

FREEDOM FROM RELIGION *foundation*

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March 13, 2017

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dr. Mary Bassett
Commissioner
NYC Dept. of Health & Mental Hygiene
125 Worth Street
New York, NY 10013

Board of Health
NYC Dept. of Health & Mental Hygiene
42-09 28th Street, 14th Floor, CN31
Long Island City, NY 11101

Dr. Howard Zucker
Commissioner
New York State Dept. of Health
Corning Tower
Empire State Plaza,
Albany, NY 12237

Mr. Cyrus Vance
District Attorney
New York County
One Hogan Place
New York, NY 10013

Re: Infants continue to die from easily preventable deaths; close ritual circumcision loophole

Dear Mayor de Blasio and New York health officials:

We are writing again on behalf of the Freedom From Religion Foundation (“FFRF”) and our New York membership to ask the city and state of New York to safeguard the health and welfare of defenseless newborns. FFRF is a national nonprofit organization working to protect the constitutional principle of separation between state and church. We represent 27,000 members across the country including more than 1,400 members in New York.

As you are aware from reports issued by the New York City Department of Health and Mental Hygiene and from FFRF’s previous entreaties, ultra-orthodox Jewish parents are exposing their infants to herpes simplex virus infection by allowing adult men to place their mouths on open wounds on the children’s penises. The New York Post recently reported a new case of neonatal herpes given to an infant through this ultra-orthodox religious ritual.¹

Since our last letter in February 2014, there have been at least five additional cases of helpless infants being infected with a potentially deadly virus because of this practice. And it is reported that the de Blasio administration has failed even to enforce the inadequate agreement made two years ago, meant to identify the mohels responsible for the transmissions.² Put another way, you have failed to protect these babies.

¹ Carl Campanile, *New case of neonatal herpes caused by Jewish circumcision*, NEW YORK POST (Mar. 8, 2017), <http://nypost.com/2017/03/08/new-case-of-neonatal-herpes-caused-by-jewish-circumcision/>.

² Yoav Gonen & Carl Campanile, *De Blasio never enforced agreement to ID mohels with herpes*, NEW YORK POST (Mar. 10, 2017), <http://nypost.com/2017/03/10/de-blasio-never-enforced-agreement-to-id-mohels-with-herpes/>.

In fact, the State of New York has made it easier for these infections to spread by ending the sole safeguard, an informed consent requirement. Though insufficient, this requirement was better than nothing. Through your refusal to appropriately regulate this practice, you have made it easier for infants to contract herpes. At some point another child will die as a result. In at least two instances so far, this ritual has resulted in a newborn's death. Two other babies have suffered brain damage.³ Others deal with a chronic, lifelong infection that causes painful lesions.

These neonatal herpes infections stem from “direct orogenital suction during ritual Jewish circumcision (also known as *metzitzah b'peh*).”⁴ Neonatal herpes infections can lead to fatal encephalitis and other serious health complications.

The clinical medical terminology coupled with ritualistic religious language obscures the true nature of this practice: Parents are allowing adult men to cut off a part of their 8-day old son's penis, rip the skin off the penis with their fingernails, place their mouths on the penis, and suck the blood from the open wound.

The government should stop placing adults' desire to impose their religion above the health, safety, and lives of defenseless infants. Dr. Bassett, Dr. Zucker, and the NYC Board of Health must act to pass regulations prohibiting this child abuse. Mayor de Blasio, you can lead this charge where your predecessor failed so miserably. District Attorney Vance, it is time to start prosecuting infected adults for their reckless and intentional acts.

Religious rights are not an issue.

Without regulation, the rights of helpless infants are being trampled in the name of a religion they cannot begin to grasp. Adults do not have a religious right to expose their children to disease and death. Religion is not an excuse for an adult to sexually touch a minor, let alone an infant. Religion is not an excuse to infect an infant with a possibly fatal and definitely incurable disease. Religion is simply not an excuse. This analysis should not change because the parents believe that their deity requires it.

No individual's religious rights would be burdened by prohibiting this criminal act. The free exercise of religion protected by our Constitution does not include the right to endanger the health and life of helpless infants. The Hebrew bible occasionally required parents to sacrifice their children in the name of their god,⁵ but our law does not permit this. The Hebrew bible allows parents to sell their daughters into slavery,⁶ but our law does not allow this. These prohibitions do not suppress free exercise, they protect children.

Prohibitions on practices that infect and kill infants are not only valid, but necessary. Society must protect its most vulnerable citizens. Current New York laws ban remarkably similar

³ NYC Department of Health and Mental Hygiene, *2014 Alert #2* (January 28, 2014) available at <https://a816-health29ssl.nyc.gov/sites/NYCHAN/Lists/AlertUpdateAdvisoryDocuments/2014%20-%20NeonatalHSV.pdf>

⁴ *Id.*

⁵ Exodus 13:2, though God allows for a sheep and ass to substitute for the first born child. *See also* Jephthah sacrifices his daughter on God's command (Judges 11:29-40); Abraham tries to sacrifice Isaac (Genesis 22:1-18); and even in the New Testament, the Jewish God sacrifices his alleged son, Jesus.

⁶ Exodus 21:7-11

behavior: knowingly transmitting an infectious venereal disease,⁷ endangering the welfare of the child,⁸ and reckless endangerment.⁹ These laws should be enforced in all situations where the conduct meets the statutory definition, regardless of whether the conduct was part of a religious ritual.

Federal law already prohibits female genital mutilation, despite religious attempts to justify the practice.¹⁰ The law allows individuals over the age of 18 to volunteer for the procedure and has exemptions for medical necessity if carried out by trained medical personnel.

Like the law against FGM, banning this practice would serve a compelling governmental interest: protecting a child's right to life and health. This interest, set out in a neutral and generally applicable law, trumps the mohel's and parents' rights to endanger a helpless child. A law banning orogenital suction on a minor's penis could also be narrowly tailored, so as to make clear that the state does not seek to end the practice because it is religious, but because it is dangerous.

It is time to take action.

One of government's fundamental purposes is to protect those who cannot protect themselves. **Your job is not to shield the zealot; it is to protect the child.** Ongoing litigation on the informed consent issue offers no excuse for failing to ban orogenital contact between adults and infants. Religion is not a license to contaminate children with deadly viruses. This must stop.

I look forward to hearing from you in writing, at your earliest convenience, about the steps you are taking to halt this entirely preventable menace to public health and protect those who cannot protect themselves.

Sincerely,



Andrew L. Seidel
Attorney
Freedom From Religion Foundation

⁷ N.Y. Pub. Health Law § 2307

⁸ Prosecute the *mohel* under § 260.10(1) and parents under § 260.10(2)

⁹ N.Y. Pen. Law § 120.25

¹⁰ 18 U.S.C. §116