

# *Children's Healthcare Is a Legal Duty, Inc.*

Box 2604, Sioux City IA 51106  
Phone or fax 712-948-3500  
e-mail: [childink@netins.net](mailto:childink@netins.net)

Number 3, 1997  
Writer and editor Rita Swan  
Copyright by CHILD, Inc.

*Equal rights for children under the law*



*Attorney Robert Bruno*

## **CHILD files second suit against payments for Christian Science nursing**

CHILD and two of its Minnesota members filed a second taxpayers' suit against the federal government on August 7, the day after President Clinton signed a bill mandating Medicare and Medicaid payments for "religious nonmedical health care."

The balanced budget act obviates a 1996 federal court ruling won by CHILD in that it changes the statutes ruled unconstitutional.

The suit asks the federal court in Minneapolis to rule the new statutes mandating such payments unconstitutional. "The amended statutes," CHILD's complaint charges, "effectively replicate the prior unconstitutional provisions, by adopting religious

eligibility criteria applicable only to those persons and institutions holding religious beliefs about the effectiveness of religious methods of healing and abstinence from medicine, thereby effectively discriminating among religious sects."

"The eligibility criteria in the amended statutes," CHILD continued, "also discriminate in favor of religious adherents and against those who have objections to medical care based upon convictions which are non-religious, but sincerely held, and against those who simply choose for non-religious reasons to forego medical treatment. The amended statutes further restrict the receipt of benefits by religious medical objectors, to receiving them only in institutions organized on the basis of religious belief, a prohibited ceding of civil authority to a religious institution."

### **INSIDE**

Congress restores money for Christian Science .....	2
How Congress protects health and safety .....	4
Florida death charged .....	4
Whither now, Florida? .....	5
19 hours of agony by <i>Nicole Weisensee</i> .....	6
Letter to editor against medical neglect .....	8
6 kids die in one Faith Tabernacle family .....	9
First Born child dies in Washington .....	10
Whooping cough in religious community .....	10
AAP urges exemption repeal .....	10
Supreme Court overturns RFRA .....	11
Excerpts from amicus by CHILD and APSAC .....	12
Magazine article on Faith Tabernacle .....	13
Swan's article in pediatric journal available .....	13
CHILD members honored .....	13



In Christian Science nursing homes all employees must be members of the Christian Science church and all the patients must pay for prayers by church-accredited spiritual healers. Despite such discriminatory practices, the new statutes mandate public money for these facilities.

"The only known institutions who qualify to receive payment under the amended statutes, Christian Science sanatoria, are pervasively sectarian and serve a core religious function, which may not be financed, supported, endorsed, or promoted by use of the taxing and spending power of the United States," CHILD states.

The U. S. Attorney-General's response to CHILD's complaint is due November 7. The Christian Science church has again entered the case as a defendant-intervenor.

Attorney Robert Bruno of Burnsville, Minnesota, represents CHILD in this action.

## **Congress restores money for Christian Science nursing**

A bill requiring Medicare and Medicaid payments for "religious non-medical health care" was passed by Congress in July and signed into law by President Clinton August 6.

The law responds to a federal court ruling in *CHILD v. Vladeck*, civil # 3-96-63 (D. Minn. 1996), that statutes and regulations mandating payments for Christian Science nursing are unconstitutional.

### **Reno opposes statutes**

In January of this year, five months after the ruling in favor of CHILD, U. S. Attorney-General Janet Reno advised Congress that her office could not defend the statutes on appeal. She petitioned the court to realign the administration against them.

Congress still had the option of defending the statutes in the appeal that the Christian Science church had declared its intention to pursue.

On April 11, Senators Orrin Hatch, R-Utah, and Edward Kennedy, D-Massachusetts, wrote Reno

claiming that many legislators were "seriously troubled" by her decision not to defend the statutes.

### **Senators lament conflict with Reno**

"Should the litigation proceed," they added, "it is our belief that a majority of Senators are likely to advocate a resolution supporting congressional intervention to defend the statutes. The executive and legislative branches will then be in conflict with one another, and that possibility raises grave concerns for each of us."

They stated their intention to pass new statutes that would give Christian Scientists Medicare and Medicaid benefits again, but would not be "sect specific." After the court ruling, the church repeatedly stated that the statutes could be made constitutional by removing references to Christian Science and offering benefits for "religious non-medical health care" instead.

On April 25, Senator Hatch wrote the Christian Science church to assure its officials that he had "taken the lead in coordinating legislative activity on this important issue."

### **No discussion**

On June 16, Hatch posted a proposed amendment to the balanced budget bill for the Christian Scientists. Two days later the Senate Finance Committee agreed to "the concept" with no debate, discussion, hearing, or even a text of the amendment.

Eventually a text was inserted. A House committee made minor changes, but also had no debate, discussion, or hearing.

Several CHILD members voiced their objections to the amendment, but legislators' responses regurgitated the church's rhetoric. They showed no concern for the children and adults endangered by Christian Science nurses nor did they acknowledge that paying such people with public money might be inappropriate.

### **Medicare/Medicaid funds for RNHCI's**

The law, PL 105-33, classifies some "religious nonmedical health care institutions" (hereafter called RNHCI's) as hospitals and skilled nursing facilities



for the purpose of receiving Medicare and Medicaid funds.

The RNHCI's eligible for public money must provide "only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing."

They must provide the "nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients."

### **Religious beliefs against diagnosis required**

The RNHCI's must also have "religious beliefs" against "medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs)."

They must have a utilization review plan to insure that admissions are necessary. However, the reviews are to be carried out by RNHCI staff.

They do not have to be accredited or licensed, but the law allows the federal government to determine that the RNHCI's are meeting federal standards on the basis of "reasonable assurances" from any accrediting agency. The Christian Science church has recently set up a body called the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

The law provides that RNHCI's can receive Medicare/Medicaid money "for inpatient hospital services or post-hospital extended care services" only when the patient "has a condition" that would qualify for covered treatment in a state-licensed hospital or skilled nursing facility.

How the federal government or anyone else can determine the patient's condition is quite unclear since the law also states that the government cannot require any patient in an RNHCI to get a medical exam.

The law allows Medicare payments to RNHCI's to reach \$20,000,000 a year, almost three times what Medicare has been paying for Christian Science nursing. The amount for Medicaid is unknown.

### **A-G's office warns of establishment problems**

On June 13, the Department of Justice (DOJ) sent a 21-page letter advising Congress that their draft bills might be unconstitutional because many provisions are special privileges for religion. A significant issue is that Medicare is expressly prohibited from paying for custodial care except as incident to hospitalization for medical treatment. Medicare does not pay for secular nursing home care.

DOJ said the benefits cannot be limited to those with religious objections to medical treatment, but must also include those with philosophical, ethical, or moral objections.

The DOJ complained that the government has no way of determining the patient's needs when no medical exam is allowed.

Religious privilege, the DOJ charged, is created by requiring that the nonmedical items and services be furnished only in an RNHCI and by nonmedical nurses and only to persons who "rely solely upon a religious method of healing."

The DOJ also reiterated Reno's point in her January letter to Congress that requiring the RNHCI's to have certain religious beliefs forces "persons who seek Medicare benefits to receive their nursing services in locations approved by an official church: eligibility would turn not only on the need for or the quality of nursing services, but also on whether the services provided bore a church's stamp of approval."

### **Privilege for certain religions prevents fraud?**

The DOJ further emphasized that the care paid for by the government "must genuinely be secular."

In its conference report on the bill, Congress claimed that the eligibility criteria it established for the RNHCI's were "necessary to protect the health and safety of patients in such institutions and to prevent fraud and abuse."

### **Congress consults with itself**

Most significantly, the report did not state that Congress had consulted the Attorney-General or that her office, the DOJ, had approved of the bill.



Instead, it said that the legislators' "extensive consultation with the Committee on the Judiciary of the Senate and of the House of Representatives" convinced them that their bill was constitutional.

Though Senators Hatch and Kennedy told Janet Reno in April that having a conflict between Congress and her office caused them "grave concerns," the bill they passed three months later ignored many of her points.

Instead, we are assured that Congress consulted with itself.

## Does Congress know what Christian Science nurses do?

Christian Science nurses are not state-licensed and do not work under the supervision of state-licensed providers. They cannot check respiration or blood pressure, use a fever thermometer or a catheter, or take a pulse. They cannot give an enema, oxygen, a backrub, or first-aid. They will not apply heat or ice to relieve inflammation. They have no training in recognizing contagious diseases.

They have been retained to attend sick children and have sat taking notes as the children suffered and died, but have not called for medical care nor recommended that the parents obtain it. The notes of these nurses indicate that they observed the children having "heavy convulsions," vomiting repeatedly, and urinating uncontrollably. They have seen the children moaning in pain and too weak to get out of bed. They have seen their eyes roll upward and fix in a glassy stare. One Christian Science nurse force-fed a toddler as he was dying of a bowel obstruction.

In the Balanced Budget Act of 1997 Congress has mandated Medicare and Medicaid payments for "religious nonmedical health care" and established criteria making Christian Science nursing homes eligible for the money.

## Interest in health and safety?

Congress says these criteria are "necessary to protect the health and safety of patients" and "to prevent fraud and abuse."

In August, a 29-year-old Christian Scientist died of Guillain-Barre syndrome. Oxygen would have most likely saved her life. But the Christian Science nurse left her flat on her back, did nothing to help her breathe, and let her become dehydrated.

There is nothing in the new federal law that shows any concern whatsoever for this young lady or thousands of others like her.

If Congress had any interest in the health or safety of patients under care of Christian Science nurses, wouldn't the legislators have gathered some information on the topic, held a hearing, talked about it, or listened to several of us who were writing and calling them about it?

## Florida parents charged for fatal medical neglect and failure to report

A Florida couple who believe that doctors should be avoided as practitioners of witchcraft were arrested on Wednesday, October 22, and charged with felony child abuse, abuse of a dead body, and failure to report a death.

Alexus Aitcheson was born in Grant last year at her uncle's home. No doctor or midwife attended her birth, and it was not recorded with the county.

### Flier explains baby's death

She apparently died a month later. Her parents, Robert and Rachael Aitcheson, then distributed a flier, stating:

*On Friday, September 13, 1996, God blessed us with a beautiful baby girl whom we called Alexis Clarice. We had a joy filled thirty two days with this God given gift. On her thirty third day, October 16, 1996, God took her back to be with him. We are so thankful for the little time we shared with our precious daughter. We will always remember*



*our little girl who warmed our hearts just by her pretty smile. God bless our sweet child. We will always love her.*

*Alexus died due to lack of oxygen. While lying on her back to rest, she spit up some of her milk that went down her windpipe filling her lungs, not allowing her to breathe or cry. Her body has been cremated for a private ceremony. There will be no public funeral.*

### **Hundreds of hours**

Law enforcement officials have spent hundreds of hours investigating the case. They have a report of heavy black smoke coming from a burn pit at the uncle's home about the time of the baby's disappearance. They also have photographs of a burial service the parents had for the placenta and have found a human placenta in the yard of the uncle's home. But the parents have refused to tell authorities where the baby's remains are.

The Aitcheson's belong to an evangelical group called The Fellowship of fewer than ten members. It split off from The Tabernacle, one of the largest churches in Tampa. The Fellowship takes the Bible literally and feels it contains the only laws they need to follow.

### **State's authority rejected**

Most of the Fellowship members are self-employed and do not speak to neighbors outside their group. They have close ties to extreme religious, anti-government groups in Tampa.

They believe God does not want births or deaths recorded with the state although the Aitchesons did obtain a marriage license.

### **Doctors are sorcerers**

In a sworn statement to police, the Aitchesons said God delivered the baby. Quoting from Revelations, they said they do not believe in using doctors because they feel doctors are "sorcerers."

They also cite religious beliefs as the reason they did not call 911 when they found Alexis cold and not breathing 45 minutes after she had been breast fed and laid down. Instead, they tried to put

"God's breath" into her—a reference to cardiopulmonary resuscitation—and called friends to ask them to pray for Alexis.

The couple feared an autopsy would be performed on Alexis if the infant's death was reported, their statement said. Aitcheson indicated that government authorities are not "of God" and he therefore did not want them "cutting her."

### **Religious persecution claimed**

Two other couples belonging to the Fellowship are known to have children whose births are not recorded with the county, but they have told authorities they will get medical care if the children become sick.

Five others, including the baby's aunt and uncle, also were charged with failing to report the death of 1-month-old Alexis Aitcheson.

A lawyer for the Aitchesons claims the two are being punished because of their unusual religious beliefs. Investigators deny it.

Taken in part from *Florida Today*, 23 Oct. 1997

## **Whither now, Florida?**

*Comments by Rita Swan*

For the fourth time in eleven years Florida prosecutors have filed felony child abuse charges against parents who let their child die without medical care and claim a religious right to do so.

In 1986 Christine and William Hermanson of Sarasota, Florida, let their 7-year-old daughter Amy die of untreated diabetes. They claimed Florida's religious exemption at Fl. Stat. 415.503 gave them the right to rely exclusively on Christian Science for healing.

The trial judge ruled that the exemption was a defense to the felony child abuse charges, but not an absolute defense. He therefore did not dismiss the charges. Instead, the parents could raise the defense at trial, and the jury could consider whether the parents had a right to claim it.



This left Assistant State's Attorney Deno Economou in the awkward position of trying to show that the Christian Science religion did not prohibit medical care and therefore the Hermansons were not practicing their religion correctly.

Nevertheless, the jury convicted them within two hours.

The Court of Appeals unanimously upheld the conviction and overturned the trial judge's ruling that the exemption was a defense to a crime.

### **"A trap"**

In 1992, however, the Florida Supreme Court unanimously overturned the conviction on grounds that the exemption created confusion as to the parents' obligations. *Hermanson v. State*, 604 So.2d 775 (Fla. 1991).

"The statutes have created a trap that the legislature should address," said the Court.

In the five years since, however, the legislature has done nothing to correct this injustice.

Economou and State's Attorney Earl Moreland have approached legislators who initially promised to sponsor a repeal bill, but jumped ship as soon as the Christian Science lobbyist met with them.

A conviction of End Time Ministries' parents in Lake City, Florida, for letting their daughter die without medical care was also overturned in the wake of the *Hermanson* ruling. *Hernandez v. State*, Fl. First Dist. App. Ct. 1994.

The legislature has made it open season on Florida children in faith-healing sects and more deaths were easily predictable.

---

## **19 hours of agony**

### **Affidavit: As child bled to death, parents called pastor instead of 911**

*by Nicole Weisensee*

It took nearly 19 hours for little Dean "Michael" Heilman to bleed to death from a small wound on his foot.

As the life slowly drained from his 22-month-old body in early July, his parents rocked him. They changed his bandages. And they called their pastor.



*Susan Heilman*

But even as his breathing slowed and his face turned paler, they didn't perform CPR or call 911.

Instead, they waited until the last breath left his body. Then they called the funeral home to make arrangements for his burial.

### **Manslaughter and endangerment charged**

On [August 16] Dean and Susan Heilman [of Philadelphia] were charged with involuntary manslaughter and endangering the welfare of a child.

Medical experts told police that Michael was a hemophiliac who would have survived had his parents taken him to a hospital for treatment, according to a probable cause affidavit attached to their arrest warrants.

Dean Heilman, 32, and Susan Heilman, 34, who were released on \$10,000 bail . . . , would not comment on the charges against them.

### **Faith Tabernacle converts**

The Heilmans are five-year members of the Faith Tabernacle Congregation, which believes God alone can cure illnesses. Instead of seeking medical



treatment, members call their pastor, who comes to anoint the sick and pray for them to get better.

It was not known whether the Heilmans knew their son was a hemophiliac, but Debra Paton, 37, one of Susan Heilman's sisters, told police Michael cut his lip on Memorial Day weekend and the wound did not heal.

Dean Heilman told police he knew Michael bruised easily, but "it was a condition he left in God's hands."



*Dean Heilman*

New details about Michael's death were revealed in the affidavit that was released [August 18]. It contains chilling details of the last hours of the child's life.

About 1:45 p.m. July 8, Nancy D'Angelo told police she arrived at her sister's house after their brother called to tell her Michael was sick.

Dean and Susan Heilman were taking turns holding Michael.

"A couple of times Michael cried out, then went back to sleep," Dean Heilman told police. "At 2:30 p.m., Michael was lying with his eyes halfway open and [I] was rocking him." He gave Michael to his wife.

### **Mom would have stopped resuscitation**

His "breathing seemed heavy and seemed to slow down," D'Angelo told police. "A few minutes later, while Susan Heilman was rocking him, it appeared he stopped breathing." D'Angelo felt his neck for a pulse, told Susan Heilman she didn't feel one and asked her to give Michael to her.

"No, he wants his mom," Susan told her sister as she held her son tighter. She later told investigators she would have stopped D'Angelo from reviving him.

Within minutes, he was dead.

Susan Heilman then took him to her bed, removed the bandage on his foot and washed it and covered him with a blanket.

The beginning of the end of Michael's life happened at about 7:30 p.m. July 7, when he cut his foot while playing in his backyard. . . .

Here's what happened next, according to the affidavit:

Michael was playing with his sister when his mother heard him yell. When she saw he had cut his foot, she ran to get her husband, who was on his way to church. He went to the back yard, where Michael was sitting on a chair, and examined a small cut on his right foot.

It wasn't until his father poured water on the cut that the boy started to cry.

### **Foot wrapped in Pampers**

Dean Heilman carried Michael inside, wrapped his foot in a towel and said a prayer for protection. Because he did not see much blood, he put gauze and tape between the toes and around the foot, and wrapped the foot with a Pampers disposable diaper so the child wouldn't bleed in his bed.

Michael began to walk around, leaving a bloody trail.

Susan Heilman checked the bandage and placed more gauze between the toes. Dean Heilman elevated his foot.

At 8:30 p.m., they put Michael to bed.



But the toddler was restless, crying off and on all night. He was up half a dozen times and vomited twice.

Susan Heilman told police she checked his bandage between 5:30 a.m. and 6 a.m. and that the cut seemed to bleed more once she unwrapped it. Her husband put clean gauze and a piece of a flannel sheet around the gauze.

A little while later, Pastor Charles A. Reinert of the Faith Tabernacle Congregation came to anoint the child.

By 1:30 p.m., the Heilmans were taking turns holding Michael. He died in his mother's arms at 2:45 p.m.

The city Department of Human Services got a court order to have Michael's brother, Austin, 9 months old, checked for hemophilia. Tests proved negative.

*The above article appeared in the August 19 Philadelphia Daily News and is reprinted with permission. Subheadlines were added.*

## **PA newspaper supports medical neglect; CHILD responds**

*The Harrisburg Patriot News*, the newspaper for the state capital of Pennsylvania, ran an editorial defending Faith Tabernacle parents who withhold lifesaving medical care from their children. CHILD President Rita Swan responded as follows:

Your June 12 editorial "Persecuted" argues that we should let parents deprive their children of the necessities of life because God told them to do so. You claim people should be allowed to practice their religion with no restrictions, even if they cause deaths of children.

### **Absolute freedom is anarchy**

For centuries our courts have ruled that we have an absolute freedom to believe, but freedom to practice religious beliefs only to the point that we do not trample on others' rights. This concept governs

hundreds of aspects of a civilized society. We would have anarchy if everyone could break the law because God told him to do so.

Would you like society to let other people beat you up or kill you or deprive you of the necessities of life because of their religious beliefs?

### **3 kids die of diabetes; 1 of ear infection**

Dennis and Lorie Nixon of Altoona have let two children die because of their religious beliefs against medical care. In 1991 their son Clayton died of an ear infection that caused near continuous vomiting. He was eight years old and 49 inches tall, but weighed only 32 pounds at his death because he was so dehydrated and malnourished. Their daughter Shannon died of untreated diabetes last year.

Dennis's brother in New Jersey holds the same religious beliefs and has also let two of his children die of untreated diabetes.

Obviously diabetes runs in their family, yet Dennis and Lorie Nixon have stated their intention to continue withholding medical care from their nine surviving children.

### **Love is not enough**

*The Harrisburg Patriot News* claims that we should let them cause the deaths of their remaining children because they "love" them. Every kind of child abuse and neglect you can think of has been carried out by parents who love their children and even by parents who think God is directing their actions.

You also claim that we should let them withhold medical care because medicine is not perfect. Few things in life are 100% certain, but a civilized society still makes laws based on probabilities. Most of us know that medical science has excellent treatments for diabetes and ear infections. Most of us feel that the state should require parents to take a child to a doctor when symptoms indicate that the child may be seriously ill or injured.

You also claim that the state should have gotten medical care for Shannon Nixon "while she was still alive." But the state did not know she was sick.



## Parents have custody

Shannon's parents did know she was sick. Parents have custody of children and usually have more awareness of their illnesses than the state does. The state therefore requires parents to provide their children with the necessities of life and sets criminal penalties when parents refuse to do so.

For the reckless, stubborn Nixons, a five-year prison term is entirely appropriate. The state should stand up and say that the lives of helpless children have value.

## 6 Kids die in one family

In Harrisburg, the capital of Pennsylvania, where the newspaper says parents should be allowed to let kids die for their parents' religious beliefs, is a family who has been doing this for a long time.

Roger and Dawn Winterborne have lost six children to pneumonia over a twelve-year period. They would not get medical care for them because of their membership in Faith Tabernacle.

While living in the Philadelphia area, the Winterbornes lost:

- Bruce Winterborne, age 7 months, who died in 1971 of bronchial pneumonia
- Roger Bruce Winterborne, 20 months, who died in 1973 of bronchial pneumonia
- Marjorie Dawn Winterborne, 5 months, who died in 1974 of bronchial pneumonia with dehydration
- Larry Winterborne, 6 months, who died in 1978 of bilateral bronchial pneumonia with dehydration and malnutrition
- Jocelyn Winterborne, 4 months, who died in 1980 of bronchial pneumonia.

## Coroners see no criminal negligence

Jocelyn's death attracted media attention. Law enforcement investigated, but decided against prosecution. A coroner said, "I don't think there is any criminal neglect about this. . . . They feel if you're called upon to die, you die."

Another coroner who investigated baby Larry's death said the symptoms might have looked like those of the common cold and therefore the parents might not have had notice the illness was serious.

## Symptoms of pneumonia would be alarming

This is disputed by CHILD board member Scott Sokol, a pediatrician, who says a child with pneumonia would present "a much different clinical picture" than one with a cold. "The child would have a prolonged, spiking often intractable fever, a much more severe cough, a degree of respiratory distress, poor appetite and other evidence of a more serious illness."

"As the infection progresses," Sokol says, the symptoms "become much more pronounced with loss of appetite and fluid intake and increasing difficulty breathing."

Unless the infection is extraordinarily virulent or the child suffers from an immune dysfunction, any reasonable parent would comprehend that a child with pneumonia needed medical treatment, Sokol says.

"And if a parent lost a child due to a rapid and highly aggressive form of pneumonia," Sokol concluded, "any similar episodes in siblings would cause a parent to seek medical attention immediately."

## Another baby dies

The Winterbornes moved to Norristown, Pennsylvania. State social workers visited them regularly to monitor the children's health.

Later, though, they moved to Harrisburg. In 1983, they lost their sixth child to pneumonia, a four-day-old unnamed female infant.

## Belief must go all the way

Though Roger Winterborne expressed grief for the deaths of his babies, he also told the press after Jocelyn's death, "When you believe in something, you have to believe in it all the way. If you only believe in it part way, it's not a true belief."

"God knows more than we do."



Contacted again after the sixth child's death, he said, "I can't say anything that's going to change anybody's mind."

Since the commonwealth of Pennsylvania has been so indifferent to the welfare of his children, he doesn't have to.

Taken in part from *The Philadelphia Inquirer*, 1 February 1980, and *Philadelphia Magazine*, September 1997.

## First born child dies of untreated meningitis

A two-year-old Washington boy died June 5 of untreated meningitis. His parents, James and Stephanie White, are members of the Church of the First Born, which opposes medical care.

Seth White had been sick with what the parents described as flu-like symptoms for almost a month before he died at his home in Elma, Washington.

Police Chief Ron Axtman said he believed the child was dead for at least an hour before authorities were notified. He also said there were several people, including parents, other relatives, and church members, at the house when officers and the aid crew arrived.

The Grays Harbor Prosecuting Attorney's Office is investigating the death as a possible criminal matter.

CHILD has documented 24 deaths of children since 1975 whose parents belonged to Church of the First Born and withheld medical care from them. Taken in part from the *Aberdeen Daily World*, 6 and 7 June 1997.

## Whooping cough strikes unvaccinated Iowa kids

Iowa has had 50 cases of whooping cough or pertussis this year, the largest number since 1986.

Nearly half the cases are in Johnson and Washington Counties. Kevin Teale, a spokesman for the

Iowa Department of Public Health, said most of these may be attributable to a branch of Mennonites who do not get vaccinated for religious reasons.

He also cited fear of side effects of the pertussis vaccine and improved reporting as other possible reasons for the increase in cases.

Iowa has had several outbreaks of vaccine-preventable diseases among groups claiming a religious exemption from immunizations provided in state law. Measles outbreaks have occurred among Christian Science, Amish, and Old Netherlands Reform children in Iowa. In the 1970s, Iowa had cases of polio among Amish children.

Taken from *The Sioux City Journal*, 17 October 1997.

## AAP urges exemption repeal

In February the American Academy of Pediatrics Committee on Bioethics published the Academy's policy statement on "Religious Objections to Medical Care."

The AAP called for "all those entrusted with the care of children to:

1. show sensitivity to and flexibility toward the religious beliefs and practices of families;
2. support legislation that ensures that all parents who deny their children medical care likely to prevent death or substantial harm or suffering are held legally accountable;
3. support the repeal of religious exemption laws; and
4. work with other child advocacy organizations and agencies and religious institutions to develop coordinated and concerted public and professional action to educate state officials, health care professionals, and the public about parents' legal obligations to obtain necessary medical care for their children.

The committee's first policy statement on the issue appeared in 1988.



Taken from "Religious Objections to Medical Care," 99 *Pediatrics* (February 1997): 279-281.

## Supreme Court overturns RFRA

On June 25, the U. S. Supreme Court overturned the Religious Freedom Restoration Act (RFRA) as unconstitutional in *City of Boerne, Texas, vs. Flores*, case #95-2074.

CHILD Inc. filed an amicus brief with the Court pointing out ways in which RFRA may compromise the interests of children.

RFRA required federal, state, and local governments to allow all activity motivated by religion unless the government could show a compelling interest in restricting it and would do so in a way that was least restrictive of religious freedom.

### Advantage given in tort suits

RFRA applied to both civil and criminal law. It gave, for example, advantage to a party claiming religious motivation in disputes with other private parties.

RFRA was enacted in response to the Supreme Court ruling in *Employment Division v. Smith*, 494 U.S. 872 (1990), that the First Amendment "does not pre-empt facially neutral laws of general applicability even if they incidentally affect a religious practice." (See David Stewart, "Power Surge," *ABA Journal* September 1997: 46.)

### Religious groups united

Religious groups were highly alarmed about the *Smith* ruling because they feared that the government would prohibit many religious practices without having a compelling interest such as public health or safety to do so. Scores of Christian denominations, Jewish groups, Moslems, and others formed the Coalition for the Free Exercise of Religion to lobby for RFRA.

Congress passed RFRA with only three dissenting votes in 1993 and openly stated its intention to obviate the *Smith* ruling.

In suburban San Antonio a Catholic church wanted to expand its building in violation of local zoning laws. The church sued, claiming that RFRA prohibited the city from interfering with its plans. The U. S. Supreme Court agreed to review the case, *Boerne v. Flores*.

### Compromises in child health and welfare

CHILD Inc. and the American Professional Society on the Abuse of Children (APSAC) submitted an amicus to the U.S. Supreme Court prepared by Robert Bruno, an attorney in Burnsville, Minnesota.

They argued that the vulnerability of children and the state's interest in insuring their welfare necessitate many types of state action, yet RFRA allows only the one that is "least restrictive" upon religious freedom. They cited *Hunt v. Hunt*, 648 A.2d 843 (Vt. 1994), in which the Vermont Supreme Court dismissed a contempt citation because of RFRA. The father argued that paying child support was against his religion. The Court held that the father could not be found in contempt because he was motivated by religion and the contempt citation was more restrictive upon the father's religion than other means for collecting the money.

They cited *Cheema v. Thompson*, 67 F.3d 883 (9<sup>th</sup> Cir. 1995), in which RFRA was the basis for allowing Sikh children to attend school with ceremonial knives worn in scabbards.

### Reasonable person standard compromised

They also discussed *Lundman v. McKown*, 530 N.W.2d 807 (Minn. App. 1995), in which a father brought suit against Christian Scientists who let his son die of untreated diabetes. The Minnesota Court of Appeals applied "a standard of care taking account of 'good-faith Christian Scientist' beliefs rather than an unqualified 'reasonable person standard.'"

CHILD and APSAC pointed out that, "under RFRA the same result is compelled in all courts because 'the religious belief would be burdened by the [tort standard].'"



They discussed churches' use of RFRA to change federal child abuse and neglect policy. See excerpt following.

Finally, they pointed out that in *CHILD v. Vladeck*, 938 F.Supp. 1466 (Minn. Dist. Ct. 1996), the judge had cited RFRA as a basis for his holding that government had a compelling interest in accommodating religion, although he also invalidated statutes mandating Medicare and Medicaid payments for Christian Science nursing because they were sect-specific.

The U.S. Supreme Court overturned RFRA on grounds that Congress exceeded its authority. The Court said its ruling in *Smith* can be changed only by an amendment to the Constitution, not by a federal law.

#### References to concerns of CHILD and APSAC

The ruling made one statement that RFRA could interfere with state laws for protecting the public's health and welfare, an oblique reference to the concerns of CHILD and APSAC. Also lawyer Stuart Taylor on public television news referred in his discussion of RFRA to "Christian Scientists who don't want to get their children medical care just because the child is dying."

The conflict is far from over. Several religious leaders called the Supreme Court's ruling a major blow to religious freedom and have vowed to enact the concepts of RFRA in state laws and perhaps even amend the Constitution.

CHILD believes that religious freedom does and should have a high degree of protection under the First Amendment as interpreted by the courts. We also feel, however, that RFRA gave too much privilege to those motivated by religion.

Copies of the amicus brief are available to CHILD members upon request.

---

## From the amicus by CHILD and APSAC

### A. RFRA Has Induced the Enactment of Other Unconstitutional Legislation by Congress.

From 1987 to 1994, the U.S. Department of Health and Human Services (HHS) ruled some states out of compliance with Child Abuse Prevention and Treatment Act (CAPTA) federal grant program standards because their laws gave exemptions from a duty to report medical neglect cases or limited the state's ability to investigate and order medical care when caretakers withheld medical care on religious grounds. Several churches charged that HHS's efforts were prohibited by RFRA. They claim that state intervention in a "child neglect case" does not serve "a federal compelling interest" and therefore RFRA prohibits the federal government from setting standards applicable to children whose parents raise religious objections to medical care. *The Christian Science Journal* Oct. 1994 at 41-42.

These churches claim that prayer is "excellent health care" and that, under RFRA, the government has the burden of proving that medical care is better than prayer before it can require medical care for a sick or injured child. A special counsel for the National Council of Churches said, "The government has to show that there's a compelling reason not to exempt this particular person. So it's not just the general governmental interest. . . but it's a compelling interest. It's a very high standard." *The Christian Science Journal* April 1995 at 48 emphasis added.

In congressional testimony, a Christian Science spokesman charged that HHS policy violated RFRA: "Not only has HHS not examined the least restrictive means question, they have not proven that their actions advance or better the compelling interest of health care for children. Absolutely no evidence exists showing Christian Science care and treatment to be any less effective for the health of a child than conventional medical treatment." Philip Davis, *Statement to Subcommittee on Children and Fami-*



lies, U.S. Senate Labor and Human Resources Committee, 25 May 1995.

Under this argument RFRA requires the states to prove the ineffectiveness of prayer before it can provide medical care for a sick child whose parents rely exclusively on prayer for healing disease. That is a virtually impossible burden to meet, and leaves children at risk of death and disability.

In response to RFRA proponents, Congress enacted in 1996 the first religious exemption in federal law from a caretaker's obligations to provide necessities of life for a child: "Nothing in this Act shall be construed as establishing a federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian." P.L. 104-235, § 112.

Thus, RFRA not only overrides state laws and reduces state options for protecting children as argued *supra*, but it has also influenced federal lawmakers to abandon their conditions for states' participation in CAPTA with respect to one class of children determined on the basis of their parent's religious beliefs. Such disparate treatment based solely upon religious criteria violates the Establishment Clause and Equal Protection Clauses of the Fourteenth Amendment, and was based upon the assumption that RFRA requires it.

---

## "A Matter of Faith"

The September issue of *Philadelphia* magazine carries an informative and lengthy article by Bill Gifford about Faith Tabernacle entitled "A Matter of Faith." It discusses the church's doctrinal objections to medical care and the many children who have died in Pennsylvania because of them. Gifford attended many Faith Tabernacle services. He interviewed members, ex-members, and Pat McGhie, whose grandson died of measles complications because of Faith Tabernacle.

---

## Reprints of Swan article available

Rita Swan's article, "Children, Medicine, Religion, and the Law," was published this summer in volume 44 of *Advances in Pediatrics* by Mosby.

The 52-page article discusses the following topics: why some religions oppose medical care, the right to practice religious healing, Christian Science health care services, religious exemptions from immunizations, rights of sick children to medical care, the Jehovah's Witnesses, religious exemptions from caring for sick children, recent prosecutions, state lobbying on religious exemption laws, civil suits, what health care providers can do, conclusions regarding religious exemption laws, and prospects for the future.

Dues-paying members of CHILD may obtain reprints of this article from us for \$2.00.

---

## Honors for CHILD honoraries

Two of CHILD's honorary members have recently received awards for their child advocacy work. Florida's premiere child and family advocacy alliance, the Florida Center for Children & Youth, has given the Sharon Solomon Child Advocate of Valor Award to Dr. Gerald and Mrs. Audrey Lincourt Schiebler of Gainesville for their individual and collective leadership in pediatric medicine, child abuse prevention, services to children with disabilities, and promotion of preventive care and parent education programs.



Audrey chaired the Advocacy Committee of the National Committee for the Prevention of Child Abuse (NCPA) and led the drive for the NCPA's policy statement against religious exemptions from parental duties of care.



Ellen Mugmon of Columbia, Maryland, has been given a child advocacy service award by the Maryland Chapter of the American Academy of Pediatrics. Ellen led lobbying work that twice stopped the Christian Science church from getting religious exemptions into the Maryland criminal code and in 1994 lobbied successfully for the repeal of Maryland's religious exemptions to civil child abuse and neglect charges.

---

## **CHILD's web pages**

Information about CHILD Inc. can be found on two internet web pages. The addresses are <http://members.aol.com/childink> and <http://www.quackwatch.com/child.html>.

The latter is part of Dr. Steve Barrett's home page. Barrett is nationally known as a consumer advocate and an opponent of health care quackery.

---

## **CHILD board of directors**

This year CHILD adopted a new governing structure and made its president Rita Swan a salaried employee. Swan has left the board. A board member serves as chairman for one year and may be on the board for a maximum of six consecutive years.

This summer Seth Asser, a pediatrician in San Antonio, and Peg McLaughlin, guidance coordinator for the Raytown School District of Kansas City, were re-elected to three-year terms on the board.

Seth is the current chairman of the board. Please contact him if you have any questions or suggestions about CHILD's activities. His address is 5804 Babcock Rd #120, San Antonio TX 78240-2131. His phone # is 210-558-3039, and his e-mail is [SethAsser@rocketmail.com](mailto:SethAsser@rocketmail.com).

---

## **50 new members, welcome**

CHILD members have nominated 50 people this year for membership in CHILD.

We extend a hearty welcome to these 50 newcomers. We hope you will enjoy being a part of our work for children.

Of course, we are deeply grateful to the established members for your gift memberships and nominations.

Please think about giving CHILD memberships to your friends during the holidays.

---

## **See you in San Diego!**

CHILD hopes many of its members will be able to attend the San Diego Conference on Responding to Child Maltreatment to be held January 27-30, 1998.

CHILD President Rita Swan will again address the entire conference as a general session speaker. Her talk is entitled "Religion-Based Medical Neglect: Update on the Status of Children We Abandon."

Two workshops also relate directly to CHILD's issues. One is entitled "Point/Counterpoint: Should Religious Objectors be Prosecuted for Medical Neglect?" The presenters include David Dunn, Deputy District Attorney of Santa Rosa County, California, who won a conviction of Christian Science parents Susan and Mark Rippberger for letting their daughter die without medical care.

The other is entitled "Medical Care Decisions by 'Mature' Minors: Legal and Ethical Implications." CHILD board chairman Seth Asser is on the panel.

CHILD will also have a reception on Thursday night, January 29, for its members.

The conference brochure is enclosed.