

Children's Healthcare Is a Legal Duty, Inc.

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Carus Cemetery in Oregon City

90 deaths of kids found in Followers of Christ

After decades of ignoring deaths of children in a Clackamas County faith-healing sect, Oregon officials and the press are this year discussing them heatedly. *The Oregonian* newspaper and KATU-TV Portland in particular have given them extensive coverage.

Mark Larabee of *The Oregonian* reported that there are 78 children buried since 1955 in the Carus Cemetery owned by the Followers of Christ near Oregon City. The church has about 1200 members.

In many cases the causes of death were not recorded. Of those that are, doctors say that at least 21 of the children probably would have lived with medical care, often as simple as antibiotics.

In the past decade three mothers in the Oregon City church have died giving birth with only unlicensed church midwives attending. That is about 900 times Oregon's rate of maternal deaths, the Oregon Health Division estimates.

An affiliate near Caldwell, Idaho, with about 500 members has had at least twelve deaths of children and one mother dying during childbirth in the past twenty years. The actual total and, in most cases, the causes of death, are unknown because of poor investigation and record-keeping. Five children's deaths were labeled stillbirths. Doctors say that two of the other children died of a ruptured appendix and a visibly strangulated hernia.

Before 1988, few autopsies were done on Followers children who died in Oregon. "Elected county coroners and appointed medical examiners,"

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The Oregonian states, “usually wrote a sentence or two about each death based on information gleaned from parents and other church members. In many cases, the cause of death listed was their best guess, not a known fact.



New Signs at Followers' Cemetery

“Dr. John Shilke, the appointed chief deputy medical examiner in Clackamas County from 1976 to 1988, said he can’t remember a Followers case he got ‘excited about’ or whether he referred any cases to the district attorney,” *The Oregonian* reported.

Shilke said it was his job to see that “a reasonable amount of care and attention” was given to those Followers who died. He said he didn’t agree with their beliefs, but assumed they had the right to deprive their children of medical care.

Prosecutor refused to act

Dr. Larry Lewman became Oregon’s medical examiner in 1987 and reorganized the medical examiner system. Lewman required that autopsies be performed on all children.

In 1988 he appointed George Coleman to be his chief deputy in Clackamas County. Coleman said he was always concerned by Followers’ deaths, especially those of children.

He reported several children’s deaths to then-District Attorney James O’Leary, but each time O’Leary told him the parents had a constitutional right to withhold lifesaving medical care. “I almost became a bore,” Coleman said of his frequent meetings with O’Leary.

3 deaths in past year

In 1997, Terry Gustafson took office as the Clackamas County District Attorney. Three Followers of Christ children have died without medical care in her county since she took office:

Holland Cunningham died at age 6 in July, 1997, from a hernia in his small intestine. For more than 30 hours he was in serious pain and was vomiting.

Valarie Shaw, 5 ½ months old, died January 1, 1998, of a kidney infection. The baby had been sickly since birth because of a congenital defect that blocked a kidney.

Bo Phillips, 11, died February 23 of diabetes.



Terry Gustafson

Unlike her predecessor O’Leary, Gustafson is deeply concerned about the deaths. She has extensively researched Oregon law and prosecutions

in other states. She has concluded, however, that religious immunity laws passed in Oregon in 1995 and 1997 give parents a religious right to let their children die.

Oregon's religious immunity laws are, in CHILD's view, the worst in the nation. The state's religious exemptions to immunizations, metabolic testing, and civil child neglect charges are typical of many states, but the religious immunity provisions in the criminal code are astonishing.

Medical attention provided by prayer

The nonsupport chapter has a law calling prayer medical care: "In a prosecution for failure to provide necessary and proper medical attention, it is a defense that the medical attention was provided by treatment by prayer through spiritual means alone...." Oregon Revised Statutes 163.555(2)(b)

People can obtain immunity from five other criminal charges just by showing that someone was praying for the victim and the victim was getting no medical care. ORS 163.206 states that, "Charges of criminal mistreatment, first and second degree, do not apply

(4) To a person who provides an elderly or dependent person with spiritual treatment through prayer from a duly accredited practitioner of spiritual treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the elderly person or the parent or guardian of the dependent person is a member or an adherent; or

(5) To a duly accredited practitioner of spiritual treatment as provided in ORS 124.095.

Religious immunity in child death cases

Immunity to three other felonies is provided by a sentence that appears in chapters defining homicide by abuse or neglect and first and second degree manslaughter. It states that "it is an affirmative defense to a charge of violating [a section of each chapter] that the child or dependent person was under care or treatment solely by spiritual means

pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person."

An affirmative defense is a legal term referring to one that the defendant has the burden of proving. If a parent causes a child's death in Oregon by beating, torture, or withholding necessities, s/he must prove that s/he withheld medical care from the child as a religious practice and someone prayed for the child, and then charges of homicide by abuse or neglect and first or second degree manslaughter must be dismissed.

Prosecutors supported religious immunity

In 1995 CHILD Inc. learned about the bill that included a religious defense to homicide by abuse or neglect after it had passed the Oregon House. We tried to build opposition to it in the Senate, but were told that the Oregon District Attorneys Association supported religious immunity.

ODAA spokesman Dale Penn cavalierly told us that parents who let their kids die because of their religious objections to medical care could still be charged with manslaughter and therefore we had nothing to complain about. The bill with religious immunity to the homicide charge passed handily in 1995.

Only two years later, however, religious immunity to manslaughter charges was enacted, and again with the ODAA's blessing. John Bradley, a deputy prosecutor in Portland, led the work for passage of the bill in 1997.

Bradley told CHILD Inc. that he was trying to get stiff enhancement penalties, including the death penalty, enacted in child abuse cases. He had strong opposition from "the left," which in his view includes the American Civil Liberties Union. He could not, he said, stave off opposition from the Christian Science church as well, which he thought spoke for the entire "Christian Coalition."

Bradley and the Attorney-General claim deaths of children in faith-healing sects can still be prosecuted under the "criminally negligent homicide" chapter to which there is no religious defense.

Gustafson disagrees because it defines the same crime as manslaughter in virtually identical wording.

Six states now have a religious defense to a homicide or manslaughter charge: Oregon, Iowa, Arkansas, Ohio, Delaware, and West Virginia. Oregon has by far the most religious exemptions to criminal charges and is the only one to extend religious immunity to physical abuse as well as medical neglect.

Taken in part from *The Oregonian*, April 22, May 12, and June 7, 1998.

Alex: one of the 78

Four-year-old Alex Dale Morris first complained of illness on February 28, 1989. He had a fever and was congested. Members of Followers of Christ in Oregon City laid hands on him and prayed for the Lord's spirit to heal him. He was anointed with oil.

On April 14, 1989, acting on an anonymous tip to state child welfare workers, an Oregon City policeman visited Alex's home. He noticed the boy was sick, but Alex told the officer he was "all right." The officer felt Alex looked well cared for and left the house without calling for medical intervention.

Alex died 29 hours later. An autopsy revealed an infection had filled one side of his tiny chest with pus.



"It was a horrible thing," said Dr. Larry Lewman, Oregon Medical Examiner. "The kid was getting sicker and sicker for days and days. At times, the child would have been overwhelmed with fever and pain."

Basic antibiotic treatment would have prevented Alex's death and suffering, Lewman said.

The current president of Followers of Christ is Dale Morris. He says his church stands for "faith in God" and "God's will be done." Of the children's deaths he said, "I don't expect you to understand. A lot of people won't understand."

When asked if the children's deaths hurt him, he conceded that they did, but added, "It also hurt when Christ hung on the cross, no doubt."

Taken from *The Oregonian*, April 22 and June 7, and reports by KATU-TV.

Bereaved father speaks out

In June 1970, 20-year-old Russ Briggs of Oregon City stood over his kitchen counter and looked down on the tiny, lace-wrapped body of his firstborn son.

Darren, born more than a month premature, died four days after birth.

Midwives from his church fed the baby with an eyedropper and prayed for him. Briggs never questioned why they didn't do more. Briggs was raised in the Followers of Christ Church, which prohibits medical treatment for disease and teaches that both death and life are in the hands of God.

Briggs and others say those ideals were hammered home by Walter White, the church's powerful minister and founder, who said God spoke to him through visions and dreams.

White controlled the Followers by forbidding marriage or socializing with non-members. Those who broke the rules or left the church were shunned and considered dead, even by their own family members.

"I stood there a 20-year-old child, sobbing and hurting and trying to figure out why my child died," Briggs recalled.

In 1971 his second child, Davey, died twelve hours after a home birth attended only by church midwives.

Shunned by family

The agony of the babies' deaths was too much for Briggs. In 1972 he left the church and was immediately cut off from his family and the only friends he'd ever known.



Russell and Lorraine Briggs

Briggs' father, on his deathbed, wanted to see his son. His mother called him to relay the message but would not allow him to come in her house. She told him he would have to wait until his father was strong enough to go out on the front porch.

That day never came. His dad died, and the two never got to say goodbye.

"An uncle and a cousin came to tell me that he passed away and that the family didn't want me at the funeral," Briggs said. Briggs started drinking to numb the pain. He considered suicide.

Shunned because of medical care

In 1976 Briggs went back to the church because his mother was dying. The congregation eventually welcomed him back. But in 1981 a back injury left him paralyzed in his right leg.

"I had a family to support so I decided to go to the hospital and have an operation," he said. "The church just expects you to lay on the couch."

When church members learned of his surgery, they broke with him permanently. Briggs hasn't spoken with his brothers and sister in 18 years even though they all live in Oregon City. A letter he wrote to his sister was returned unopened, he said.

Briggs' wife Lorraine left the Followers of Christ with him. They have been married thirty years and have three adult daughters. He runs a real estate business from his home.

Briggs credits Lorraine with getting him through the depression, grief, and loss. "When I walked away, I assumed I was going to hell," he said.

Briggs calls for repeal

Russ Briggs' only motive for speaking publicly about the loss of his babies more than a quarter century ago is to prevent such tragedies from happening to others. He has begun a campaign to repeal Oregon's religious immunity laws and says he will do whatever it takes to get legislators to listen.

The politicians are "not fully aware of the personal pain, agony, and suffering that's being caused," he said.

Taken from *The Oregonian*, April 26, 1998.

First Born death conviction upheld on appeal

The conviction of a father who let his son die without medical care because of his religious beliefs was upheld July 15 by the Oregon Court of Appeals.

Loyd Hays of Brownsville was convicted of criminally negligent homicide for the 1994 death of his 7-year-old son Tony. Members of the Church of

the First Born, Loyd and his wife Christina had Tony anointed with oil and prayed for him, but would not obtain medical care.

The boy was sick for two months with acute lymphocytic leukemia, which is treatable. During the last days of his life, he had constant nosebleeds and red blotchy bruises all over his body.

The Hayses told the police they did not obtain medical care because their child "did not ask" for it. They regard his death as the will of God and also claim they have seen church members miraculously healed by faith.

A Linn County jury acquitted Mrs. Hays of all charges. Hays was acquitted of manslaughter but convicted of criminal negligence causing death. Sentencing guidelines call for a maximum of 15 to 18 months incarceration for the crime. Instead, the court sentenced him to five years probation and ordered him to report to his probation officer if any child in his custody suffers from a life-threatening disease or other physical condition and that he then permit examination of the child and removal for medical treatment.

On appeal, Hays argued that his due process rights were violated because of Oregon's religious defense to criminal mistreatment of children, which prevented him from knowing when exclusive reliance on prayer was illegal.

The appeals court disagreed and found the statutes as they existed in 1994 when Tony died to be clear. "The statutes," said the court, "permit a parent to treat a child by prayer or other spiritual means so long as the illness is not life threatening. However, once a reasonable person should know that there is a substantial risk that the child will die without medical care, the parent must provide that care, or allow it to be provided, at the risk of criminal sanctions if the child does die."

Since Tony died, however, Oregon has enacted religious immunity to crimes involving the death of a child: homicide by abuse or neglect and manslaughter.

Taken from the ruling in *State v. Hays*. See also the CHILD newsletter 1995 #1.

Research on faith deaths of children published

Many children have died of readily treatable diseases because of religious objections to medical care, researchers report in the largest study ever published on child faith deaths. The article by Seth Asser and Rita Swan entitled "Child fatalities from religion motivated medical neglect" appeared in the April issue of *Pediatrics*, the peer-reviewed scientific journal of the American Academy of Pediatrics.

Asser and Swan reviewed 201 U.S. child fatalities between 1975 and 1995. In 29 cases documentation was insufficient, leaving 172 subjects for evaluation. Criteria for inclusion were evidence that parents withheld medical care because of reliance on religious rituals and documentation sufficient to determine the cause of death.

Causes of death highly treatable

The authors found that 140 fatalities were from conditions for which survival rates with medical care would have exceeded 90%. Eighteen more had expected rates above 50%. All but 3 of the remainder would likely have had some benefit from clinical help.

The deaths occurred in 34 states and 23 denominations. Five churches accounted for 83% of the total: Faith Assembly with 64, Christian Science 28, Church of the First Born 23, Faith Tabernacle 16, and End Time Ministries 12.

Infant deaths mischaracterized as stillbirths

The study group included 59 prenatal and perinatal deaths. All but one infant would have had a 50% or better expected survival rate with medical care. Some of the infants studied were called stillborn on death certificates. In many cases, however, autopsy reports and witness statements indicated that death occurred during labor or delivery from causes that would have been easily prevented or treated with skilled assistance.

Study starts when feds began requiring religious exemptions

The authors chose 1975 as the starting point for the study because that is when the federal government began requiring states in the child abuse grant program to have religious exemptions to child neglect charges. Asser and Swan charged that the exemption laws have encouraged parents to believe they have a legal right to withhold necessary medical care from children and called for their repeal.

The research has already been reported at several child abuse conferences. In 1999 Seth Asser will discuss it at the American Academy of Pediatrics spring meeting.

The article also received widespread media attention. It was reported on national wires, *CNN Headline News*, and many local broadcast media.

Lead author Seth Asser is a critical care pediatrician now at Southwest Methodist Children's Hospital in San Antonio. He also volunteers his services as a member of CHILD's board of directors. He took a year's sabbatical to do the research for the article. Junior author Rita Swan is president of CHILD. These affiliations were disclosed to *Pediatrics* when the article was submitted for publication.

Church charges bias

The Christian Science church's response has mainly been to attack the authors as biased. Church public relations managers have accused them of "contriving the article to bolster" CHILD's suit against the federal government to stop Medicare and Medicaid reimbursements for Christian Science nursing.

They also disclaim any responsibility for the tragic deaths of Christian Science children. They claim Asser and Swan's statement that "Christian Science promotes avoidance of medical services" is "unsupportable and false." Christian Science parents withhold medical care from children only because they are convinced spiritual treatment heals better and not because of anything the church has ever written or said, church officials argue.

"Somehow the church knows what all its parents think even though it has never done anything to influence their thinking," Swan commented.

A complimentary copy of the article will be sent to any dues-paying CHILD member.

Taken in part from Victor Westberg's letter to *Pediatrics*, April 23, 1998, and *San Diego Union-Tribune*, April 7, 1998.

Religious freedom bill opposed in Congress

In 1993 the Religious Freedom Restoration Act (RFRA) sailed through Congress almost unanimously. Since the U. S. Supreme Court ruled it unconstitutional in 1997, the broad coalition of religious and civil liberty groups behind RFRA has been searching for another way to establish their views on religious freedom.

One faction thought the U.S. Constitution should be amended. The Religious Freedom Amendment (RFA) to allow school-sponsored prayer in public schools and virtually all religious expression was introduced. House leaders made its passage their number 1 priority on social issues and extracted promises from grassroots organizations not to push any other religion bills until after the RFA vote.

The RFA was defeated on June 4. The old RFRA coalition was ready with another legislative remedy; Senators Hatch, R-Utah, and Kennedy, D-Massachusetts introduced the Religious Liberty Protection Act (RLPA) on June 9.

Like its predecessor RFRA, RLPA prohibits any government from "substantially burden[ing] a person's religious exercise" except when the government demonstrates "that application of the burden to the person—

1. is in furtherance of a compelling governmental interest; and
2. is the least restrictive means of furthering that compelling governmental interest."

Proponents seek to avoid a constitutional challenge by tying RLPA to commerce since the Constitution gives Congress the power to regulate interstate commerce. RLPA states that government shall not substantially burden religious practice "in a program or activity, operated by a government, that receives Federal financial assistance; or in or affecting commerce with foreign nations, among the several States, or with the Indian tribes; even if the burden results from a rule of general applicability."

The Center for Law and Freedom argued that virtually all activities have a relationship to interstate commerce. For example, it said, if the government cites daycare centers who hire only Christians for violating anti-discrimination laws, the centers may have to close and toymakers in Indiana will lose customers.

Tie to commerce offends some conservatives

The RFRA coalition first sent out a memo indicating that all its members supported RLPA. But soon several conservative groups announced their opposition, including the Home School Legal Defense Association, Concerned Women of America, American Family Association, Christian Action Network, I Love Jesus Worldwide Ministries, Inc., American Association of Christian Schools, Traditional Values Coalition, and the Free Congress Foundation.

Some feel it devalues religion to tie it to interstate commerce. Other conservatives fear that RLPA will expand the size and scope of government. They have complained for decades about liberals' using the commerce clause as a rationale for far-flung federal government intrusion and they do not feel right about using the commerce clause in pursuit of conservative goals.

CHILD answers Senator's concerns about kids

Law professor Marci Hamilton, who argued the case against RFRA before the U.S. Supreme Court, has testified against RLPA in both the House and Senate Judiciary Committees. Senator Michael DeWine, R-Ohio, a former child abuse prosecutor, raised a question at the Senate Judiciary Committee

about whether RLPA would weaken child abuse laws.

Hamilton relayed his question to CHILD Inc. We sent her a letter outlining our concerns about RLPA. She then placed it with her own written response to other questions in the public record of the Judiciary Committee. We are including CHILD's letter as a separate handout with this newsletter.

On August 6, a House subcommittee deleted the commerce clause provisions from RLPA and sent the bill to the House Judiciary Committee.

CHILD wishes to repeat that we believe religious liberty does deserve a high degree of protection, but RFRA and RLPA go too far.

Taken in part from Bob Jones IV, "Strong-arming the law?," *World* June 20, 1998:15-17.

Two Christian Science exemptions deleted by Congress

The Christian Science church got two exemptions added to a federal child welfare bill this year, but key Senators quickly deleted them after the American Academy of Pediatrics and others objected.

The bill was the Adoption and Safe Families Act. It dealt with how long states had to make "reasonable efforts" to reunify families while children languish in foster care until they are eligible for adoption.

One section provides that states do not have to expend the federal definition of "reasonable efforts" when the parent has committed murder or voluntary manslaughter of another child of the parent, "aided or abetted, attempted, conspired, or solicited to commit such a murder or manslaughter," or committed a felony assault that causes serious bodily injury to the child in foster care or a sibling.

The Christian Science church decided that their members needed a religious exemption to prevent or delay termination of parental rights after they are found guilty of murder or manslaughter.

Exemptions for parents convicted in deaths

Many states, the church wrote to Congress on March 13, recognize "in varying degrees the right of parents to rely on spiritual means for healing for their children. In the rare cases in which a child has passed on while receiving Christian Science treatment, however, there have been an extremely small number of criminal convictions of the parents which may fall under the provisions of [the bill]. The families thus face the threat of a termination of parental rights proceeding."

"Conscientious, loving, and religious parents," said the church, should not be included "in the same legislative category with parents who have deliberately engaged in violent, harmful conduct toward their children. . . . Trust in God does not justify subjecting the children or parents to the threat of a proceeding which could result in complete destruction of the family."

CHILD and pediatricians protest

The Senate Finance Committee added the church's amendments to the Adoption and Safe Families Act, to prevent or delay termination of parental rights when the conduct for which the parent was convicted of murder, voluntary manslaughter, or assault "consists of the reliance on a religious method of healing in lieu of medical treatment for the child."

The American Academy of Pediatrics and CHILD Inc. wrote and called Finance Committee members. Reportedly, Senator Dan Coats's staff was "furious" with the church for violating a deal. After all they had given the church in the Child Abuse Prevention and Treatment Act of 1996, they assumed they would not have to deal with religious exemptions again. The Senators quickly dropped the religious exemptions from the bill before it left the committee.

Religious exemption from child labor laws sought

Several Pennsylvania Congressmen have introduced a bill to give a religious exemption from child labor laws for the Amish. It has passed a House committee and now moves to the House floor.

HB4257 would amend the Fair Labor Standards Act to provide that youths fifteen years old or older "who are members of a religious sect or division thereof whose established teachings do not permit formal education beyond the eighth grade," may be employed inside or outside places of business where machinery is used to process wood products if a supervising adult is present and "if the youth does not operate or assist in the operation of power-driven woodworking machines."

CHILD urges people to contact their Congressmen in opposition to this proposed religious exemption. Child labor laws are there to protect children, and children should not be given a lower standard of protection because they were born into a church that deprives them of education beyond the eighth grade.

Court refuses request for child labor exemption

Fifty years ago a Jehovah's Witness argued that she had a religious right to violate the child labor laws of Massachusetts. In immortal words, the U. S. Supreme Court ruled, "The right to practice religion freely does not include liberty to expose the community or child to communicable disease, or the latter to ill health or death. . . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158 (1944).

Congress should not overturn this sensible standard by passing a religious exemption for the Amish. If Congress feels the standards in the child labor laws are more stringent than is necessary to protect children, then the standards should be lowered for all children, not just children whose

parents have religious beliefs against high school education.

The address for all Congressmen is U.S. House of Representatives, Washington DC 20515.

Exemptions from lead poison screening defeated

The Christian Science church got religious exemptions from lead poison screening introduced this year in Kansas and Maryland, but neither passed.

In Kansas the exemption was part of a comprehensive bill on lead in the environment. The bill was opposed by several groups and did not pass.

In Maryland the exemption was in a stand-alone bill. It provided religious exemption from lead poison screening for children in day care and was initially presented as "an emergency measure. . . necessary for the immediate preservation of the public health and safety."

Widespread opposition

A large number and variety of Maryland groups opposed the religious exemption, including Parent-Teacher Association, Foster Care Review Board, Maryland School Psychologists, Maryland Multi-Housing Association, People Against Child Abuse, and medical organizations.

CHILD honorary member Ellen Mugmon of Columbia, Maryland, testified against the bill and circulated her fact sheet, "Lead Poisoning by Religious Exemption: a Step Backward for Maryland's Children." Many other Maryland CHILD members also wrote letters opposing the bill. One of them appears on the next page.

By fortunate coincidence, research by Seth Asser and Rita Swan on 172 deaths of children in faith-healing sects was published while the legislators were considering the bill, and CHILD was able to distribute copies of the article to them.

The bill passed the House, but was defeated by one vote in the Senate Judicial Proceedings Committee.

Faith Tabernacle parents convicted for medical neglect

A Philadelphia couple whose toddler nearly died from untreated cancer were convicted May 11 of child endangerment and criminal conspiracy.

Daniel and Anne Foster belong to the Faith Tabernacle church, which believes only God can heal disease. In May, 1997, a neighbor saw their son Patrick fall on the sidewalk. His head fell over, and he could not lift it. The boy was lethargic, losing weight, and had a large lump protruding from his abdomen. The neighbor reported to the child abuse hotline.

The Department of Human Services intervened and got him to a hospital. The two-year-old boy had a swollen eye and rash, but his main problem was a Wilms' tumor that had spread from his kidneys to his liver and heart and was starving his body.

Patrick underwent months of chemotherapy to shrink the tumor until it could be removed surgically. More chemotherapy and radiation followed.

Today he lives with his aunt and uncle, Diane and Timothy Foster, who do not belong to Faith Tabernacle. He is happy, energetic, and in remission. A pediatric oncologist testified at the trial that Patrick now has an 80% chance of survival.

Daniel Foster also testified at the trial. He said if the cancer returned or if Patrick got sick with any other illness in the future, he would rely on God and not a doctor.

"God is in control. God has his hands around us and Patrick the whole time," he said. He wept as he described the "walking miracles," he has seen from "divine intervention."

Foster told the jury that when he and his wife first felt the lump in Patrick's belly in February 1997, they prayed. As they watched their son weaken, the Fosters asked their pastor to anoint the child with oil, and they sought their congregation's prayers. "We prayed morning and night. We asked the Lord to change it," the father said.

Kenneth E. Scheck
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Senator Walker Baker
Chairman, Judicial Proceedings Committee
James Senate Office Building
Annapolis, Maryland 21401-1991

April 5, 1998

Dear Senator Baker:

This letter is in reference to HB 1388, regarding the lead-poison screening exemption for Christian Science children. Basically, I would like to say that "exemption" is not the correct word to use in these CS cases. "Condemnation" would be much more accurate.

My late wife, Kimball S. Scheck, was the child of CS parents. We were married for 22 years and I had ample opportunity to see what happens when CS parents "exempt" their children from the benefits of modern medicine.

As a child, Kim was "exempted" from going to the doctor for any and all illnesses. When I met her at Washington College in the '60s, her lungs were already damaged beyond repair by untreated bouts of pneumonia and other infections. With proper medical care, Kim hung on to life until she was 44. Then her heart and lungs gave out. Numerous doctors at Johns Hopkins and Maryland told me that Christian Science "condemned" Kim.

Senator, I am not normally a fan of government intrusion into private life. But children are at the mercy of their parents. We have laws to protect children from beatings and neglect. Lead poisoning screening is no different than other routine physical checks children need and should have. To deny them this is to condone neglect.

I have known Christian Scientists for most of my adult life. My belief is that if they wish to deny themselves medical treatment – fine. But their children should be protected by law, at least until they are old enough to make their own medical decisions.

Senator, until you've seen someone sicken and die from the ultimate effects of Christian Science neglect, you don't know how evil it can be. If children are "exempted" from lead poisoning screening, it is the same thing as "condemning" them to lives of retardation, as well as psychological and emotional damage.

Forgive the strong tone of this letter, Senator. But I loved my wife. The thought of other children suffering a fate similar to hers upsets me greatly. I hope you'll vote to allow innocent children to receive the medical care they deserve.

Sincerely,

Kenneth E. Scheck



Anne and Daniel Foster

used by permission of *Philadelphia Daily News*

Assistant District Attorney Mimi Rose asked Foster if he was aware that parents in Pennsylvania had a legal duty to get necessary medical care for their children. "I trust in God," Foster replied.

Nothing in Bible about cars

Foster, a carpenter, said he consulted with his pastor about everything, including his work and his car. "You don't pray when your car doesn't work," said Rose. "You get it fixed, don't you?"

"Yes," Foster replied. "I take it to a mechanic." Defense Attorney Jonathan James later pointed out there was nothing written in the Bible about cars.

Foster said he was raised in Faith Tabernacle. Anne Marie joined the church shortly before their marriage six years ago. They have two other children, Daniel, 4, and Rosanna, 1, who live with them.

After less than two hours of deliberation, the jury convicted the Fosters of felony child endangerment and criminal conspiracy. The basis of the conspiracy charge was that both parents had a shared intent and agreement to deprive the child of medical care.

Jurors speak out

"Adults can do whatever they want to their bodies," said one juror. "A two-year-old child, who has no religious beliefs and is helpless, needed help, which the parents ignored."

"We had a lot of trouble with their beliefs in this century," said another juror. "While faith might move mountains, in this case, it wasn't a reasonable defense. Parents cannot endanger the life of a child, no matter how strong your religious beliefs are." He said the jury hoped to send a message to the church to make an adjustment in their doctrine for children.

The Fosters visit their son and hope to regain custody of him. They could be sentenced to 7 to 14 years in prison, but will more likely receive sentences of probation with a requirement to get medical care for their children.

Philadelphia's new message

In the courthouse, prosecutor Mimi Rose drove home the message for Philadelphia: "The verdict says, in Philadelphia, in Pennsylvania, if you have a child, you must get medical care for that child."

Philadelphia has not always been saying that. Faith Tabernacle was started in Philadelphia during the Pentecostal revival in the late nineteenth century. Dozens of Faith Tabernacle children have died for lack of medical care in Philadelphia in the past, and the city did nothing.

For years only prosecutors in rural Pennsylvania counties filed criminal charges when Faith Tabernacle children died without medical care. Last year Blair County District Attorney William Haberstroh won his third conviction in a Faith Tabernacle child's death. The case received national media attention.

Soon afterwards Philadelphia filed charges in three Faith Tabernacle cases.

Taken in part from *The Philadelphia Inquirer*, May 9 and 12, 1998.

Scientologists convicted of child endangerment and failure to report

Seven-month-old Jeanette Mercado of San Jose, California, was just weeks away from death in a pediatrician's opinion when she arrived at a hospital.

Her babysitter Twyla Young had been worried about Jeanette before. The baby could not hold herself up or push herself around in a walker. But in February, 1994, Jeanette's eyes had rolled back in her head, her body was limp and unresponsive, and her fists were tightly clenched. Twyla and her husband called for an ambulance.

Upon hospital admission Jeanette weighed 10 pounds, 11 ounces, when average weight for her age would have been 16 to 19 pounds. She was pale and anemic. Her mental development was at the level of a three-month-old. She did not have enough muscle mass to hold her head up. She had generalized mineral loss from her bones, hair loss, brittle hair, cracks at the corners of her mouth, and oral thrush.

She was diagnosed with vitamin A toxicosis and malnutrition.

Baby fed only barley water

Her parents, Ed and Gina Mercado, are followers of Scientology. From October through February, a Scientologist chiropractor, Richard Peterson of Sunnyvale, had been the baby's only health care provider.

Peterson's records show that Mrs. Mercado repeatedly told him about the baby not eating. Peterson claimed she was allergic to both soy and dairy products. In October Mercado started the baby on a barley water recipe that she got from *The Second Dynamic* by Scientology founder L. Ron Hubbard. Friends of theirs had used it and their children turned out "chunky," she told investigators.

Alcohol and massive doses of vitamins given

Peterson also prescribed massive doses of vitamin A over two months. Initially Jeanette was given 100 times the Recommended Daily Allowance (RDA) for a baby; later the dosage was reduced to 50 and then 20 times the RDA.

In January, Peterson prescribed a Brazilian bark extract, pau d'arco, for what he diagnosed as yeast infections in the lungs and digestive system and later for the "white curds" in her mouth. The herbal medicine was 40% alcohol.

The alcohol would have blunted her hunger, leading to further malnutrition, pediatrician Patrick Clyne told law enforcement.

Parents misinterpret symptoms

Neither the parents nor the chiropractor weighed the baby. The parents told investigators that Jeanette's puffy face gave them the idea she was adequately nourished. They also pointed out that she initially lost six ounces in the hospital.

Clyne responded that "the body's last subcutaneous fat stores to be used up in profound malnutrition is in the cheek pads of infants." Also, "because of the low protein in her bloodstream, her body was retaining water in the intercellular tissues," which leads to edema and puffiness in the extremities. "As infants who are this malnourished are nutritionally resuscitated, they can lose a little weight initially as the body mobilizes this excess water and removes it as urine."

Hubbard calls Scientology "an applied religious philosophy." The parents described it as their "lifestyle." They said it opposes chemicals and narcotics, but does not prohibit medical care.

Scientology's nutritional advice

The Second Dynamic has a flippant, arrogant style. Hubbard presents himself as an expert on infant nutrition and ridicules medical doctors. He sometimes suggests going to a pediatrician for tests, but then wants the test results used to help decide which one of his own ideas to try.

Few "Guernsey-type mothers" today

Hubbard strongly discourages breast feeding, and in fact Mrs. Mercado gave it up after two weeks. Blaming contemporary women, Hubbard says,

Breast feeding babies may have a nostalgic background, particularly to a Freudian oriented medico, but real breast milk again is usually a poor ration. Modern mothers smoke and sometimes drink. Smoking makes the milk very musty. Anyway, a nervous modern mother just can't deliver the right ration. Maybe it's the pace of the times or the breed, but there are few modern Guernsey-type mothers. So even without drinking or smoking, one should forget breast feeding.

Hubbard also lashes out at powdered formulas, saying, "When you see one of these bloated, white, modern babies, know that it is being fed exactly on the doctor's orders: a diet of mixed milk powder, glucose and water, total carbohydrate."

Claiming expertise on infant nutrition, Hubbard says,

As an old hand at this, I have straightened out more babies who were cross, not sleeping, getting sick and all, than it was easy to keep a record of. These babies were all just plain hungry. . . , and the little things were ready to toss in their chips. Some had gone into a stupor and just didn't care anymore. Some were trying to quit entirely. And they all recovered and got alert and healthy when they were given a proper ration.

Hubbard's first patient was his own son:

When I first tackled this problem, it was a personal matter. . . . I had a little boy who was not going to live and I had to act fast (1) to get him out of the hospital and (2) to discover his trouble and (3) to remedy it. The total time available was less than 24 hours. He was dying.

Hubbard says he got the boy out of the hospital "helped by a hot temper and a trifle of promised mayhem."

"From a deep past" some 2,200 years ago, Hubbard then "called up" the formula for barley water, which he says "is the nearest approach to human milk that can be assembled easily." It has to heal children, Hubbard argues, because barley is the highest protein content cereal and "Roman troops marched on barley."

Dr. Clyne, however, testified that barley water has "little to no nutritionally valuable protein."

Mrs. Mercado was gone ten hours a day for her salaried employment and two hours a day of volunteer work for Scientology. She gave the babysitter strict orders to feed Jeanette nothing but barley water.

The Mercados pled no contest to a misdemeanor count of child endangerment in November, 1994, and were sentenced to two years probation. They promised to take their child to a pediatrician regularly.

Parents refuse to testify against chiropractor

The chiropractor was charged with unlicensed medical practice, theft from the Mercados (for his fees), and failure to report child abuse. The parents refused to testify against him and therefore the first two charges were dropped. In 1998 he pled no contest to failure to report child abuse, which is a misdemeanor in California.

At sentencing Peterson reportedly described himself as a martyr for his religion, who agreed to the plea only to save his church from attack.

The state submitted evidence that Peterson was acting outside the scope of legal chiropractic practice in treating Jeannette. On November 2, the Board of Chiropractors, a state agency, will hold a hearing to consider revocation of his license.

The Mercados and Peterson were prosecuted by Santa Clara County Deputy District Attorneys Katherine Lucero and Cynthia Sevely.

Taken in part from court records and L. Ron Hubbard's *The Second Dynamic* (Los Angeles: Bridge Publications, 1988).

Child abuse case puts spotlight on polygamy

On July 22 John Kingston, 43, was bound over for trial on felony child abuse charges in Brigham City, Utah. According to the Box Elder County Sheriff's office, he belongs to a polygamous clan and forced his daughter to become the 15th wife of his brother David, 32. The second time the 16-year-old girl ran away, he drove her to a remote farm and allegedly beat her with a belt and fists. She suffered a broken nose, swollen lip, and many bruises, and finally passed out from the pain.

He left her at the Washakie Salers ranch, where the clan sends disobedient wives and children, expecting her to go to them for help. Instead, the girl walked seven miles to a gas station phone and called the sheriff. She asked for shelter and said she ran away because she wants to finish high school.

David Kingston may be charged with rape because it is illegal in Utah for an adult to have sex with a 16-year-old.

Polygamy ignored by Utah officials

Polygamy also is against the law, but Utah officials have not prosecuted those who practice it since 1952. It is estimated that as many as 30,000 polygamists live in the West.

Utah and the Mormon church, also known as the Church of Jesus Christ of Latter-Day Saints (LDS), outlawed polygamy in 1890 as a precondition of statehood, but Charles Kingston believed it should be part of Mormonism. In 1935 he established a dissident church called the Latter-Day Church of Christ. It borrows much from LDS theology, including prohibition of alcohol and tobacco.

Today the Kingston clan has 1,000-1,500 members and business assets worth perhaps \$150

million while many wives and children live in abject poverty.

Former members say sermons at the clan church never refer to the Bible, but instead include rules on how to bathe, rinse milk cartons, conserve shampoo, and how much toilet paper to use.

Leader may have 300 children

Current leader Paul Kingston, the founder's grandson, is considered a prophet and the only one who speaks directly to God. He reportedly preaches that no member will reach heaven unless a daughter is married to a clan leader. Ex-members say he has 250 to 300 children.

"The Destruction" is another prominent feature of their theology. Members are told that their hard work now will be rewarded after a general destruction of the unsaved. Then the Kingston clan will have its pick of beautiful homes and other luxuries.

Disobedient wives and children are threatened with starvation, beatings, or isolation at Washakie.

Most polygamists marry only one woman in a legal civil ceremony and take later brides in private religious ceremonies. They therefore cannot be prosecuted for polygamy, the Utah Attorney-General's office said.

No cooperation with law enforcement

The sheriff's office reports getting calls from teachers or neighbors that children in the Kingston clan appear abused or neglected. But "when you do an investigation, you have to have cooperation, and we get zero cooperation from the families," a detective said.

"It's a closed society. If people are willing to talk, there could be prosecutions, but we have to have witnesses," said another official.

Nevertheless, the courage of John Kingston's daughter has aroused hope for change.

Former plural wives speak out

After the charges were filed against Kingston, a group of former polygamous wives calling itself Tapestry of Polygamy held a press conference just outside the gate of Brigham Young's home and next

door to the home where his children and twelve of his wives lived.

Tapestry offers counseling, group therapy, workshops, and legal advice for women and children who have been in polygamous sects. It assists women with finding employment, health care, housing, and transportation.

Many women's shelters can accept only a limited number of children and therefore may turn away polygamous wives, who are expected to have a baby every year.

Governor changes position

At a July 23 news conference, Utah Governor Mike Leavitt defended the polygamists. "These people have religious freedoms," he said. Most are "hard-working, good people," he added. Leavitt is himself a descendent of Mormon polygamists.

The Tapestry women demanded that laws against polygamy be enforced. A week later Leavitt reversed himself and said the practice of polygamy was not a protected religious freedom.

Attorney General Jan Graham issued a statement that "the claim of religious freedom is no defense to the crimes of statutory rape, incest, unlawful sexual conduct with a minor, child abuse or cohabitant abuse."

This is hardly a new insight. In 1878 the U. S. Supreme Court ruled against Mormons who argued that they had a First Amendment right to practice polygamy. The Court held that while Americans have absolute freedom to believe their religions, the state may prohibit religious practices in the interest of public health and safety. *Reynolds v. U. S.*, 98 U.S. 145, 166 (1878).

The selection of Salt Lake City as the site of the 2002 Winter Olympics has focused more national and international attention on Utah. The Olympics along with the persistence of Tapestry and the courageous teenager, whose name has not been released, may motivate law enforcement to take action.

Taken from the *Ogden Standard-Examiner*, June 3, 4, 7, and 17; an AP report of August 3; and

Newsweek, August 10. Some articles were retrieved from the Child Protection Project's website at www.ncal.verio.com/~childpro.

Pastor seeks to overturn rules against corporal punishment

Donald Cobble, an assistant minister at the non-denominational Christian Teaching and Worship Center in Woburn, Massachusetts, has asked a Suffolk Superior Court judge to overturn the Department of Social Services finding that spanking his physically handicapped son, Judah, was child abuse. The DSS also found Lisa Cobble neglected their 11-year-old son because she did not stop the corporal punishment.

Donald Cobble argues DSS is violating his right to practice his religious and parental beliefs.

"I feel it's my God-given responsibility, as well as my God-given right, that if I love my son to train him up and teach him what's right," said Cobble, citing the Book of Proverbs. "And part of that is corporal punishment."

Child handicapped

He said he has gone to court to clear his name. The Cobbles said that Donald Cobble uses a belt to punish Judah only rarely and slaps his clothed buttocks once or twice for misbehaviors. Judah Cobble, who is now 11, has a birth defect that requires he wear braces on both legs and a back brace.

In March, 1997, at his school, Judah, who has attention deficit disorder and other educational challenges, reported being fearful of going home because his father would "beat" him for poor behavior in school.

That triggered a DSS investigation, which substantiated the finding of abuse and led to the recommendation that Donald Cobble not be alone with his son until Judah Cobble turns 18 years old. But no action was ever taken against the Cobbles, and the DSS closed the case in June 1997 when the Cobbles balked at following the DSS recommendation.

DSS spokeswoman Lorraine Carli said state regulations require abuse reports to be substantiated if a social worker believes a caretaker's action has hurt a child. "By using a belt repeatedly on a child, you are causing a substantial risk of injury, which can include swelling and bruising," said Carli. However, she added that despite Cobble's public pronouncements that he would strike his son again if the need arose, the agency would not reopen the case unless it had evidence he hit the boy again.

Condensed from *The Boston Globe*, July 21, 1998.

Jehovah's Witness position on blood changing

The Jehovah's Witness faith has had many twists and turns in its positions on medical procedures. Its hardline position against blood transfusions, developed during the 1940s, has been modified several times. Commonly, its denominational headquarters, the Watchtower Society, delays informing the general membership of the change and then releases a rationale explaining that no basic change in the theology has occurred.

In this era of the internet, delays and deceptions are becoming harder to maintain. In the summer of 1997 Jehovah's Witness officials charged before the European Commission on Human Rights that Bulgaria was persecuting their faith.

Agreement with Bulgaria changes blood policy

Bulgaria responded that the Witness church policies "endanger public health" because they do not respect human life in that they require refusal of lifesaving blood transfusions. Bulgaria also charged that other Witness doctrines endanger national security and the rights and freedoms of others.

The parties negotiated an agreement in which Bulgaria granted the church state recognition as a religion and promised to enact a law allowing alternative civilian service for conscientious objectors.

In return, the Jehovah's Witness officials promised that members "should have free choice" to accept blood transfusions "without any control or sanction on the part of the association." These officials further stated that "there are no religious sanctions for a Jehovah's Witness who chooses to accept blood transfusions."

The European Commission on Human Rights accepted the agreement in March, 1998, and posted it on the internet.

Ex-Witnesses say the agreement reaches far beyond Bulgaria because the European Commission of Human Rights is an agency of the Council of Europe with its decisions serving as legal precedent for all 40 member states.

Spokesman disclaims church's agreement

Within a few weeks dissidents and reformers had seen it and begun circulating it widely. On April 21 an ex-member phoned the Watchtower Society's Brooklyn headquarters about the policy and heard from an official spokesman that there was no change. Jehovah's Witnesses who permit transfusions for themselves or their children will still be disfellowshipped worldwide.

History of Watchtower's positions chronicled

The Watchtower Bible and Tract Society, the governing body for the Jehovah's Witnesses, has developed a plethora of theological arguments for its judgments on health care over the years. These are nicely chronicled in a book entitled *Blood, Medicine, and The Jehovah's Witnesses: the Hidden History of the Watchtower's Position on the Blood Issue* by Steve Devore and Steve Lagoon. The book is intended for use in evangelizing among Jehovah's Witnesses; it is available from Witness Inc. in Clayton, California.

To many outsiders the Watchtower's positions look wildly inconsistent. Here is some of the chronology given in Devore and Lagoon's book.

1892: Witness founder Charles Russell said that the New Testament's prohibition against eating blood in Acts 15 was a temporary measure to promote unity during the transition from the Jewish to the Christian era.

1925 through 1936: The Watchtower issued several condemnations of vaccinations. They seem especially concerned that vaccines are made from animals' blood. "Violation of the divine commands to keep human and animal blood apart from each other" causes sexual immorality and the "spread of demonism."

1929 and 1940: Watchtower literature praises blood donors for helping save lives of others.

1945: Watchtower literature first condemned human to human blood transfusion, but did not prohibit it.

1952: The Watchtower began to allow vaccinations.

1958: The Watchtower again condemns blood transfusion, but says receiving it is *not* a disfellowshipping offense.

The Watchtower draws a distinction between taking blood as a food and accepting blood serums that add antibodies. God prohibits transfusions because they are "a nutrient to build up the body's vital forces." While "God did not intend for man to contaminate his blood stream by vaccines, serums or blood fractions, doing so" does not violate "God's expressed will forbidding blood as food."

1961: Having a transfusion is made a disfellowshipping offense, and donating blood is condemned. Citing Deuteronomy 15:23 that blood should be immediately poured on the ground, the Watchtower says blood must not be stored, even momentarily in a syringe.

Donating organs upon death is ruled allowable as a matter of conscience.

1964: Jehovah's Witnesses are forbidden to get blood transfusions for their pets and to feed them pet food containing blood; use of fertilizer containing blood is also prohibited.

Later that year the Watchtower says Witnesses can apply such fertilizer to other people's land while employed by non-Witnesses. Also, Jehovah's

Witness doctors are allowed to transfuse non-Witness patients and food vendors can sell blood sausage to non-Witness customers.

The Watchtower decrees that blood must "serve no useful purpose."

1966: Blood transfusions are called cannibalism.

1967: Organ transplants are called cannibalism and absolutely prohibited.

1975: Witness doctors are forbidden to transfuse non-Witness patients unless ordered to do so; Witnesses are forbidden to sell tobacco or blood sausage to customers unless ordered by an employer to do so.

Hemophiliacs are prohibited from taking plasma factors if they want to be "true Christians."

1977: A blood transfusion is condemned as "essentially an organ transplant."

1978: In a major reversal the Watchtower now allows use of plasma proteins such as clotting factor VIII for treating hemophilia.

The Watchtower also allows blood tests because "the small quantity of blood" involved "is not eaten or injected into someone else," but is merely examined and then disposed of.

1980: The Watchtower reverts to its original view that organ transplants are a matter for individual conscience. "Organ transplants are different from cannibalism since the 'donor' is not killed to supply food."

1990: The Watchtower calls a transfusion "a tissue transplant." While other organ transplants have been allowed since 1980, accepting "a tissue transplant" of blood remains a disfellowshipping offense.

Today the Watchtower prohibits transfusions of whole blood, plasma, white and red blood cells, and platelets. The sect also prohibits autotransfusions because of Deuteronomy 15:23's edict against storing blood. The Watchtower allows Jehovah's Witnesses to accept albumin, immunoglobulins, and hemophiliac preparations on the argument that they are just fractions of blood. It allows diversion of the patient's blood through a heart-lung machine, dialysis, or other diversion where the blood is kept

flowing continuously through the body. And it allows blood-gas analysis testing of infants even though it includes removing blood and later returning it to the body as in autotransfusion.

Jehovah's Witnesses demand reform of church policy

A group calling itself the Associated Jehovah's Witnesses for Reform on Blood is publicly calling for the Witness hierarchy to let members have the freedom to accept blood transfusions without the threat of disfellowship and other sanctions.

They have posted their web page at <http://www.visiworld.com/starter/newlight>. They remain anonymous because of their fear of punishment. Many are members of the Watchtower's Hospital Liaison Committees (HLCs) who meet with physicians treating Witness patients and set forth the denomination's positions on receiving blood products.

Some MDs "cooperate" in preventable child fatalities

The reformers say on their web page, "The most depressing feature of being a member of a HLC is when our children are involved. When there are effective alternatives available, when there is a choice to be made, that choice should be made by the parent and not by some doctor, social worker, or judge. But here one needs to ask an important question: Who is qualified to make a decision about alternative nonblood management, and will that decision adequately meet or respond to the child's needs? As members of the HLC's we have been eye witnesses of cases where cooperative doctors have followed the parents wishes for alternative non-blood therapy, and the results have sometimes been tragic, with just one more unnecessary death being the result."

One member identifying himself as the Liberal Elder has an e-mail address for the group at jwreformers@anon.nymserver.com.

A physician considers the AJWRB another ethical issue for doctors. "In the interests of full and complete disclosure should they inform Witnesses patients about the existence of a reform movement that would allow blood transfusions," he asks, "or should they remain silent to avoid any perception of 'religious interference'?"

Taken in part from John Doyle, "'Reformed' Jehovah's Witnesses who accept blood transfusions," *Canadian Medical Association Journal* November 11, 1997 and the AJWRB web page.

CHILD loses Medicare/Medicaid suit

On July 24 Judge Ann Montgomery of the U.S. District Court in Minneapolis granted summary judgment for the defendants in a taxpayers' suit filed by CHILD and two of its Minnesota members. The plaintiffs challenged the constitutionality of federal laws mandating Medicare and Medicaid payments for "religious non-medical health care" and exempting its providers from program requirements and standards.

When Congress established the Medicare and Medicaid programs in 1965, it provided payments to Christian Science sanatoria and, in Medicaid cases, to Christian Science nurses who care for sick patients in their homes.

CHILD, Dr. Bruce Bostrom, and Steve Petersen challenged Medicare/Medicaid statutes and regulations in 1996. Later that year, the federal court ruled them unconstitutional.

In 1997 Congress removed references in the statutes to Christian Science and substituted "religious non-medical health care." CHILD, Bostrom, and Petersen filed a second suit against the federal government challenging the new statutes as a privilege for certain religions that violates the Establishment Clause of the U.S. Constitution.

When Congress was drafting the present statutes, the U. S. Department of Justice (DOJ) advised them they might be unconstitutional because many provisions are special privileges for religion.

However, the DOJ did defend the statutes in both of CHILD's suits and the Christian Science church voluntarily entered the suits as a defendant-intervenor.

A significant issue, in CHILD's view, is that Medicare is expressly prohibited from paying for custodial care except as incident to hospitalization for medical treatment. Congress said in its committee report that benefits for religious non-medical health care could only be paid when a patient had "a medical condition" that would qualify him for inpatient care at a hospital or skilled nursing facility or extended care services associated with such facility.

However, the law also prohibits the government from requiring a medical diagnosis of patients receiving religious non-medical health care. Determinations of these patients' medical conditions are made by a utilization review committee consisting only of persons who hold religious objections to medical care and diagnosis.

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.

In civil and criminal cases when injuries to patients under Christian Science nursing care have been considered by the courts, the church has argued that its nursing is religious in nature and cannot be held to secular standards of care. Unlicensed church nurses have sat by the bedsides of dying children and taken notes, but did not call for medical help or recommend that the parents obtain it. The church has defended their work as primarily being to encourage patients and their families to believe that prayers by Christian Science practitioners are healing them.

In CHILD's suit, however, the federal government and the church argued that Christian Science nurses provide many secular benefits that can be "unbundled" from their religious ministry and that the government will be paying only for secular activities.

They also argued that custodial care in medical hospitals can be "unbundled" from medical nursing care. CHILD submitted an affidavit by Dr. Jordan Holtzman, an internist, who swore that all care in medical hospitals was under the direction of physicians and based on medical diagnoses.

Judge Montgomery's ruling was, she wrote, premised on the notion that nonmedical nursing services, including such things as feeding, cleaning, clothing, and other aspects of physical maintenance, can be "unbundled" from medical nursing services. As such, a resident of a RNHCI would not be receiving 'special' benefits. Such an individual would receive basic care without any medical component, meaning that they would receive a *subset* of normal services rather than 'special' benefits *above and beyond* the norm.

Relying on *Lemon v. Kurtzman*, 403 U.S. 602, 612, 91 S.Ct. 2105 (1971), to evaluate the issues, she held that the statutes had "a clear secular purpose" to "ensure more egalitarian access to health care benefits."

CHILD's web page

CHILD's new web page address is <http://www.childrenshealthcare.org>. A bibliography and other information about religion-based medical neglect of children may be found there.

About CHILD

CHILD Inc. is a tax-exempt educational organization working to protect children from religion-based abuse and neglect.

Membership in CHILD is by application. Dues are \$25 a year or \$15 for full-time students and include a subscription to the newsletter. Applications for membership may be obtained from the web page or by contacting CHILD.