

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law

Federal government enacts religious exemption from parental duty of care

In the fall of 1996 Congress passed S.919, a bill that reauthorized the Child Abuse Prevention and Treatment Act (CAPTA) and included the first federal statute with a religious exemption to child abuse and neglect charges.

The CHILD newsletter 1995, #3, details the federal government's involvement with religious exemptions, first as mandated by administrative regulation and lastly as placed in federal statute. In 1995, the exemption was part of a welfare reform bill that Clinton vetoed, but in 1996 it returned in the CAPTA reauthorization bill and was signed into law.

The U.S. House passed its religious exemption with no debate, discussion, or hearing. The Senate promised there would be a hearing on the religious exemption, but did not hold one. Next they promised a staff briefing, but later declined to hold one. After protest from CHILD and others, they held a staff briefing on 24 hours notice.

CHILD President Rita Swan testified against the religious exemption at the Senate staff briefing in June, 1995. CHILD and the American Academy of Pediatrics made many contacts with Senate staff to voice their opposition to the exemption. The Washington D. C. office of the American Civil Liberties Union also lobbied against the exemption.

To our knowledge neither the National Child Abuse Coalition or any other groups spoke out against the exemption. Most organizations for children were focused on stopping block granting of funds for programs.

The religious exemption language in S.919 was identical to the language in the 1995 welfare reform bill. Section 115 of S.919 stated

(a) **IN GENERAL.**—Nothing in this Act shall be construed—

(1) 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; and

(2) to require that a State find, or to prohibit a State from finding, abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

(b) **STATE REQUIREMENT.**—Notwithstanding subsection (a), a State shall, at a minimum, have in place authority under State law to permit the child protective service system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life-threatening conditions. Case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.

What does the law mean?

The law is a masterpiece of congressional doublespeak. It might mean nothing to a court that scrutinized its nuances. For example, there are no federal statutes requiring parents to provide children

any necessities of life or to refrain from physically abusing them. Child abuse and neglect laws are state laws. The only leverage the federal government has is through the grant program. It can offer states federal money in exchange for their enacting child abuse and neglect laws with certain provisions.

And for all the Christian Science church's inflated rhetoric about the U.S. Department of Health and Human Services (HHS) "forcing" states to find Christian Scientists "automatically" negligent for praying for their children, part 2 is as irrelevant as part 1. The federal government has never required that a state find or prohibited a state from finding abuse or neglect in any case or with any particular fact situation. It requires states who want to participate in the federal grant program to include certain features in their statutory definitions of child abuse and neglect, but it has never required state courts to make findings of abuse or neglect in particular cases.

Everybody who has heard about O. J. Simpson knows that the state has the burden of proving that a person violated a statute, that the person is allowed to put on evidence, and that a judge or jury must weigh the evidence before finding him guilty.

Congress, however, put on its shining armor and gallantly fixed the sensational, but nonexistent problem of HHS forcing state courts to find Christian Scientists guilty of neglect whenever they pray for their children to get well.

After those two concessions to the church, Congress threw the child advocates a sop and required states in the grant program to permit their child protection services to "pursue any legal remedies" to get medical care for children who need it.

Now if the remedies are legal, why would Congress need to order these states to let child protection services pursue them?

Reporting promoted in committee report

CHILD Inc. and the American Academy of Pediatrics worked hard to get a reporting requirement in the Senate Labor and Human Resources Committee's report on the bill. Jane Loewenson of Senator Christopher Dodd's staff pushed for it and

finally won committee consensus for the following statement:

The committee affirms the States' sole discretion over its case by case determinations relating to medical neglect. Section 115 should not, however, be interpreted to discourage the reporting of such incidences to child protective services nor to exempt any child's situation from State reporting requirements.

The report language is more protective than the bill.

Church wins colloquy

Congressional staffers repeatedly told us that there would be not a single word more on the religious exemption issue.

Nevertheless, in September, 1996, when S.919 was moved to the House and Senate floors for passage, we learned that the Christian Science church had negotiated a colloquy in the floor discussions. It was a scripted dialogue with the chairs of the committees that had authorized S.919 purporting to explain what the bill meant on the religious exemption issue.

Of course what was later characterized as "a very lengthy negotiation" had to be kept a secret from all child advocates. It was a lengthy negotiation only between the Christian Science church and Congressional staffers. Stephanie Monroe, representing Senator Dan Coats and the Republicans in the negotiations, would not return our phone calls. Brooke Goldman, representing Senator Dodd and the Democrats, claimed she did not know what was in the colloquy only hours before it went to the floor.

In the House, the colloquy was a dialogue between Christian Science Congressman Lamar Smith, R-Texas, and Congressman Bill Goodling, R-Pennsylvania, chair of the House Economic and Educational Opportunities Committee. In the Senate it was an identical exchange between Senator Coats, R-Indiana, chair of the Subcommittee on Children and Families, and Senator Dodd, the ranking Democrat on the Subcommittee, as follows.

MR. COATS: After a very lengthy negotiation we have reached a compromise which will both protect children in need of medical intervention while ensuring that the first amendment rights of parents to practice their religion are not infringed upon. Under this bill, no parent or legal guardian is required to provide a child with medical service or treatment against their religious beliefs, nor is any State required to find, or prohibited from finding, abuse or neglect cases where the parent or guardian relied solely or partially upon spiritual means rather than medical treatment in accordance with their religious beliefs."

MR. DODD: It is my understanding that under CAPTA, States have been allowed to exempt parents from prosecution on grounds of medical neglect if the parent was employing alternative means of healing as part of the parent's religious practice. CAPTA also has required States to have procedures in place to report, investigate and intervene in situations where children are being denied medical care needed to prevent harm.

MR. COATS: That is correct. The two provisions you have described have caused problems for some States. The Department of Health and Human Services has moved to disqualify certain States from CAPTA funding based on the State's accommodation of the religious treatment in lieu of medical treatment.

MR. DODD: And it is my further understanding that we have clarified that issue in the Rule of Construction in the bill before us.

MR. COATS: Yes, we have.

MR. DODD: Does the bill address the State's authority to pursue any legal remedies necessary to provide medical care or treatment when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life-threatening conditions?

MR. COATS: Yes it does. In addition, the bill gives States sole discretion over case-by-case determinations relating to the exercise of authority in this area. No State is foreclosed from considering parents use of treatment by spiritual means. No State is required to prosecute parents in this area. But every State must have in place the authority to intervene to protect children in need. Let me also state that nothing in this bill should be interpreted as discouraging the reporting of suspected incidences of medical neglect to child protection services, where warranted.

MR. DODD: I also see that a new section has been added that requires the States to include in their State laws, as statutory grounds for the termination of parental rights, convictions of parents for certain specified crimes against children. It also eliminates a Federal mandate that States must seek reunification of the convicted parent with surviving children. Given the crimes that have been specified—murder, voluntary manslaughter, and felony assault—it appears that what we are addressing is a parent who deliberately takes the life or seriously injures his child.

MR. COATS: That is correct. This section is intended to give the States flexibility in this area by not requiring them to seek to reunify a parent convicted of a serious and violent crime against his child, with that surviving child or other children. States may still seek to reunify the family but will no longer be required to do so by Federal law. Second, the bill provides that these very serious crimes should be grounds in State law for the termination of parental rights. Any decision, however, to terminate parental rights, even in these cases, is entirely a State issue and remains so under this bill.

MR. DODD: Would States be allowed to consider a parent's motive when deciding to terminate parental rights or to seek reunification of that family? And could this include sincerely held religious beliefs of the parent?

MR. COATS: Yes. Since this is entirely a matter of State law, States are free to consider whatever mitigating circumstances they would like.

Congressional Record, 27 September 1996.

The senators then complimented each other on their "bipartisanship." Indeed courtesy was front and center as the bill that lowers protection for children in many respects moved to and from the floors of both chambers without a murmur of concern.

CHILD Inc. asked some legislators to add a comment in the *Congressional Record* pointing out that parents do not have a first amendment right to withhold medical care from sick children, but they declined to do so. As Senator Harkin's staffer Bev Schroeder put it, the colloquy was negotiated, every word was part of an agreement, and Congressmen cannot go back on their word.

No first amendment right to neglect kids

It is noteworthy that the Christian Science church is concerned about members losing custody of surviving children after being convicted of manslaughter, felonious assault, etc. Also noteworthy is the deference Congress offers to motivation as cloaked in the mantra of states' rights.

What primarily concerns CHILD Inc., though, is the reference to the first amendment. The Congressmen and Senators claim that a federal law exempting parents from an obligation to provide medical care for their children on religious grounds protects the first amendment rights of parents.

This is false. No court has ruled that parents have a first amendment right to abuse or neglect their children. The U. S. Supreme Court ruled in *Prince v. Massachusetts*, 321 U.S. 158 (1944), "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. . . ."

The new federal law itself is bad enough, but then Congress allowed the Christian Science church to put words in its mouth and dignify the law with

the claim that it was mandated by the U.S. Constitution.

Impact of colloquy

A colloquy has no legal force. Nevertheless, we suspect that it will be widely circulated to state legislators as evidence that they must enact religious exemptions from parental duties of care.

Impact of new law

S.919 is so poorly worded on religious exemptions that it is ambivalent, from a legal standpoint, as to what it has given the Christian Science church.

The committee report appears to prohibit religious exemptions from a duty to report cases of medical neglect to child protection services. Such a standard would require changes in the laws of several states currently receiving federal money for child abuse prevention and treatment. Whether HHS will activate that standard remains to be seen.

On balance, though, S.919 is a giant step backward on the religious exemption issue. It says that federal law allows parents to withhold medical care from sick children on religious grounds and further says state law may do so as well. Some Congressmen went still further and claimed in floor discussion that the Constitution requires society to let parents do whatever they want with kids in the name of religion.

The 104th Congress talked much about making parents responsible for children and getting government out of family life. When it came to children associated with faith-healing sects, however, Congress said their parents had no responsibility to care for them, but the state could do so.

Congress ignores its advisory board's report

Congress ignored the report of the U.S. Advisory Board on Child Abuse and Neglect, which it directed and paid for. Its report, "A Nation's Shame: Fatal Child Abuse and Neglect in the United States," spoke out against state religious exemption laws and in favor of parental duty. "All states should ensure that child abuse laws include the pro-

vision that parents must provide medical care when such care is available and necessary to protect the child from death or serious harm," the board said.

U.S. Advisory Board Chairman Deanne Durfee paused in her plenary session at the San Diego Conference on Child Maltreatment January 24th, 1996, to say that it was "stupid" for Congress to pass a federal religious exemption.

It is stupid, and kids will pay the price for this stupidity.

The November elections

CHILD wishes to report that two politicians who bent over backwards to do special favors for the Christian Science church were defeated in their races for U.S. Senate. One was William Weld, the Republican governor of Massachusetts. He refused to sign the child abuse bill in 1993 because it repealed the state's religious exemption even though he had supported repeal at a press conference a few months earlier. He did not have the courage either to veto or sign it, but returned it to the legislature with a plea for them to restore the religious exemption. After the legislature passed the repeal a second time, Weld signed it into law. Weld was defeated by the incumbent Senator, John Kerry.

The second was Woody Jenkins, a Louisiana state legislator, who sponsored a resolution passed by the legislature declaring that "the practice of spiritual healing has proven for those who use it to be generally as safe as medical treatment, with the rate of serious illness and death now averaging less than half that of the normal population." (He nevertheless takes his own children to a pediatrician.)

He was defeated by Mary Landrieux.

Maybe politicians should determine the size of the Christian Science voting bloc before they throw children to the winds.

Write your legislator?

Americans are repeatedly enjoined to write their legislators about the issues of the day. We are told that communicating with our elected officials is our privilege and right and perhaps even our duty.

Some CHILD members, though, wonder if letters are not counterproductive. When they write in defense of children's rights to medical care, they receive eerie letters from their U.S. Senators and Representatives reassuring them that they are keeping the Christian Science church happy.

These Congressmen do not even bother to keep two piles of letters from constituents. They just assume that everybody who writes them on religious exemptions is a Christian Scientist and send them all a pro-Christian Science form letter.

For example, Senator Christopher Dodd, D-Connecticut, assured a CHILD member, that he had worked "to include language in the bill that would protect the religious practices of Christian Scientists, while ensuring that states can intervene where there is a threat of serious harm to a child."

"In developing the language, several legal scholars, as well as the Washington representatives of the Christian Science Church, were consulted every step of the way," Dodd said.

"During the process, my staff spoke several times to the Connecticut [Christian Science] Committee on Publication. Both the committee and the national representatives of the Christian Science church have expressed satisfaction with the final language," Dodd continued.

Far more offensive was Senator Harris Wofford's reply to Gayle Quigley, a Pennsylvania woman who lost her son to untreated diabetes because her ex-husband is a Christian Scientist and did not tell her that the boy was ill. Quigley wrote Senator Wofford, D-Pennsylvania, an impassioned letter, but he chalked it up as another petition for the church.

Their letters follow.

Senator Harris Wofford
Senate Dirksen Office Building
Washington DC 20510

July 11, 1994

Dear Senator Wofford,

As a voting resident in Pennsylvania, a public school teacher, and most of all a mother, I am writing to beg you on behalf of my dead son, Andrew Wantland and all children everywhere, to put no restrictions on H.H.S. funding that will allow parents in Pennsylvania to avoid providing medical care for their children!

PLEASE, children deserve protection of their right to medical care. I am keenly aware of how Christian Science lobbyists say they care for and love their children, and how they are telling you that prayer is a viable alternative to medical care, well, it is not! For a seriously ill child who does not receive medical care, prayer does not heal, it kills, often a painful torturous death.

Even though I am not a Christian Scientist, my ex-husband is. During the time my son, Andrew Wantland was residing with his father he developed juvenile on-set diabetes. This beautiful, intelligent, talented twelve year old boy was allowed to die because his father, and others associated with the Christian Science Church did not permit a doctor or any type of medical care. My son's death was a horrible, painfilled, frightening, completely unnecessary death. Certainly, this is child abuse!

Christian Science Practitioners, Christian Science Nurses, Christian Science Teachers, the local Committee on Publication as well as the Mother Church in Boston, Mass. were all notified of my son's serious illness, but no doctor. I was not contacted as my interference would have meant that a doctor was called, which would have saved my sons life.

Please, I really do beg you, don't allow this to happen; too often "other alternate care" means death and suffering. What would you want for your own children? It is a terrible loss to lose your child under any circumstances. I will never get over the unnecessary death of my son.

Very, Very Sincerely,

Mrs. Gayle Lee Quigley
Mrs. Gayle Lee Quigley

HARRIS WOFFORD
PENNSYLVANIA

ENVIRONMENT AND PUBLIC WORKS
LABOR AND HUMAN RESOURCES
FOREIGN RELATIONS
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-3803

October 10, 1994

Ms. Gayle Quigley
354 Winding Way
King of Prussia, Pennsylvania 19406

Dear Ms. Quigley,

Knowing of your deep concern about the effect of proposed child abuse regulations on the practice of Christian Science, I write to update you on recent legislative action that should solve the problem in the short-term.

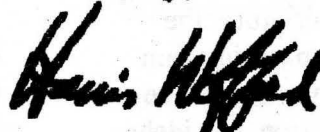
As you know, in administering the Child Abuse Prevention and Treatment Act, the Department of Health and Human Services had begun to press states to change child abuse laws that accommodated the practice of spiritual healing. States that did not change their laws were threatened with a loss of federal funding.

You will be pleased to know that the Labor Health and Human Services Appropriations bill, which was recently enacted into law, establishes a moratorium on the withholding of funds. Under the moratorium, States deemed to be out of compliance with the religious exemption portion of the regulations will continue to receive funds.

This moratorium will enable us to hold hearings and carefully study the issue. Next year Congress will reauthorize the Child Abuse Prevention and Treatment Act. As a member of the Labor Committee that has jurisdiction over this issue, I look forward to working with you to ensure that the concerns of Christian Scientists are heard.

Thank you for taking the time to contact me. I hope you will continue to keep in touch.

Sincerely,



Harris Wofford

Enclosure
HW/smk

Female genital mutilation outlawed in U.S.

On September 30, 1996, Congress passed a bill making it a federal crime to perform female genital mutilation (FGM) in the United States. Both parents and those who perform it could be sentenced to five years in prison. Congress further directed the administration to inform new immigrants from countries practicing FGM that it is now a crime in the United States.

The new law also requires U.S. representatives to the World Bank and other international financial institutions to oppose loans to governments that have not carried out educational programs discouraging FGM.

Misleadingly labeled as "female circumcision," FGM has been performed on perhaps as many as one hundred million women living today. The operation ranges in severity from partial or full removal of the clitoris and surrounding tissue to a radical procedure in which the external genitals are cut away and the area closed with stitches, leaving only a small opening for urination and menstruation. It is intended to deprive women of sexual desire so they will be faithful to their husbands. It is frequently done to three and four year old girls and in unsanitary conditions.

FGM has been linked to fatal bleeding, infection, complications from anesthesia and eventually problems in childbirth and sexual relations.

Required by religion and culture

In 28 African countries FGM is a tribal custom practiced by several religions and cultures. A recent national survey indicated that 97% of married Egyptian women between the ages of 15 and 49 have undergone the procedure. Many Moslems claim it is required by their sacred scripture, the Koran, but others contend it has no basis in Islam. They note that it is not done in such conservative Islamic nations as Saudi Arabia and Iran, is widely done among Egypt's Coptic Christian minority, and

may date to the time of the pharaohs, long before the advent of Islam.

If not strictly required by Islam, it is staunchly defended as at least a cultural tradition that must be perpetuated regardless of the deaths and suffering of little girls. It is a way "of insuring a girl's good behavior," said a Somalian woman now living in Texas. "It prevents them from running wild. Women should be meek, simple, and quiet, not aggressive and outgoing."

Some observers complain that the new U.S. law targets Africans instead of just using general laws prohibiting violence against children as France has done for the past ten or fifteen years to discourage FGM.

The U.S. does not have federal laws prohibiting violence against children in general. Child abuse and neglect are state crimes, not federal crimes. Several states have outlawed FGM.

Congresswoman Pat Schroeder, D-Colorado, worked twenty years for a federal law prohibiting FGM. She claimed the bill finally passed partly because Republicans wanted to make their party more attractive to women in an election year.

Thus, in 1996, Congress outlawed a practice sanctioned by centuries of cultural and religious tradition.

Also in 1996, however, the same Congress passed a federal law allowing states to have laws letting parents withhold medical care from children on religious grounds, and Congressional leaders claimed parents had a first amendment right to do so.

Taken in part from *The Washington Post* 24 Nov. 1996 and *The New York Times* 12 Oct. 1996 and 28 Dec. 1996.

Membership in CHILD Inc. is by application. Dues are \$25 a year and include a subscription to the newsletter. CHILD opposes religion-based abuse and neglect of children.