

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

February 12, 2014

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. Nirav M. Shah
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: Religious rituals endangering infants

Dear Mayor de Blasio and New York health officials:

We are writing on behalf of the Freedom From Religion Foundation (“FFRF”) and our New York membership to ask the city and state of New York to take serious action to safeguard the health and welfare defenseless newborns. FFRF is a national nonprofit organization working to protect the constitutional principle of separation between state and church. We represent 20,000 members across the country including more than 1,100 members in New York.

As you may be aware, and as reports issued by the NYC Department of Health and Mental Hygiene point out, 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. In at least two instances, this has resulted in the newborn’s death. Two others have suffered brain damage.¹ 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*).”² Neonatal herpes infections can lead to fatal encephalitis and other serious health complications.

¹ 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>

² *Id.*

The clinical medical terminology coupled with ritualistic religious language obscures the true nature of this practice. It must be stated more simply. 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 orogenital can infect the infant with herpes, *which can be fatal to infants*. To put the seriousness of this infection in perspective, the reported cases show that a newborn infected with HSV by a *mohel* is 7 times more likely to die than a climber attempting to summit Everest or a U.S. soldier fighting in WWI.³

Currently, the only regulation to protect children from this outrageous practice is informed parental consent. This must change. The government should stop placing adults' desire to impose their religion above the health, safety, and lives of defenseless infants. Dr. Bassett, Dr. Shah, 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 these infectious agents.

Religious rights are not an issue.

No person's religious rights would be hindered by prohibiting this criminal act. Without regulation, the helpless infants' rights are 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 simply because the parents and *mohel* (the circumciser) really, really believe that their deity requires it.

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/Old Testament occasionally required parents to sacrifice their children in the name of their god,⁴ but our law does not. The Hebrew/Old Testament Bible allows parents to sell their daughters into slavery,⁵ but our law does not. Our prohibitions do not suppress free exercise, they "establish justice [and] promote the general welfare" by protecting 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 behavior: knowingly transmitting an infectious venereal disease,⁶ endangering the welfare of the child,⁷ and reckless endangerment.⁸ The exceptions carved out for religion could be amended or

³ Exact numbers on this practice are difficult to come by, of the 14 past cases involving HSV infection, 2 have died. That is a 1 in 7 chance or 14% of death. Climbing Mount Everest or fighting for the United States during World War I carried less than 2% risk of death. See Graeme Wood, "Death at the Summit" *Pacific Standard: The Science of Society*, (Nov. 4, 2013) available at <http://www.psmag.com/navigation/business-economics/death-summit-67326/>.

⁴ 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.

⁵ Exodus 21:7-11

⁶ N.Y. Pub. Health Law § 2307

⁷ Prosecute the *mohel* under § 260.10(1) and parents under § 260.10(2)

these laws could actually be enforced.

Federal law already prohibits female genital mutilation, despite religious attempts to justify the practice.⁹ 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. Your job is not to shield the zealot; it is to protect the child.

It is time to take action.

One of government's fundamental purposes is to protect those who cannot protect themselves. If you do not defend the helpless infants, who will? Ongoing litigation on the informed consent issue offers no excuse for failing to ban orogenital contact between adults and infants.

Legislatures everywhere are removing exemptions to child abuse laws for parents who try to heal their sick children with prayer instead of medicine. In your own backyard, Brooklyn District Attorney Charles Hynes was ousted from his position amid criticism that he failed to prosecute sex offenders in the Hasidic community. Religion is not a license to contaminate children with deadly viruses. This must stop.

You have the power to stop this atrocity — if local and state governments do nothing, they are complicit in the death, maiming, and infection of every affected infant. If the city can ban large sodas, surely it can find a way to prevent adult men from transmitting a deadly virus to infants?

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

Sincerely,



Andrew L. Seidel
Attorney
Freedom From Religion Foundation

⁸ N.Y. Pen. Law § 120.25

⁹ 18 U.S.C. §116