

CIRCUMCISION, CHILD FATALITIES, AND CONSTITUTIONAL FREE EXERCISE IN NEW YORK

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Parents' rights include considerable leeway when raising children, and the state cannot substitute its judgment for parental decisions. However, under the "best interest of the child" standard, the State will intervene swiftly when children's health is at stake, even at the risk of alienating parents or limiting these parents' authority.

One particular group of children, however, seems to slip through the cracks. Male infants of Orthodox Jewish families, who practice a form of ritual circumcision called *metzizah b'peh* ("MBP"), are not included in the context of child abuse. During the practice, the *mohel*, a ritual circumciser, removes an infant's foreskin, and then applies oral suction to clean the wound with his mouth. Even though religious and secular authorities have failed to intervene, the deaths of several infants who contracted herpes from the *mohelim* performing the procedure has brought the practice into the public eye as a child welfare and safety issue.

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This Article addresses the MBP controversy in New York from 2004 to the present day, contextualizing both the practice itself and the State's response to it in Free Exercise jurisprudence, faith healing exemptions to child abuse and neglect laws in the United States, and New York State criminal law. This Article suggests that New York's informed consent regime will both fail to protect infants and fail to withstand strict scrutiny. Further, this Article argues that the practice is already criminal under New York penal law and discusses possible explanations for why New York has chosen to fight the battle over MBP in the public health arena. Finally, this Article evaluates other ways to conceptualize and effectuate the protection of children in communities practicing MBP.