

Massachusetts high court says foster parents claiming religious reasons still can't spank children

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(The Christian Science Monitor) When Melanie and Greg Magazu decided to open their family to foster children, they say the social worker who inspected their home was impressed. The couple had two young daughters, and Melanie Magazu used to be in foster care herself.

But the Fitchburg, Massachusetts, couple say the situation changed when they acknowledged that they spank their kids as a form of discipline, in line with their interpretation of the Bible. They said they would refrain from using corporal punishment on foster children in their care but refused to stop spanking their own children. The Department of Children and Families rejected their application in 2013, citing “clinical policy” to keep foster children out of homes where corporal punishment was used. Claiming religious discrimination, the couple sued.

The state’s highest court unanimously ruled in favor of the agency Monday, prioritizing the state’s interest in protecting children in foster care.

“Although the department’s decision imposes a substantial burden on the Magazus’s sincerely held religious beliefs, this burden is outweighed by the department’s compelling interest in protecting the physical and emotional well-being of foster children,” wrote Justice Francis Spina for the Massachusetts Supreme Judicial Court.

At the heart of the case are religious liberties on one hand and a desire to protect children who may already have suffered physical abuse from experiencing additional trauma on the other. Complicating matters is the question of spanking, which remains a fraught one in America.

At least 39 countries have banned the practice, but it remains legal in all 50 states. For its part, the Massachusetts high court has ruled it is legal for parents to spank their own children. Roughly two-thirds of Americans polled say they agree that an

occasional spanking can be an appropriate form of discipline—a number that's been consistent since the 1990s. Interestingly, New England is the only region of the country where a majority of residents, 55 percent, disagree that spanking is sometimes necessary, according to the 2014 General Social Survey.

Child development experts and medical boards including the American Academy of Pediatrics and the American Psychological Association almost uniformly oppose the practice and cite research dating to the 1990s showing it can lead to aggressive and harmful behaviors in children.

The Magazus's see the Bible as explicitly condoning the use of corporal punishment. Their lawyer cited Proverbs 13:24: "He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes diligently."

They say they spanked their daughters with an open hand in the privacy of their bedrooms so as not to humiliate them.

DCF cited concerns that living in a home where corporal punishment was employed in itself could potentially harm foster children, who have been removed from their parents due to abuse or neglect.

In 2013, the hearing officer in the Magazu case noted that, "children placed by the department have been exposed to an array of neglect and abuse, and their awareness of acts of corporal punishment in their foster homes 'could well trigger the very trauma the placement was intended to mitigate.' "

In many cases, children recovering from traumatic abuse can be triggered by even reasonably mild forms of physical discipline, said Susan Mangold, executive director of the Juvenile Law Center in Philadelphia. This understanding of child psychology and how to mitigate trauma did not exist years ago, Mangold said. While statutory change has yet to take place, trauma-informed care may be wielding some influence on the judicial bench, as in Massachusetts, she said.

But David Bodanza, the Magazus's attorney, said the case goes beyond disciplinary practices.

"The ruling highlights, if anything, the need for reform in the system," Bodanza said. "In a time when filings for custody are soaring and when there's a dire need for foster parents, the qualifications to be foster care parents are getting more and

more narrow.”

His clients are currently evaluating the option of federal review. Because the ruling affirmed that DCF imposed “a substantial burden on the Magazus’ sincerely held religious beliefs,” they may have a First Amendment case, Bodanza said.

In the ruling, Justice Spina drew a line between religious beliefs and actions, saying, “to the extent that the department may have infringed on the Magazus’ constitutional rights, such infringement is on their freedom to act, not on their freedom to believe.”

But Ken Klukowski of the Liberty Institute, a legal organization that supports religious liberties, argues that the ruling violates the First Amendment.

“We certainly disagree” with the Massachusetts Supreme Judicial Court, Klukowski said in a written statement. “It held that a state’s interests in children’s well-being justified what the court admits is a substantial burden on loving parents’ religious beliefs. Under the specific facts described by the court, where there is no perceived risk of abuse, the state’s decision here violates the First Amendment’s Free Exercise Clause.

The issue of corporal punishment appears to have been the sole disqualifying factor, according to the Supreme Judicial Court.

“It is apparent from the record that in every respect [but for one] they were ideal foster and preadoptive candidates,” Justice Robert Cordy wrote in a concurring opinion. “They had a very stable home environment, a nurturing supportive relationship with their own two children, and an excellent record of employment and community involvement.”

Justice Cordy, while acknowledging the department’s “very substantial” interest in protecting foster children, also expressed concern that such high standards had not been rigorously applied to other applicants, given foster-care tragedies in Massachusetts.

“One is left to wonder . . . whether the real problem in this case was not so much the department’s concern for child safety, but rather a disagreement with the plaintiff’s beliefs regarding the upbringing of their children,” he wrote.

Those who have studied corporal punishment say that it is too extreme to categorize spanking as invariably harmful. In fact, other disciplinary methods also can have troubling consequences—sometimes even more severe—such as excessive yelling, said Ronald Rohner, who has studied the effects of corporal punishment for 30 years.

“What we have found is that when it comes to corporal punishment, it’s not always wrong or negative or associated with issues of mental health problems,” said Rohner, of the Ronald and Nancy Rohner Center for the Study of Interpersonal Acceptance and Rejection in conjunction with the University of Connecticut. “The fundamental bottom line conclusion for me is that it has negative affects when it leads to kids’ feelings of rejection, of ‘Mom and Dad don’t love me. . . . The most important thing is your kids’ perception of how loved they are.”

Based on what Robert Larzelere, who studies parental discipline, has read about the case, the ruling “is an example of how the antispanking advocacy has been taken too far,” he said.

Larzelere, a professor of human development and family science at Oklahoma State University, cites research that shows the vast majority of children, 70 to 80 percent, are spanked by the time they reach 18.

“Let’s say that somewhere around 80 percent of parents with three or four year olds still spank their children occasionally,” Larzelere said. “This means that if we go with this ruling, then 80 percent of all parents are unfit to be foster parents, and that’s extreme.”