

HOW FAR IS TOO FAR?: WEIGHING FREEDOM OF RELIGION WITH THE BEST INTEREST OF THE CHILD STANDARD

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I. INTRODUCTION

A mother and father of four children divorced in 2016.¹ Prior to their divorce, both parents were members of a polygamous religious community known as the “Order.”² However, upon divorce, the mother left the group and sought custody of their four children, arguing that the teachings of the Order were not in the best interest of the children.³ Even outside scenarios like this, in modern American society, there has been an increase in “religiously mixed” marriages.⁴ When situations such as these arise, it is not necessarily clear how courts are to consider religion in custody determinations without infringing on the First Amendment.⁵

The effects of the 2008 raid of Yearning for Zion Ranch in Eldorado, Texas, further illustrated this dilemma.⁶ In that case, the Texas Department of Family and Protective Services (the “Department”) removed 437 children from the Fundamentalist Latter-Day Saints community, led by Warren Jeffs, following an anonymous tip.⁷ What followed was the largest child custody battle in our country’s history—the primary concern being in regards to “child sexual abuse” due to the Church’s promotion of arranged marriages between underage girls and much older, adult men.⁸ However, in the resulting court proceedings,

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¹ Kingston v. Kingston, 532 P.3d 958, 961 (Utah 2022).

² *Id.*

³ *Id.* at 961–62.

⁴ Donald L. Beschle, *God Bless the Child?: The Use of Religion as a Factor in Child Custody and Adoption Proceedings*, 58 FORDHAM L. REV. 383, 383 (1989).

⁵ See Jennifer Benning, *A Guide for Lower Courts in Factoring Religion into Child Custody Disputes*, 45 DRAKE L. REV. 733, 748 (1997).

⁶ See Katy Vine, *The Raid on YFZ Ranch, Ten Years Later*, TEX. MONTHLY (Apr. 6, 2018), <https://www.texasmonthly.com/the-culture/raid-yfz-ranch-ten-years-later/> [<https://perma.cc/44PM-QT25>].

⁷ *Id.*

⁸ *Id.*; Carol Guensburg, *Sorting Through the Texas Polygamist Custody Case*, NPR (May 8, 2008, 6:25 PM), <https://www.npr.org/templates/story/story.php?storyId=90300335> [<https://perma.cc/2FKY-R9KR>].

a Texas court ruled that child welfare officials were to return many of the children to the Yearning for Zion Ranch.⁹ In doing so, the court concluded that those selected children should be returned due to the Department's failure to show evidence of physical danger to the male children or female children who had not yet reached the age of puberty.¹⁰

The question posed by these examples is: How much weight does the First Amendment truly hold—or in other words, how far is too far? Part II of this Article will discuss the protections provided by the First Amendment, the history of cults in the American legal system, and the best interest of the child standard. Part III of this Article will follow with an analysis of the definition of the term “cult,” as well as the harms posed to children raised in these communities—arguing the need for courts to consider the risk of future physical and psychological harm to the child. Ultimately, this Article will conclude that while a court must abide by the constitutional protections for religion, the risk of psychological or physical harm to children is too great to not be considered in custody or visitation disputes.

II. LEGAL HISTORY OF RELIGION, CULTS, AND CHILD CUSTODY

The term “cult” is understandably controversial.¹¹ Commonly, this term has been used to describe a group with “socially deviant” beliefs and practices.¹² In Western society, many groups throughout history have been dubbed cults: including, Peoples Temple (led by Jim Jones), the Manson Family (led by Charles Manson), and the Branch Davidians (led by David Koresh).¹³ In today's society, the most common groups to be considered cults by Americans are Mormon denominations and Scientologists.¹⁴ Regardless, due to First Amendment protections, it is very rare for any religious group to be deemed illegal by a court on the sole basis of “social deviance.”¹⁵ Because of this, there is no clearly defined legal definition for “cult.”¹⁶ Even though the Constitution provides for the freedom of religion, the government is still permitted to impede

⁹ Howard Berkes, *Court: Polygamist Group's Kids Must Be Returned*, NPR (May 29, 2008, 7:35 PM), <https://www.npr.org/2008/05/29/90970877/court-polygamist-groups-kids-must-be-returned> [https://perma.cc/NE8Q-PARK].

¹⁰ *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652, at *10 (Tex. Ct. App. May 22, 2008).

¹¹ Lauren Zazzara, *4 Notorious Cults in American History*, HEINONLINE BLOG (Oct. 13, 2023), <https://home.heinonline.org/blog/2023/10/4-notorious-cults-in-american-history/> [https://perma.cc/WN5S-M4F9].

¹² Tina Rodia, *Is it a Cult, or a New Religious Movement?*, PENN TODAY (Aug. 29, 2019), <https://penntoday.upenn.edu/news/it-cult-or-new-religious-movement> [https://perma.cc/7855-ZZ9X].

¹³ Zazzara, *supra* note 11.

¹⁴ Rodia, *supra* note 12.

¹⁵ See *id.*; *Are Cults Legal?*, HG.ORG, <https://www.hg.org/legal-articles/are-cults-legal-35055#:~:text=Illegal%20Cults&text=In%20essence%2C%20the%20First%20Amendment,on%20the%20rights%20of%20others> [https://perma.cc/U5TH-7ND8].

¹⁶ *Are Cults Legal?*, *supra* note 15.

the exercise of religion if the conduct would infringe on the rights of others.¹⁷ This Part will discuss the protection of the freedom of religion found in the First Amendment, the legal history of cults, and the best interest of the child standard.

A. First Amendment Protections and the Freedom of Religion

The freedom of religion is a liberty clearly deeply rooted in American history.¹⁸ In fact, this liberty is evident in the history of the Founding Fathers leaving Europe due to the lack of religious tolerance in Europe at the time.¹⁹ As a result, the First Amendment of the Constitution provides: “Congress shall make no law respecting an *establishment of religion*, or *prohibiting the free exercise* thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”²⁰

The First Amendment protects only the freedom to believe in any religion, and not the freedom to act on those beliefs.²¹ In the 1944 case *United States v. Ballard*²² members of the religious movement, I AM were indicted and convicted for conspiring and using mail to defraud.²³ The members used mail to promote their religious movement,²⁴ which had values rooted in Christianity and American Patriotism.²⁵ Members of this specific religious group believed that their leader, Guy W. Ballard, was the reincarnation of George Washington who would receive messages for followers from God.²⁶ In regard to First Amendment protections, the Supreme Court in *United States v. Ballard* provided:

The First Amendment has a dual aspect. It not only “forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship” but also “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 nature of things, the second

¹⁷ *Are Cults Legal?*, *supra* note 15.

¹⁸ See Robert T. Miller, *Religious Conscience in Colonial New England*, 50 J. CHURCH & STATE 661, 661 (2008).

¹⁹ *See id.*

²⁰ U.S. CONST. amend. I (emphasis added).

²¹ *United States v. Ballard*, 322 U.S. 78, 86 (1944).

²² *Id.* at 78.

²³ *Id.* at 79.

²⁴ *Id.*

²⁵ J. Gordon Melton, *I AM Movement*, BRITANNICA, <https://www.britannica.com/topic/I-AM-movement> [https://perma.cc/77PN-VLBW].

²⁶ *Id.*

cannot be.”²⁷

When the government intrudes on the freedom of religion, the “*Lemon* test”²⁸ was historically used by courts.²⁹ Coming from the case *Lemon v. Kurtzman*, the Supreme Court provided that the government action may be constitutional if (1) it has a secular legislative purpose; (2) the principal or primary effect is one that neither advances nor inhibits religion; and (3) it does not foster an excessive government entanglement with religion.³⁰ However, in recent years, the Supreme Court has moved away from the *Lemon* test, instead adopting a new test.³¹ This new test draws the line of permissible and impermissible government action between what is in accord with the history and understanding of the Founding Fathers.³² This means that there is no longer a multi-pronged analysis or specific factors for a court to consider.³³ However, in general, courts have held that under the First Amendment, legislation should adopt the least restrictive alternatives to prevent infringement upon religious beliefs.³⁴

In regard to the upbringing of children, parents have a fundamental right to make decisions related to the care, custody, and control of their children.³⁵ Moreover, parents are provided with the right to determine the child’s religious upbringing that is derived from the Free Exercise Clause of the First Amendment and the right to make care and custody decisions.³⁶ This is because, as the Court in *Wisconsin v. Yoder* stated, the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”³⁷ In cases of divorce or custody disputes, it has been held that courts do not have the authority to choose which religion a child is to be reared under.³⁸ This creates uncertainty amongst courts when assessing whether a specific

²⁷ *Ballard*, 322 U.S. at 86 (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940)).

²⁸ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

²⁹ Joshua D. Smeltzer, *Should Faith-Based Initiatives Be Implemented by Executive Order?*, 56 ADMIN. L. REV. 181, 198 (2004) (stating that “[t]he traditional starting point for legal analysis is the three-part test outlined in *Lemon v. Kurtzman*.”).

³⁰ *Lemon*, 403 U.S. at 612–13.

³¹ See e.g., *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022); *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014); Aislinn Comiskey, *Kennedy v. Bremerton School District: A Touchdown and a Victory for Establishment Clause Jurisprudence*, 31 JEFFREY S. MOORAD SPORTS L.J. 67, 92–93 (2024).

³² *Kennedy*, 597 U.S. at 535–36; Comiskey, *supra* note 31, at 93.

³³ Comiskey, *supra* note 31, at 93.

³⁴ Shawn McAllister, *Holy Wars: Involuntary Deprogramming as a Weapon Against Cults*, 24 T. MARSHALL L. REV. 359, 373–74 (1999) (citing *Peterson v. Sorlien*, 299 N.W.2d 123, 129 (Minn. 1980)).

³⁵ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

³⁶ Joanne Ross Wilder, *Resolving Religious Disputes in Custody Cases: It’s Really Not About Best Interests*, 22 J. AM. ACAD. MATRIM. LAWS. 411, 413 (2009).

³⁷ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

³⁸ See *Siegel v. Siegel*, 472 N.Y.S.2d 272, 273 (N.Y. App. Div. 1984).

religious group's activities are harmful to a child.³⁹

B. Legal History of American Cults

The Supreme Court has long held that the First Amendment protects the freedom to believe, but not necessarily the freedom to act.⁴⁰ In other words, while a court is not permitted to deem particular religious beliefs illegal, certain religious practices may be.⁴¹ A foundational example of these types of restrictions can be found in the 1878 Supreme Court case *Reynolds v. United States*, which ultimately upheld the prohibition of polygamist relationships despite the argument that the prohibition violated the First Amendment right to freedom of religion.⁴² However, it is important to note that while the government may restrict those practices that are harmful, it is impermissible to target particular religious practices unless the regulation is justified by a compelling governmental interest and is narrowly tailored to advance that interest.⁴³

The tension between religious freedom and harmful practices can be evidenced by contemporary legal examples as well. A modern example of this is the prosecution of NXIVM co-founder Keith Raniere, who was convicted on charges of forced labor, sex trafficking, sexual exploitation of children, wire fraud, and violations of federal anti-racketeering law for conduct related to his religious practices.⁴⁴ In the past, former cult members have also sought tort liability based on fraud and intentional infliction of emotional distress from harmful religious practices.⁴⁵ In situations such as these, a plaintiff may be able to introduce “brainwashing” as evidence for their claims.⁴⁶ Additionally, a conservatorship order may be rendered in cases in which a minor is subject to a destructive cult.⁴⁷ In such instances, a plaintiff would need to establish that a parent, or relative, lacks the degree of judgment adequate to conduct daily

³⁹ See E.A. Gjelten, *Child Custody and Religion*, NOLO (Mar. 27, 2023), <https://www.nolo.com/legal-encyclopedia/child-custody-religion-29887.html> [<https://perma.cc/9XTW-P3R5>].

⁴⁰ *United States v. Ballard*, 322 U.S. 78, 86 (1944).

⁴¹ See *id.*

⁴² See *Reynolds v. United States*, 98 U.S. 145, 165 (1878).

⁴³ *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 896 (1990) (O'Connor, J., concurring); *Smith*, 494 U.S. at 890 (upholding the denial of unemployment compensation for individuals that used peyote because of their religious beliefs); but see *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 533, 545, 547 (1993) (finding that an ordinance specifically prohibiting Santería animal sacrifices is unconstitutional).

⁴⁴ Amanda Ottaway, *Trial of NXIVM Leader to Put Spotlight on Cult Prosecutions*, COURTHOUSE NEWS SERV. (May 2, 2019), <https://www.courthousenews.com/trial-of-nxivm-leader-to-put-spotlight-on-cult-prosecutions/> [<https://perma.cc/DU4H-YUWE>].

⁴⁵ McAllister, *supra* note 34, at 380.

⁴⁶ *Id.* at 381.

⁴⁷ *Id.*

responsibilities.⁴⁸ However, because of the First Amendment, courts are hesitant to issue such orders “for the purpose of ‘deprogramming’” the individual from the alleged cultic beliefs.⁴⁹

While there are no state or federal prohibitions against cults, there are a number of laws that provide criminal penalties for or civil remedies against certain harmful practices.⁵⁰ Specifically, rape laws, state and federal antistalking laws, and the federal Violence Against Women Act provide these potential penalties or remedies.⁵¹ These examples go to show that while Americans are provided the freedom of religion under the First Amendment, a court may still interfere in circumstances where the religious practices are harmful.⁵²

C. Honor Your Father, Mother, and the Best Interest of the Child Standard⁵³

The best interest of the child is a standard commonly used by courts in determining child custody.⁵⁴ This standard has been adopted by the Uniform Marriage and Divorce Act.⁵⁵ In applying this standard, a court may consider a series of factors including, but not limited to: the wishes of the child (subject to other conditions), the child’s adjustment to home, the financial conditions of the parents, and the physical health of the child and/or parents.⁵⁶

The permissibility of considering the moral and spiritual well-being of a child varies by state.⁵⁷ Generally, the religious training of a child is left to the discretion of the parents and is outside of the courts’ control.⁵⁸ However, the tension between best interest determinations and a parent’s constitutional rights has been a problem for decades.⁵⁹ A parent’s religion may become a consideration when the religious practices pose a risk of physical harm to the child.⁶⁰ In other words, while courts should maintain an attitude of impartiality between religions in custody and visitation cases, a court may consider religious beliefs when they may affect the general welfare of the child.⁶¹

Currently, there is no universal approach in considering religious

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Robin A. Boyle, *Women, the Law, and Cults: Three Avenues of Legal Recourse: New Rape Laws, Violence Against Women Act, and Antistalking Laws*, 15 CULTIC STUD. J. 3, 3 (1998).

⁵¹ *Id.*

⁵² See *United States v. Ballard*, 322 U.S. 78, 86 (1944).

⁵³ See *Ephesians* 6:2–3 (New International Version).

⁵⁴ *Best Interests of the Child*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/best_interests_of_the_child [<https://perma.cc/2WN3-S3WD>].

⁵⁵ George L. Blum, Annotation, *Religion as Factor in Child Custody Cases*, 124 A.L.R.5th 203 (2004).

⁵⁶ *Id.*

⁵⁷ Benning, *supra* note 5, at 738.

⁵⁸ Blum, *supra* note 55.

⁵⁹ Benning, *supra* note 5, at 738.

⁶⁰ *Id.* at 742–43.

⁶¹ See *Compton v. Gilmore*, 560 P.2d 861, 863 (Idaho 1977); *LeDoux v. LeDoux*, 452 N.W.2d 1, 5 (Neb. 1990); *Sanborn v. Sanborn*, 465 A.2d 888, 893 (N.H. 1983).

practices within the best interest of the child.⁶² Instead, many courts are left with differing standards—commonly classified in three approaches: (1) the actual or substantial harm approach; (2) the risk of harm approach; and, (3) the no harm required custodial preference approach.⁶³ The first of these approaches restricts a court from taking action that intrudes on a parent’s religious beliefs or conduct unless there is evidence that the practice of that religion is causing actual or substantial harm to the child.⁶⁴ This approach is illustrated by the court’s decision in the Texas case, *In re Steed*, which involved the raid of Yearning for Zion Ranch.⁶⁵ In *In re Steed*, the court emphasized the need for immediate danger to the physical health and welfare of the child in order for removal to be necessary.⁶⁶ Under the risk of harm approach, courts have the ability to interfere with a parent’s religious rights if there is a possibility of future harm to the child.⁶⁷ If the Texas court had taken this approach in *In Re Steed*, the court would have had the ability to remove the male and pre-pubescent female children if the court found that there was a risk of future harm (specifically a risk to the girls that may later be married to older men before reaching the age of the majority).⁶⁸ The final approach inherently rejects both of the previous approaches and provides parents unrestricted control over religious decisions.⁶⁹

III. THE NEED FOR COURT INTERVENTION WHEN CHILDREN ARE HARMED BY RELIGIOUS PRACTICES

Children do not have a say in what religion they are to be raised in nor do they choose to be a part of a cult.⁷⁰ Rather, that decision is usually made for them by their parents or guardian.⁷¹ Thus, it is important to critically examine whether court interference is necessary to protect children from harmful

⁶² Elizabeth Newland, *Extreme Religion, Extreme Beliefs: Comparing the Role of Children’s Rights in Extremist Religions Versus Extremist Cults* (QAnon), 42 CHILD.’S LEGAL RTS. J. 121, 129 (2022).

⁶³ *Id.* at 131.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652, at *3 (Tex. Ct. App. May 22, 2008) (“However, it is a step that the legislature has provided may be taken only when the circumstances indicate danger to the physical health and welfare of the children and the need for protection of the children is so urgent that immediate removal of the children from the home is necessary.”), *aff’d sub nom. In re Tex. Dep’t of Fam. & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

⁶⁷ Newland, *supra* note 62, at 131.

⁶⁸ *In re Steed*, 2008 Tex. App. LEXIS 3652, at *10.

⁶⁹ Newland, *supra* note 62, at 132.

⁷⁰ Steven A. Hassan, *Protect Children from Harm by Destructive Cults*, PSYCH. TODAY (May 8, 2021), <https://www.psychologytoday.com/us/blog/freedom-mind/202105/protect-children-harm-destructive-cults> [<https://perma.cc/WVD6-FKVT>].

⁷¹ *Id.*

practices. This Part will first discuss how a court should define the term “cult” and follow with how practices typically associated with cults negatively impact children both physically and psychologically. Finally, this Part will further analyze the previously mentioned approaches courts use in determining the best interest of the child when religious practices pose an issue.

A. Defining a “Cult”

There is currently no clear legal definition of the term “cult”⁷² and a dilemma presents itself when attempting to create one because society’s perception of what is and is not a “cult” may change over time.⁷³ The possibility exists that what may be deemed a “cult” in today’s society may one day be a mainstream religion.⁷⁴ In fact, many prominent religious figures such as Saint Augustine, John Calvin, and Martin Luther were once seen as “deviant” figures.⁷⁵ Therefore, when considering whether a religion crosses the line into being a “cult,” it is important for a court to be mindful.

Before examining what factors may define a “cult,” the definition of “religion” must first be considered.⁷⁶ Black’s Law Dictionary has provided the following definition for “religion”:

A system of faith and worship usu[ally] involving belief in a supreme being and usu[ally] containing a moral or ethical code; esp[ecially], such a system recognized and practiced by a particular church, sect, or denomination. In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have interpreted the term *religion* broadly to include a wide variety of theistic and nontheistic beliefs.⁷⁷

While there is no definition for “cult” in Black’s Law Dictionary, legal scholars have noted the different characteristics of a “cult.”⁷⁸ Margaret Singer, who is considered to be an expert in cults, provided eight features that describe cults and their leaders:

1. Cult leaders are self-appointed, persuasive persons who claim to have a special mission in life or to have special knowledge;

⁷² *Are Cults Legal?*, *supra* note 15.

⁷³ Anne S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong*, 13 PAC. RIM L. & POL’Y J. 1, 9 (2004).

⁷⁴ *Id.*

⁷⁵ *Id.*; see Rodia, *supra* note 12 (describing “cults” as a group with “socially deviant” beliefs and practices).

⁷⁶ See Guobin Zhu, *Prosecuting “Evil Cults:” A Critical Examination of Law Regarding Freedom of Religious Belief in Mainland China*, 32 HUM. RTS. Q. 471, 474 (2010).

⁷⁷ *Religion*, BLACK’S LAW DICTIONARY (12th ed. 2024).

⁷⁸ McAllister, *supra* note 34, at 362.

2. Cult leaders tend to be determined and domineering and are often described as charismatic;
3. Cult leaders center veneration on themselves;
4. *Cults are authoritarian in structure;*
5. Cults appear to be innovative and exclusive;
6. Cults tend to have a double set of ethics;
7. Cults tend to be *totalistic*, or all-encompassing, in *controlling their members' behavior* and also ideologically totalistic exhibiting zealotry and extremism in their world view; and
8. *Cults tend to require members to undergo a major disruption or change in life-style.*⁷⁹

Due to the First Amendment, it is unlikely that the United States government will ever provide a true legal definition for the term “cult.”⁸⁰ However, a court should still consider the above-mentioned features in child custody cases concerning the harmful effects of one, or both, of the parents’ religion.⁸¹ To avoid unconstitutional infringement on one’s religious beliefs, it is best that the court not classify a particular religion or certain religious practices as being of a “cult.”⁸² In other words, instead of classifying a religious group as a “cult” in child custody determinations, a series of factors, such as Margret Singer’s, should be adopted for the court’s consideration as to whether a particular practice is harmful to a child.⁸³

B. The Impact of Harmful Religious Practices on Children

Unfortunately, children raised in environments with harmful religious practices may be subjected to the risk of physical and psychological harm.⁸⁴ Additionally, because of their minority, these children likely do not have the resources to protect themselves.⁸⁵ This Part will discuss both the physical and psychological harm children raised in these environments may face.

⁷⁹ Cynthia Norman Williams, *America’s Opposition to New Religious Movements: Limiting the Freedom of Religion*, 27 LAW & PSYCH. REV. 171, 172–73 (2003) (emphasis added); Catherine Wong, *St. Thomas on Deprogramming: Is It Justifiable?*, 39 CATH. LAW. 81, 86–87 (1999) (emphasis added).

⁸⁰ See *Are Cults Legal?*, *supra* note 15.

⁸¹ Williams, *supra* note 79, at 172–73; Wong, *supra* note 79, at 86–87.

⁸² See *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 533 (1993) (reasoning that laws violate the First Amendment when they target religious beliefs as such or the object of the law is to restrict religion).

⁸³ See Williams, *supra* note 79, at 172–73; Wong, *supra* note 79, at 86–87.

⁸⁴ Hassan, *supra* note 70.

⁸⁵ *Id.*

1. *The Physical Harm Children May Face*

Because many cults are isolated from society, a child may be at a higher risk of sexual and physical abuse.⁸⁶ Consider situations such as the mass murder-suicide at Jonestown, where over 200 children died.⁸⁷ In Jonestown, members of the Peoples Temple created a makeshift settlement isolated from the rest of society in the jungle of Guyana.⁸⁸ Members were then asked to consume a drink laced with cyanide, resulting in the deaths of more than 900 members.⁸⁹ In other cases, a child may be forced into sex trafficking or become a victim of sexual abuse through “sex cults.”⁹⁰ Moreover, child marriage is another issue presented by cults.⁹¹ In America, between the years 2000 to 2018, nearly 300,000 minor children were legally married.⁹² However, a concern with child marriages is the undermining of statutory rape laws.⁹³ Of the nearly 300,000 underage marriages, between 34,943–40,224 of those marriages occurred at an age in which the spousal age difference would have constituted a sex crime.⁹⁴ In this way, the state creates a “get out of jail free” card for engaging in sexual relations with a minor and inherently creates situations where children are at risk of danger under what would otherwise fit the legal definition of “rape.”⁹⁵ Additionally, these statistics are drastically unfavorable to young girls compared to young boys.⁹⁶ While the physical well-being of a child is a “best interest” consideration, the potential risk of children’s physical harm is not a universal consideration.⁹⁷

2. *The Psychological Harm Children May Face*

While certain practices, such as physical child abuse, are already inherently considered in the best interest of the child standard, negative psychological impacts are not always considered.⁹⁸ One of the primary concerns regarding a child’s psychological well-being when raised in a cult is the fact that

⁸⁶ Sam Jahara, *The Psychological Impact on Children Who Grow Up in Cults*, BRIGHTON & HOVE PSYCHOTHERAPY (Aug. 6, 2023), <https://www.brightonandhovepsychotherapy.com/blog/the-psychological-impact-on-children-who-grow-up-in-cults/> [https://perma.cc/7TJL-VNFZ].

⁸⁷ *Jonestown*, FBI, <https://www.fbi.gov/history/famous-cases/jonestown> [https://perma.cc/ZQK7-43AK].

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Hassan, *supra* note 70.

⁹¹ *Id.*

⁹² *Child Marriage – Shocking Statistics*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/child-marriage-shocking-statistics/> [https://perma.cc/7V23-LHAC].

⁹³ Fraidy Reiss, *Child Marriage in the United States: Prevalence and Implications*, 69 J. ADOLESCENT HEALTH S8, S9 (2021).

⁹⁴ Reiss, *supra* note 93, at S9.

⁹⁵ *Id.*

⁹⁶ *Id.* at S8.

⁹⁷ See *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652, at *10 (Tex. Ct. App. May 22, 2008), *aff’d sub nom. In re Tex. Dep’t of Fam. & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

⁹⁸ *Id.* at *9–10.

trauma may negatively impact brain development.⁹⁹ Children in such groups often experience a sense of guilt for failing to live up to the “cult standards,” thus putting them at risk for suicide.¹⁰⁰ Some of the other potential risks of psychological effects on children can be seen through the researched impact on adult former cult members. After leaving a cult, former cult members were found to exhibit many of the following psychological traits or symptoms: dissociation, cognitive deficiencies—such as simplistic black/white thinking and difficulties in making decisions—depression, anxiety, and some psychotic symptoms.¹⁰¹ Former members may face additional psychiatric disorder diagnoses.¹⁰² The former members facing “cult indoctrinee syndrome” tend to exhibit symptoms such as: drastic catastrophic alteration of the individual’s value system, reduction of cognitive flexibility, narrowing and blunting of affect, regression of behavior to child-like levels, and delusional thinking.¹⁰³ In accordance with the third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), a former member may additionally face a diagnosis of Post-Traumatic Stress Disorder (PTSD).¹⁰⁴

Cults may also discourage outside education.¹⁰⁵ Some cults rely on homeschooling minor members through an unqualified cult leader while others outright ban the internet and other information critical of the cult.¹⁰⁶ Without proper education, a child cannot reasonably be expected to develop critical thinking skills, thus relying on what group leadership may tell them.¹⁰⁷ Therefore, adoption of a universal method in evaluating cases where a parent’s religious practices may impede on a child’s best interest is needed.

IV. THE NEED TO ADOPT A UNIVERSAL STANDARD IN WEIGHING THE BEST INTEREST OF THE CHILD AND RELIGIOUS UPBRINGING

As previously discussed, because there is no universal standard for considering religious practices regarding the best interest of the child, there are three approaches commonly utilized by courts: (1) the actual or substantial harm approach; (2) the risk of harm approach; and (3) the no harm required custodial

⁹⁹ Chantal Kern & Johannes Jungbauer, *Long-Term Effects of a Cult Childhood on Attachment, Intimacy, and Close Relationships: Results of an In-Depth Interview Study*, 50 CLINICAL SOC. WORK J. 207, 208 (2020).

¹⁰⁰ *Cf. id.* at 211–13 (discussing how cult teachings on sex generates feelings of guilt for former cult members in sexual relationships, leading to thoughts of suicide).

¹⁰¹ Jodi Aronoff et al., *Are Cultic Environments Psychologically Harmful?*, 20 CLINICAL PSYCH. REV. 91, 100 (2000).

¹⁰² *Id.* at 101.

¹⁰³ Richard Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1, 69–72 (1977).

¹⁰⁴ Aronoff et al., *supra* note 101, at 101.

¹⁰⁵ Hassan, *supra* note 70.

¹⁰⁶ Hassan, *supra* note 70.

¹⁰⁷ *Id.*

preference approach.¹⁰⁸ While the first approach may alleviate concerns of unconstitutionally infringing on a parent's freedom of religion, the potential risks a child may be subjected to are far too great.¹⁰⁹ Arguably, this first approach is unhelpful in protecting children that are at risk of harm and will, more likely than not, cause children to face actual or substantial harm in the near future.¹¹⁰ Additionally, while the third approach also protects freedom of religion, it completely ignores and belittles physical and psychological harm posed to children in these environments.¹¹¹

The second approach, which looks to the risk of potential harm, is the best standard to be universally applied as it protects children from the potential physical, psychological, or sexual harm they may be subjected to. In understanding the application of this standard, the court in *In re Steed*, would have likely allowed the additional removal of male children and pre-pubescent female children.¹¹² While utilization of this standard should never be interpreted to allow a court to unreasonably infringe on a parent's First Amendment rights, the harm children may be subjected to through damaging religious practices cannot be ignored. Children are not provided a choice in the religious practices of their parents and do not have a voice to protect themselves from harmful practices.¹¹³ Thus, courts should apply the second standard in protecting the best interest and well-being of a child.

V. CONCLUSION

While a court should never be eager to deem a religion as a cult due to its own biases, a court should consider the religious practices that would harm the child because the right to rear a child in any religious belief should not be absolute.¹¹⁴ Because of the risk of severe physical and psychological harm a child may face, a universally preventive approach, mirroring the actual or substantial harm approach, must be adopted.¹¹⁵ While this standard would require a case-by-case analysis, it is necessary because ignoring the harm or waiting for actual or substantial harm to protect First Amendment rights does not provide the necessary justice owed to children raised in dangerous environments.¹¹⁶ Regardless of the religious reasonings, the abuse of a child, and arguably the prevention of future risk, is the business of anyone who knows

¹⁰⁸ See Newland, *supra* note 62, at 131.

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

¹¹¹ See *id.* at 132.

¹¹² See *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652, at *10 (Tex. Ct. App. May 22, 2008), *aff'd sub nom. In re Tex. Dep't of Fam. & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

¹¹³ See Hassan, *supra* note 70.

¹¹⁴ See Newland, *supra* note 62, at 127; see *United States v. Ballard*, 322 U.S. 78, 86 (1944).

¹¹⁵ See Newland, *supra* note 62, at 139; Hassan, *supra* note 70.

¹¹⁶ Newland, *supra* note 62, at 139.

about it.¹¹⁷ Therefore, adoption of this universal standard is absolutely necessary to provide guidance for American family courts.

¹¹⁷ See *Follow the Money*, in *The Program: Cons, Cults and Kidnapping*, NETFLIX (2024) <https://www.netflix.com/watch/81616650?trackId=255824129> [https://perma.cc/X3NW-HLG4] (“The abuse of a child is the business of anyone who knows about it.”).