1-1-1985

California Penal Code's Child Neglect/Abandonment Statutes: Religious Freedom or Religious Persecution?

Jenny Brown

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation
Available at: http://digitalcommons.law.scu.edu/lawreview/vol25/iss3/5

This Comment is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.
CALIFORNIA PENAL CODE'S CHILD NEGLECT/ABANDONMENT STATUTES: RELIGIOUS FREEDOM OR RELIGIOUS PERSECUTION?

I. INTRODUCTION

Religious freedom—the freedom to believe and practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society.¹

Religious freedom is a precious commodity in American society. The United States owes its existence to people who sought to exercise religion without governmental restraint. But just as religious freedom is an integral part of America's history and foundation, so too is governmental interference with religious freedom.² Society's interest in maintaining public safety, peace, and order continually competes with American constitutional religious exercise guarantees. Although courts have attempted to harmonize these interests, the tension between them continues to require our judicial system to resolve conflicts of grave importance to American society.

Society's increasing concern over the welfare of children has renewed the tension between governmental regulation and religious freedom. In People v. Arnold,³ a mother was convicted of manslaughter when she failed to provide medical treatment for her daughter. The mother was a member of the Church of the First Born, a religious group which believes in faith healing.⁴ She attempted to heal the child spiritually because of her religious beliefs, and the child subsequently died.⁵

© 1985 by Jenny Brown.
2. See, e.g., Bob Jones Univ. v. United States, 461 U.S. 574 (1983) (denied tax exemption to religious University because of its discriminatory admissions policy which was a product of University officials' religious beliefs); Prince v. Massachusetts, 321 U.S. 158 (1944) (upheld statute preventing children from selling in public places even though a Jehovah's Witness believed that it was her religious duty to do so); Reynolds v. United States, 98 U.S. 145 (1878) (criminalized the Mormon practice of bigamy).
4. Id. at 442 n.1, 426 P.2d at 517 n.1, 58 Cal. Rptr. at 117 n.1.
5. Id. The child initially experienced stomach pains and vomiting. Over the next two weeks, the child's condition deteriorated. The mother never called a doctor or provided medicine. Instead, she called members of the Church of the First Born who came to the home and prayed for the little girl.
The *Arnold* case focused attention on California Penal Code section 270, which makes it a misdemeanor for a parent to willfully fail to furnish a minor “necessities” including medical or other remedial care. In the aftermath of *Arnold*, the California Legislature recognized a need to protect both a child’s welfare and an individual’s religious freedom. The Legislature passed an exemption to California Penal Code section 270 which allows parents to provide spiritual prayer for children in lieu of statutorily required medical treatment without sustaining criminal liability.

The exemption under section 270 attempts to protect religious freedom while serving the state’s interest in preventing child neglect. However, despite the section 270 exemption, District Attorneys continue to prosecute parents under California Penal Code section 273a when parents choose to treat their children by spiritual means. California Penal Code section 273a makes any person having care or custody of a child guilty of a misdemeanor or felony if that person willfully endangers a child or places a child in a situation which may endanger the child’s health. This prosecution leads

---

6. CAL. PENAL CODE § 270 (West 1970 & Supp. 1985), provides in relevant part: “If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor . . . .”

7. CAL. PENAL CODE § 270 (West Supp. 1985) provides:
   If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute ‘other remedial care’ as used in this section.

Id.

8. CAL. PENAL CODE § 273a (West 1970 & Supp. 1985) provides in relevant part:
   Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer . . . or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3, or 4 years.

   Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer . . . or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

Id.


SPIRITUAL HEALING

1985]

to confusion as to what legal effect should be given to the section 270 religious exemption. In light of the religious freedoms involved and the state's interest in protecting the welfare of its citizens, California courts need to resolve the inherent uncertainty of these two statutes.

This comment will examine the tension between California Penal Code sections 270 and 273a and will suggest that both religious freedom and child welfare can be protected by giving full force to the section 270 exemption. Properly applying the exemption to those who qualify will remove fears of violating federal and state religious freedom guarantees. However, in order to protect religious liberties, the section 270 exemption must withstand federal and state constitutional equal protection guarantees which prohibit the government from unlawfully discriminating between similarly situated groups. The exemption might be found to violate equal protection if its reference to a "recognized church or religious denomination" is construed too narrowly.

The fifth section of this comment will demonstrate that broad, objective criteria should be used to interpret the phrase "recognized church or religious denomination," in order to protect the exemption from constitutional equal protection attack. Additionally, the broad, objective criteria set forth will assist courts in distinguishing between spuriously held religious beliefs and sincere claims. This criteria will not only protect religious liberty, but also will protect child welfare. The final section of the comment will demonstrate that a broadly interpreted section 270 exemption can survive both California and United States constitutional establishment clauses challenges.

This broad interpretation will coincide with the California Legislature's demonstrated desire to protect individual religious freedom while serving the state's interest in preventing child neglect. California courts can and should enforce the religious exemption under Penal Code section 270, thereby carrying out legislative intent and ensuring religious freedom to the greatest extent possible.

II. STATE AND FEDERAL RELIGIOUS GUARANTEES

The first amendment to the United States Constitution prohibits Congress from establishing religion or from prohibiting the free exercise thereof.11 Despite the sanctity with which courts and American society regard first amendment guarantees, they are not absolute. The first major free exercise of religion case illustrating such limita-

tions, Reynolds v. United States, affirmed a federal law criminalizing bigamy although a Morman claimed polygamy was his religious duty. The Court held that while the first amendment absolutely protects religious beliefs, conduct or actions may still be subject to regulation.

Since Reynolds, the United States Supreme Court has consistently held that the free exercise of religion may be subject to limitation if it appears the state has compelling reasons which justify such limitation. The Court has found justification for religious regulation when the conduct or actions of those exercising religious freedom have posed some substantial threat to public safety, peace, or order. Religious exercise which may threaten the health or safety of children constitutes a threat to public safety, and therefore may be subject to regulation. In that instance, the state runs the risk of illegally regulating religious beliefs.

As long as the rights guaranteed by the California Constitution provide equal or greater protection than those guaranteed by the federal Constitution, California courts will interpret and enforce those rights. The California Constitution forbids all laws that involve establishing a religion.

This means that religion shall be freely exercised and enjoyed "without discrimination or preference." Therefore, the California Supreme Court may interpret the state right of religious freedom more broadly than the federal guarantee, because preference is forbidden even when there is no discrimination.

California's treatment of religion is significant because if the section 270 exemption is viewed as preferring one religion over another, regardless of the purpose of the preference, the exemption will

12. 98 U.S. 145 (1878).
13. Id. at 166.
14. Prince v. Massachusetts, 321 U.S. 158, 168 (1944). This case prohibited children from selling in public places despite the fact that particular religious beliefs require proselytizing. The Court stated, "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." 321 U.S. 166-67.
15. See supra note 2.
SPIRITUAL HEALING

violate the California Constitution. The tension between California Penal Code section 273a and the section 270 exemption must be examined and resolved against this constitutional background.

III. STATUTORY INTERPRETATION

A. Ambiguity Between Section 270 and Section 273a

It is important to underscore the differences and similarities between California Penal Code sections 273a and 270. Section 273a was enacted in 1905 under the penal code chapter concerning child abandonment and neglect. Section 273a creates misdemeanor and felony penalties for anyone who willfully causes or permits the person or health of a child to be injured or endangered. Section 270 was enacted under the same penal code chapter. It creates misdemeanor penalties for any parent who willfully omits to furnish necessities for a child, including medical care or other remedial care. Both statutes exist to protect the health and safety of children. In 1976, the California Legislature amended section 270 to clarify the meaning of “other remedial care.” The amendment states that treatment by prayer in accordance with the tenets of a recognized church or religious denomination satisfies the “other remedial care” requirement.

In other words, one who treats a child by spiritual means because of religious beliefs satisfies the section 270 requirements and is absolved from liability if the child experiences any injury. Despite a person’s exemption under section 270, the question remains whether or not the person is still liable for felony or misdemeanor child endangering under section 273a.

When two statutes within a penal code chapter produce differing results, it must be decided which statute controls. The California Legislature enacted the Child Abandonment and Neglect Chapter of the California Penal Code to protect the health and safety of children. The judiciary must not ignore any part of this chapter because doing so would disregard the legislative intent of the stat-

21. See supra note 8.
22. Id.
23. See supra note 6.
24. See supra note 7.
25. Id.
26. See generally In re Williamson, 43 Cal. 2d 651, 653-54, 276 P.2d 593, 594 (1954) (statutory punishment for conspiracy to violate a specific statute conflicted with punishment under the general conspiracy provision of that statute).
27. See supra text accompanying notes 20-21.
utes. The solution to the conflict lies in determining the purpose behind the legislative enactments, and in deciding how each statute should be applied in light of the other.

B. When Statutory Application is Uncertain, the Statute Containing Specific Provisions Should Control

In construing a statute, courts should ascertain the intent of the Legislature so as to effectuate the purpose of the law and should not change the clear words of a statute to accomplish a purpose that does not appear on the face of the statute or from its legislative history. Words must be construed in context and statutes must be harmonized both internally and with each other to the extent possible.28

California courts consistently hold that statutes should be harmonized and that clauses should be read with direct reference to those which relate to the same subject.29 Those provisions which relate to the same subject or have the same general purpose should be interpreted to constitute one law.30 When a specific provision and a general provision relate to the same subject, the specific provision will govern.31 This is true even though the general provision, standing alone, is broad enough to encompass the subject to which the more specific provision applies.32 This analysis was utilized by the court in People v. Swann.33 In this case, involving the fraudulent use of credit cards, the court applied misdemeanor provisions governing credit cards instead of felony forgery provisions. The court found that the state could not prosecute under the more general felony statute if the conduct coincided with that prohibited by a more specific statute.34 Penal Code section 273a is a general child abuse statute


32. Id.


34. Id. at 449, 28 Cal. Rptr. at 831.
mandating felony or misdemeanor penalties. It is a general statute because it prohibits any conduct thought to endanger children. Therefore, Penal Code section 270, the more specific statute, should govern in cases when the two conflict.\(^{35}\)

Furthermore, the California Supreme Court has held that a statutory exemption which provides a defense for one crime may apply to another crime if the defense is consistent with legislative intent. This applies whether or not the defense is expressly set out in the statute defining the second crime.\(^{36}\)

Cases discussing statutory interpretation seek to discover the legislative intent behind a statute in order to properly interpret a statute in accordance with that intent. Consequently, the California Legislature’s intent in passing section 273a and the section 270 exemption must be examined in order to resolve the tension between these statutes.

C. When Statutory Application is Uncertain, Deference Should be Given to Legislative Intent

1. Legislative Intent in Enacting Section 270

In 1925, the California Legislature enacted the Section 270 exemption to protect religious freedom. The legislative history of the statute demonstrates that “the other remedial care” exemption was added in direct response to manslaughter prosecutions initiated by the Los Angeles District Attorney in 1920.\(^{37}\) In reaction to *People v. Arnold*, the 1976 amendment to the exemption specifically authorizes that spiritual treatment satisfies the “other remedial care” requirements.\(^{38}\) Remarks submitted to the Senate Committee on the Judiciary for consideration of the section 270 amendment indicated that the *Arnold* case might undermine the legislative desire to protect child welfare and religious freedom.\(^{39}\) The Assembly Committee

\(^{35}\) See *supra* text accompanying notes 31-33.

\(^{36}\) *People v. Jenkins*, 28 Cal. 3d 494, 503-09, 620 P.2d 587, 592-96, 170 Cal. Rptr. 1, 6-10 (1980) (allowed prosecutions for AFDC fraud to proceed either under the Welfare and Institutions Code or under the general perjury statute in the Penal Code).


\(^{39}\) The proponents of the exemption amendment stated that the purpose of the bill is to clarify what has been a long standing policy of the State. This policy is not to treat parents who are legitimately practicing their religious beliefs, and who thereby do not provide specified medical treatment for their child, as violating the law. The proponents of the exemption amendment feared the *Arnold* case might undermine this longstanding policy. *Cal. Senate*
on Criminal Justice expressed similar concerns.\textsuperscript{40} The main objection was that "if treatment by prayer was to be recognized in part, the parents should not be liable for the results of using a permitted mode of healing."\textsuperscript{41}

This legislative background provides proof that the Legislature wanted to ensure that parents would not be prosecuted for practicing their religion and for treating their children by spiritual means in accordance with section 270. The United States Supreme Court holds that while penal statutes should be strictly construed, they are not to be so strictly construed that they defeat obvious legislative intent.\textsuperscript{42} It is difficult, therefore, to see how one could properly be prosecuted under section 273a if he or she falls within the 270 exemption. Furthermore, the California Supreme Court holds that when penal statutes are at issue, any ambiguity or inconsistency between provisions calls for the construction which is most favorable to the defendant.\textsuperscript{43}

2. Legislative Intent in Enacting Section 273a

The debates surrounding the enactment of Section 273a were not recorded, but the underlying purpose of the statute can be gleaned from the language of the statute. The Legislature acted to ensure that those with custody or care of children would not willfully cause or permit a child to be placed in a situation which would endanger his or her health. Children have always been provided special legal protection.\textsuperscript{44} Similarly, section 270 was originally enacted to prevent child neglect, and only later was it amended to include its current exemption. The Legislature wanted to make sure that children who are dependent upon others for "necessities" actually receive those necessities. The legislative intent underlying both Penal Code statutes is to protect the welfare of children. Subsequently, the Legislature recognized the need to protect religious liberty as well. Therefore, section 270 was amended to include its current exemption. Given the singular purpose behind each statute, it seems un-
likely that the Legislature wanted to protect religious freedom under one statute but not under the other.

IV. **Section 273a Should Be Read to Include the Section 270 Exemption**

The legislative goals of the statutes coupled with the California case law requirement that statutes be construed in accordance with legislative intent, leads to the conclusion that the exemption should be given full effect. This comment suggests that the courts should therefore interpret section 270 in conjunction with section 273a. The section 270 exemption would thereby absolve individuals from liability under both statutes. Such analysis fulfills legislative intent and judicial demand for harmonious and consistent interpretations of statutes.

Giving section 270, the more specific statute, full effect also complies with the California Supreme Court’s view that penal statute interpretation should be applied most favorably to the defendant. Legislative intent is then served because each statute is given effect.

This statutory interpretation alone resolves the dilemma between the Penal Code section 270 exemption and section 273a, yet the gravity of the interests involved necessitates a discussion of the constitutional implications. Should a court fail to apply the section 270 exemption to those falling within its provisions and instead allow prosecution under section 273a, federal and state religious liberties will be violated.

A. **Religious Freedom and the Belief/Conduct Distinction**

The first amendment embodies two freedoms, the freedom to believe and the freedom to act. While the first freedom must not be abridged, the state may abridge the freedom to act. The difficulty

45. See supra text accompanying notes 37-42.
46. See supra text accompanying notes 28-30.
48. Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940) (Jehovah's Witnesses were arrested and charged with breaching the peace for playing an anti-Catholic phonograph record in a predominantly Catholic neighborhood. The Court reversed the conviction because the statute was not narrowly defined and did not proscribe conduct which was a clear and present danger to a substantial state interest).

Freedom of conscience and freedom to adhere to such worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the
lies in establishing where belief ends and conduct begins, for the state can argue that prosecuting parents or guardians for treating their children spiritually merely regulates religious conduct, not religious beliefs. But as the Supreme Court noted in Wisconsin v. Yoder, these cases are not made easier simply by convicting the defendants for their religious conduct and not for their religious beliefs. "[I]n this context belief and action cannot be neatly confined in logic-tight compartments."50

Religious belief and religious conduct often are inseparable. Prohibiting or regulating conduct which is the manifestation of a belief may suppress that belief. The state then burdens or punishes action which is a mere extension of a religious belief. Criminal law has long recognized that one cannot be prosecuted for mere thoughts, but that thoughts acted upon may be punishable.51 Yet, when the facts of a case involve religious beliefs which are acted upon, comparisons to other aspects of the law become virtually impossible because of the high regard the law places on religious liberties. The law places such high regard on religious liberties because this country owes its existence to people who came here to escape religious persecution and religious authoritarianism. Consequently, courts have refused to treat the belief/conduct distinction lightly.52

While prosecution under 273a may only be an attempt to control religious conduct, such prosecution will result in controlling religious beliefs. Sherbert v. Verner illustrates this dilemma. Sherbert involved a denial of unemployment benefits to a woman whose religious beliefs precluded her from working on Saturdays. The state found her ineligible to receive benefits because under the statute's terms she had failed without good cause to accept suitable work when it was offered.4 The Court refuted state arguments that no denial of constitutional liberties had occurred because its action did not "in any way prevent [the claimant] in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience."5 The Court instead found that the government was forcing the employee to choose between practicing her

---

50. Id. at 220.
52. See infra text accompanying notes 53-56.
54. Id. at 399-401.
55. Id. at 401.
religion and receiving benefits by accepting work. The Court realized that this coercive measure punished the free exercise of constitutional liberties.\textsuperscript{56}

The Court held that by proscribing the claimant's conduct, the state was proscribing the claimant's religious beliefs. Similarly, prosecuting a parent or guardian for treating a child by spiritual means in accordance with religious beliefs violates that individual's constitutional liberties.\textsuperscript{57} The threatened prosecution is the state's attempt to proscribe the individual's ability to adhere to a primary tenet of his or her religious belief.

Considering the subtleties of the belief/conduct distinction, the state violates an individual's right to free exercise by prosecuting the individual under California Penal Code section 273a. California's prosecution of these cases may punish actions which are manifestations of a sincere religious belief. This threat becomes more serious considering that the Penal Code section 270 exemption exists to protect religious beliefs. If courts allow religious belief protections to erode, the religious freedom of many California citizens could be destroyed.

\section*{B. Violations of Religious Freedom are Justified Only by a Compelling State Interest}

If California is found to have violated constitutional religious freedom guarantees, the state then has the opportunity to justify the violation. Such a violation is constitutional only when a compelling state interest exists which overrides religious freedom protections.\textsuperscript{58} A child's health and safety is a compelling state interest,\textsuperscript{59} particularly when a life or death situation is presented. The United States Supreme Court also requires the state to show it is using the least restrictive alternative available when it burdens an individual's religious exercise.\textsuperscript{60} Because California courts will be determining whether or not religious liberties are violated by prosecuting people

\textsuperscript{56} Id. at 404-06.

\textsuperscript{57} Laurie Walker, the defendant in the pending \textit{Walker} case, is a Christian Scientist. California is prosecuting Walker for using spiritual means to heal her child, which, if the state prevails, would proscribe her from adhering to this primary tenet of her religion. \textit{See, e.g., M.B. EDDY, SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES (Boston: Trustees Under the Will of Mary Baker G. Eddy, 1984)} (central to the Christian Science religion is the belief that permanent healing can only occur through spiritual means and that Christian Scientists should continually strive to demonstrate this healing method).


\textsuperscript{59} \textit{See supra} note 14.

\textsuperscript{60} \textit{Sherbert}, 374 U.S. at 404.
under section 273a, it is essential to examine the federal and California requirements which would justify such a violation.

California and federal courts apply the same test to determine the validity of a law which inhibits religious exercise. The leading California case on the issue is *People v. Woody.* Woody involved a group of Navajo Indians who were convicted for unauthorized possession of peyote. The California Supreme Court reversed the convictions under a *Sherbert* analysis because it found the prohibition of peyote possession inhibited the defendants' religious practice. Like the *Sherbert* Court, the California court reached this conclusion making no distinction between religious belief and religious conduct. The *Woody* court simply found that prohibiting peyote use struck at the theological core of the group's religion.

Upon establishing the religious liberty infringement, the *Woody* court considered whether the state could justify the infringement. The court found no justifiable compelling state interest in the prohibition and little merit in the argument that California could no longer effectively enforce narcotic laws if courts create exceptions to the laws. Additionally, the California court applied the *Sherbert* guidelines and held that even if the evidence supported the threat that narcotics laws could not be enforced, the state would still have to show that no other form of regulation could accomplish that state objective without burdening first amendment rights.

Following the United States Supreme Court guidelines, the *Woody* court first established that religious liberty was inhibited. The court then looked to see if a compelling state interest justified the inhibition, and if so, whether the burden on religion was the least restrictive burden given the state's interest.

Applying this analysis to the Penal Code problem, California must show that prosecuting an individual for spiritual treatment of a child under section 273a serves California's compelling interest and is the least restrictive alternative to protect that interest. California will have great difficulty meeting this test unless it applies the section 270 exemption.

California will have no difficulty in showing that protecting a child's health and safety is a compelling interest and that Penal Code section 273a serves this interest. This is because *Reynolds v. United*
States demonstrates that a child's health and safety is a compelling state interest, and because section 273a punishes those who willfully endanger a child's health and safety. Yet California will fail to show that it is applying the least restrictive burden on religion if it ignores the section 270 exemption.

The less restrictive alternative available to California is the enforcement of the section 270 exemption. The exemption exists specifically to lessen the burden on religious practice. Ignoring the section 270 exemption violates the federal and state constitutional religious freedoms of those who fall within its provisions. Because enforcing the exemption is crucial to safeguarding religious guarantees, the exemption must be able to withstand state and federal constitutional equal protection and establishment clause requirements.

V. EQUAL PROTECTION CONCERNS WITH SECTION 270 EXEMPTION LANGUAGE—NO DISCRIMINATION AMONG RELIGIOUS BELIEFS

The fourteenth amendment to the United States Constitution guarantees that "[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." People who are similarly situated must be treated similarly. The section 270 exemption language which refers to a "recognized church or religious denomination" may therefore pose a threat to these equal protection guarantees. If narrowly interpreted, its language may serve to protect only the religious liberties of better known or established religions, and would thereby not treat similarly situated people similarly. Moreover, when such disparate treatment affects a fundamental right, the law will only be upheld under a strict scrutiny analysis.

A state must show an overriding reason for a classification when the classification affects a fundamental right because such rights are guaranteed by the Constitution and deserve the highest degree of judicial protection. As a result, when a strict scrutiny

66. 98 U.S. 145 (1878).
68. Tiger v. Texas, 310 U.S. 141, 147 (1940) (agriculture and other economic pursuits are not similarly situated for equal protection purposes); In re Eric J., 25 Cal. 3d 522, 530, 601 P.2d 549, 533, 159 Cal. Rptr. 317, 320-21 (1979) (minors and adults are not similarly situated as to their liberty interests for equal protection purposes).
70. Id. at 336 (right to participate in the electoral process was deemed fundamental and
analysis is applied to a classification, a state’s action is not entitled to the usual presumption of validity. A state carries the burden of justifying a classification which affects a fundamental right.\textsuperscript{71} Under a strict scrutiny test, if a court finds that the classification does indeed serve a compelling interest, a state still must show that the distinctions drawn in the law are necessary to further this interest.\textsuperscript{72}

This equal protection analysis applies to the instant discussion because equal protection guarantees fully apply to penal statutes.\textsuperscript{73} When a penal statute diminishes an individual’s religious liberty, it touches a constitutionally protected right.\textsuperscript{74} Because classifications based upon a “recognized church or religious denomination”\textsuperscript{75} may mean the difference between loss of liberty or exemption from penalty, these classifications must withstand strict scrutiny. Consequently, California must show that the section 270 exemption language, which can be read to protect the religious liberties of some, serves a compelling state interest and that this language is necessary to further that purpose.

A. Meeting the Compelling State Interest Requirement

California must show that the section 270 exemption language serves a compelling state interest in order for the exemption to withstand an equal protection analysis. Section 270 was enacted to protect the health, safety, and welfare of children.\textsuperscript{76} Therefore the statute meets the first part of the equal protection requirement by serving the compelling state interest of protecting children.\textsuperscript{77} The exemption language itself, however, must also serve the state’s compelling purpose. Exempting only state “recognized” religious creeds helps serve that purpose while making only a narrow allowance for free religious exercise. Presumably the Legislature confined its language to a “recognized church or religious denomination” to prevent child neglect which arises from arguably spurious religious belief claims. Therefore, such a classification does serve the compelling

\begin{itemize}
\item \textsuperscript{71} Shapiro v. Thompson, 394 U.S. 618, 633 (1969) (state’s interest in preserving the fiscal integrity of its programs not substantial enough to warrant denying welfare benefits to persons residing in the state for less than a year).
\item \textsuperscript{72} Cotton v. Municipal Ct., 59 Cal. App. 3d 601, 606, 130 Cal. Rptr. 876, 879 (1976).
\item \textsuperscript{73} Id.
\item \textsuperscript{74} Id. (A penal statute touches the personal liberty of the individual convicted of violating the statute).
\item \textsuperscript{75} CAL. PENAL CODE § 270 (West 1970 & Supp. 1985).
\item \textsuperscript{76} See supra text accompanying notes 21-23.
\item \textsuperscript{77} See supra text accompanying notes 14-16.
\end{itemize}
state interest of protecting children. Still, the state must show that the distinctions drawn in the exemption language are necessary to further this compelling interest.

B. Narrow Interpretation of the Section 270 Exemption is not Necessary to Further the State's Compelling Interest

It is difficult to see how an arbitrary distinction between more established religions and those not as popularly recognized necessarily furthers the state's interest in protecting children. The California courts have yet to determine which religious beliefs this exemption language includes and excludes. Nevertheless, the exemption may violate equal protection provisions if it is read too narrowly.

Although the state should not permit counterfeit religious belief claims raised in defense to child abuse or neglect, the state cannot show that exempting one religious group over another is necessary to protect children. More importantly, in limiting what is deemed a "recognized church or religious denomination," the state blatantly condones some religions to the detriment of others. Not only does this violate equal protection guarantees, but such arbitrary government favoritism comes dangerously close to governmental establishment of religion in violation of constitutional guarantees.

C. Equal Protection Concerns are Met by Applying the Seeger Sincerity of Belief Test When Determining Whether a Religion Qualifies Under the Section 270 Exemption

The exemption distinctions must serve the state's interest in protecting children. If California tries to justify arbitrarily favoring one religion over another, it sanctions some religions but not others. In California's attempt to protect the health and safety of children, it cannot measure the validity of a religious belief to show why some religions should be exempt under section 270 and why others should not. But careful judicial interpretation of the exemption language can save the exemption from invalidation under equal protection requirements. Broad interpretation will serve to both save the exemption and thereby to protect both religious liberties and the health, safety, and welfare of children. Serving both interests is possible if courts interpret the section 270 exemption language by standards set forth by the United States Supreme Court in United States v. Seeger.78

78. 380 U.S. 163 (1965).
Seeger involved claims of conscientious objectors to military duty. The federal law involved exempted those who oppose participation in war in any form by virtue of their religious training and belief. The Court acknowledged that the exemption embodied congressional recognition that one could qualify for the exemption without belonging to an organized church. The majority undertook a lengthy discussion of the broad spectrum of religious beliefs in this country. The discussion illustrated the difficulties courts face when determining whether a belief qualifies as religious and therefore entitles one to exemption. The Court derived a test to determine "religious belief." The Court established the standard that the claimed belief must be manifested in the life of the objector to the same degree that an orthodox belief is evidenced in the life of one who would definitely fall within the exemption.

The Seeger test is the Court's attempt to determine the sincerity of a religious belief. Under tort law, a judge or jury decides whether an individual behaved as a reasonable person would have in order to determine if that person was negligent. Similarly, the Seeger test sets up a reasonable religious person standard by which courts can decide whether or not a defendant falls within the section 270 exemption language. Given the previously stated proscriptions against state sanctioned religions, the Seeger test would limit the state to determining the sincerity of the religious belief, not the merits of the belief. Recognizing the personal nature of religion, this test appears to be the best way to protect not only child welfare, but also religious liberty.

Applying the Seeger test to those claiming exemption under section 270 allows a broad enough interpretation to avoid what might otherwise be an unconstitutional preference for religion. Because the state should not allow spurious religious belief claims as defenses against child neglect prosecutions, applying a Seeger interpretation would provide objective criteria for interpretation, while not unconstitutionally confining or dangerously expanding the exemption.

Courts should be allowed discretion to test religious belief

80. Seeger, 380 U.S. at 172.
81. Id. at 184.
82. See also Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 692, 315 P.2d 394, 411 (1957) (applied a Seeger test to determine eligibility under a religious tax exemption).
83. See supra text accompanying notes 18-20.
claims within fairly objective "reasonable religious person" guidelines. The California Supreme Court acknowledges the ability of a judge and jury to distinguish between those who feign belief in a religion and those who sincerely adhere to a religion. As the Seeger Court emphasized, a claim that a belief is central to a person's faith will be highly scrutinized under a factual determination, but the validity of the belief itself cannot be questioned.

The Seeger test resolves constitutional equal protection problems. The state will not prosecute people after evaluating the value of their religious belief, but will limit its examination to the sincerity of the belief as determined by applying a reasonable religious person standard. As a result, the state will be able to guard against any counterfeit religious belief claims raised in defense to charges of child neglect and abuse. Not only will the Seeger test thereby meet California's interests of protecting a child's health and safety, but it will also protect sincere religious belief.

Although applying a Seeger test to the section 270 exemption language will satisfy possible equal protection concerns, the problem remains whether a Seeger analysis will meet constitutional establishment clause concerns.

VI. ESTABLISHMENT CLAUSE CONCERNS WITH SECTION 270 EXEMPTION LANGUAGE—NO PREFERENCE FOR ANY RELIGIOUS BELIEF

A. Preference/Discrimination Distinction

In erecting a wall of separation between church and state, the framers of our Constitution acted upon the belief that a union of government and religion tends to destroy government and to degrade religion. When government . . . all[i][es] itself with one particular form of religion, the inevitable result . . . [is] that it incurs the hatred, disrespect, and even contempt of those who hold contrary beliefs.

A broad interpretation of the section 270 exemption language will not only alleviate equal protection concerns, but also it will guard against one of the founding fathers' primary fears—the gov-
ernmental establishment of religion.

The United States Supreme Court in *Everson v. Board of Education*\(^87\) discussed governmental actions which violate the United States Constitution's establishment clause.\(^88\) The establishment clause affords protection against state sponsorship, financial support, and active involvement in religious liberty.\(^89\) Government is deemed actively involved in religious liberty whenever it prefers one religion over another.\(^90\) Consequently, any state preference for a religion will be invalidated unless it is justified by a compelling governmental interest.\(^91\) The law or action in question must also be closely fitted to further that interest.\(^92\) In addition, the California Constitution guarantees the free exercise and enjoyment of religion without discrimination or preference.\(^93\) Even if the purpose of a law or state action is secular, and therefore is not discriminatory on its face, if state action results in a preference for a religion, the action cannot stand.\(^94\) Therefore, California confers a very broad religious freedom guarantee. While the United States Constitution prohibits discrimination among religions, California's establishment clause prohibits even de facto discrimination. Regardless of lack of discriminatory intent, a California state action will be invalidated if it results in preferential treatment of a religion.\(^95\)

This preference/discrimination distinction is well illustrated in *Fox v. City of Los Angeles.*\(^96\) There the California Supreme Court found that the illumination of a cross on the Los Angeles City Hall at Christmas and Easter constituted an unconstitutional religious preference. The court found a preference had occurred even though the city's stated purpose was to promote "peace and good fellowship toward all mankind."\(^97\) Discrimination goes to the purpose of the law. But, in California, regardless of the secular purpose of the law, if a preference among religions results, the law violates the Califor-

\(^{87}\) 330 U.S. 1 (1947).
\(^{88}\) *Id.* at 15-16.
\(^{90}\) Larson v. Valente, 456 U.S. 228 (1982) (invalidated law which required registration and reporting for only those religious organizations receiving less than half their total contributions from members).
\(^{91}\) *Id.* at 15-16.
\(^{92}\) *Id.*
\(^{93}\) *CAL. CONST.* art. I, § 4.
\(^{94}\) *See supra* notes 18-20 and accompanying text.
\(^{95}\) *Id.*
\(^{96}\) 22 Cal. 3d 792, 796, 587 P.2d 663, 665, 150 Cal. Rptr. 867, 869 (1978).
\(^{97}\) *Id.* at 804, 587 P.2d at 670, 150 Cal. Rptr. at 870.
nia Constitution and cannot stand.98

B. *Establishment Clause Concerns are met by Applying the Seeger Sincerity of Belief Test when Determining Whether a Religion Qualifies under the Section 270 Exemption*

A narrow reading of the section 270 exemption language to include only state-recognized religions would violate the California Constitution by exempting only those members of more established religions from prosecution under section 273a. Such a narrow reading would clearly constitute a state preference for religion in violation of the California Constitution.99 Yet invalidating the exemption altogether would result in the unlawful prohibition of religious exercise.100 However, these establishment clause/religious preference concerns can be resolved by using the Seeger guidelines to interpret the section 270 exemption.101

If the reasonable religious person standard enunciated in Seeger is used to determine the sincerity of a claimed religious belief, equal protection and establishment clause concerns are unwarranted. The courts will then limit their examination to the sincerity of an individual’s religious belief and the nature or popularity of the belief will not enter the analysis. As a result, the state will not be discriminating among religions or preferring any religion over another. Accordingly, the exemption will be able to withstand constitutional attack. The state will maintain control in preserving the health and safety of children while also protecting constitutionally guaranteed religious liberties.

**VII. Conclusion**

The United States and California constitutional religious guarantees, though sancrosanct, are not absolute. While the first amendment absolutely protects religious beliefs, conduct may be regulated when justified by a compelling state interest. Religious conduct often is but an extension of religious belief, therefore whenever possible the state must draw its regulation narrowly to avoid burdening religious exercise guarantees.

The California Legislature has manifested a compelling interest

---

98. *Id.* at 796, 587 P.2d at 665, 150 Cal. Rptr. at 869.
100. *See supra* text accompanying notes 60-64.
101. *See supra* text accompanying notes 78-85.
in preserving the health and safety of children. The legislature has also stated its sensitivity to state/religion questions and to the necessity of protecting constitutional religious guarantees to the greatest extent possible. Consequently, when enacting penalties for those who fail to adequately provide for children, the Legislature exempted from prosecution those who, for religious purposes, use spiritual instead of medical means to treat children. This exemption poses minimal burdens on religious exercise in accordance with constitutional religious guarantee requirements. Statutory manifestations of legislative intent which are amplified by constitutional religious guarantees cannot be disregarded. The section 270 exemption must be enforced regardless of other laws which may appear contrary to the exemption.

If the exemption is applied too narrowly, it will result in government preference for religion and thereby threaten equal protection and establishment clause mandates. Broad interpretation of the exemption language prevents that occurrence. The courts can apply a Seeger reasonable religious person standard to those claiming the section 270 exemption and thereby avoid the danger that counterfeit religious belief claims will be raised to defend child abuse or neglect charges.

The tension between the California Penal Code section 270 exemption and section 273a is complex and serious. The welfare of children as well as one of the most precious individual liberties guaranteed by both the California and United States Constitutions are at stake. This comment has shown it is possible to preserve both interests.

The California Legislature has demonstrated its desire to protect individual religious freedom while serving the state’s interest in preventing child neglect and abuse. As a result, courts should not hesitate to apply the religious exemption under Penal Code section 270. Such application will protect both children and religious freedom.

Jenny Brown