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## **Belief vs. a nation of laws WHEN DOES GOVERNMENT STEP IN?**

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RICHMOND--

The First Amendment is supposed to protect the free exercise of religion, but two recent cases raise the question of whether some beliefs are better protected than others.

On May 29, the Texas Supreme Court ruled that the State Family and Protective Services had improperly seized 150 children from the Fundamentalist Latter Day Saints' Yearning for Zion Ranch.

Family and Protective Services cited the religious group's belief in polygamy and underage marriage as an immediate threat to the safety of all the children. Busloads of children were removed from their parents and relocated to temporary foster homes and shelters across the state.

The media for weeks had focused on the compound, the polygamous FLDS practices, and the 19th-century attire of the women. After the raid, photos of crying mothers and allegations of widespread sexual abuse made the story even more compelling.

A highly regarded First Amendment scholar and advocate, Marci Hamilton, declared in her weekly column that "the evidence of criminal behavior was so plainly apparent that . . . no self-respecting child-protective agency could have departed from that compound without taking all of the children away as well." She concluded that the criminal behavior swept away all First Amendment concerns that government must not abridge the free exercise of religion.

Statutory rape of a minor is a serious criminal offense, and, in this instance, it is alleged that there could even be generations of victims. Polygamy is also illegal in Texas, but the law is rarely enforced.

Even criminals, though, are entitled to due process of law.

### **BELIEF EXEMPTION**

In a second case, another parent-child drama passed without the same media attention. On Feb. 1, the San Diego Health Department was notified that an unvaccinated 7-year-old child had contracted measles in Switzerland. That infected but asymptomatic child had attended school and spread measles to eight other unvaccinated children and infants. Those infected children then passed the disease to another three children.

When the outbreak was discovered, public health officials imposed a two-week quarantine on all unvaccinated children and infants at the school (50 in all).

The 7-year-old had not been immunized because the parents were granted a personal-belief exemption from state vaccination requirements.

In a 1990 measles outbreak in California, 4,000 people contracted the disease and three children died. No deaths were reported during the 2008 outbreak, but an infant who contracted measles was hospitalized.

It is estimated that currently 5 percent to 15 percent of California parents obtain this exemption to bypass immunization for their children. Nineteen states offer such exemptions.

Personal-belief exemptions were adopted originally to protect religious practitioners like some Amish, who refuse all vaccinations, and Christian Scientists, who reject other medical procedures like blood transfusions. The statutes codified what was established already in First Amendment case law, so that religious believers could obtain medical exemptions without having to go to court.

Since their approval, however, many states have broadened personal-belief exemptions to apply whenever the parent cites any belief that runs counter to public health requirements. Religious belief is not necessary to obtain a vaccination exemption; personal opinion is sufficient.

#### ADULTS VS. CHILDREN?

The argument against vaccination is rejected by the vast majority of medical professionals and public health officials, and, yet, these beliefs are granted exemptions in many states.

In both the Texas and California cases, the health and welfare of the children were at stake while the adults sought to live out their beliefs.

Lack of immunization is a threat to the health and safety of minors and to the community at large. Because infants cannot be immunized until they are 12 months old, all infants in the vicinity of an infected child are at serious risk of contracting the disease.

There is little doubt that statutory rape and a pervasive atmosphere that condones sex with minors are harmful to children, but this allegation has yet to be proved.

The two cases differ most in the level of state deference that the parent's belief receives. In California, a belief that is neither religious nor scientific is afforded First Amendment protection through state statute even though it places young lives in jeopardy. In Texas, a religious belief, whose harmful effects on minors have yet to be determined, is waved aside, while the state itself takes action that may be harmful to the minors.

#### REMEMBER WACO?

There are haunting echoes here of the Waco, Texas, case a few years ago, where rumors of sex abuse prompted the Justice Department's aggressive siege that concluded with the group's self-immolation. In hindsight, this tragedy and loss of life are thought to have been avoidable entirely.

Today's cases add an element of religious discrimination to the sinking feeling of déjà vu. One group is a

secretive, sectarian group that lives in an isolated community in rural Texas. The other is made up of urban Californians who are affluent enough to afford family trips to Switzerland.

As a nation, we are mesmerized by the FLDS drama, while we are indifferent to this accommodation of a middle-class anti-medicine stance that may have just as many victims.

We do a great disservice to our Constitution and to the principle of freedom of religion when we stretch the law to create rights for some and abridge the law to dismiss the religious beliefs of others. We are not constitutionally obligated to approve of, or even to permit, particular beliefs, but we must give them equal treatment under the law.

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