chattooga County District attorney. This author contacted Dr. Swan and asked her if she would be willing to share the details of that correspondence, to which she agreed. The exact number of children who have died in Georgia as a result of parents withholding medical treatment for religious reasons is unknown. As previously noted, Seth Asser M.D. and Rita Swan conducted a study of child fatalities resulting from religious based medical neglect from 1976-1995 and found that "[d]eaths of children in faith-healing sects are often recorded as attributable to natural causes and the contribution of neglect minimized or not investigated." See their article "Child Fatalities From Religion-Motivated Medical Neglect,"628.

belonged to Church of God of the Union Assembly, which "believes only God can heal."[159] The Longs were charged with involuntary manslaughter after Tommy's death. When the case went to trial, Judge Joseph Loggins granted a motion for a directed verdict of not guilty, saying "the court feels there is not sufficient evidence in this case to support a conviction even if the jury returned one."[160] The judge did not elaborate on his reasoning, giving no indication as to whether or to what extent the existence of the spiritual exemption played a role in his decision.

Inconsistencies

It is theoretically possible that the courts could order medical intervention in circumstances where a child faces significant health risks as a result of spiritual healing. However, in practice, the existence of the exemptions to the definition of child deprivation and child abuse essentially ties the hands of child welfare workers to investigate and determine when this risk is imminent. The practical result is that the religious liberty interest of certain parents to engage in spiritual healing is protected to a greater degree than the physical health and welfare of their child. Passage of the child endangerment statute without a spiritual exemption may appear to be a move towards limiting potential harm to children that may result from spiritual treatment, but because of the existing exemptions, it does not change the fact that this behavior is still allowed to continue. It only offers the possibility that if excessive physical or mental harm results, then a parent could potentially face punishment. This does little to help the child who has suffered the harm. It appears that, over time, the Georgia legislature has been riding the fence on this issue. Statutes continue to allow spiritual healing as a substitute for medical treatment. In fact, amendments to statutes containing spiritual exemptions have been passed as recently as

[159] Madison Park, "Parents clash with state, kid in medical decisions," *CNN*, May 27, 2009, accessed December 23, 2010, http://articles.cnn.com/2009-05-27/health/parents.medical.custody_1_chemotherapy-parents-clash-gasoline-fire?_s=PM:HEALTH.

[160] *State v. Long*, Chattooga County District Court, Georgia (1984) (unpublished). See Swan, "On Statutes," 87 ftnt 77.

2009, and these amendments did not repeal or modify the existing language in an effort limit the scope of these exemptions.[161] On the other hand, the legislature has not extended criminal protection to religious parents when cruel or excessive physical or mental pain results from using spiritual healing methods to the exclusion of medical treatment. Yet, existing exemptions that prevent investigations by child welfare authorities in order to determine when children are at risk for such harm have not been repealed. Reading these statutes together, it seems that the legislature is, on the one hand, criminalizing excessive physical or mental pain that may result from a failure of religious parents to seek medical care, but on the other, laying the foundation for this suffering to occur, by preventing child welfare workers from investigating to prevent such situations and paralyzing prosecutors with inconsistent statutes.

The Result: Unequal Protection

The legal result of Georgia's spiritual healing exemption is ironic. The Georgia legislature grants parents who practice spiritual treatment by prayer legal protection from civil or criminal liability, while it decreases the legal protection offered to their children. Unlike all other children in the State of Georgia, these children cannot rely on the State to ensure their protection from the potential physical harm of medical neglect. In this instance, a child's legal rights are actually decreased by virtue of the religious beliefs of their parents. It is true that, in America, children are not afforded the same legal rights as adults. However, Georgia has created via statute a guarantee that they will be protected from harm, including medical neglect. The

[161] O.C.G.A. §49-5-40(a)(3)(d) (governing Child Abuse and Deprivation Records). The language of this spiritual treatment exemption is identical to the language used in O.C.G.A.§15-11-2 and discussed on page 9 *supra*. The exemption was originally added to §49-5-40(a)(3)(d) in 1993. The 2009 amendment did not specifically address the language of the spiritual treatment exemption, just its placement in the statute. See note 31 *supra*. However, the legislature could have taken this opportunity to repeal or modify the exemption language during the amendment process, especially in light of the decision to enact the Child Endangerment Act without a spiritual exemption. However, there are no indications that the failure to amend or modify the exemption language will necessarily prohibit an interpretation of the 2004 Child Endangerment Act to impose limitations on the exemption as discussed above.

spiritual treatment exemption not only exempts parents from the obligation to seek medical treatment for their children, but it exempts these children from the legal protection provided to all other Georgia children. This may be one of the only instances under the law where religion acts as a means to decrease the legal rights of an individual.

Interestingly, while the exemption acts to decrease the protection offered to these children, it does not take their religious beliefs into consideration, only those of their parents. This is not unusual. Children are generally assumed to share the religious beliefs of their parents and do not really have a right to religious freedom apart from the beliefs of their family. However, in this case, the failure to consider a child's religious beliefs has the effect of relegating them to the role of mere conduits. Because their own religious beliefs are irrelevant, they are simply the means through which religious freedom is granted to their parents.

The specific role of children as religious agents is one largely dependent on theological interpretation. However, in his essay "Material Children," Religious Studies scholar Robert Orsi, explains that one "medium of religious materialization - for rendering the invisible visible and present - of special importance to religious practitioners is children."[162] According to Orsi, "Children's bodies, rationalities, imaginations, and desires have all been privileged media for giving substance to religious meaning, for making the sacred present and material, not only *for* children, but *through* them too, for adults in relation to them."[163] This is apparent in the case of Georgia's spiritual treatment exemption, as it does not act to promote the religious freedom of the children whose lives may be cut short as a result, rather, it allows for parents to withhold medical treatment as an expression of their own religious beliefs. It is through these children's

[162] Robert Orsi, "Material Children: Making God's Presence Real for Catholic Boys and Girls and the Adults in Relation to Them," in *Between Heaven and Earth*, (Princeton, New Jersey: Princeton University Press, 2005), 77.
[163] Ibid.

bodies that their parents' faith is made material. Discussing the biblical story of the sacrifice of Isaac, and drawing on the work of Elaine Scarry, Orsi concludes that "The story of Abraham and Isaac 'does not merely describe the rigors of belief, what is required of belief, but the structure of belief itself, the taking of one's insides and giving them over to something wholly outside of oneself' - God - 'as Abraham agrees to sacrifice the interior of his and Sarah's bodies, and to participate in that surrender.'"[164] But Orsi reminds readers that

> Children are uniquely available to stand for the interiority of a culture and to offer embodied access to the inchoate possibilities of the culture's imaginary futures. But the "interior" of Abraham's body is a grown child with his own feelings and perceptions. Isaac is a boy who understands that he is about to be killed. Child sacrifice is not self-immolation but the murder of a separate human being whose identity is not exhausted by his or her status as a son or daughter nor as a sign of the future of the social world. It is this fluidity - if not the actual erasure of the boundaries - between the body of the child and the interiority of the adult engaging the child in a religious setting that makes possible the materialization of a sacred reality through the bodies, minds, and imaginations of children.[165]

The Georgia spiritual healing exemption seems to accept this erasure of boundaries between "the body of the child and the interiority of the adult." These children represent their parents' sacrifice, they stand as a testament to their parents' faith, but they are not recognized themselves as "a child with his [or her] own feelings and perceptions." Children have not been vested with the autonomy to make decisions regarding their faith for themselves. While it is true that the state does not recognize children as autonomous citizens in many respects, it is interesting that Georgia law does allow for children to make, or at the very least, have a voice, in other important decisions regarding their lives where the stakes are not nearly so high. For instance, an unemancipated minor may file a petition to waive the parental consent requirement for abortions. Under Georgia law, the requirement of parental consent shall be waived if a

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[164] Ibid, 78, quoting Elaine Scarry, *The Body In Pain: The Making and Unmaking of the World*, (New York: Oxford University Press, 1985), 204-205.
[165] Ibid.

Juvenile Court judge determines that the unemancipated minor is "mature enough and well-enough informed to make the abortion decision in consultation with her physician, independently of the wishes of such minor's parent or guardian."[166] In addition, "in all custody cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live."[167] Furthermore, in all custody cases, a judge must consider the desires of a child who has reached the age of 11, though this preference is not controlling.[168] However, according to the letter of the law, a child of 17 years, 11 months, and 29 days has no choice in the decision of whether they wish to receive life-saving medical treatment if their parents opt to withhold such treatment on the basis of their religious beliefs. Whether the child agrees with these beliefs is irrelevant under Georgia law. To use Orsi's language, it is the "interiority" which the law protects, rather than the body of the child.

In *Miskimens*, this distinction was not lost on the court. In his decision, Judge Evans stated:

> In the instant case, it is not the *personal* religious practices of these parents which are sought to be regulated. An important line must be drawn between the right of an individual to practice his religion by refusing medical treatment for his *own* illness and that of a parent to practice his religion by refusing to obtain or permit medical treatment for another person, *i.e.*, his child. This court, as with any government entity, can neither know nor care whether someone who relies solely on faith healing *for his own affliction* is religiously or scripturally 'correct.' But the right to hold one's own religious beliefs, and to act in conformity with those beliefs, does not and cannot include the right to endanger the life or health of others, including his or her children.[169]

Citing *Prince v. Massachusetts,* the Court held "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of

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[166] O.C.G.A. §15-11-114(c)(1).
[167] O.C.G.A. §19-9-3(a)(5).
[168] O.C.G.A. §19-9-3(a)(6).
[169] *Miskimens*, 490 N.E.2d at 934.

their children before they have reached the full age and legal discretion when they can make that choice for themselves."[170]

However, religious practitioners do not see themselves as making martyrs of their children. They understand themselves to be protecting their children's spiritual interests, which, in their minds, outweigh the corporeal interests which the state is concerned with protecting.

Assumptions Regarding the Static Nature of Religious Belief

The Georgia spiritual exemptions for faith healing, vaccination requirements, and newborn testing appear to assume that religious beliefs are static, unchanging over the years, and from one generation to the next. However, in reality, religious belief is often transient in nature. Decisions based on an individual's religious belief today may not represent the decisions that they will make a year from now. The aforementioned President of CHILD, is a telling example of this. In 1977, Rita Swan and her husband, Doug, were practicing Christian Scientists, as they had been their whole lives. When their sixteen-month-old son Mathew fell ill, they treated him according to the tenets of their faith, with prayer alone. After two weeks of suffering, a Christian Science practitioner told Matthew's parents that he might have a broken bone. Christian Scientists are allowed to go to doctors for setting of broken bones, so the Swans took Matthew to a hospital, where his illness was diagnosed as Hemophilus Influenza Meningitis. He lived for a week in intensive care, before finally succumbing to his illness. The bacterial form of meningitis which killed Matthew Swan is nearly 100% fatal without antibiotic treatment and 95% curable with antibiotics. Today, it is also vaccine-preventable. Following Matthew's death, the Swans left the Christian Science church and later founded CHILD.[171]

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[170] Ibid., citing *Prince,* 321 U.S. at 170.

[171] Children's Healthcare is a Legal Duty, Inc, "Victims of Religion-Based Medical Neglect," accessed December 26, 2010, http://childrenshealthcare.org/?page_id=132#Matthew.

Rita Swan is now one of the leading advocates for a legal right to children's healthcare and actively lobbies against spiritual exemptions that permit parents to use prayer in lieu of medical treatment for their children. Swan's religious beliefs have clearly changed over the last 34 years, yet her son is not alive because of the religious beliefs she *once* held. Likewise, in Georgia, children are at risk based on the beliefs that their parents hold at the time they choose to withhold medical treatment. The law does not seem to contemplate that these beliefs may change, or that children should be protected to ensure that they are able to reach an age when they can choose these religious beliefs for themselves. In *Miskimens,* the court noted equal protection problems with the spiritual exemption for faith healing because it failed to protect all children to the same degree until "they have their own opportunity to make life's important religious decisions for themselves upon attainment of the age of reason." After all, the Court reasoned, "a child may someday choose to reject the most sincerely held of his parents' religious beliefs."[172] All other Georgia children, both religious and non-religious, are protected by the state until they reach an age when it is presumed that they can make these decisions for themselves. At that time, if they choose prayer over medical treatment, the State will not interfere with their decision.

In Georgia, children of certain religious parents are not protected to the same degree as other children. The transient nature of religious belief notwithstanding, the physical health and welfare of these children is placed secondary to the right of their parents to practice their religion. As a result, some of these children may never reach an age at which they can choose to accept or reject the faith of their parents.

[172]*Miskimens*, 490 N.E.2d at 935.

Historical Trends

Georgia statutes regulating the health and welfare of minor children have contained spiritual exemptions in various forms since 1957. At times, the language appears to protect only parents who are associated with certain kinds of institutional religious organizations. At other times, spiritual exemptions are offered to parents who may not necessarily claim loyalty to any particular religious institution, doctrine, or creed. No clear patterns are apparent from an examination of the historical record.

The vaccination exemption, the oldest of the statutory exemptions, at one time contained language that limited its application to parents who objected to the vaccination requirement because it was not in accordance with the teachings of a "recognized religious organization of which he or she is an adherent."[173] In 1964, it was amended to state that the parent or guardian must object to the vaccination requirement "on the grounds that such immunization conflicts with the religious tenets and practices of a well recognized religious denomination, whose teachings include reliance on prayer or spiritual means alone for healing, of which he is an adherent or member."[174] In 1968, the vaccination exemption was amended again, seemingly reverting back to the previous requirements, and granted an exemption to parents if the immunizations conflicted "with the religious tenets and practices of a recognized church or religious denomination of which said parent or guardian is an adherent member."[175]

In 1966, following the first vaccination amendment, the statute governing metabolic testing for newborns was enacted. It included an exemption which stated that the testing requirement would not apply to "any infant whose parents object thereto on the grounds that

[173] Ga. L. 1957, p. 455, §1.
[174] Ga. L. 1964, p. 499, §6.
[175] Ga. L. 1968, 1436, §1.

such tests conflict with their religious tenets and practices."[176] However, as noted by the second vaccination amendment of 1968, this was not the beginning of a trend towards accepting individual religious belief as sufficient to receive an exemption. The definition of a deprived child was amended to include a spiritual exemption in 1968 as well. "Necessary care" for a child's well-being was stated to include "treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof."[177] This statute was amended in 1971 to state that "no child who in good faith is being treated solely by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a 'deprived child.'"[178]

As of 1971, aside from the newborn testing exemption, all other exemptions required some kind of institutional affiliation. However, in 1973, the vaccination requirement was amended again, stating that the statute shall not apply if the immunization "conflicts with the religious beliefs of said parent or guardian."[179] Yet again, this does not indicate a precursor to changes in existing or future exemptions. In 1993, the definition of an abused child was amended to include a spiritual exemption with identical language to the exemption found in the definition of a deprived child ("no child who in good faith is being treated solely by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered

[176] Ga. L. 1966, p. 140, §1.
[177] Ga. L.1968, p. 1013, §1.
[178] Ga. L. 1971, p. 709 §1.
[179] Ga. L. 1973, p. 910, §2.

to be a 'deprived child'").[180] This same year, the statute governing child abuse and deprivation records also adopted this language.[181] Two years later, this identical language was incorporated into the statute governing the Child Abuse Central Registry.[182]

In 2004, the legislature considered including this language in the Child Endangerment Act, (which amended the offense of cruelty to children) but ultimately enacted the law without a spiritual exemption, indicating a possible intent to limit the scope of the spiritual treatment exemption. The passage of the statute which criminalized female genital mutilation was passed in 2005, and explicitly stated that religion would not serve as a defense. The intentional absence of a religious exemption in both of these statutes (one certainly more explicitly than the other), might lead one to think that the era of the spiritual exemption was coming to an end. However, in 2009, the legislature amended the spiritual exemption section of the statute governing the child abuse and deprivation records (amended in 1993 to include spiritual treatment exemption language) but did not take the opportunity to repeal or modify the exemption.

No clear historical trends can be discerned from the passage and/or amendments to statutes containing spiritual exemptions, except that explicit exemptions, at least in the context of child welfare law, appear to be limited to decisions involving medical treatment or prevention. However, this project did not include a thorough historical/political analysis which may shed more light on this issue. It is clear that Khalid Adem's arrest for allegedly circumcising his daughter initiated the development and eventual passage of the statute which criminalizes female circumcision and which explicitly denies a religious defense. However, no additional definitive connections were found between the cases and/or statutes that were discussed.

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[180] Ga. L. 1993, p. 1695, §1.
[181] Ga. L. 1993, p. 1712, §1.
[182] Ga. L. 1995, p. 937, §2.

CONCLUSIONS

In granting explicit statutory exemptions for spiritual healing, vaccination requirements, and newborn testing, the State of Georgia treats religious motivation as a rationale that stands apart from other forms of parental discretion. Religion is treated as different and unique, and religious parents as more worthy of parental autonomy. But in so doing, these exemptions result in legally defined religious orthodoxy. Applying these statutes requires judges to determine what counts as real religion, or what Winnifred Sullivan calls "legal religion."[183] Judicial enforcement of the right granted by these exemptions would require judges "to define which religious belief or practice is authentic, and therefore, legally significant."[184]

The potential result is inconsistent regulation of the same religiously motivated conduct. This inconsistency is apparent when looking at the language of the spiritual treatment exemption. A parent who belongs to a recognized church or religious denomination may use prayer in lieu of medical treatment while a parent who does not attend a particular institutional religious organization, but has an unwavering faith in the power of prayer to heal her child, is offered no exemption from the requirement that he or she seek medical care for their child.

The mere existence of these exemptions results in a state sanctioned determination that some religious conduct rises above the mandates of the law, while other religious conduct does not. Perhaps this would make sense if the regulations were based on public policy concerns regarding the protection of children, i.e. if the conduct allowed posed no risk to children while the prohibited conduct was inherently dangerous. Instead, the conduct which poses the most significant risk of harm, the omission of medical treatment, where death may be the end result, is permitted, while the removal of the clitoral prepuce, a procedure likened to a male circumcision

[183] Sullivan, "*Impossibility*," 4.
[184] Ibid., 10.

and which poses little risk to a child's long term health or sexual function, is explicitly outlawed. The resulting disparate treatment among religious individuals leads one to believe that these exemptions do little to foster religious freedom as a whole and more to privilege certain kinds of religion.

The exemption for spiritual treatment through prayer also results in the disparate treatment of children based on the beliefs of their parents. It places certain children at a greater risk of harm by effectively denying them the State guarantees of intervention and protection that are offered to all other children. The religious freedom of these parents is deemed superior to the State's interest in protecting *all* of its children. The implication that can be drawn is that the State values the rights of *these* parents to practice their faith more than it values the lives of *these* children.

When the law is silent, and determinations have been left up to judges to decide when religious motivation warrants an exemption from the legal standard of conduct set for all other citizens, judges have not typically accepted religion as a defense. This is particularly true when the belief or practice at issue is not connected with widely-held mainstream beliefs or practices. However, one fact that must be noted is that most of these cases that have made it to the courtroom and into the headlines have involved "fringe" religious practices, indicating the possibility that child welfare workers, police, district attorneys, and others "on the ground" may be choosing to make their own determinations as to whether or not religion should serve as a valid exemption to the law. When these cases do make it to court, they are still being heard by jurists who may very well let their own perceptions of religion influence their determinations.

Possible Rationale for These Exemptions

So why keep these exemptions when they appear to conflict with judicial decisions regarding religious conduct that poses a risk of harm to children, the consequences seem so contrary to public policy of protecting the health and welfare of children, and the results offend the fundamental democratic notion of equal treatment under the law? Scholar and author Marci Hamilton believes spiritual exemptions like the ones that exist in Georgia are the result of a romanticized idea of religious freedom on the part of the legislators, and that this conception of religious freedom does not consider carefully the potential consequences that may be associated with specific exemptions.[185] Hamilton calls this idea that religious individuals and institutions are always doing what is right a "hazardous myth."[186] Robert Orsi has also commented on this notion that religion is always benign. He reminds readers that religion was the motivating factor behind the civil rights movement, but also the mass suicide of Jonestown. "There is a quality to the religious imagination that blurs distinctions, obliterates boundaries…and this can, and often does, contribute to domestic violence, not peace. Religion is often enough cruel and dangerous, and the same impulses that result in a special kind of compassion, also lead to destruction, among the same people at the same time."[187]

Hamilton argues that it is for precisely this reason that religious entities should be subject to the same laws as other citizens, "unless they can prove that exempting them will cause no harm to others."[188] Ironically, the Georgia Constitution seems to agree. It states "the right of freedom of religion shall not be so construed as to excuse acts of licentiousness or justify

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[185] Hamilton, *God vs. the Gavel*, 3, 9.
[186] Ibid., 3.
[187] Robert Orsi, "Snakes Alive: Religious Studies Between Heaven and Earth," in *Between Heaven and Earth*, (Princeton, New Jersey: Princeton University Press, 2005): 191.
[188] Hamilton, *God vs. the Gavel*, 5. Hamilton does not explicitly define harm, but does state that "Most laws should govern religious conduct, with the exception being when the legislature has determined that immunizing religious conduct is consistent with public welfare, health, and safety." Hamilton, *God vs. the Gavel*, 8.

practices inconsistent with the peace and safety of the state."[189] Yet, spiritual exemptions which pose a risk of harm to children have been granted and maintained for the past 54 years.[190]

Hamilton also notes that part of the problem is a lack of public education surrounding religious exemptions. She notes that while "abortion has the attention of the American public, deaths of children arising from religiously motivated conduct have not galvanized the people…Few - other than those who benefit and the legislators that grant the benefit - know about or understand the exemptions or their consequences."[191] It may also be true that the legislators themselves are not fully educated about what the First Amendment requires. Rita Swan notes that state and federal legislators often agree to requests for spiritual exemptions based on vague assumptions that the First Amendment requires religious exemptions, despite the fact that courts have made clear this is not a constitutional right.[192]

Another reason for the continued existence of these exemptions may have less to do with religious tolerance and more to do with politics. While the majority of Georgia legislators and their constituents may not engage in faith healing themselves, to argue for a repeal of the existing spiritual exemptions would require legislators to publically call for limitations on the reliance on prayer. While their mainstream constituents may not rely solely on prayer to treat medical illness, many do believe in the power of prayer and the will of God.[193] Efforts to repeal the existing spiritual exemptions could be perceived as a threat to these fundamental ideals, whether or not one agrees with the specific theology protected by the exemptions. District attorneys, who

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[189] Ga. CONST. art. I, ¶ 4. There is a history of acts of licentiousness marking the limits of religious freedom in nineteenth century America. See Sarah Barringer Gordon, "Blasphemy and the Law of Religious Liberty in Nineteenth-Century America," American Quarterly 52:4 (2000): 682-719.
[190] The first spiritual exemption for the vaccination requirement was enacted in 1957. See Ga. L.1957, p.455, §1.
[191] Hamilton, *God vs. the Gavel*, 32.
[192] Swan, "On Statutes," 75-76, 78.
[193] According to a poll conducted by the Pew Forum on Religion and Public Life in 2007, 68% of Georgians reported that they pray at least once per day. See "How Religious Is Your State?" accessed on March 15, 2011, http://pewforum.org/How-Religious-Is-Your-State-.aspx.

are also elected officials in the State of Georgia, may also consider this possibility when deciding whether to charge a parent for the unintended results of their reliance on prayer alone, such as when a child suffers serious medical consequences or death. This may be one possible reason why there are so few cases on record that deal with this particular issue.

Drawing the Line

The line which Georgia draws between religious freedom and child abuse is a squiggly one. It includes some religious conduct but not other kinds. Its boundary does not appear to be guided by a singular public policy commitment or a dedication to consistency in the realm of religious freedom. It does appear to place on opposite sides those practices which are connected with widely held or accepted religious ideology and those which are not. The line is not always clearly drawn, but where it is, it unmistakably protects the conduct of some religious individuals while punishing others, and it places some children at a greater risk to suffer physical harm. These children's parents may believe that their welfare is dependent upon the will of God, but the will of the State certainly does not appear insignificant in determining their fate.

Georgia's use of spiritual exemptions to draw the line between child abuse and free exercise does not promote religious freedom as much as it creates religious norms and a hierarchy of religion as determined by legislators and judges. The tolerance that they offer to some necessitates intolerance to others. Religious freedom for *all kinds* of religious practitioners is impossible under these exemptions.

BIBLIOGRAPHY

Althaus, Frances. "Female Circumcision: Rite of Passage or Violation of Rights?" *International Family Planning Perspectives* 23, no. 3 (1997). Accessed December 28, 2010. http://www.guttmacher.org/pubs/journals/2313097.html#f1).

Asser, Seth M., and Rita Swan. "Child Fatalities From Religion-Motivated Medical Neglect." *Pediatrics* 101 no. 4 (1998): 625-629.

Associated Press, "Judge Takes 41 Children From 'Cult,'" *The Charleston Gazette*, March 29, 2001, accessed March 18, 2011, LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

Burnette, Jeremy."Crimes and Offenses." *Georgia State University Law Review*, 21, no.1 (2004). Accessed on February 11, 2011. http://law.gsu.edu/lawreview/index/archives/show?art= 21-1/21-1_CrimesOffenses_Burnette.htm.

"Charges Dropped in Gwinnett Exorcism." *wsbtv.com*, June 25, 2009. Accessed December 31, 2010. http://www.wsbtv.com/news/19856729/detail.html.

Children's Healthcare is a Legal Duty, Inc. "Victims of Religion-Based Medical Neglect." Accessed December 26, 2010, http://childrenshealthcare.org/?page_id=132#Matthew.

Christian Science."About Christian Science." Accessed January 4, 2011, http://christianscience.com/questions-and-answers/2007/10/18/your-questions-and-answers/

Christian Science. "Frequently Asked Questions About Christian Science." Accessed January 5, 2011. *http://christianscience.com/questions/questions-christian-science-faq/.*

Christian Science. "Healing."Accessed January 5, 2011. http://christianscience.com/spiritual-healing-practitioner.html.

Ciullo, Allison. "Prosecution Without Persecution: The Inability of Courts to Recognize Christian Science Spiritual Healing and A Shift Towards Legislative Action." *New England Law Review* 42 (2007): 155-194.

Eddy, Mary Baker. *Science and Health with Key to the Scriptures*. Boston: Published by the author, 1887.

Eisgruber, Christopher and Lawerence Sager. *Religious Freedom and the Constitution*. Cambridge, Massachusetts: Harvard University Press, 2007.

El Dareer, Asma. *Woman Why Do You Weep: Circumcision and Its Consequences*. London: Zed Press, 1992.

Finamore, Eric, P. "*Jefferson v. Griffin Spalding Hospital Authority:* Court-Ordered Surgery to Protect the Life of an Unborn Child." *American Journal of Law and Medicine* 9 (1983-1984): 83-101.

Gaithings, John T. "When Rights Clash: The Conflict Between a Parent's Right to Free Exercise of Religion Versus His Child's Right to Life." *Cumberland Law Review* 19 (1988/1989): 585-615.

Good, Joshua and Ron Martz. "Pastor, 5 Church Members Arrested in Child Beating." *Atlanta Journal-Constitution*, March 21, 2001. Accessed March 18, 2011. LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

Guinn, David. "A Test Case: Female Circumcision/Female Genital Mutilation." In *Faith on Trial: Communities of Faith, the First Amendment, and the Theory of Deep Diversity*, 179-194. Lanham, Maryland: Lexington Books, 2002.

Hamilton, Marci. *God vs. the Gavel; Religion and the Rule of Law*. Cambridge, UK: Cambridge University Press, 2005.

Hanzlik-Green, Christie. "Seeing Through the Illusion." *Christian Science Sentinel*, October 15, 2007. Accessed March 11, 2011. http://www.arautocienciacrista.com/articleprint.jhtml?ElementName-&ElementIC=/repositories/shocomarticle/Oct2007/1191341283.xml&ElementReturnPage=/tte/article_display.jhtml.

Harris, Chris, Melissa Dorris, John Taylor, and Laurie-Ann Fallon. *Working with Child Deprivation Cases in Georgia's Juvenile Courts: A Reference Manual for Department of Family and Children Services Case Managers.* Georgia Supreme Court Child Placement Project, 2004. Accessed January 10, 2011. http://childwelfare.net/resources/JuvenileCourtRefManuals/200405/DFCS_Manual1.pdf.

Hughes, Richard. "The Death of Children by Faith-Based Medical Neglect." *Journal of Law and Religion* 20, no.1 (2004-2005): 247-265.

Jehovah's Witness Online Bible, *New World Translation of the Holy Scriptures*. Accessed on December 22, 2010. http://watchtower.org/e/bible/

Judd, Alan. "Church Disputes Claims of Abuse." *Atlanta Journal-Constitution*, March 18, 2001. Accessed March 18, 2011. LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

Judd, Alan. "Judge Allows State to Take More Children In House of Prayer Case." *Atlanta Journal-Constitution*, May 7, 2001. Accessed March 18, 2011. LexisNexis http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

Kearney, Daniel. "Parental Failure to Provide Child with Medical Assistance Based on Religious Beliefs Causing Child's Death - Involuntary Manslaughter in Pennsylvania." *Dickinson Law Review*, 90 (1986): 861-890.

Laycock, Douglas. "Formal, Substantive, and Disaggregated Neutrality toward Religion." *DePaul Law Review* 39 (1990): 993-1019.

Masuzawa, Tomoko. "Culture." In *Critical Terms for Religious Studies*, ed. Mark C. Taylor, 70-93. Chicago: University of Chicago Press, 1998.

Matz, Steven J., Dorothy V. Murphy, Chris Harris, Melissa Dorirs, and Laurie-Ann Fallon. *Working with Child Deprivation Cases in Georgia's Juvenile Courts: A Reference Manual for Attorney and Volunteer Guardian Ad Litems.* Georgia Supreme Court Child Placement Project, 2004. Accessed January 10, 2011. http://childwelfare.net/resources/ JuvenileCourtRefManuals/200405/GAL_Manual1.html.

Miller, Jill Young. "House of Prayer's Preacher Leaves Jail." *Atlanta Journal-Constitution*, January 26, 2003. Accessed March 18, 2011. LexisNexis, http://ezproxy.gsu.edu:2650 /hottopics/lnacademic/.

"NewsChannel 5 Investigates: Firm Beliefs (Part I)" *Religion News Blog*, February 14, 2004, accessed December 31, 2010, http://www.religionnewsblog.com/6064/newschannel-5-investigates-firm-beliefs-part-1.

Oliver, Mary Margaret and Willie Levi Crossley. "Survey of Child Endangerment Statutes Nationally and Analysis of Georgia Legislative Opportunity." Childwelfare.net, The Barton Child Law and Policy Center of Emory University Law School. Accessed on December 22, 2010. http://childwelfare.net/activities/legislative2002/endangerment_gbj.html.

Orsi, Robert. "Material Children: Making God's Presence Real for Catholic Boys and Girls and the Adults in Relation to Them." In *Between Heaven and Earth*, 73-109. Princeton, New Jersey: Princeton University Press, 2005.

Orsi, Robert. "Snakes Alive: Religious Studies Between Heaven and Earth." In *Between Heaven and Earth*, 177-204. Princeton, New Jersey: Princeton University Press, 2005.

Park, Madison. "Parents clash with state, kid in medical decisions." *CNN*, May 27, 2009. Accessed December 23, 2010. http://articles.cnn.com/2009-05-27/health/parents.medical custody_1_chemotherapy-parents-clash-gasoline-fire?_s=PM:HEALTH.

Phinney, Allison W., Jr. "Why Does Christian Science Treatment Work and How Does it Heal." *Christian Science Sentinel*, October 11, 2007. Accessed January 5, 2011. http://christianscience.com/articles-sentinel/2007/10/11/why-does-christian-science-treatment-heal-and-how-does-it-work/.

Scarry, Elaine. *The Body In Pain: The Making and Unmaking of the World*. New York: Oxford University Press, 1985.

Schoepflin, Rennie D. *Christian Science on Trial*. Baltimore, MD: John Hopkins University Press, 2003.

Shweder, Richard. "What About Female Genital Mutilation? And Why Understanding Culture Matters in the First Place." In *Engaging Cultural Differences*, ed. Richard Shweder, Martha Minow, and Hazel Rose Markus, 216-251. New York: Russel Sage Foundation, 2002.

Shirek, Jon. "Parents Convicted on Dead Son's Birthday." *11Alive.com*, February 16, 2007. Accessed December 31, 2010. http://www.11alive.com/news/article_news.aspx?storyid =92302&provider=top.

Simmons, Andria and Chip Towers. "Judge rules on side of religious rights in exorcism case. Charges dropped against mother restraining, performing rites on psychotic teenage son." *Atlanta Journal Constitution*, June 25, 2009. Accessed March 3, 2011. http://www.ajc.com/services/content/metro/gwinnett/stories/2009/06/25/exorcism_charges_ dropped.html.

Smith, Edward Eagan. "The Criminalization of Belief: When Free Exercise Isn't." *Hastings Law Journal* 42 (1991): 1491-1526.

Steffen, Charles G. *Mutilating Khalid: The Symbolic Politics of Female Genital Cutting."* Trenton, New Jersey: The Red Sea Press, 2010.

Sullivan, Winnifred Fallers. *The Impossibility of Religious Freedom*. Princeton, New Jersey: Princeton University Press, 2005.

Sugarman, David E., Albert E. Barskey, Maryann G. Delea, Ismael R. Ortega-Sanchez, Daoling Bi, Kimberly J. Ralston, Paul A. Rota, Karen Waters-Montijo, and Charles W. LeBaron. "Measles Outbreak in a Highly Vaccinated Population, San Diego 2008: Role of the Intentionally Undervaccinated." *Pediatrics* 125 (2010); 747-755.

Swan, Rita. "On Statutes Depriving a Class of Children of Rights to Medical Care: Can This Discrimination Be Litigated?" *Quinnipiac Health Law Journal* 2 (1998): 73-95.

Swan, Rita. "Georgia Passes Endangerment Bill." *Children's Healthcare is a Legal Duty Newsletter* 2 (2004): 8-9. Accessed on December 22, 2010. http://childrenshealthcare.org/wp-content/uploads/2010/10/2004-02finallayout.pdf.

Swan, Rita "Parents Get Life Plus Thirty Years in Fatal Beating," *Children's Healthcare is a Legal Duty Newsletter, 1 (2007):1-4. Accessed December 31, 2010, http://childrenshealthcare.org/wp-content/uploads/2010/10/2007-01finallayout.pdf.*

Tatel, Stepahine. "A Pox on You." *Slate Magazine*, October 20, 2009. Accessed January 5, 2011. http://www.slate.com/?reload=true.

Towers, Chip. "Charges Dropped against Mother Restraining, Performing Rites on Psychotic Teenage Son." *Atlanta Journal-Constitution*, June 25, 2009. Accessed December 31, 2010. http://www.americanfreethought.com/wordpress/2009/06/25/exorcistchild-abuser-scot-free-in-ga/.

United Press International, "Preganant Woman Believes Prayers Obviated Caesarean," *New York Times*, January 26, 1981. Accessed on December 22, 2010. http://www.nytimes.com /1981/01/26/us/around-the-nation-pregnant-woman-believes-prayers-obviated-caesarean.html.

Visser, Steve and Jill Young Miller. "Church Members Sent to Jail for Whipping Kids; House of Prayer Pastor Says He'll Follow the Bible." *Atlanta Journal-Constitution*, October 18, 2002. Accessed March 18, 2011. LexisNexis, http://ezproxy.gsu.edu:2650/hottopics/lnacademic/.

COURT CASES:

Bendiburg v. Dempsey, 909 F.2d 463 (11th Cir. 1990)

Cantwell v. Connecticut, 310 U.S. 296 (1940)

Congregation Etz v. Chaim v. City of Los Angeles, 371 F.3d 1122 (2004)

Employment Division, Human Resources Department of Oregon v. Smith, 494 U.S. 872 (1990)

Goldman v. Weinberger, 475 U.S. 503 (1986)

Hunt v. State, 180 Ga. App. 103 (1986)

In the Interest of L.O.L, Dekalb County Juvenile Court, Georgia (April 19, 1984) (unpublished)

Jefferson v. Griffin Spalding County Hospital, 247 Ga. 86 (1981)

LeGallienre v. State, 348 S.E.2d. 471 (1986)

Lemon v. Kurtzman, 403 U.S. 602 (1971)

Prince v. Massachusetts, 321 U.S. 158 (1944)

Reynolds v. United States, 98 U.S. 145 (1878)

Roberts v. Ravenwood Church of Wicca, 292 S.E.2d 657(1982)

Sherbert v. Verner, 374 U.S. 398 (1963)

State v. Adem, Gwinnett County Superior Court, Georgia (2006) (unpublished)

State v. Long, Chattooga County District Court, Georgia (1984) (unpublished)

State v. Miskimens, 490 N.E.2d 931, 934, (Ohio Ct.Com.Pl. 1984)

Waltz v. Tax Commission, 397 U.S. 664 (1970)