Denying and Defining Religion Under the First Amendment: Waldorf Education as a Lens for Advocating a Broad Definitional Approach

INTRODUCTION

Group eurhythmic dance, biodynamic gardening, handicrafts, and the search for spiritual enlightenment are not the typical subjects that elementary and high school students learn in the classroom. Nevertheless, these topics and others make up a particular nontraditional curriculum that many parents choose for their children.[1] This pedagogical method, which focuses on fostering students' mental, physical, and spiritual health, is practiced as part of the phenomenon known as Waldorf education.[2] Waldorf schools originated from a belief system known as anthroposophy, which author and spiritual philosopher Rudolf Steiner created in the early twentieth century.[3] Anthroposophy postulates, among other ideas, the existence of a directly comprehensible spiritual world and embraces teachings from all religious faiths.[4] Notably, Waldorf education, although most commonly implemented in private institutions, also exists in publicly funded settings.[5]

Although many parents, teachers, administrators, and students commend the holistic, artistic approach undertaken by public Waldorf education, a group consisting of parents of former Waldorf students and certain taxpayers is not so supportive.[6] In fact, this group is the plaintiff in a lawsuit, which alleges that publicly funded Waldorf education is religious in nature[7] and thus violates the First Amendment of the United States Constitution.[8] Representatives and supporters of Waldorf schools, as well as followers of anthroposophy, forcefully deny this accusation, asserting that anthroposophy is merely a spiritual philosophy—not a religion.[9] Thus, what actually qualifies as a religion under the Constitution is central to the resolution of this dispute. Whereas a

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1. *See* discussion *infra* Part I.B.
2. *See* discussion *infra* Part I.B.
3. *See* discussion *infra* Part I.A–B.
4. *See* discussion *infra* Part I.A.
5. *See* discussion *infra* Part I.B.
6. *See* discussion *infra* Part I.C.
7. *See* discussion *infra* Part I.C.
8. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I.
9. *See* discussion *infra* Part I.C.

significant line of cases addresses the issue of defining religion when a group claims or admits religious status, the Waldorf controversy provides the uncommon situation in which an entity *denies* religiosity.[10]

The characteristics of the Waldorf paradigm engender interests, arguments, and legal questions distinct from those germane to the more commonly litigated Free Exercise and Establishment Clause fact patterns.[11] Specifically, the stakes involved when an entity asserts or admits its religious nature differ significantly from the individual and societal concerns in the less common situation in which a party denies its religious nature.[12] Accordingly, these dissimilarities in interests raise the question of whether a court has the authority to label a party as religious against its will. Further, these dissimilarities shed light on how courts should define religion.

Moreover, contemporary notions of American religious diversity demand an examination of the legal definition of religion and suggest that controversies like the Waldorf dispute will appear in the future in greater numbers and with greater frequency. Such disputes will likely increase as religious subgroups and even completely novel religious groups emerge and seek to establish themselves in the United States.[13] Not only do non-Christian minority religions represent an increasingly large percentage of the American population, but subgroups within these minority traditions as well as within Christianity are also multiplying.[14] Furthermore, in light of the perceived failure of many traditional public schools in the United States,[15] parents' and communities'

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10. *See* Malnak v. Yogi, 592 F.2d 197, 200 (3d Cir. 1979) (Adams, J., concurring); *see also infra* note 82.

11. *See supra* note 8. The first clause of the quoted portion of the amendment is the Establishment Clause; the second is the Free Exercise Clause.

12. *See* discussion *infra* Part IV.

13. *See infra* note 180 and accompanying text.

14. *See infra* note 180 and accompanying text.

15. *See, e.g.*, John Stossel, *John Stossel's "Stupid in America," How Lack of Choice Cheats Our Kids Out of a Good Education*, ABC NEWS, Jan. 13, 2006, http://abcnews.go.com/2020/Stossel/story?id=1500338; Lou Dobbs, *Dobbs: No Summer Vacation for Our Failing Schools*, CNN, June 27, 2006, http://articles.cnn.com/2006-06-27/us/dobbs.june28_1_high-school-diploma-dropouts-graduation-numbers?_s=PM:US; Gilbert Cruz, *Can Charter-School Execs Help Failing Public Schools?*, TIME, June 27, 2009, http://www.time.com/time/nation/article/0,8599,1907203,00.html; Valerie Strauss, *An Occasion for Civil Debate, Constitution Day Questioned as a 'One-Shot Moment' in Education*, WASH. POST, Sept. 15, 2008, at B02; Robin Finn, *Shaping the System That Grades City Schools*, N.Y. TIMES, Nov. 16, 2007, at 4; Mitchell Landsberg, *The Vanishing Class; Back to Basics: Why Does High School Fail So Many?*, L.A. TIMES, Jan. 29, 2006, at A1.

confidence in non-traditional education is on the rise.[16] Where non-traditional educational models arising from arguably religious organizations seek direct financial support from the state, the potential for Waldorf-like controversies abounds, indicating the need for a coherent, workable constitutional definition of religion.

In light of the increasingly diverse religious and educational landscapes in the United States, this Comment contends that the Waldorf dispute demonstrates why courts should adopt a broad, unitary definition and be able to apply it in spite of an entity's denial of religiosity. Specifically, courts should adopt a definition that does not apply a "comprehensiveness" requirement but does incorporate an element focusing on "duties of conscience" in the mind of an adherent to a belief.[17]

In reaching this conclusion, Part I of this Comment first explores the history and current status of anthroposophy, as well as the Waldorf education program to which Steiner's philosophy gives rise. Additionally, Part I examines the Waldorf controversy in some detail. Next, Part II tracks the jurisprudential development of the constitutional definition of religion and discusses the essential failure of the United States Supreme Court in setting forth a clear, workable definition. Part III distills from past judicial decisions and scholarly commentary the underlying individual and societal interests that drive the debate about defining religion in typically observed cases. Part IV explores how the facts of the Waldorf dispute bring to light interests that have not arisen in previously decided cases. Ultimately concluding that societal concerns outweigh individual concerns in the Waldorf scenario, Part IV also suggests that courts have the authority to impose a religious label on an entity that denies its own religiosity. Finally, acknowledging that the Waldorf scenario implicates a need for a new definitional framework, Part V presents a forward-looking solution: an expansive, inclusive definition of religion that adequately protects the interests entailed in both the Free Exercise and Establishment Clauses by reflecting the role of religion in a pluralistic society.

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16. *See, e.g.*, V. Dion Haynes, *Teachers, Parents Spend Break Getting New School Ready for Kids*, CHI. TRIB., Jan. 5, 1994, at 2; Kate Folmar, *Opposites on Track, 2 Schools in Running for National Blue Ribbon Status*, L.A. TIMES, Jan. 12, 1997, at 1; Abby Goodnough, *$30 Million Pledged to Help City Revamp Failing Schools*, N.Y. TIMES, Dec. 14, 2000, at B6; Kameel Stanley, *Putting His Ideals to the Test, School to Focus on Founder's 'Smaller Is Better' Doctrine*, WASH. POST, Aug. 24, 2008, at LZ01; Rachel Cromidas, *Charter Education Expanding In Chicago*, N.Y. TIMES, Oct. 8, 2010, at 21A.

17. *See* discussion *infra* Part V.

I. EXAMINING ANTHROPOSOPHY AND WALDORF EDUCATION

A. Anthroposophy

Anthroposophy, a spiritual philosophy founded by author and teacher Rudolf Steiner in the early twentieth century, advances the notion of an objective, comprehensible spiritual world, amenable to direct experience through internal spiritual cultivation.[18] Operating as a method of spiritual study that combines elements of anthropology and theosophy, anthroposophy aims to attain the precision, consistency, and coherence characteristic of scientific investigations of the physical world.[19]

Particularly, anthroposophy endeavors to observe "the external nature of the human being living in the sense-perceptible world," but in doing so, "seek[s] out the spiritual foundation by means of its manifestation."[20] The end aim of anthroposophy is to empower people "to penetrate the mystery of [their] relationship with the spiritual world by searching for answers and insights that come through a schooling of one's inner life."[21] Ultimately, anthroposophy may be termed succinctly as "spiritual science."[22] Today, over 10,000 institutions worldwide are fundamentally based on or connected with Steiner's anthroposophy.[23]

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18. *See generally* RUDOLF STEINER, THE ESSENTIAL STEINER: BASIC WRITINGS OF RUDOLF STEINER: KNOWLEDGE, NATURE, AND SPIRIT; SPIRITUAL ANTHROPOLOGY; HISTORICAL VISION; ESOTERIC CHRISTIANITY; SOCIETY AND EDUCATION (Robert A. McDermott ed., 1985).

19. Anthropology is defined as "the study of human beings and their ancestors through time and space and in relation to physical character, environmental and social relations, and culture." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003). Theosophy is defined as a "teaching about God and the world based on mystical insight." *Id*.

20. RUDOLF STEINER, ANTHROPOSOPHY (A FRAGMENT) 84–85 (Catherine E. Creeger & Detlef Hardorp trans., 1996). Steiner provided a vivid analogy to describe anthroposophy:

> If theosophy could be likened to standing on top of a mountain surveying the landscape, while anthropology is investigating down in the lowlands, forest by forest and house by house, then anthroposophy will choose its vantage point on the slope of the mountain, where individual details can still be differentiated but integrate themselves to form a whole.

Id.

21. *The Anthrposophical Society in America*, ANTHROPOSOPHY.ORG, http://www.anthroposophy.org/about/about-the-anthroposophical-society.html (last visited on Feb. 26, 2012).

22. *Is Anthroposophy a Religious Faith?*, WALDORFANSWERS.ORG, http://www.waldorfanswers.org/NotReligion2.htm (last visited April 28, 2012).

23. *History of the Anthroposophical Society*, GOETHEANUM, http://www.goetheanum.org/121.html?&L=1 (last visited April 28, 2012).

B. Waldorf Education

Waldorf schools are a product of Steiner's anthroposophy and have become increasingly popular internationally, with 2,500 schools in over 60 countries.[24] Like Montessori schools and other non-traditional educational paradigms, Waldorf schools offer a different approach to education—one that subscribes to anthroposophy's inward-looking, free-thinking perspective.[25] Indeed, in order "to solve the riddles of existence and to transform both self and society," the Waldorf curriculum differs significantly from other educational plans.[26] For example, students in Waldorf elementary schools do not learn to read until the second grade—much later than their traditional school counterparts.[27]

Other examples of Waldorf schools' distinction from other schools include strong focuses on expressive dance—termed "eurhythmy"—artistic development, handwork, crafts, gardening, natural studies, cooking arts, and storytelling.[28] Many of the history and storytelling components of the Waldorf curriculum involve the study of holy texts, myths, and creeds from a panoply of world religions.[29] Additionally, with respect to faculty, those aspiring to teach at Waldorf schools must undergo an extensive training program in anthroposophy involving Steiner's most prominent works.[30] Notably, teachers of younger grades remain with the same students until the students' eighth year in school.[31]

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24. *Waldorf Education*, THE WALDORF SCHOOL OF GARDEN CITY, www.waldorfgarden.org/page.cfm?p=349 (last visited Jan. 24, 2012).

25. Adam Housley, *Where's Waldorf?*, FOXNEWS LIVE SHOTS (September 15, 2010, 11:21 AM), http://liveshots.blogs.foxnews.com/2010/09/15/wheres-waldorf/?action=late-new&order.

26. *The Anthroposophical Society in America*, ANTHROPOSOPHY.ORG, *supra* note 21.

27. *Frequently Asked Questions*, WALDORFANSWERS.ORG, http://www.waldorfanswers.org/WaldorfFAQ.htm (last visited Sept. 8, 2010).

28. *RSC Foundations in Anthroposophy*, ANTHROPOSOPHY.ORG, http://www.anthroposophy.org/index.php?id=62&tx_ttnews[tt_news]=259&tx_ttnews[backPid]=39&cHash=e6744ae40c487b197511023defdb5f0a (last visited Sept. 8, 2010).

29. William Ward, *Is Waldorf Education Christian?*, WHY WALDORF WORKS, http://www.whywaldorfworks.org/02_W_Education/documents/2_Is_W_Christian.pdf (last visited Sept. 16, 2010).

30. *RSC Foundations in Anthroposophy*, ANTHROPOSOPHY.ORG, *supra* note 28. This website also describes the thirty-week program as a "gateway" into the "profound world-view" of anthroposophy:

> Each of us bears three essential questions in her/his heart: "Who am I? What is my relationship with others? Why am I here on the earth—what is my mission?" . . . .

C. The Constitutional Controversy Regarding Waldorf Education

Most Waldorf schools in the United States are private.[32] However, to date, 43 are publicly funded—24 of which are in California.[33] Thus, the issue of whether publicly funding Waldorf schools amounts to an establishment of religion—which is prohibited by the Establishment Clause—arises around Waldorf methods and their roots in Steiner's anthroposophy.[34] Although Waldorf supporters deny any religious or sectarian motive underlying the schools' curricula,[35] People for Legal and Nonsectarian Schools (PLANS), a group of concerned parents and taxpayers, opposes publicly funded Waldorf schools.[36] PLANS not only attacks the quality of the teaching methods used in Waldorf

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> Only by working with the whole human being—head, heart, and hands/limbs—can we find meaningful answers to such questions. "Abstract" knowledge serves only the head, not the heart and hands. The Foundations in Anthroposophy program balances and interweaves five educational approaches to self-transformation: study, conversation, meditation, artistic activity, and skill-development . . . .
> . . . .
> A gateway into many professions, the Foundations in Anthroposophy program serves as the first year of Waldorf Teacher Education for those who wish to become Waldorf school teachers in the Grades, Early Childhood and High School. It also prepares the student for further studies in Biodynamic agriculture and horticulture, beekeeping, remedial education, medicine, the arts of eurhythmy, drama, speech, painting, sculpture, music, architecture, and social sciences . . . .
> Students explore the nature of the human being as body, soul, and spirit, chart the unfolding of their own biographies, seek the deeper meaning of life, grasp the laws of karma and reincarnation, and strive to create new forms through practical work and community building. The Foundations in Anthroposophy program opens exciting vistas into the inner laws of nature and spirit, evolution of the Earth and changing human consciousness, the relationships between East and West, the mysteries of the Grail, freedom, love and individual creativity, and the challenges/opportunities facing us in our time . . . .

Id.

31. *Frequently Asked Questions*, WALDORFANSWERS.ORG, *supra* note 27.

32. Housley, *supra* note 25.

33. *Id*.

34. For a law to pass muster under the Establishment Clause, the law must have a legitimate secular purpose, must not have the primary effect of advancing or inhibiting religion, and must not further an excessive entanglement of government and religion. If it does not pass this test, the law cannot stand. *See* Lemon v. Kurtzman, 403 U.S. 602 (1971).

35. *Frequently Asked Questions*, WALDORFANSWERS.ORG, *supra* note 27.

36. *Welcome from PLANS President*, WALDORFCRITICS.ORG, http://www.waldorfcritics.org/index.html (last visited Sept. 8, 2010).

classrooms but also objects to the alleged unconstitutionality of government funding for these schools.[37] Specifically, PLANS argues that state support for Waldorf schools directly violates the Establishment Clause of the First Amendment because these schools are inherently "religious" and deleterious to the separation of church and state.[38] Accordingly, PLANS sued two California school districts for their official support of Waldorf schools.[39]

The crux of PLANS's argument rests in defining anthroposophy—and Waldorf schools, by extension—as religious in nature. In its trial brief, PLANS aims to establish the religious nature of anthroposophy by linking Waldorf schools to the teachings of Steiner and anthroposophy.[40] In doing so, PLANS aims to show that Waldorf schools constitute "an excessive governmental entanglement" with religion.[41] Furthermore, PLANS insists that public funding for Waldorf schools is a government endorsement of religion.[42]

Other instances of Waldorf schools' arguably religious nature are scattered throughout Steiner's teachings. For example, Steiner is alleged to have made missionaries of aspiring Waldorf teachers by instructing them to promote the anthroposophist message to their students.[43] Additionally, Steiner himself specifically referred to anthroposophy as religious: "[T]he [Anthroposophical] Society provides religious instruction just as other religious groups do."[44] From her own experience as a parent of a former student, the President of PLANS describes Waldorf education as a rigid,

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37. Melody Gutierrez, *Public Waldorf Schools Booming in Sacramento–But Are They Legal?*, SACRAMENTO BEE, Aug. 2, 2010, at 1B.

38. *Concerns*, WALDORFCRITICS.ORG, http://www.waldorfcritics.org/concerns.html#public (last visited Feb. 26, 2012).

39. Trial Brief for Plaintiff at 1, PLANS, Inc. v. Sacramento City Unified Sch. Dist., Twin Ridges Elementary Sch. Dist., and Does 1–100, 2005 WL 2657536 (E.D. Cal. 2005) (No. CIV. S 98–266 FCD EFB).

40. *Id*. at 5–6.

41. *Id*. at 5.

42. *Id*. at 11–12.

43. RUDOLF STEINER, FACULTY MEETINGS WITH RUDOLF STEINER 55 (Robert Lathe & Nancy Parsons Whittaker trans., 1998). Steiner emphasized:

> Among the faculty, we must certainly carry within us the knowledge that we are not here for our own sakes, but to carry out the divine cosmic plan. We should always remember that when we do something, we are actually carrying out the intentions of the gods, that we are, in a certain sense, the means by which that streaming down from above will go out into the world.

Id.

44. *Id*. at 706.

authoritarian environment immersed in "medieval dogma."[45] Moreover, PLANS criticizes the alleged religious nature of the material taught in class.[46] For example, PLANS emphasizes the in-class celebration of the religious festivals of Michaelmas[47] and the Advent Spiral,[48] although Waldorf teachers often change the names of these festivals.[49]

Waldorf supporters, however, characterize the PLANS argument as a fundamental misunderstanding of the nature of Waldorf schools and anthroposophy.[50] Although religious study is often incorporated into a Waldorf school's curriculum, Waldorf supporters assert that anthroposophy is not mentioned in the classroom, that in-class religious study does not favor any particular religion, and that such study is aimed at providing natural spiritual growth for students of all faiths.[51] Rather than

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45. *Welcome*, WALDORFCRITICS.ORG, http://www.waldorfcritics.org (last visited Feb. 23, 2012). The PLANS president is Debra Snell. *Id*.

46. *See Concerns*, WALDORFCRITICS.ORG, *supra* note 38. Specifically, PLANS attacks the alleged religious nature of the class material:

> Since 1991 the Waldorf movement has begun to move into public education in the US [sic] with teacher training workshops, "Waldorf Method" magnet schools, and "Waldorf-inspired" charter schools . . . . [T]hese activities have led to violations of church-state separation laws. The religious philosophy of Anthroposophy cannot be separated from Waldorf education. For example, Steiner's scheme of "post-Atlantean sub-races" is the framework of ancient history taught in all Waldorf schools, both public and private.

Id.

47. Michaelmas is the Christian celebratory feast of the victory of Michael the Archangel over Lucifer. *See* RICHARD FREEMAN JOHNSON, SAINT MICHAEL THE ARCHANGEL IN MEDIEVAL ENGLISH LEGEND 105–06 (2005).

48. Also called "Winter Garden" or "Advent Garden," Advent Spiral is a Waldorf school event that resembles a mystical or religious ritual. *See Concerns*, WALDORFCRITICS.ORG, *supra* note 38.

49. *Id.*

50. *Frequently Asked Questions*, WALDORFANSWERS.ORG, *supra* note 27.

51. *Id*. Waldorf supporters are emphatic in their stance concerning the religion-neutral nature of Waldorf schools:

> Are Waldorf schools religious? Waldorf schools are non-sectarian and non-denominational. They educate all children, regardless of their cultural or religious backgrounds. The pedagogical method is comprehensive, and, as part of its task, seeks to bring about recognition and understanding of all the world cultures and religions. Waldorf schools are not part of any church. They espouse no particular religious doctrine but are based on a belief that there is a spiritual dimension to the human being and to all of life. Waldorf families come from a broad spectrum of religious traditions and interest.

Waldorf Education Frequently Asked Questions, WHY WALDORF WORKS, http://www.whywaldorfworks.org/02_W_Education/faq_about.asp (last visited Sept. 8, 2010).

adopting the label "religion," Waldorf supporters and anthroposophists see anthroposophy as a complement to religion.[52] Anthroposophists claim to embrace ideas from all religions and focus on spiritual enlightenment.[53] Anthroposophy entails no profession of faith, no sacred texts, no particular method of study, no proclaimed means of salvation, no religious practices or sacraments, and no hierarchical spiritual leaders.[54] Some Waldorf supporters even claim that Steiner's spiritual philosophy cannot be characterized as a belief system, but should merely be considered a method of achieving a healthy body, mind, and spirit.[55]

Ultimately, the dispute can be characterized as Waldorf supporters' word against the allegations of PLANS. But whose point of view, if either, is the correct one?[56] Centering on delicate issues of faith, education, and the role of religion in American society, the implications of the Waldorf scenario provide a lens for examining two exceptionally difficult issues: whether a court has the authority to impose a religious label on an unwilling entity, and if so, how courts should define religion under the First Amendment.

II. TRACKING THE JURISPRUDENTIAL DEVELOPMENT OF THE DEFINITION OF RELIGION

Despite the significance of the Free Exercise and Establishment Clauses of the Constitution, defining religion remains a herculean task that the United States Supreme Court has essentially avoided to date. The Supreme Court's failure to provide a working legal

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52. *Is Anthroposophy a Religion?*, WALDORFANSWERS.ORG, http://www.waldorfanswers.org/NotReligion1.htm (last visited Jan. 24, 2012).

53. *Id.*

54. *Id*.

55. *Is Anthroposophy a Religious Faith?*, WALDORFANSWERS.ORG, *supra* note 22. Steiner's own commentary distinguishes anthroposophy from religion:

> It is often asked how spiritual science or anthroposophy stands in relation to the religious life of man . . . . By reason of the whole character of anthroposophy, it will not intervene in any religious creed, in the sphere of any sort of religious life . . . . Spiritual science never can entertain the wish to create a religion . . . . One cannot, therefore, call spiritual science, as such, a religious faith. It neither aims at creating a religious faith nor in any way at changing a person in relation to his religious beliefs.

Id.

56. In the most recent episode of this lawsuit, the Eastern District ruled in favor of the defendant school districts, holding that PLANS failed to show that anthroposophy is religious in nature. Memorandum and Order at 21, PLANS, Inc. v. Sacramento City Unified Sch. Dist., et al., 2010 WL 6352637 (E.D. Cal. Nov. 5, 2010) (No. CIV. S 98–266 FCD EFB).

definition of religion has engendered pervasive uncertainty with respect to the issue, prompting lower courts and legal scholars to set forth several definitional approaches.[57]

A. An Evolving Definition: From a Theistic Approach to Ultimate Concerns

Although Supreme Court jurisprudence associated with the constitutional definition of religion is sparse, judicial opinions on the issue have shifted from adopting a strict, narrow definition of religion to a sweepingly inclusive definition.[58] The history of the American judicial definition of religion began in 1890 with the case of *Davis v. Beason*.[59] There, the Supreme Court stated that "[t]he term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."[60] This theistic, creator-centric definition of religion lasted well into the early twentieth century, when the Court in *United States v. Macintosh* defined the "essence of religion" as a "belief in a relation to God involving duties superior to those arising from any human relation."[61]

The first challenge to the predominating theistic definition of religion originated in Judge Augustus Hand's appellate court opinion in *United States v. Kauten*.[62] Rather than adopting a theistic approach, Judge Hand broadly defined religion as "a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets."[63] In other words, Judge Hand developed a definition of religion rooted not only in a single supernatural paradigm but also in human relationships and the universe at large.[64] Only a year later, in *United States v. Ballard*, the Supreme Court embraced Judge Hand's approach, defining religion to encompass "theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths."[65]

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57. *See* discussion *infra* Parts III–IV.
58. *See infra* notes 59–76 and accompanying text.
59. 133 U.S. 333 (1890).
60. *Id*. at 342.
61. 283 U.S. 605, 633–34 (1931).
62. 133 F.2d 703 (2d Cir. 1943).
63. *Id*. at 708.
64. Karen Sandrik, *Towards a Modern Definition of Religion*, 85 U. DET. MERCY L. REV. 561, 565 (2008).
65. 322 U.S. 78, 86–87 (1944).

Accordingly, this jurisprudential progression set the foundation for a more significant broadening of the definition of religion in the 1960s. In *Torcaso v. Watkins*, the Court adopted an approach to defining religion that transcended the confines of a theistic definition of religion: "neither [the federal or state government] can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."[66] The Court even suggested in dicta that non-theistic beliefs like "Buddhism, Taoism, Ethical Culture, Secular Humanism, and others" fall within the definition of religion.[67]

Subsequently, in interpreting section 6(j) of the Universal Military Training and Service Act of 1948,[68] the Court developed the "ultimate concerns" test for defining religion in *United States v. Seeger*[69] and *Welsh v. United States.*[70] The ultimate concerns test, which arises in the conscientious objector context, essentially consists of one dispositive question to determine whether a person is a conscientious objector exempt from military service: "[D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for the exemption?"[71] Answering this question and granting the conscientious objections in *Seeger* and *Welsh*, the Court analyzed two sub-issues: "whether the beliefs professed by a registrant are sincerely held and whether they are, in [the objector's] own scheme of things, religious."[72] The sincerity inquiry is fact-dependent and determined on a case-by-case basis.[73] Notably, the inquiry strictly avoids an examination of whether the alleged religious beliefs are valid.[74] The second part of the test, however, determines whether the beliefs at issue are universally important in the life of the objector, such that they "play the role of a religion and function as a religion."[75] Put differently, the test

66. 367 U.S. 488, 495 (1961).
67. *Id*. at 495 n.11.
68. 50 U.S.C. app. § 456(j) (1970). Section 6(j) allows exemptions from military combat training and service by way of an objection rooted in "religious training and belief." *Id*. The concurrences in *Seeger* and *Welsh* suggest that the Constitution was an influence on the Court's statutory interpretation because the Court went beyond the plain language of the statute. *See* Ben Clements, Note, *Defining "Religion" in the First Amendment: A Functional Approach*, 74 CORNELL L. REV. 532, 538 (1989).
69. 380 U.S. 163 (1965).
70. 398 U.S. 333 (1970).
71. *Seeger*, 380 U.S. at 184.
72. *Id*. at 185.
73. *Id*.
74. *Id*. at 184.
75. *Welsh*, 398 U.S. at 339.

does not examine the content of the belief at issue but instead aims to determine whether a belief is subjectively identifiable in the eyes of an adherent as an ultimate, gravely significant concern.[76]

B. Seeking a Better Approach to Define Religion: Malnak v. Yogi

Torcaso, *Seeger*, and *Welsh*, taken together, demonstrate a modern broadening of the judicial definition of religion beyond the traditional theistic approach, which centers on man's relationship with a creator.[77] Specifically, this broadening is characterized as a "functional" approach, which focuses on the role an idea plays in an adherent's life, rather than its content.[78] However, what "religious" really means in a functional sense remains nebulous and indefinite.[79] Moreover, whether religious beliefs are always equivalent to ultimate concerns is another problematic issue with this definitional approach. In other words, beliefs that an adherent might commonly consider religious may or may not function with such universal importance in an individual's life that a person would make immense sacrifices in order to abide by them.[80]

Thus, because of the Supreme Court's unwillingness to define religion clearly, lower courts have sought a more workable approach for defining religion in the constitutional context.[81] A pertinent example is *Malnak v. Yogi*, a landmark decision in the Third Circuit in which the court barred the offering of a high school course in the Science of Creative Intelligence and Transcendental Meditation (SCI/TM) on Establishment Clause

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76. *Id*.

77. Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1066 (1978).

78. John C. Knechtle, *If We Don't Know What It Is, How Do We Know If It's Established?*, 41 BRANDEIS L.J. 521, 526 (2003).

79. Steven D. Collier, *Beyond* Seeger/Welsh*: Redefining Religion under the Constitution*, 31 EMORY L.J. 973, 1008–09 (1982).

80. Clements, *supra* note 68, at 540–41; *see also* Collier, *supra* note 79, at 1008–09. For example, although strictly observing the Sabbath likely qualifies as an ultimate concern for a Russian Jewish sect known as the Subbotniks—whose name literally means followers of the Sabbath—a less strict Christian or Jewish tradition might consider resting on the Sabbath as a practice that, although religious in nature, is not universally important in comparison with other religious beliefs. *See Origins of the Subbotniki Sect*, MOLOKANE.ORG, http://molokane.org/subbotniki/Aldacushion/HTML/3_Origins.html (last visited Feb. 26, 2012). In other words, there may be concerns that, although lacking in ultimate importance, are nonetheless considered religious in the lives of adherents.

81. *See infra* notes 82–104 and accompanying text.

grounds.[82] The plaintiffs argued that the SCI/TM course was religious in nature and therefore barred from public funding.[83] Central to the course was the idea that life is founded in "pure creative intelligence."[84] Additionally, the Hindu monk directing the course encouraged students to "perceive the full potential of their lives" through Transcendental Meditation.[85] The practice of Transcendental Meditation taught in the course included a ceremonial element known as the "puja," which involved the recitation of a "mantra" chosen for each student individually.[86] The puja also included chanting and making offerings to a deified Hindu teacher.[87] Despite the defendants' contention that the SCI/TM course was not religious in nature, the Third Circuit affirmed the district court's finding[88] that the course was indeed of a religious nature.[89] Notably, without referring to or setting forth any definition of religion, the court simply deemed the SCI/TM course as religious and violative of the Establishment Clause.[90]

Unsatisfied with the court's conclusory classification of the SCI/TM course as religious, Judge Arlin Adams, in a concurring opinion, set out a test for defining religion in the constitutional context.[91] Although Judge Adams acknowledged *Seeger* and *Welsh*'s expansion of the definition of religion to include non-theistic belief systems, Judge Adams also found the ultimate concerns and sincerity inquiries to require further development and limitation.[92] Accordingly, Judge Adams developed a three-factor test.[93] First, ideas or actions of a religious nature should "address

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82. 592 F.2d 197 (3d Cir. 1979). *Malnak* is one of the only cases in which an entity has denied it is religious in nature only to be labeled as religious by a court. *Id*. at 200 (Adams, J., concurring). Aside from the fact that a particular course at the high school in *Malnak* was at issue, rather than an entire teaching philosophy or paradigm, *Malnak* mirrors the Waldorf controversy. *Id*. Accordingly, the judge in the Waldorf controversy has adopted a standard for defining religion reflecting the method used in *Malnak*. *See infra* note 104.

83. *Malnak*, 592 F.2d at 197–98.

84. *Id*. at 198.

85. *Id*.

86. *Id*. Pujas, which lasted between one and two hours each, were conducted off campus on a Sunday. Students were required to bring fruit, flowers, and a white handkerchief. *Id*.

87. The deified teacher to whom the chanting and offerings were directed in the puja is known as "Guru Dev"—the embodiment of kindness and the purest essence of creation. *Id*. at 198 n.2.

88. Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977).

89. Malnak v. Yogi, 592 F.2d 197, 198–200 (3d Cir. 1979).

90. *Id*.

91. *Id*. at 200–210 (Adams, J., concurring).

92. *Id.* at 200.

93. *See infra* notes 94–99 and accompanying text.

fundamental questions" in the sense expressed in the ultimate concerns test in *Seeger* and *Welsh*.[94] Judge Adams emphasized courts' duty not to determine the "truth or falsity" of supposed religions; nonetheless, the test requires the determination of whether a belief rises to the level of encompassing "theories of man's nature or his place in the Universe which characterize recognized religions."[95]

The next two factors provide limits upon the first. Because a particular ultimate concern may be an isolated idea that deals only with one or a few aspects of life, the second factor requires that an idea be part of a "comprehensive belief-system" to be considered religious.[96] For example, Judge Adams referred to the Big Bang theory as answering an ultimate question, yet failing to encompass all aspects of life in a complete system of ultimate truth.[97] Lastly, the third factor requires the presence of "formal, external, or surface signs that may be analogized to accepted religions."[98] For example, this element consists of "formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions."[99]

Thus, Judge Adams provided three factors that now compose the prevailing test for defining religion. Courts in subsequent cases have adopted these factors and scholars have treated them as central to the debate regarding the definition of religion.[100] For example, two years after *Malnak*, the Third Circuit officially adopted Judge Adams's three-factor test in *Africa v. Pennsylvania*.[101] In addition, the Tenth Circuit adopted and modified Judge Adams's test in *United States v. Meyers*,[102] which

94. *Malnak*, 592 F.2d at 208 (Adams, J., concurring).
95. *Id*.
96. *Id*. at 209.
97. *Id*. at 208–09.
98. *Id*. at 209.
99. *Id*.
100. *See*, *e.g.*, Collier, *supra* note 79, at 991–97; Clements, *supra* note 68, at 552–53; Sandrik, *supra* note 64, at 568–69.
101. 662 F.2d 1025 (3d Cir. 1981) (denying prisoner's petition for injunction requiring state prison authority to provide for special religious dietary needs and holding that prisoner's organization—which required a raw food diet and an opposition to all that is wrong, and consisted of no formal hierarchy or ceremonies—was not religious, insofar as the organization did not address fundamental and ultimate questions, was not comprehensive in nature, and did not have external or formal signs characteristic of traditional religions).
102. 95 F.3d 1475 (10th Cir. 1996) (setting out five factors for determining whether an idea or organization is religious: ultimate ideas, metaphysical beliefs, moral or ethical systems, comprehensiveness of beliefs, and accoutrements of religion).

provided the standard for the District Court of New Mexico in *United States v. Quaintance*.[103] Furthermore, the parties to the Waldorf controversy have relied upon Judge Adams's concurrence in *Malnak* as an appropriate standard for resolving the Waldorf controversy.[104] Thus, at the least, Judge Adams's test is gaining popularity as an appropriate way to define religion for the purposes of the First Amendment.

III. DISTILLING THE INTERESTS THAT DRIVE THE DEBATE ABOUT THE DEFINITION OF RELIGION

The Supreme Court's failure to develop an unambiguous constitutional definition of religion signifies an uncommonly volatile area of American constitutional law.[105] Whereas courts have defined other concepts in the Constitution, religion is relatively uncharted territory. The varying judicial and scholarly opinions suggesting an appropriate method for defining religion are rooted in the struggle between competing individual and societal interests.[106] For example, in most cases involving the religion clauses of the Constitution, individual interests like freedom of conscience, self-determination, and avoidance of psychological trauma are pitted against society's interests in avoiding political discord and unnecessary cost and maintaining a separation of church and state.[107]

Whereas advocates of a broad definition of religion usually focus on the individual concerns at stake, scholars and judges seeking to rein in the definition of religion typically do so with the interests of ordered liberty and society at large in mind.[108] For example, when an individual conscientiously objects on the basis of a borderline religious belief, he or she has an interest in a broad definition of religion that sweeps widely in its ambit of protection.[109] Conversely, the government may have an interest in a narrower definition of religion that allows the state to legislate

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103. 471 F. Supp. 2d 1153 (D.N.M. 2006) (finding that beliefs of members of the "Church of Cognizance" that marijuana was a sacrament and deity and that consumption of marijuana was a means of worship were not "religious" for the purposes of free exercise).

104. *See* Trial Brief for Plaintiff, *supra* note 39, at 9–10.

105. Collier, *supra* note 79, at 976.

106. *See* discussion *infra* Part III.A–B.

107. James G. Dwyer, *School Vouchers: Inviting The Public into the Religious Square*, 42 WM. & MARY L. REV. 963, 966 (2001).

108. *See* discussion *infra* Part III.A–B.

109. *See* discussion *infra* Part III.A.

and enforce laws it views as valuable to society without the interference of the Free Exercise Clause.[110]

A. Protecting Individual Interests

Serving as the fountainhead of the modern broadening of the definition of religion beyond theism, *Torcaso v. Watkins* resulted in the Supreme Court's invalidation of a Maryland constitutional provision that required state officials to profess a belief in God.[111] Particularly, the Court held that Maryland's oath requirement "unconstitutionally invade[d] the [declining official's] freedom of belief and religion."[112] In other words, the Court's decision in *Torcaso* explicitly rejected a purely theistic definition of religion.[113] In doing so, the Court concerned itself with the potential "burdens imposed on the free exercise of the faiths of nonfavored believers."[114] Indeed, the Court in *Torcaso* reinforced the scholar-supported notion that "[t]he core of the free exercise clause is voluntarism—the inviolability of conscience."[115] Accordingly, the thrust of the *Torcaso* decision appears to emanate from the notion of defending individual citizens from the harmful psychological turmoil of having to feign or alter religious beliefs in order to avoid punishment or obtain a benefit from the state.[116]

Notably, although the *Torcaso* decision marked the Court's willingness to recognize the important moral and psychological interests an individual has in the security of his conscience, it did so without having to account for any significant competing state

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110. *See* discussion *infra* Part III.B. In a case in which the Establishment Clause is central, the interests are reversed. The government may desire a broad definition of religion to control religious influence in state affairs, whereas an individual entity may seek a narrower definition in order to escape the limitations of the Establishment Clause. *Id.*

111. 367 U.S. 488 (1961). At issue in *Torcaso* was article 37 of the Declaration of Rights of the Maryland Constitution: "'[N]o religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God . . . .'" *Id*. at 489.

112. *Id*. at 496.

113. *See* Note, *supra* note 77, at 1066.

114. *Torcaso*, 367 U.S. at 490.

115. *See* Note, *supra* note 77, at 1058.

116. Clements, *supra* note 68, at 545; Dwyer, *supra* note 107, at 970–71; J. Morris Clark, *Guidelines for the Free Exercise Clause*, 83 HARV. L. REV. 327, 337 (1969); Gary J. Simson, *Endangering Religious Liberty*, 84 CAL. L. REV. 441, 466–67 (1996); Brian M. Murray, *Confronting Religion: Veiled Muslim Witnesses and the Confrontation Clause*, 85 NOTRE DAME L. REV. 1727, 1743 (2010).

interest.[117] Rather, the Court struck down an arcane provision of the Maryland Constitution that, although originally drafted soon after colonists emigrated to "escape religious test oaths and declarations" they had faced in Europe,[118] was subsequently abused by religious majorities to oppress "dissenters from their faith."[119] This brief dismissal of the Maryland provision, coupled with the glaring absence of any mention of Maryland's interest in upholding the requirement that officials express a belief in God, indicates that the Court considered the individual interests at stake in the case as prevailing over comparatively minimal, or even non-existent, legitimate state interests.[120] In other words, broadening the definition of religion and connoting the break from a line of narrow, theistic jurisprudence was relatively easy for the Court in *Torcaso*, in which the state lacked any significant interest in enforcing the particular provision.

However, a few years later in the *Seeger* and *Welsh* decisions, the Court encountered more formidable societal interests, which required a more careful balancing against individual interests.[121] Summarized succinctly, the federal government had an incentive to prevent the circumvention of the draft through the abuse of a statutory exemption for conscientious objectors.[122] Moreover, although all governments have a significant interest in ensuring the enforcement of laws in general, the federal government in *Seeger* and *Welsh* had compelling and particularized interests in effectively enforcing the law to provide for national security, defense, and public order.[123] Expressed differently, in *Seeger* and *Welsh*, the individual interest in avoiding the dilemma of disobeying the law or facing "extratemporal consequences" was pitted against strong societal interests in maintaining the meaning and applicability of law, as well as in providing for public safety.[124]

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117. In *Torcaso*, the Court channeled Justice Black: "Neither [a state nor the Federal Government] can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion." 367 U.S. at 492–93 (quoting Everson v. Bd. of Educ., 330 U.S. 1, 15–16 (1947)).

118. *Torcaso*, 367 U.S. at 490.

119. *Id.*

120. *See id.*

121. *See* discussion *infra* Part III.B.

122. *See generally* Clark, *supra* note 116 (describing the interplay between individual interests in religious freedom and governmental interests in health, safety, order, defense, and revenue).

123. *Id.*

124. Simson, *supra* note 116, at 446.

Despite the government's interest in curtailing the breadth of the definition of religion in the *Seeger* and *Welsh* cases, the Court allowed the conscientious objection, indicating that individual interests in freedom of conscience and of religion are to be protected as sacred even in the face of important state policies.[125] In turn, the ultimate concerns test was born.[126] Accordingly, with this precedent in mind, advocates of the psychological interests connected with the Free Exercise Clause promote broadly inclusive definitions of religion.[127] Expanding upon the individual psychological and conscience-based concerns that are central to the policy behind a broad definition of religion, commentators advocating broad definitions emphasize other more particularized concerns about morality and fairness, which come under the protection of the Free Exercise Clause.[128] For example, "the cost to a principled individual of failing to do his moral duty is generally severe, in terms of supernatural sanction or the loss of moral self-respect."[129] Additionally, broad definitions also aim to protect interests in privacy, independence, self-expression, and maintaining the integrity of religion against state interference.[130]

B. Protecting Societal Interests

The Supreme Court's development of the ultimate concerns test in *Seeger* and *Welsh*, which provided a distinctly broad definition of religion, has drawn the critical eye of judges and commentators.[131] The expansive ultimate concerns approach promulgated in *Seeger* and *Welsh* has been criticized as useless, subject to abuse, limitless, and generally unworkable.[132] These criticisms tend to relate to society's countervailing interests in religion clause cases, particularly in avoiding the circumvention of generally applicable laws by individuals who are empowered to

125. *See supra* notes 68–76 and accompanying text.
126. *See supra* notes 68–76 and accompanying text.
127. *See, e.g.*, Clark, *supra* note 116; A. Stephen Boyan, Jr., *Defining Religion in Operational and Institutional Terms*, 116 U. PA. L. REV. 479 (1968); Anita Bowser, *Delimiting Religion in the Constitution: A Classification Problem*, 11 VAL. U. L. REV. 163 (1977).
128. *See supra* notes 115–16 and accompanying text.
129. Clark, *supra* note 116, at 337.
130. Bowser, *supra* note 127, at 198–201.
131. *See infra* notes 132–139 and accompanying text.
132. Collier, *supra* note 79, at 1000; Knechtle, *supra* note 78, at 527–31; László Blutman, *In Search of a Legal Definition of Religion: Lessons from U.S. Federal Jurisprudence*, Americana: E-Journal of American Studies in Hungary, Spring 2009, http://americanaejournal.hu/vol5no1/blutman.

define religion themselves.[133] Permitting individuals to define religion themselves arguably allows the fox to guard the henhouse, threatening to render the religion clauses objectively meaningless.[134] Furthermore, the ultimate concerns test imposes an immense burden upon the state in sifting the fraudulent abusers from the sincere believers.[135]

Correspondingly, post-*Seeger* and post-*Welsh*, allowing individuals and organizations to be laws unto themselves indicates a need to limit the ultimate concerns test. For example, Judge Adams's concurrence in *Malnak* deftly limited the apparent breadth of the *Torcaso*, *Seeger*, and *Welsh* notions of religion by characterizing religious ideas as part of a "comprehensive belief system laying a claim to ultimate truth and supported by a formal group with religious trappings."[136] Judge Adams's motivation to give tangible limits to the definition of religion further manifested itself in the opinion he authored for *Africa v. Pennsylvania*, in which the Third Circuit officially adopted Judge Adams's three-part test.[137]

By the same token, other societal concerns distinct from the state's interest in preventing the circumvention of the law undergird jurisprudence and scholarly commentary partial to a more limited definition of religion. One prominent societal concern hinges upon the perceived overinclusiveness of the ultimate concerns test: the test—interpreted at its broadest application—threatens to invalidate any legislation with a humanitarian

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133. Blutman, *supra* note 132; *see also* Empl. Div. v. Smith, 494 U.S. 872 (1990) (holding that neutral laws of general applicability do not violate the Free Exercise Clause of the First Amendment).

134. Blutman, *supra* note 132. However, fears of fraud and abuse are arguably overdrawn because religious ideas are of such importance that individuals will not lie about them in a way that would cheapen ideas central to their lives. Note, *supra* note 77, at 1081–82. Moreover, the sincerity test is arguably competent to identify fraud efficiently. *Id*. *See also* Wisconsin v. Yoder, 406 U.S. 205, 215–16 (1972) ("A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.").

135. Clark, *supra* note 116, at 335.

136. Malnak v. Yogi, 592 F.2d 197, 212 (3d Cir. 1979) (Adams, J., concurring). In other words, Judge Adams set out a three-part test encompassing ultimate concerns, comprehensiveness, and external signs characteristic of accepted religions. *Id*. at 208–09.

137. 662 F.2d 1025, 1032 (3d Cir. 1981).

objective as an establishment of religion.[138] From a broader social perspective, government has a strong interest in avoiding excessive cost and intense political discord, which prevent the state from handling issues more pressing than the mediation of religious controversies under either the Free Exercise Clause or Establishment Clause.[139]

C. Dual Versus Unitary Definitional Approaches

Noting the competing interests and approaches for defining religion, Judge Adams's concurrence in *Malnak* also calls attention to the tug-of-war between the different values associated with the Free Exercise Clause and the Establishment Clause. Judge Adams acknowledges but dismisses the scholarly promotion of a dual definition of religion—a different definition for each clause that is sensitive to the balance of competing values.[140] Particularly, a dual definitional method would impose a broad definition for the Free Exercise Clause to protect the array of individual interests, whereas a narrow definition would attach to the Establishment Clause for the protection of societal interests.[141] Although this approach purports to resolve the tension between the Free Exercise Clause and the Establishment Clause, it is susceptible to criticism that the language of the First Amendment requires the adoption of a unitary definition of religion.[142] Furthermore, with a dual definitional

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138. *See* Note, *supra* note 77, at 1084; Knechtle, *supra* note 78, at 528; Simson, *supra* note 116, at 471. For example, increasing funding for education in impoverished areas might fail under the Establishment Clause as an establishment of religion if the important goal of improving poor children's education qualifies as an ultimate concern.

139. Simson, *supra* note 116, at 467; *see also* Patrick M. Garry, *The Democratic Aspect of the Establishment Clause: A Refutation of the Argument that the Clause Serves to Protect Religious or Nonreligious Minorities*, 59 MERCER L. REV. 595, 608–09 (2008).

140. *Malnak*, 592 F.2d at 210–13 (3d Cir. 1979) (Adams, J., concurring).

141. *See* Note, *supra* note 77, at 1084; Andrew W. Austin, *Faith and the Constitutional Definition of Religion*, 22 CUMB. L. REV. 1, 10–11 (1991).

142. *Malnak*, 592 F.2d at 210–13 (Adams, J., concurring); Blutman, *supra* note 132; Collier, *supra* note 79, at 993–94. Consider Justice Rutledge's criticism of a dual definitional approach in *Everson v. Board of Education*:

> "Religion" appears only once in the Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid "an establishment" and another, much broader, for securing "the free exercise thereof." "Thereof" brings down "religion" with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other.

approach, particularly positioned individuals or organizations would receive disparate treatment under each religion clause. For example, a group might be considered religious under the Free Exercise Clause but not under the Establishment Clause, allowing it to garner the benefits but avoid the restrictions the Constitution applies to religions.[143]

Ultimately, the struggle to fill the definitional void for religion in the constitutional context is characterized by the broad and the narrow, the individual and the societal, the unitary and the dual. The different values at stake drive the debate: individual interests in preserving freedom of conscience and expression, avoiding psychological turmoil, maintaining the integrity of religion, avoiding punishment or detriment at the hands of the state, and fulfilling moral duties are pitted against societal interests in preventing the circumvention of the law, maintaining a separation between church and state, avoiding excessive expense in delicate religious controversies like the Waldorf scenario, and preserving useful legislation from attacks on religious grounds.[144] In the context of this struggle, the Waldorf dispute provides an opportunity for courts to rethink the current method for defining religion, particularly through a close examination of the interests, questions, and challenges that the Waldorf scenario presents.

IV. FRAMING THE INTERESTS AT STAKE IN THE WALDORF PARADIGM

A. Unearthing a Hidden Set of Interests

The Waldorf situation, which arises under the Establishment Clause in the educational context, defies the typically observed balance of interests, in which an individual entity prefers a broad definition of religion, and the government prefers a narrower approach.[145] In fact, in the Waldorf scenario, the desired approach for both sides is reversed—with the individual interests of Waldorf supporters better served by a narrow definition of religion and the government's interests protected by a broad definition.[146] Although

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330 U.S. 1, 32 (1947) (Rutledge, J., dissenting).

143. Collier, *supra* note 79, at 994. For example, this inconsistency would occur if Waldorf schools avoid a religious classification in the current dispute but later seek Free Exercise protection as religious entities in the future.

144. *See* discussion *supra* Part III.A–B.

145. *Cf.* discussion *supra* Part III.A–B.

146. In other words, Waldorf supporters seek a narrower definition of religion in order to avoid a religious classification, whereas significant societal

rarely examined as central to an Establishment Clause case in the educational context, the reasons for an individual's preference for a narrow definition and the government's preference for a broad definition have always existed latently when an educational program or practice faces an Establishment Clause challenge.[147]

Nonetheless, because Establishment Clause cases in the educational context have commonly involved groups, practices, or symbols that are clearly religious—such that their religious nature is beyond debate—these cases have not addressed the definition of religion or the interests relevant thereto.[148] That is to say, no clearly established religious defendant has been able to argue sincerely that it is not religious for the purposes of the Establishment Clause.[149] In the Waldorf scenario, however, Waldorf supporters and anthroposophists are not like clearly established religious groups and can make the argument that they are not religious in nature. For example, Waldorf supporters might assert that the celebrations of Michaelmas and the Advent Spiral are part of a spiritual-educational approach that goes beyond religion, unlike a traditional Christian school paradigm that has a clearly religious agenda.[150] Thus, anthroposophists and Waldorf supporters seek a narrower definition of religion, deny religiosity, and avoid the limitations of the Establishment Clause.

Because a Waldorf-like defendant has the legitimate opportunity to deny its own religiosity under the Establishment Clause, and because the state has significant interests in a dispute

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interests favor a broad definition that labels Waldorf schools and anthroposophy as religious. *See* discussion *supra* Parts I.C, III.

147. *See infra* note 148.

148. For example, the following Establishment Clause cases addressed whether a particular practice, program, or law constituted an establishment of an accepted religion—not whether the underlying system of beliefs giving rise to the alleged establishment was religious in nature: Van Orden v. Perry, 545 U.S. 677 (2005); Mitchell v. Helms, 530 U.S. 793 (2000); Agostini v. Felton, 521 U.S. 203 (1997); Edwards v. Aguillard, 482 U.S. 578 (1987); Aguilar v. Felton 473 U.S. 402 (1985); Wallace v. Jaffree, 472 U.S. 38 (1985); Lynch v. Donnelly, 465 U.S. 668 (1984); Mueller v. Allen, 463 U.S. 388 (1983); Marsh v. Chambers, 463 U.S. 783 (1983); Widmar v. Vincent, 454 U.S. 263 (1981); Stone v. Graham, 449 U.S. 39 (1980); Wolman v. Walter, 433 U.S. 229 (1977); Meek v. Pittenger, 421 U.S. 349 (1975); Sloan v. Lemon, 413 U.S. 825 (1973); Tilton v. Richardson, 403 U.S. 672 (1971); Epperson v. Arkansas, 393 U.S. 97 (1968); Bd. of Educ. v. Allen, 392 U.S. 236 (1968); Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963); Engel v. Vitale, 370 U.S. 421 (1962); Zorach v. Clauson, 343 U.S. 306 (1952); McCollum v. Bd. of Educ., 333 U.S. 203 (1948); Everson v. Bd. of Educ., 330 U.S. 1 (1947).

149. *See* cases cited *supra* note 148.

150. *See* discussion *supra* Part I.C.

like the Waldorf scenario, a court should have the authority to define a group or individual as religious, even if the group or individual denies its religiosity. Moreover, such judicial authority is particularly important in light of the increased probability of Waldorf-like disputes arising in the future.[151] In light of the implications of the Waldorf scenario, two related policy arguments favor the court's authority to impose a religious label on a denier.[152]

B. Waiver of Religious Interests

The first argument is relatively uncomplicated, although controversial: in the Waldorf situation, wherein an entity denies its religiosity, such a denial serves as a waiver of any religious rights or interests normally contemplated in a religion clause case. In other words, a denial of religious status may be viewed as a waiver of the benefits of a religious classification.[153] Additionally, in spite of this waiver of religious interests, a court may nonetheless label an entity as religious in light of society's heightened countervailing interests in preventing indoctrination, fraud, and a mixing of church and state.[154] The rationale is that individual religious interests no longer stand in opposition to the state's powerful interests.[155] This view is consistent with the idea that individuals or groups should not be able to self-define for the purposes of the law, even if, as in this type of case, religiosity is not purported but instead denied.[156]

The waiver argument leads to a peculiar result, however. Indeed, it allows the denier of religiosity to create a dual definition of religion by its own accord, albeit the complete opposite of what advocates of a dual definition suggest.[157] Whereas the literature focuses on a narrow definition for the Establishment Clause and a broad definition for the Free Exercise Clause,[158] this "waiver" approach results in a group falling outside of the definition of

151. *See infra* note 180 and accompanying text.
152. *See* discussion *infra* Part IV.B.
153. For a discussion of some of the interests that a religious classification protects, see *supra* Part III.A.
154. *See* discussion *supra* Part III.B
155. *See* discussion *supra* Part III.A–B. For example, in denying the religiosity of anthroposophy and Waldorf education, Waldorf supporters would waive any potentially religious interests under this theory. Nonetheless, a court, in order to protect powerful societal interests, might accept the arguments PLANS makes, finding anthroposophy and Waldorf schools to be religious.
156. *See supra* notes 133–135 and accompanying text.
157. *See* discussion *supra* Part III.C and accompanying text.
158. *See* discussion *supra* Part III.A–B.

religion for the purposes of the Free Exercise Clause but inside the definition for the purposes of the Establishment Clause. Admittedly, this result is vulnerable to the criticism that the government cannot "have its cake and eat it, too." If a court classifies a group or individual as religious, it should not only take into account government and societal interests that exist in a religious context, but, in fairness, it should also consider the interests a group or individual necessarily has as a religious entity. In other words, if a court determines that a group or individual is religious against that entity's will, the court should recognize both the limitations and benefits that result from a religious characterization.[159]

Moreover, the waiver view is open to the criticism that it allows the state to take unfair advantage of the subtle differences between the commonly understood meaning of religion and the legal definition of religion, which, in its current state, is a broader concept than the former.[160] For example, the Jehovah's Witnesses, who claim that all religion is "wrong," "a snare," and "a racket,"[161] would likely qualify as constitutionally religious under the prevailing judicial tests and scholarly suggestions for defining religion.[162] Essentially, in a situation like the Waldorf controversy, the waiver argument allows the state to apply the broader legal definition in the Establishment Clause context and the narrower operational definition in the free exercise context—both for the state's own advantage.[163]

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159. *See* discussion *supra* Part III.

160. Boyan, *supra* note 127, at 490–91. Boyan even posits that the government should have no power to label as religious an entity that defines itself as non-religious:

> To what extent should it be legally relevant that an individual or group labels or refuses to label a particular belief as religious? It is most relevant. A refusal to label a belief as religious, while in a legal context asserting a freedom or privilege granted on the basis of religion, seems inconsistent although it is not unknown. Under the standard proposed here, a court should be required to make clear to the claimant what *it* means by religion, because he might understand the term only in a conventional institutional sense. However, if an individual maintains that his belief, even including a belief in God, is not religious, it is not for the government to say that it is.

Id.

161. Douglas v. City of Jeannette, 319 U.S. 157, 167 (1943) (quoting a phonographic record Jehovah's Witnesses played for house inhabitants during door-to-door information dissemination campaigns).

162. Boyan, *supra* note 127, at 491 n.47.

163. *See id.*; *see also* Note, *supra* note 77, at 1088. Notably, anthroposophists and supporters of Waldorf schools deny their religious nature, even under the broader legal concept of religion in some respects. *See supra* notes 33–38. Thus,

C. Balancing Individual and Societal Interests

Notwithstanding the waiver argument's potential weaknesses, a second argument demonstrates the superiority of the state's interests over the interests of the anthroposophists and Waldorf supporters in the current controversy. It initially proceeds by indicating the particular societal interests at stake and weighs them against the comparatively inferior, less compelling individual interests of the Waldorf schools.

In a typical conscientious objection claim, the objector's interest in individual freedom and psychological well-being is usually pitted against the state's comparably formidable interest in enforcing whichever law is alleged to violate the Free Exercise Clause. In such a case, the state aims, *inter alia*, to guard against fraudulent adherents to a religion in order to prevent abuse of the Free Exercise Clause and circumvention of the law.[164] Likewise, in the Waldorf situation, the government has a significant interest in preventing fraudulent denials of religiosity in order to prevent circumvention of the Establishment Clause.[165]

Nonetheless, there is a key difference between these two situations, with respect to the magnitude of the individual interests at stake. In the conscientious objection fact pattern, the state's interests are at odds with formidable individual interests that are of arguably equal or greater strength.[166] Conversely, in a Waldorf-like fact pattern there exist compelling societal concerns against which no counterbalancing individual interests of comparable magnitude emerge.[167]

Critical among the state's concerns is preventing the fraudulent—or at least injurious—circumvention of the Establishment Clause by a religious group that claims it is not religious.[168] Allowing such a group to avoid an Establishment Clause challenge opens the door to state-funded religious indoctrination in an educational setting, the blurring of the line between church and state, and the incitement of political discord like

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because anthroposophy can be distinguished from the Jehovah's Witness example, the waiver approach arguably maintains its validity in the Waldorf scenario, in which the denier of religiosity is aware of the differences between the legal and commonplace definitions of religion.

164. Collier, *supra* note 79, at 990.
165. *See* discussion *supra* Part III.B.
166. *See* discussion *supra* Part III.
167. *See supra* note 58 and accompanying text.
168. *See* discussion *supra* Part III.B.

the Waldorf controversy.[169] The primary thrust of this interest-balancing argument rests on a modification of the notion that allowing individuals to be a law unto themselves threatens to render the Free Exercise Clause limitless.[170] In the Waldorf situation, however, it is the Establishment Clause that is at risk of superfluity if a group is granted the power to define itself legally as non-religious.[171] Furthermore, the state has an interest in avoiding costs and efficiently monitoring borderline cases like the Waldorf dispute to prevent Establishment Clause violations from occurring.[172]

In sum, the state and the society it represents have powerful interests under the Establishment Clause in thoroughly and fairly vetting the veracity of the claim that public Waldorf schools are not religious in nature. Necessarily, these interests weigh in favor of allowing judicial discretion to determine whether entities like Waldorf schools are religious, despite their contentions to the contrary.

On the other side of the interests equation, however, free exercise concerns for fairness to the individual, freedom of conscience, and the avoidance of psychological harm are not central to the debate in the Waldorf situation. The moral dilemma facing an individual entity that must choose between following the law or its religion is not present in the Waldorf paradigm, wherein religious nature is explicitly disavowed.[173] Assuredly, there is no danger of duress upon one's conscience, against which the Free Exercise Clause protects. Moreover, to declare that there exists a fundamental right to receive public funding for a particular teaching method is questionable at best.[174] Adherents to anthroposophy are not at risk of undue governmental interference with the practice of their spiritual philosophy either. Indeed, defining anthroposophy as a religion under the Establishment

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169. *See* discussion *supra* Part I.C.

170. *See* discussion *supra* Part III.B.

171. For example, if Waldorf schools or other similar borderline religious entities escape a religious classification through their own self-definition, the deferential judicial imprimatur on these entities might sanction the public funding of activities that even more clearly exhibit a "religious" character, like constructing facilities for ceremonies or rituals. In other words, by accepting an entity's self-proclaimed label of non-religious, a court opens the door for such an entity to inject even more religious behavior into the classroom under the guise of its now judicially sanctioned classification as non-religious.

172. *See id.*

173. *See* discussion *supra* Part III.A.

174. *See* DeShaney v. Winnebago Cnty., 489 U.S. 189 (1989) (determining that, under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, individuals have only negative fundamental rights and that the government owes no related positive duties to individuals).

Clause would remove only Waldorf schools' eligibility for public funding.[175]

To be sure, important individual interests are at stake in a Waldorf fact pattern, but they do not rise to the level of society's interests in upholding the Establishment Clause. For example, Waldorf schools maintain concerns about self-determination, self-definition, and the ability to educate children in a manner that many believe is beneficial to students' minds, bodies, and spirits.[176] Moreover, Waldorf schools may also have a strong interest in avoiding the government-sanctioned cheapening of their teaching methods through a religious classification.[177] In other words, Waldorf supporters insist that the allegedly religious characteristics of the Waldorf method are either historical or purely spiritual in nature.[178] A religious label may undercut Waldorf supporters' apparently firm belief in neutrality and secularity as touchstones of Waldorf education's quality.[179] Nonetheless, in this scenario, an allegedly religious entity's values do not come under the special protection of the Free Exercise Clause and are non-issues in the Waldorf paradigm. Thus, in short, a court should have the power to define ideas and systems like anthroposophy and Waldorf schools as religious in light of compelling societal concerns, despite a denial to the contrary.

V. ADOPTING A BROAD, UNITARY DEFINITION OF RELIGION

The societal interests at stake in the Waldorf controversy tip the scales in the government's favor, preventing anthroposophists from legally defining themselves as non-religious and instead demanding the recognition of a judge's capability to define anthroposophy as religious under appropriate circumstances. How courts should define religion in light of these interests, however, is a different issue. The balance of interests in the Waldorf controversy provides critical insight into solving this issue and suggests a new framework for defining religion. Moreover, the Waldorf situation's relevance to an increasingly pluralistic society demonstrates a need for a definition of religion that differs in dimension from the currently prevailing *Malnak* test.[180] In light of

175. *See supra* note 34.
176. *See* discussion *supra* Part I.B.
177. Bowser, *supra* note 127, at 198–201.
178. *See* discussion *supra* Part I.B–C.
179. *See* discussion *supra* Part I.B–C.
180. *Statistics*, THE PLURALISM PROJECT AT HARVARD UNIVERSITY, http://pluralism.org/resources/statistics/index.php (last visited Oct. 12, 2010). Harvard University's Pluralism Project provides statistical and substantive information

these considerations, a broad, inclusive definition, if applied unitarily and with proper limitation, fairly and symmetrically protects individual and societal values. Specifically, this unitary definition should avoid a "comprehensiveness" requirement and should incorporate a non-determinative "duties of conscience" requirement as well as a non-determinative "external signs" requirement.

A. Equity of a Unitary Approach

Coupled with the increasing likelihood of Waldorf-like scenarios in the future, the powerful societal interests at stake in the Waldorf paradigm bolster the argument for a broad, unitary definition of religion.[181] Whereas the promotion of an expansive definition is usually premised on achieving protection of individual interests, a broad, unitary definition of religion also prevents circumvention of the wall between church and state in Waldorf-

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on religious diversity in the United States. *Id*. The Project emphasizes the difficulty in gathering accurate statistics regarding the representation of various religious traditions in the United States:

> One of the most frequently asked questions at the Pluralism Project is about statistics—how many people are here from a given religious tradition, how many centers are there, what percentage of the population are we talking about. There is a paucity of information since the U.S. Census does not collect figures on religious adherence for the country. What information we have about such numbers is controversial; some suggest that a religious tradition that keeps track of its own adherents has a vested interest in maximizing those numbers. The presence of religious diversity does not require proof; it is a fact that can be seen in communities across America.

Id. Nonetheless, the Project does suggest increasing diversity and growth in specific faiths for which information is available, like Baha'is, Buddhists, and Jains. *Id*. In addition, the Project indicates that 17 million people—over 6% of the American population—practices a non-Christian minority religion. *Id*. For a more in-depth division of the American population by religious tradition, see *Statistics by Tradition*, THE PLURALISM PROJECT AT HARVARD UNIVERSITY, http://pluralism.org/resources/statistics/tradition.php#Total%20Population (last visited Oct. 12, 2010). Other sources paint a similar picture: the Pew Forum on Religion and Public Life, in its U.S. Religious Landscape Survey, indicates results similar to those of the Pluralism Project and describes American society as a "very competitive religious marketplace," characterized by "constant movement" in which "every major religious group is simultaneously gaining and losing adherents." *Reports*, THE PEW FORUM ON RELIGION & PUBLIC LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY, http://religions.pewforum.org/reports (last visited Oct. 12, 2010).

181. *See* discussion *supra* Part III.B–C.

like situations, providing clarity for the meaning of the Establishment Clause.[182]

In other words, whereas less-known religious groups are protected by the Free Exercise Clause, the Waldorf situation indicates a related need to include these groups in the ambit of the Establishment Clause. This way, symmetry is achieved between both religion clauses, and a religion receives equal treatment in both contexts. Moreover, the Establishment Clause's historically societal objectives are best achieved under a broad definition of religion that serves the needs of a religiously pluralistic society.[183] Ultimately, the existence and probable proliferation of Waldorf-like controversies reinforce the argument for a broad, inclusive definition of religion.

B. Crafting a Workable Definition of Religion

1. Dropping Malnak*'s "Comprehensiveness" Requirement*

Judge Adams was aware of the unusual scheme of interests at issue in *Malnak* and recognized the importance of developing and applying an expansive yet prudently limited definition of religion.[184] In turn, Judge Adams crafted the three-part ultimate concerns, comprehensiveness, and external characteristics test.[185] Nonetheless, Judge Adams's test does not escape criticism and should be modified in order to develop a workable definition of religion that reflects the needs and characteristics of modern American society.[186]

Judge Adams's approach is susceptible to the criticism that comprehensiveness is not a necessary component of a religion.[187] Indeed, the comprehensiveness component classifies as non-religious "a person who worships the sun" or a pantheist, "whose belief system consists simply of the notion that God exists solely in nature, and whose beliefs guide him to lead a pure and natural life."[188] These examples would likely be considered religious from a common, everyday perspective; in turn, the broader definition that Judge Adams claims to adopt should not exclude them.[189] In addition, this element of the three-part test is inherently vague,

182. *See* discussion *supra* Part III.B–C.
183. *See* Garry, *supra* note 139, at 596–99.
184. *See supra* notes 136–37 and accompanying text.
185. *See supra* notes 136–37 and accompanying text.
186. *See supra* note 180 and accompanying text.
187. Austin, *supra* note 141, at 23–24.
188. *Id*. at 25.
189. *Id*.

insofar as the concept of comprehensiveness may vary significantly among individuals.[190] Moreover, persons not articulate enough to convey the comprehensiveness of their ideas might become objects of unfair discrimination in court.[191]

Waldorf education provides another example of the arbitrariness of the comprehensiveness standard.[192] Although anthroposophy and Waldorf education may be considered comprehensive under Judge Adams's approach, in light of their mental, spiritual, and physical focuses, they may instead be considered to fall below the comprehensiveness threshold.[193] To be sure, anthroposophy and Waldorf education arguably center merely on health issues, albeit mental, physical, and spiritual health.[194] Nonetheless, PLANS makes other legitimate arguments beyond comprehensiveness that advocate for a finding of religiosity, emphasizing anthroposophy's attention to theistic and ultimate concerns and its exhibition of formal external signs of a religious character.[195] Accordingly, because it is both arbitrary and unnecessary, the comprehensiveness requirement should be eliminated from the test.

2. Modifying "Ultimate Concerns" to Reflect "Duties of Conscience"

In addition to eliminating the comprehensiveness requirement, a modification of the first *Malnak* factor to reflect "duties of conscience" will more accurately capture the role of religion in an individual's life, as well as in society.[196] For example, in *Seeger* and *Welsh*, the Supreme Court intended for the ultimate concerns test to express the functional role of religion in an adherent's life—the place an idea holds, rather than its content.[197] The Court required that a claimant exhibit a "belief that is sincere and

190. For example, one person may consider a specific, isolated aspect of life to be extremely important and filled with meaning so as to direct his or her life path comprehensively, whereas another person may credit no importance or breadth to such an idea at all.

191. Austin, *supra* note 141, at 25.

192. *Id*. at 23–25.

193. *See* discussion *supra* Part I.

194. *See* discussion *supra* Part I.

195. *See* discussion *supra* Part I.C.

196. Clements, *supra* note 68, at 552–53. Notably, Clements supports Judge Adams's comprehensiveness requirement, supplementing it with his "duties of conscience" approach. *Id*. Conversely, this author advocates dropping the comprehensiveness element but adopts the "duties of conscience" modification of the ultimate concerns test. *See id*.

197. *Id*. at 551.

meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption."[198] Nonetheless, without actually clarifying the function of religious belief in the life of a follower of a recognized religion, this definition falls short of providing a usable approach.[199]

Furthermore, the subset of ideas that may qualify as ultimate concerns—for example, a deep-seated conviction relating to a particular political philosophy—is not necessarily consistent with the class of ideas the religion clauses aim to address.[200] Assuredly, the Court's primary concern in *Seeger* and *Welsh* was the inviolability of conscience.[201] The Court aimed to prevent the intense psychological turmoil an adherent faces when forced to choose between obeying the law or his conscience—not when facing a conflict between the law and any question of great meaning.[202] Not all ultimate concerns necessarily qualify as matters of conscience.[203]

Rather than labor with the inherent vagueness of the ultimate concerns test as it stands, courts should focus on ideas that impart to believers a duty of conscience—"a compelling sense of devotion and duty."[204] Stated differently, duties of conscience would incorporate Judge Adams's notions of "the meaning of life and death, man's role in the Universe, and the proper moral code of right and wrong,"[205] while also achieving consistency with the spirit of the Court's conscience-oriented interpretation of the First Amendment's aims.[206] In a more narrowly tailored fashion than the

198. Seeger v. U.S., 380 U.S. 163, 166 (1965).
199. Clements, *supra* note 68, at 551–52.
200. *Id*. at 540–41.
201. *Id*.
202. *Id.*
203. *Id*. For example, vegetarianism for health-based reasons is a significant life choice—an ultimate concern, even—but it does not impart duties of conscience in the sense of addressing questions of right and wrong or moral duty. On the other hand, veganism does impart a duty of conscience, insofar as it espouses an animal-free diet in order for adherents to avoid animal cruelty. *About Veganism*, VEGAN ACTION, http://www.vegan.org/about_veganism/index.html (last visited Feb. 4, 2011).
204. Clements, *supra* note 68, at 553.
205. Malnak v. Yogi, 592 F.2d 197, 208 (3d Cir. 1979) (Adams, J., concurring).
206. James Madison viewed religion as "the duty which we owe to our Creator." Walz v. Tax Comm'n, 397 U.S. 664, 719 (1970) (Douglas, J., dissenting) (quoting James Madison, *Memorial and Remonstrance Against Religious Assessments*, *in* 2 THE WRITINGS OF JAMES MADISON 183–191 (G. Hunt ed. 1901)). The expansion of this idea to include beliefs not necessarily

ultimate concerns test, such a definition protects the inviolability of conscience that the *Seeger* and *Welsh* Courts aimed to preserve.[207] Moreover, requiring ideas of questionable religious nature to relate to duties of conscience in order to be considered constitutionally religious is a test that more accurately captures the role that easily recognized, clearly religious ideas play in the lives of individuals and in society.

3. Maintaining the "External Signs and Formalities" Requirement

Third, a useful yet non-determinative factor involves "formal, external, or surface signs that may be analogized to accepted religions."[208] In other words, rituals, hierarchies, holy texts, ceremonial apparel, and other externally observable indications are useful analogical tools for identifying religious character, even though they are not necessary to such a finding.[209] This factor allows courts to consider and apply everyday, commonplace notions of religion as it occurs in society.[210]

CONCLUSION

The Waldorf dispute provides a glimpse into the likely future—a changing American religious and educational landscape, which will give rise to cases that will inevitably call into question the meaning and aims of the religion clauses of the Constitution.[211] Ultimately, the particular facts of the Waldorf controversy—Waldorf supporters' insistence that the system's roots in anthroposophy and its teaching methods are spiritual yet non-religious[212]—not only demonstrate significant state interests at stake in defining religion but also suggest that courts in the future should be able to apply a religious label to an entity in spite of its denial of religiosity.[213] In turn, the prevailing societal interests in the Waldorf scenario add to the evidence supporting American society's need for a broad, unitary definition of religion—one that

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related to a Creator or god reflects the Court's protection of the individual conscience. *See also* Clements, *supra* note 68, at 534 n.14.

207. *See supra* notes 125–30 and accompanying text.
208. *Malnak*, 592 F.2d at 209 (Adams, J., concurring).
209. *Id*.
210. Blutman, *supra* note 132, at § 3.2.
211. *See supra* notes 15–16, 180 and accompanying text.
212. *See* discussion *supra* Part I.C.
213. *See* discussion *supra* Part IV.

gives adequate meaning and scope to both the Free Exercise and Establishment Clauses.

In addition to maintaining an "external signs" factor, the subtraction of Judge Adams's "comprehensiveness" requirement and the modification of the notion of ultimate concerns to reflect "duties of conscience" allow for the broad protection of the interests associated with both religion clauses.[214] Such a definition of religion also reflects the more commonly understood role of religion in American society and uses reasonable limits to protect against overinclusion. Lastly, this definitional approach allows for flexibility in a continuously pluralizing society, providing a fair, sufficiently inclusive playing field for individuals and groups that continue to blur the existing boundaries of the legal definition of religion.

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214. The greatest significance of the Waldorf dispute does not lie in its resolution; rather, the scenario more importantly foretells the manifestation of similar factual situations in the future and emphasizes the need for a workable definition of religion. Nonetheless, this author believes that, under the newly proposed definition of religion, Waldorf schools and anthroposophy would potentially earn religious classifications. Without having to meet a comprehensiveness requirement, Waldorf schools and anthroposophy would fulfill the "duties of conscience" factor because of the arguably moral obligations that they impose upon an adherent's conscience: a mission to avoid profound misunderstandings and anti-social attitudes in order to become more fully human. Moreover, the globally connected network of anthroposophy-based organizations and the ritualistic, ceremonial characteristics of parts of Waldorf education contribute to the external signs factor of the proposed test. Nonetheless, a legitimate counterargument—which goes beyond the scope of this paper—lies in the contention that strong moral suggestions are not equivalent to imperative moral duties. Regardless of any preliminary assertions, however, determining religiosity under the proposed test would ultimately require a trier of fact to examine in detail the totality of relevant evidence.

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