MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order By: Stella Jean Hansen, on January 18, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All, except

Members Excused: Rep. Gould

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HB 116

Presentation and Opening Statement by Sponsor: Rep.

McDonough stated that this bill was an act to amend the Elder Abuse Prevention Act to include developmentally disabled persons. The bill would provide for reporting abuse and neglect of a developmentally disabled person and will provide that the Department of Family Services investigate such reports. Currently, the Department provides social work services to the developmentally disabled and licenses developmentally disabled homes.

List of Testifying Proponents and What Group They Represent:

Charley McCarthy, Department of Family Services John Thorson, Mental Health Association of Montana Cris Volinkim, Developmentally disabled of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charley McCarthy, stated that as a result of mandatory reporting of elder abuse, there has been a dramatic increase in the last five years in the number of reported incidents of alleged abuse, neglect and/or exploitation of the elderly. Without a mandatory reporting law for the developmentally disabled, over

the same period, the increase in the number of reports of abuse, neglect, or exploitation of the developmentally disabled has been less dramatic. Exhibit 1.

- John Thorson, supplied proposed amendments in support of this legislation. Exhibit 2. Mr. Thorson also indicated that the inclusion of mentally disabled persons should also be covered.
- Owen Warren, a supporter, said AARP also supports the amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation. Exhibit 3.
- Cris Volinkim supports this bill for the developmentally disabled people of Montana.
- Questions From Committee Members: Rep. Simon asked Mr.

 McCarthy what type of investigators the Department of Family Services had and Mr. McCarthy said the Department had a number of adult protective services workers around the state. Rep. Simon then questioned action which might involve action within a court of law and Mr. McCarthy said that the social workers were trained to work with the county attorney in this type of work.
- Rep. Boharski asked Mr. McCarthy if there was another statute available for child protective services and Mr. McCarthy said that there was.
- Rep. Brown asked Mr. McCarthy if he opposed the amendments which had been offered and he said that he approved of them.
- Rep. Good asked Mr. McCarthy if the language in the bill were totally new. Are we expanding the law to include the elderly and possibly the mentally ill as far as those individuals right to refusal to enter their homes. Mr. McCarthy said that the law already included the elderly and the new legislation was to include the developmentally disabled.
- Rep. Nelson asked Mr. McCarthy if the person alleged to be abused, refuses to allow investigation, would this law usurp his right of privacy and Mr. McCarthy said it would.
- Rep. Strizich asked Mr. McCarthy if a court order was required for probable cause. Mr. McCarthy indicated it would.

- Rep. Whalen questioned Mr. McCarthy if reasonable cause was defined somewhere else in the statutory language. Reasonable cause is a term which was used by the discretion of the judge.
- Rep. Simon asked Mr. McCarthy about a younger relative who might live in the home of an elderly person and how this legislation might affect this situation and Mr. McCarthy said that with this new legislation the fear of exploitation might be resolved.

Closing by the Sponsor: Sponsor closes on the bill.

HEARING ON HB 200

Presentation and Opening Statement by Sponsor: Rep. Vincent stated that this bill was an act creating the Montana Child Care Act to provide for a state program for the improvement of child care; providing for low income day care support programs and transitional child care programs; creating a child care advisory council, providing an appropriation. Rep. Vincent stated that this bill creates needed coordination and structure for child care services. It assures child care services will continue to be totally privately provided, and allows the development of resources that will assist private providers with improvements in the quality of child care and establishes resource and referral programs at the local level which will assist parents with their child care choices. Exhibit 4.

List of Testifying Proponents and What Group They Represent:

Senator Michael Halligan, Family Coalition
Marilin Trotter, League of Women Voters
Boyce Fowler, Montana Department of Family Services
Katherine Campbell, Montana Association for the
Education of Young Children
Don Judge, AFL-CIO

Cindy Garthwaite, Social worker
Nancy Characklis, Day care center owner
Betty Wood, American Association of University Women
Loralee Beatty, Montana Child Care Association
Pam Marshall, Montana Low Income Coalition
Virginia Jellison, Montana Low Income Coalition
Mary Nelson, St. Thomas Child and Family Center
Mike Stephen, Montana Safety Belt Coalition
Nancy Lee Griffin, Montana Women's Lobby
Joseph Moore, Montana Rainbow Coalition

List of Testifying Opponents and What Group They Represent:

Doug Kelley, Application of Churches Brian Asay, Montana Family Coalition Bill Farley, Helena Alliance Church Richard Dion, Fairview Baptist Church Mary Doubek, Helena Equal Forum Pioneers Chapter

Testimony:

- Senator Mike Halligan stated that this legislation does not put the state in the day care business. It enhances the ability of local individuals, private parties to provide day care the way they see fit in their communities, tries to build into the system of day care the important quality and that this legislation is the most pro business bill.
- Marilin Trotter supports this bill and indicates that the goal of this legislation was to strengthen consumer protection for families, support services for caregivers, economic incentives for employers, local resource and referral programs to help families choose the type of child care appropriate to their needs, financial child care assistance for low income families, interagency cooperation. Exhibit 5.
- Boyce Fowler states his support and said this bill will insure that the state has a child care program which will meet federal requirements, establish the DFS as the lead agency for day care, allow the department to contract with local providers for day care resource and referral, clarify the definition of day care and establish the department's authority to provide low income day care support payments through a sliding fee scale child care program. Exhibit 6.
- Katherine Campbell supports this bill and indicates that the organization feels that if families have changed so has the work force. This work force, regardless of income, or the type of job responsibility have one common how to care for their children while they go off to work. The problem of obtaining child care is shared by both the employer and the employees.
- Don Judge supports this legislation and indicates that in this state we find a trend toward forcing more and more people onto the job market, often at poverty level wages. Mr. Judge feels it would be reasonable for the state to assist in overcoming perhaps the single largest barrier toward that effort: affordable, available child care. Exhibit 7.

- Cindy Garthwaite stated that she supports this legislation and stated that in her profession as a social worker she found that to secure good day care was not always available.
- Nancy Charackiis supports this bill and owns a child care facility in Bozeman and with this legislation the program would provide much needed staff training which is extremely difficult in our large, low populated state where many of us have trouble with distances and expenses. Exhibit 8.
- Betty Wood supports this bill and felt that with this legislation Montana would have the best quality of child care.
- Loralee Beatty supports this bill and indicated that the bill did not have all in it that the organization she represents were hoping to have but it was a start to good legislation. The children will really benefit from the passage of this bill.
- Pam Marshall supports this bill and indicates that the sliding scale fees, support offered beyond benefit termination, and parental options tel our children that we care enough to ensure safety, quality, and affordability for a good program. Exhibit 9.
- Virginia Jellison supports this bill because it is so crucial for low income working parents to receive day care assistance during the transition from welfare to independence. Exhibit 10.
- Marty Nelson supports this bill and says that at the day care center where she works are currently allowing 10% of their projected day care income for sliding scale fees for parents who desperately need day care and have nowhere else to turn for help. Exhibit 11.
- Mike Stephen supports this legislation and stated that personal habits are developed and established as children grow and know that their perceptions develop during this time. The perceptions of what is good and bad, right and wrong, what is safe and unsafe and his department realizes that the quality of child care impacts these perceptions and development. He supports efforts to bring more stability and a better quality to the child care system of Montana.
- Nancy Lein Griffin, a supporter, states that her beliefs are that the most important contribution of this bill is

the improvements which can be made to the quality of child care programs in Montana. It is important to stress that al child care services are presently privately provided, and she supports the continuation of that trend. Exhibit 12.

- Joseph Moore stated his support and said that this legislation would be a great benefit to all the working men and women in the state of Montana. Child care must be available and affordable to all who need it. Exhibit 13.
- Douglas Kelley is in opposition of this bill and states that numerous fundamental and evangelical churches and schools across the state will find it totally unacceptable to be under the licensure control of any department of the state. Exhibit 14.
- Brian Acey opposes this legislation and states that if the exemption of churches and other organizations from licensure and that action would be a constitutional action. A copy of a case from the circuit court. Exhibit 15.
- Bill Farley opposes this bill and states that it will force many churches currently providing preschool training into a state controlled system and it does not allow the family the full freedom to decide what will be best for their own child. Exhibit 16.
- Richard Zion opposes this bill and states that he has strong convictions on licensing on the churches for any ministries.
- Mary Doubek opposes this bill and states that the choice as to whether a parent, particularly a parent with young children should or should not seek employment outside the home must be made by each family. The government should not bias that choice through that policy. Exhibit 17.
- Questions From Committee Members: Rep. Blotkamp asked Mr. McCarthy the fee charged for licensing and Mr. McCarthy stated that there was not a charge.
- Rep. Boharski asked Rep. Vincent a question regarding the statutory appropriation of funds and the amount appropriated and Rep. Vincent stated that the Department of Family Services had gone through the figures. Seventy percent of the funding is through the federal government. Is there any provision in the bill for any facility that wants to take care of less than

- three children and Mr. McCarthy stated that previous legislation had already been passed on this.
- Rep. Simon asked Mr. McCarthy what the difference was between a visit and an inspection of a facility and Mr. McCarthy said that the law requires the Department to inspect 15% of the registered facilities yearly. The facilities which care for 12 or less children are not required to be inspected. The new ABC bill will require the Department to visit 20% of the facilities. What kind of costs would be incurred by the Department to make these visits and Mr. McCarthy said that the cost would be a burden to the staff. Rep. Simon then asked Mr. McCarthy about the availability of funds and Mr. McCarthy said that the inspections would commence as long as the funds were available.
- Rep. Good then asked Mr. McCarthy if the DFS would oppose to the amendment to exclude church facilities and Mr. McCarthy said that he would not exempt church related facilities.
- Rep. Lee asked Mr. Fowler about the sliding scale and Mr. Fowler stated that a sliding scale would be provided to the committee.
- Closing by Sponsor: Rep. Vincent closed on the bill.

EXECUTIVE ACTION

DISPOSITION OF HB 87

- Discussion: Rep. Blotkamp stated there were several recommendations on this bill. Retain subsection 1, line 17, retain subsection 1, line 24 and 25, retain as amended subsection B, retain as amended subsection 7, line 16, retain as amended subsection 8, line 22-24, retain as amended subsection 8, lines 15-16.
- Rep. Good made a Motion to Move the Bill. Rep. Blotkamp then made a Motion to Move the Bill as Accepted.
- Rep. Blotkamp then stated that section 1, line 17 reinsert in bill. Under section 1, lines 24-25 reinsert in bill. Subsection B retain as reads in the bill. The only line to reinstate subsection 2, line 17. The issue of imminent and substantial on page 4, subsection 6. Delete imminent and retain substantial.
- Discussion followed by several of the Committee regarding the amendments.

- Rep. Hansen requested a division of the amendments. Retaining page 1, line 17.
- Amendments and Votes: A vote was taken on the first amendment, all voted in favor.
- Rep. Good made a Substitute Motion to Move an Amendment on page 4, line 12 "imminent and substantial."
- Amendments and Votes: A vote was taken on the substitute amendment, all in favor with Reps. Boharski, Strizich, Squires and Hansen voting no. Amendment passes.
- Recommendation and Vote: Rep. Squires made a Motion to DO PASS AS AMENDED. A vote was taken and passed.

DISPOSITION OF HB 116

- Amendments and Votes: Rep. Russell made a Motion to DO PASS. A vote was taken and passed.
- <u>Discussion:</u> After the vote was taken Rep. Boharski requested that a Fiscal Impact Statement was needed on this bill in regards to the developmentally disabled.
- Rep. Russell moved that this bill be placed on a consent calendar. An objection was raised by a majority of the committee and was thence denied.
- Rep. Simon made an opposition to the motion on the inclusion of the developmentally disabled being added to the bill. Rep. Whalen also opposed to this and stated that provisions were already contained in the law for commitment of individuals in the Department of Institutions who take care of the developmentally disabled people.
- Rep. Boharski withdrew his Motion.

ADJOURNMENT

Adjournment At: 5:35 p.m.

REP. STELLA JEAN HANSEN, Chairman

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DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date <u> /-/8-89</u>

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	V		
Bill Strizich			
Robert Blotkamp			
Jan Brown	V		
Lloyd McCormick	V		
Angela Russell	V	***	
Carolyn Squires			
Jessica Stickney			
Timothy Whalen	/		
William Boharski	Let .		
Susan Good	<u> </u>		
Budd Gould		·	V
Roger Knapp			
Thomas Lee			
Thomas Nelson	. 12		
Bruce Simon	V		
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STANDING COMMITTEE REPORT

January 19, 1969 Page 1 of 1

Mr. Speaker: We, the committee on <u>Human Services and Aging</u> report that <u>HOUSE BILL 87</u> (first reading copy -- white) <u>do pass as amended</u>.

Signed: Stella Jean Hansen, Chairman

And, that such amendments read:

1. Page 1, line 17.

Strike: "who"

Insert: "Whose normal physical or mental health or welfare"

2. Page 4, line 12.
Following: "imminent"
Insert: "imminent and"

STANDING COMMITTEE REPORT

January 19, 1989
Page 1 of 1

Mr. Speaker: We, the committee on <u>Human Services and Aging</u> report that <u>HOUSE BILL 116</u> (first reading copy -- white) <u>do pass</u>.

Signed:	}		* .		
5		Jean	Hansen.	Cha	Irman

TESTIMONY IN SUPPORT OF HB 116

AMENDMENTS TO THE MONTANA ELDER ABUSE PREVENTION ACT SUBMITTED BY DON SEKORA, DEPARTMENT OF FAMILY SERVICES

This bill has been submitted to amend the Montana Elder Abuse Prevention Act to include developmentally disabled adults in the mandatory reporting requirements of the Act and to give the department's social workers explicit authority to investigate incidents of abuse, neglect, and or exploitation. In addition, these amendments to the act will give law enforcement or department social workers the authority to request a court order to investigate those cases where the alleged victim is in serious danger.

As a result of mandatory reporting of elder abuse, there has been a dramatic increase in the last five years in the number of reported incidents of alleged abuse, neglect, and/or exploitation of the elderly. Without a mandatory reporting law for the developmentally disabled, over the same period the increase in the number of reports of abuse, neglect, or exploitation of the developmentally disabled has been less dramatic.

There are approximately 15,000 developmentally disabled adults living in Montana. Currently 1,374 of this number are receiving services. We have concern for the remaining developmentally disabled adults that are not receiving services. These unprotected persons are very vulnerable to the mental and physical harm associated with abuse, neglect and/or exploitation. In the majority of these cases when abuse has occurred, it is not brought to the Department's attention until a great deal of harm has been done. The department has a need to know about these cases earlier, so the physical and mental harm can be minimized, and so the services required will be less extensive and less costly. Mandatory reporting for the developmentally disabled will assure this in most cases.

This bill gives the Department of Family Services <u>explicit</u> authority to investigate cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. The current act provides <u>implied</u> authority, but many times this authority has been questioned by alleged perpetrators and by attorneys. Department social workers have been prevented from doing a complete investigation in approximately 15 cases a year because of this issue. In four of those cases DFS received referrals later on that indicated more harm was done and more extensive services were needed. There is no way of knowing what happened in the other 10 cases not referred back, but statistically we expect that at least half continue to be abused.

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The last amendment included in this bill will give law enforcement or Department social workers the authority to petition the local district court for an order to investigate alleged cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. This authority would only be used in those cases where the alleged victim or caretaker refuses to allow the worker to do an investigation and it is believed that serious abuse, neglect, and/or exploitation is occurring that is physically and/or mentally harming the alleged victim.

In 1987 DFS had 27 cases where department social workers were refused to do investigations. Of these we received 4 referrals later on that indicated more harm was done and the services needed were more extensive. In 1988 we had 23 similar cases where department workers were not allowed to investigate. Five of these were referred back in worse shape and requiring more extensive services. In many of these cases there has been a lot of pressure on the department's social workers to do something. The pressure comes from community persons knowledgeable about the case and from those reporting the abuse. The social workers hands have been tied by the refusal to allow them to investigate or even to see the alleged victim. To prevent serious and extensive physical and/or mental harm or death the department needs to be allowed to investigate these cases as soon as possible.

Thank you for your consideration of these amendments to the Montana Elder Abuse Prevention Act. These amendments will assure that the department can better serve those elderly and developmentally disabled who are victims of abuse, neglect, and/or exploitation.

Proposed Amendment to H.B. 116 to add protection to persons suffering from a mental disorder

Submited by John E. Thorson Doney & Thorson In behalf of the Mental Health Association of Montana

House Human Services Committee January 18, 1989

Title: "to include developmentally disabled persons and mentally disordered persons:"

Page 1, line 14: "Montana Elder, Developmentally Disabled, and Mentally Disordered Abuse Prevention Act"

Page 1, line 22: "Montana's elderly, developmentally disabled persons, and mentally disordered persons."

Page 2, line 6: "older person, developmentally disabled person, or mentally disordered person"

Page 2, line 13: "older person, developmentally disabled person, <u>or mentally disordered person</u>"

Page 2, line 18 (new subsection): "(5) 'Mental disordered person' means a person 18 years of age or older who is suffering from a mental disorder as defined in 53-21-102."

Page 2, line 24: "older person's, developmentally disabled person's, or mentally disordered person's welfare"

Page 3, line 4: "older person, developmentally disabled person, or mentally disordered person"

Page 4, line 15: "older person, developmentally disabled person, <u>or mentally disordered person</u>"

Page 5, line 16: "older person, developmentally disabled person, <u>or mentally disordered person</u>"

Page 6, line 6: "older person, developmentally disabled person, or mentally disordered person"

EXHIBIT 2	
DATE 1-18-89	
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Page 6, line 24: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 4: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 8: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 13: "departments of social and rehabilitation, family services, and institutions, their local affiliates"

Page 7, line 24: "older person, developmentally disabled person, or mentally disordered person"

Page 8, line 2: "older person, developmentally disabled person, or mentally disordered person"

Page 8, line 13: "older person, developmentally disabled person, or mentally disordered person"

Page 9, line 9: "older person, developmentally disabled person, or mentally disordered person"

Page 10, line 10: "older person, developmentally disabled person, or mentally disordered person"



1988-1989 MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN Mrs. Molly L. Munro 4022 6th Avenue South Great Falls. MT 59405 (406) 727-5604

SECRETARY Mr. John C. Bower 1405 West Story Street Bozeman, MT 59715 (406) 587-7535

January 18, 1989

TO: House Human Services Committee

FROM: Owen Marren, American Association of Retired Persons

RE: In support of HB 116 - "An Act. to amend the Elder Abuse Prevention Act. to include developmentally

disabled persons

The amendments will provide for the identification and reporting of acts of abuse, neglect and exploitation of the developmentally disabled and provide legal authority for law enforcement officials to levy penalties for these abuses.

The Montana State Legislative Committee of AARP supports these amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation.

EXHIBIT_3_______

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HB__//6_____

HB 200 The Montana Child Care Act Rep. John Vincent

This bill creates needed <u>coordination</u> and structure for child care services. It assures child care services will continue to be totally privately provided, and allows the <u>development of resources</u> that will assist private providers with improvements in the quality of child care and establishes resource and referral programs at the local level which will assist parents with their child care choices.

The major provisions of this legislation are:
(1) allows the <u>DFS</u> to coordinate child care services administered by the SRS which Makes direct child care assistance payments to AFDC families; DHES which administers the federal nutrition program; and Dept. of Labor which administers federal job training funds and a displaced homemakers program.

- (2) defines a <u>low-income daycare support program</u> as once which provides co-payment of child care costs according to a sliding scale formula to eligible low-income people. For example, a family which qualifies as low income may initially share the daily day care cost of \$10, by providing \$4 and receiving a \$6 state co-payment. As their ability to earn increases they may pay \$8, while reciving a \$2 co-payment. This program may include AFDC families as well as non-AFDC, low income families. The program is a requirement of the federal Family Support Act and is included in budget modification requests with the SRS budget (\$853,000). (That appropriation request also appears in duplicate within this bill). Presently, only AFDC families in Montana are included in proposed funding levels. It is anticipated that within this year federal funds will be proposed that will assist non-AFDC low income families with child support costs.
- (3) defines <u>transitional child-care program</u> as a program that pays the full day-care costs former AFDC or PA clients once they have found work, but continue to need child care. This section is also a requirement of the federal Family Support Act and is included in budget modification requests within the SRS budget. (The cost of this section is included in the modification request mentioned above.)
- (3) creats a <u>child care advisory council</u> consisting of parents, providers and state agency representatives. This council is directed with review and coordination of a statewide child care plan, which will be required for receipt of federal child care assistance money which will probably be allocated by this session of the U.S. Congress. This council is directed to create a state child care plan which would be required prior to the receipt of federal child care program assistance.

(4) Resource & Referral grants will be provided to organizations which	
maintain a record of available child care options within their	EVILIBLE 4
communitities, have expertise in child development, and be able to provi	derribit
information of the availability of child care assistance. This provides	DATE 1-18-89
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HB200 The Montana Child Care Act Rep. John Vincent Page 2

assistance to parents in choosing a child care program for their child. In addition the grants, given directly to Montana communities, will assist private programs with improvements to the quality of programs available to Montana children and their parents. The appropriation for this section (\$60,000/year) is presently included in the Governor's modification request budget and also appears in this bill.

- (5) <u>defines a preschool</u> as a program that operates for less than 6 hours per day, and served children 3 years of age or older, and excludes them from licensure. This provision does not require those program which operate for less than full days to meet the staff qualifications and other requirements already established for licensed or registered child care program. Presently, some programs operating for up to 24 hrs. and serving children from infant to age 12 have opted for exclusion from licensing requirements, which include health and safety provisions, by claiming a "preschool" status, this definition closes that loophole.
- (6) Provides for an additional <u>2.5 FTE's within DFS to assist programs with obtaining licensure</u>. These positions will be assigned to field work. Presently the nearly 1000 licensed or registered child care programs are assigned to 3 FTE's within the DFS. Licensing is presently required and the benefit to both children, parents and providers is significant. The appropriation for this section (\$65,000/year) is presently included in the Governor's budget modification request and also appears in this bill.

Child care is a major cost of employment for Montana workers, and the cost of creating a structure for maininting that quality private child care choices are available to parents is a matter of social priority.

I recommend a do pass committee consideration.



League of Women Voters of Montana January 18, 1989

TO: Human Services and Aging Committee

SUBJECT: H.B. 200, "The Montana Child Care Act"

In 1987, the League of Women Voters of Montana chose child care as the subject for a two-year state study. This topic was no longer simply a mother's problem or a father's problem. This family issue was suddenly recognized as a problem of national importance. Often both parents in a two-parent household are working out of economic necessity. Single parent families are now common. These changes in our work force are having dramatic consequences for Montana's families and children, as we all know. The need for high quality, affordable child care has far exceeded the supply. Projections indicate that this need will continue to grow.

Today's children will soon become tomorrow's citizens. Their intellectual, physical and social development are vital to family stability and society's growth. Ensuring high quality child care now is more cost effective than correcting future problems caused by the lack of such care. Because each of us shares the responsibility for building the future of Montana, each of us shares the responsibility for today's children of Montana.

As a result of our two-year study, the League of Women Voters of Montana supports an active partnership between parents, caregivers, the private sector, and government which working together will enable our children to become the best they can be . . . well-adjusted, successful, contributing members of society. Together we need to set in place a system of high quality, affordable, developmentally appropriate child care which will murture, protect and educate our children.

To achieve this goal, therefore, the LWV of Montana supports:

- 1. Strengthened consumer protection for families.
- 2. Support services for caregivers.
- 3. Economic incentives for employers.
- 4. Local resource and referral programs to help families choose the type of child care appropriate to their needs.
- 5. Financial child care assistance for low income families.
- 6. Interagency cooperation.

House Bill 200, The Montana Child Care Act, is a good start toward this goal, building on the best of your previous legislation.

League of Women Voters of Montana urges you to support HB 200.

Marilen Trotter (for the LWV of Montana) 2105 Gerald Missoula, Montana 59801 543-4883

EXHIBIT_5 DATE_1-18-89 HB_200

TESTIMONY IN SUPPORT OF HB 200

MONTANA CHILD CARE ACT

SUBMITTED BY BOYCE FOWLER, DEPARTMENT OF FAMILY SERVICES

The Department supports the Montana Child Care Act of 1989. The purposes of the bill are several: the bill will

- a. insure that the State of Montana has a Child Care Program which will meet federal requirements;
- b. establish the DFS; as the lead agency for day care;
- c. allow the department to contract with local providers for day care resource and referral;
- d. clarify the definition of day care; and
- e. establish the department's authority to provide low-income day care support payments through a sliding-fee-scale child care program.

Under the 1988 federal Welfare Reform legislation, called the Family Support Act, the state must provide safe, quality child care services to public assistance recipients while they participate in training and employment. For the past 20 years, the department has provided day care services to AFDC families through WIN and other

EXHIBIT_6 DATE_1-18-89 HB_200 programs. The department is responsible to insure that day care services meet licensing and registration standards and are therefore safe for children. The Family Support Act requires the state to provide child care through licensed facilities which meet standards established by the state. H.B. 200 combines the department's existing licensing authority with new items required to meet federal welfare reform legislation.

The bill establishes the Department of Family Services as the lead agency for day care for the state. The duties for the lead agency will be to assess Montana's child care needs, develop a state plan to address those needs, improve day care services, and coordinate the delivery system of day care services. The bill designates an advisory council appointed by the governor to work with the department. The advisory council will provide a mechanism for public participation in the development of a plan to address Montanas' day care concerns.

The bill allows the department to work with the private sector by contracting with local providers to develop resource and referral (R&R) programs. The community based resource and referral programs will assist AFDC families in locating licensed day care providers in their communities. The R&Rs will also assist people interested in starting day care homes, group home, or centers.

To clarify the definition of day care, the bill defines what a preschool is and exempts preschools from licensure/ registration.

Finally, the bill establishes the department's authority to provide low-income day care support through a sliding fee scale child care program, as required by federal welfare reform. The sliding-fee-scale method allows former AFDC recipients to contribute toward the cost of day care based on their ability to pay. The sliding-fee-scale day care program is required by April 1990, or sooner if the state chooses to implement the "JOBS" program before that date.

Over the past year the department has worked with day care providers, advocates and parents throughout the state in the preparation of HB 200. The bill was designed to meet federal program requirements, to establish a lead agency for child care and to clarify the definition of day care. The bill, when passed, will begin to address the many day care concerns that affect today's Montana families. The department urges your support for the passage of the bill.



JAMES W. MURRY EXECUTIVE SECRETARY

110 WEST 13TH STREET P.O. BOX 1176 HELENA, MONTANA 59624

(406) 442-1708

STATEMENT OF DON JUDGE BEFORE THE HOUSE COMMITTEE ON HUMAN SERV-ICES IN SUPPORT OF HB 200, JAN. 18, 1989.

Mr. Chairman, for the record, I am Don Judge and I represent the Montana State AFL-CIO. I am here to express our organization's support for improvements in Montana's child care laws.

The national AFL-CIO is a strong supporter and participant in child care development, and we want to echo that sentiment at the state level.

Nationally, more than two-thirds of the entrants into the labor force in the past decade have been women, and two-thirds of these women had children in need of care. By 1990, half the labor force nationally will be women and an estimated 30 million infants and young children will need care. As of 1987, there was only space for 6 million children in licensed not-for-profit centers and family homes.

With the cost of available care running at a national average of \$3,000 yearly per child, workers may find themselves paying as much as a fourth of their annual income for child care, if they can even find it. And, for people earning at or near the minimum wage, such child care costs are prohibitive. This high cost of child care can lead people to forego low-paying work and its attendant high child-care costs, and simply remain on public assistance.

In Montana as elsewhere around the country, we find a trend toward forcing more and more people onto the job market, often at poverty-level wages. We feel it would be responsible for the state to assist in overcoming perhaps the single largest barrier toward that effort: affordable, available child care.

Nationally, many employers and states have already gotten involved in the effort. Many larger companies now provide free or low-cost child care to employees. We note with pleasure the recent announcement by a lumber mill in Libby that it was planning to build employee recreation, fitness and child-care centers. The almost million-dollar cost of the project is expected to be recouped at the rate of \$500,000 per year due to improved work attendance and employee morale.

EXHIEIT <u>7</u> DATE <u>1-18-89</u> HB <u>200</u> Testimony of Don Judge, page two Jan. 18, 1989

At the federal level, the U.S. Department of Labor announced last week that it was creating a national clearinghouse for child-care information. The goal of the new information and reference program in the Women's Bureau of the U.S. Department of Labor is very similar on a national scale to what HB 200 aims to do on the state level. The federal program's stated goal, which we also support, is to help employers and employee organizations develop policies that respond to child-care needs and to provide them with information in a broad range of categories, such as financial assistance, "how-to" guides for running day care centers, sample policies, etc.

As more and more families face child care problems, the gap between demand and the response of private and government responses continues to widen. These new public and private programs will help reduce that gap. The AFL-CIO believes that HB 200 will be of even greater help in closing that gap. Although we have had a chance to make only a brief review of the bill since it became available this morning, we strongly support it.



Montanans For Social Justice

436 North Jackson Helena, Montana 59601 (406) 442-7752

TESTIMONY IN SUPPORT OF HOUSE BILL 200

Good afternoon Chairperson and committee members, and thank you for your time and consideration today. My name is Pam Marshall and I am an active member of Montanans for Social Justice, the Helena-based arm of the Montana Low Income Coalition.

The issue of quality, affordable child care affects not only Helenans, and Montanans, but almost every citizen in this country. It is exciting to see Montana take a look at resolving the problems involved in raising children in a working-class home and helping those currently recieving assistance and benefits to move to self-sufficiency. As a single parent of two young children, I am well aware of the costs, and quality and safety obstacles involved in sustaining child-care services.

In 1982 I received a Legal Secretarial certificate from the Great Falls Vo-Tech. Immediately following this I entered the work force, receiving 625.00 per month to support myself and my oldest daughter. After working eight months, I could no longer afford to remain off of AFDC. I could not afford child care and the medical expenses for my asthmatic daughter (as well as the day-to-day necessities). Eventually again I returned to AFDC roles.

Now I am a semester away from graduating from college, something I say with great pride (and probably several new "stress lines"). Through grants, scholarships, benefit programs, and determination, I've almost made it.

Unfortunately, I am still struggling with the issue of child care. When I first moved to Helena it took me almost six months to find child care for my children so that I could return to school. Now, I cannot find adequate day care for my oldest child after school, and I take my youngest daughter to an unlicensed

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As a private provider and a board member of the Montana Association for the Education of Young Children, MAEYC, an organization composed of private programs, preschools and day care centers and parents we ask you to support this legislation so that we can continue to move forward in Montana in our quest to make the best quality childcare available in our state.

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Thank you very much for your time and attention.

center. I do not feel comfortable leaving my daughter alone after school, and I believe new child care options should include home care as well as the exclusion of licensing requirements. The worst and by far the most unsafe child cares I have had were licensed. One licensed center even beat the children severely enough to force investigation and eventually closure. The licensing center did not tell me of the investigation -- I called after my daughter herself had been beaten. There are many problems within the licensing departments. On the other hand, one of the best child-care centers I have had is the one I currently utilize and it is unlicensed. This center provides educational, physical, musical, and fun activities regularly. I am comfortable always with the quality of care and attention my youngest daughter receives. And this happens without licensing. A parent should have the right and the option of selecting their own child-care facility, even if that includes home care or unlicensed centers. Simply because we are low-income does not mean we lack the skills to choose adequate and quality child care for our children. As parents we have the right to make those choices. Home care and unlicensed care can offer the stability and quality our kids need and deserve. We, as parents and policy makers, have the obligation to ensure this care, without forcing parents to leave work or school simply because this care is unavailable or unaffordable.

Sliding scale fees, support offered beyond benefit termination, and parental options tell our children that we care enough to ensure safety, quality, and affordability. It also tells recipients that they are not stuck in a no-win scenario. There would be options for parents to get off and stay off the benefit systems. Please take the time to look at the long-range implications and benefits of House Bill 200. I believe you'll see its practicality and common sense. Thank you.

Pam Marshall, 2371 Buckboard, East Helena, MT 59635

MONTANA WOMEN'S LOBBYIST FUND

P.O. Box 1099

Helena, MT 59624

406/449-7917

Testimony in Support of H.B. 200

Nancy Lien Griffin Montana Women's Lobby

Members of the Committee:

We believe the most important contribution of this bill is the improvements which can be made to the <u>quality</u> of child care programs in Montana. It is important to stress to this committee that all child care services are presently privately provided, and we support the continuation of that trend.

The development of this legislation is the cummulation of nearly a year's work by the Montana Women's Lobby, the Montana Alliance for Better Child Care and a coalition of child care providers and parents. Child care services in the state were assessed, recommendations made and this bill is the result of those recommendations. The Department of Family Services was approached by this group for assistance with the development of H.B. 200. Child care is the highest priority for new legislation established by the Montana Women's Lobby, a coalition of 53 women's organizations operating in nearly all Montana counties.

Child care programs are currently operated by either private, non-profit corporations with elected parent boards or by private, for-profit providers. I can assure you that no one in Montana is getting rich, or even making ends meet, in the child care business. Child care rates which are affordable to Montana workers—the average cost of full day child care is approximately \$12 for one child. A private provider, which must pay facility costs, hire trained staff, provide meals and snacks, buy insurance and all other costs of business usually cannot afford to invest in such "extras" as educational toys, child development libraries, staff training, or facility improvements.

We believe this bill, through the resource and referral grant program, will provide those private providers with access to staff training, lending libraries for learning aids and toys, and will be able to link these private providers with resources available within their own communities. In addition, the "referral" part of the program provides a much needed service to parents who are faced with choosing the best possible placement for their child. Children with special needs can be matched with the program best able to meet those needs.

As the parent of four children, the youngest two of preschool age, and the parent director of a private, non-profit nursery school, I and countless other working women, and men, can attest to the importance of this legislation. It provides needed organization of state assisted child care services, gives resources to community providers and continues to leave the choice of program to the parent.

The Montana Women's Lobby recommends a do pass vote for H.B. 200 $^{
m HB}$

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Testimony in Support of H.B. 200

Joseph Moore Montana Rainbow Coalition 58 S Rodney Helena Mt.

The Rainbow Coalition supports this child care bill. We think this would be of great benefit to all the working men and women in the state of Montana. Child care must be available and affordable to all who need it. The citizens of Montana are going through some tough economic times. This bill, if enacted, will go along way towards providing a skilled, dedicated work-force which will be an absolute necessity in our efforts to reorganize and revitalize Montana's economy.

The 101st Congress may or may not address the problem of affordable and quality day care for all. We in Montana can not afford to relinquish our future to the hands in Washington that may not appreciate or be sympathetic to the problems of the citizens of Montana.

We urge your support for House Bill 200.

DATE 1-18-89 HB 200 eouglas B. Kelley
Pastor

January 18, 1989

406 | 449-7771 (o) 406 | 443-3738 (r)

Representative Stella Jean Hansen Chairman, Human Services and Aging Capitol Building Helena, MT 59620

Home of:

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Re: House Bill 200

11. Helena Christian Academy

Tree of Life Training Institute

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churches of Montana.

King's Kids Children's Church

Dear Chairman Hansen:

The Toppan's Missionaries

I wish to speak in opposition to House Bill 200 as it is presently drafted. As a representative of the Montana Association of Church Schools and numerous churches across the State of Montana, we are vitally concerned that HB 200 as presently drafted will provide an extreme burden and hardship to the evangelical and fundamentalist

Charismatic Worship & Drama

Churches and Christian schools across the State of Montana have long opposed any form of licensure as said licensure is a form of control. "License" has been determined as "permission by an authority to operate in an activity otherwise unlawful."

Certainly every church that practices the Lord's Supper would find it extremely offensive to have a government inspector come and inspect the bread and the wine before the elements were passed. Likewise, numerous fundamental and evangelical churches and schools across the State of Montana will find it totally unacceptable to be under the licensure control of any department of the State of Montana.

The definition of "day care" as contained in HB 200 is extremely broad. While there are some exemptions contained in the bill for a person who limits care to related children and to group facilities established chiefly for educational purposes, there is no exemption for a facility established chiefly for educational purposes. I would suggest that the bill be amended to include a new paragraph to be inserted immediately after paragraph (b) in Section 9. It would read essentially as follows:

- "(b) any group facility established chiefly for educational purposes.
- "(c) any group facility established chiefly for religious purposes."

EXIMINIT 14 DATE 1-18-89 HB 200 Hansen January 18, 1989 Page -2-

If the above amendment was added, I think there are still additional problems with the law. However, I believe that many of the fundamentalist and evangelical pastors, churches and schools across Montana would find it less objectionable. Certainly if they are not covered by it directly, they are going to have less objection to it.

While the overall intent of the bill appears to be noble, the broad brush of the legislature must not infringe upon the religious convictions of a vast segment of the State of Montana. At a time when we desperately need more good strong care facilities, we don't want to preclude the entry of additional care tenders by a burdensome legislative approach.

I hope that you will give careful consideration to the above amendment proposal. Thank you for your consideration in this matter.

Sincerely yours,

Douglas B. Kelley DBK:ck

PIBICHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-3713

FOREST HILLS EARLY LEARNING CENTER, INC.; ACADEMY DAY CARE, INC.; HOLLOMAN CHILD CARE CENTERS, INC.

Plaintiffs - Appellees

v.

GRACE EAPTIST CHURCH; BEREAN BAPTIST CHURCH; THE ROCK CHURCH; TABERNACLE BAPTIST CHURCH

Defendants - Appellants

COALITION FOR RELIGIOUS FREEDOM; UNITED STATES OF AMERICA

Amicus Curiae

and

LARRY D. JACKSON , Director, Department of Welfare and Institutions, Commonwealth of Virginia; SHENANDOAH BAPTIST CHURCH; ROBERT L. ALDERMAN, Pastor

Defendants

No. 87-3714

FOREST HILLS EARLY LEARNING CENTER, INC.; ACADEMY DAY CARE, INC.; HOLLOMAN CHILD CARE CENTERS, INC.

Plaintiffs - Appellees

v.

LARRY D. JACKSON, Director, Department of Welfare and Institutions, Commonwealth of Virginia

Defendant - Appellant

and

SHENANDOAH BAPTIST CHURCH; ROBERT L. ALDERMAN, Pastor; GRACE BAPTIST CHURCH; BEREAN BAPTIST CHURCH; THE ROCK CHURCH; TABERNACLE BAPTIST CHURCH

Defendants EXECUTED 15
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HB 200

No. 87-3703

FOREST HILLS EARLY LEARNING CENTER, INC.; ACADEMY DAY CARE, INC.; HOLLOMAN CHILD CARE CENTERS, INC.

Plaintiffs - Appellees

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SHENANDOAH BAPTIST CHURCH; ROBERT L. ALDERMAN, Pastor

Defendants - Appellants

and

LARRY D. JACKSON, Director, Department of Welfare and Institutions, Commonwealth of Virginia; GRACE BAPTIST CHURCH; BEREAN BAPTIST CHURCH; THE ROCK CHURCH; TABERNACLE BAPTIST CHURCH

Defendants

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, District Judge. (CA-80-116-R)

Argued: February 4, 1988 Decided: May 6, 1988

Before RUSSELL and HALL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Jesse Herbert Choper (Mary Sue Terry, Attorney General of Virginia; Gail Starling Marshall, Deputy Attorney General; Guy W. Horsley, Senior Assistant Attorney General; Peter R. Messitt, Assistant Attorney General; Anthony F. Troy; David G. Shuford; George A. Somerville; Mays & Valentine; David C. Gibbs, Jr.; Charles E. Craze; Daniel Jon Loomis; Terry L. Hamilton; Gibbs & Craze Co., L.P.A.; Donald W. Huffman; Bird, Kinder & Huffman on brief) for Appellants; John Edward Heintz (Stephen A. Chernow; Stephanie E. Humbert; Popham, Haik, Schnobrich & Kaufman, Ltd.; John Vanderstar; Covington & Burling on brief) for Appellees; (William Bradford Reynolds, Assistant Attorney General; Roger Clegg, Deputy Assistant Attorney General; David K. Flynn; Lisa J. Stark, Department of Justice on brief) for Amicus Curiae United States; (Kathryn A. Hazeem on brief) for Amicus Curiae Coalition for Religious Freedom.

BUTZNER, Senior Circuit Judge:

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This challenge to the constitutionality of Virginia's exemption of religiously affiliated child care centers from state licensing requirements has been before this court on several occasions. See Forest Hills Early Learning Center v. Lukhard, 728 F.2d 230 (4th Cir. 1984); Forest Hills Early Learning Center v. Lukhard, 789 F.2d 295 (4th Cir. 1986). Acting on the basis of our earlier instructions, the district court conscientiously reviewed the various requirements of the licensing statute and held that compliance with them would not impermissibly burden the churches' free exercise rights. Consequently, the court concluded that the statute exempting the churches from obtaining licenses and from complying with regulations governing child care centers violates the establishment clause of the first amendment. Forest Hills Early Learning Center v. Lukhard, 661 F. Supp. 300 (E.D. Va. 1987). Because the Supreme Court's recent decision in Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 107 S. Ct. 2862 (1987), requires an analysis different from that which we previously employed, we reverse the judgment of the district court and hold the challenged statute to be constitutional.

I

The background of this dispute has been set forth in detail in our earlier opinion in this case. <u>Forest Hills</u>, 728 F.2d at 233-37. A brief review will suffice for the present discussion.

The state of Virginia since 1948 has required all child care center operators to obtain a license, and to comply with certain basic standards. In 1976 the Department of Welfare promulgated new and substantially broader and more stringent regulations, setting detailed mandatory standards concerning, among other areas, programs, space, health, nutrition, disciplinary practices, and parental participation. Spurred to examine their positions by this more intensive regulation and by news of related controversies in other states, some churches informed state authorities that their religious beliefs could not permit them to apply for or accept a state license to carry out a function they consider an integral part of their religious ministry. sponse to these concerns, the Virginia legislature enacted Va. Code § 63.1-196.3, which exempts child care centers operated by religious institutions, at their option, from licensing and compliance with many regulations. Exempt centers must still meet basic health and safety standards.

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The appellees are child care centers without religious affiliations. They allege that the exemption of religious centers from licensing requirements places secular centers at a competitive disadvantage, and that they have suffered actual injury as a result of this effect.

ΙI

The churches contend that the secular child care centers lack standing to challenge the constitutionality of the exemption because they have introduced no evidence, beyond assertions, that

exemption of religious centers. The district court ruled that the secular centers had demonstrated sufficient injury to establish standing. 661 F. Supp. at 307-08.

The Supreme Court's decision last term in Arkansas Writers' Project v. Ragland, 107 S. Ct. 1722 (1987), supports the secular centers' claim of standing. In that case a publisher whose magazine was subject to the general state sales tax brought suit challenging the constitutionality of a sales tax exemption granted to certain types of magazines. The Court held that the plaintiff did have standing to bring that challenge, pointing to "the numerous decisions of this Court in which we have considered claims that others similarly situated were exempt from the operation of a state law adversely affecting the claimant." 107 S. Ct. at 1726. The facts and positions of the parties in the present case are closely analogous to those in Arkansas Writers' Project, and the same principle must govern.

III

Our earlier analysis of the statutory exemption was guided by the three-prong test for establishment clause violations articulated in Lemon v. Kurtzman, 403 U.S. 602 (1971). The Supreme Court's decision last term in Amos adheres to the Lemon test, but explains and clarifies it in ways which require us to revise our analysis.

At issue in <u>Amos</u> was a statute specifically exempting religious organizations from the ban on religious discrimination

imposed on all other employers by Title VII of the Civil Rights Act of 1964. The plaintiff was a building engineer employed in a gymnasium run as a nonprofit facility open to the public by entities connected with the Morman Church. He was fired when he failed to qualify as a member in good standing of that church. The district court held that the exemption violated the establishment clause.

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On direct appeal, the Supreme Court reversed. The Court employed the <u>Lemon</u> test for distinguishing between permissible accommodations and unconstitutional establishments of religion:
"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, . . . finally, the statute must not foster 'an excessive government entanglement with religion.'"

<u>Lemon</u>, 403 U.S. at 612-13. The Court held that the exemption of religious employers from Title VII's mandate passed each of the elements of the <u>Lemon</u> test. In reaching its conclusion, it emphasized that "'[t]he limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause.'"

<u>Amos</u>, 107 S. Ct. at 2867, <u>quoting</u> Waltz v. Tax Comm'n, 397 U.S. 664, 673 (1970).

The Court held it a permissible and sufficient legislative purpose "to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." Amos, 107 S. Ct. at 2868. The government interference to be avoided includes both positive statutory mandates to which a religious group would have to conform

its practices, and the "significant burden on a religious organization" caused by forcing it to defend its beliefs and practices in extended free exercise litigation before "a judge [who may] not understand its religious tenets and sense of mission." Amos, 107 S. Ct. at 2868.

The potential for just the sorts of burdens the Court is concerned with is very clear in the present case. Absent the exemption, some church leaders would immediately be forced to violate their convictions against submitting aspects of their ministries to state licensing, or face legal action by the state. This would be an unseemly clash of church and state which the legislature might well wish to avoid. Our earlier opinion shifted to the churches the initial burden of producing evidence "to establish the extent, if any, of their free exercise rights in the exempted activities." See Forest Hills, 728 F.2d at 246. As a result, they have already been put to the difficult and intrusive burden of attempting to persuade a secular court of the sincerity and centrality of the beliefs they consider threatened by government licensing.

The interference that the Supreme Court sought to avoid is apparent in an approach which permitted the district court to declare that "while the [churches] may characterize this activity as a part of their ministries, the Court is not bound to accept this characterization," and to conclude that "operation of child care centers by these sectarian institutions is a secular, and not religious, activity." Forest Hills, 661 F. Supp. at 309. The district court, noting that child care centers in general are

relatively recent phenomena, suggested that "sectarian groups, in establishing day care centers, were responding to secular economic need rather than expanding the scope of their ministries." 661 F. Supp. at 309. But religious groups have throughout history reshaped their ministries to respond to changed circumstances. Amos clarifies that it is a legitimate legislative purpose to avoid interference with the execution of religious missions in a nonprofit area in which a church operates, without reference to the role played by churches in the past.*

Addressing the requirement that a law must have a "principal or primary effect . . . that neither advances nor inhibits religion." Lemon, 403 U.S. at 612, the Court distinguished laws such as those invalidated in Lemon which positively aid, endorse, and advance religion, from laws which, by adopting a hands-off policy, leave the way open for churches to advance their own teachings. "A law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose. For a law to have forbidden 'effects' under Lemon, it must be fair to say that the government itself has advanced religion through its own activities and influence." Amos, 107 S. Ct. at 2868-69. Virginia, in exempting religious child care centers from its licensing requirement, cannot be said to be "advanc[ing] religion through its own activities and influence." On the contrary, we believe that "the objective observer should perceive [this exemption] as an accommodation of the exercise of religion rather than

^{*}The Supreme Court has not decided whether the state may as readily exempt for-profit operations of religious groups from otherwise applicable regulations. Amos, 107 S. Ct. at 2873

as a government endorsement of religion." Amos, 107 S. Ct. at 2875 (O'Connor, J., concurring). The fact that this accommodation may make the churches' task marginally easier than it would be were no exemption given, the Supreme Court has indicated, is of no moment. Nor does a regulatory statute's singular exemption of religious groups render its purpose suspect: "Where, as here, government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, we see no need to require that the exemption comes packaged with benefits to secular entities." Amos, 107 S. Ct. at 2869.

Finally, the Court held that exemptions such as those challenged in Amos and in the present case actually lessen the risk of entanglement between church and state. The burdensome issue-by-issue free exercise litigation that would be necessary absent a general exemption "results in considerable ongoing government entanglement in religious affairs." Amos, 107 S. Ct. at 2872 (Brennan, J., concurring). This would both chill and interfere with religious groups, enmeshing judges in intrusive and sometimes futile attempts to understand the contours, sincerity, and centrality of the religious beliefs of others. Amos, 107 S. Ct. at 2870 (opinion of the Court) and 2872 (Brennan, J., concurring).

In sum, applying to these nonprofit facilities the <u>Lemon</u> test as now explained by <u>Amos</u>, we do not discern any distinctions that would justify a result in this case different from that

^{* (}Cont.) (Blackmun, J., concurring) and 2875 (O'Connor, J., concurring).

reached in <u>Amos</u>. Indeed, if an exemption is permissible in the context of employment practices in a gymnasium, one can only be more solidly justified where it acts to prevent state interference with church programs that provide education and care for children.

IV

Our decision on the merits renders moot the appeal of Shenandoah Baptist Church from an order dismissing it from the case.

Since the appellees are no longer the prevailing party within the meaning of the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, we vacate the district court's award of attorney's fees.

The judgment of the district court declaring Va. Code § 63.1-196.3 unconstitutional is reversed, and the injunction it issued is dissolved.

Helena Alliance Church



1030 Choteau Helena, MT 59601 Telephone: (406) 442-1301

Fulfilling the Great Commission in Love

January 18, 1989

Representative Stella Jean Hansen Chairman, Human Services and Aging Capitol Building Helena, MT 59620

Re: House Bill 200

Dear Chairman Hansen:

I would like to speak against HB 200 for three reasons. As a pastor, educator and provider of pre-school training, it would seem to me that a definition between these two should not be based on time spent but rather on curriculum. A day care, by definition, should be providing a caring environment in place of the home care because of a need for parents to work or otherwise be out of the home. Pre-school, on the other hand, has the responsibility to help prepare a child to enter the school system - public or private.

The second reason I am opposed to this bill is that if HB 200 passes, it will force many churches currently providing preschool training into a state controlled system. While this may seem desirable to some, it raises areas of concern for religious organizations. In applying for a day care license, an organization or individual must comply with 5 provisions of current law. These provisions are:

- (1) Safety (fire, insurance)
- (2) Health
- (3) Curriculum
- (4) Discipline
- (5) Hiring (no discrimination for any reason)

Provisions (1) and (2) do not cause major concern and in reality are probably prudent and reasonable. However, for the state to control curriculum, discipline and hiring violates a church's constitutionally mandated beliefs and freedoms. The 4th Appellate District Court upheld this same finding in New Jersey in May of 1988.

You have testimony essentially indicating that religious organizations should have their religious freedoms limited in these

EXHIBIT 16

DATE 1-18-89

HB 200

The Christian and Missionary Alliance

Hansen January 18, 1989 Page -2-

matters for the good of the children. While this may sound like worthwhile logic, in reality it will continue the downward spiral leading to the continued decay of the family values, moral values and educational values that once made the United States and Montana great.

This will be caused by the diluting of the trustworthiness of the Bible in areas of discipline and curriculum. Religious teaching and morals will further be diluted by forcing licensed facilities to hire individuals who, while being otherwise qualified, do not hold to the same teaching, moral values or philosophy.

State controlled hiring will cause many organizations to violate constitutions governing their operation and relationship to their parent organization.

The third reason I am opposed to this bill is that while the legislation provides financial assistance to families for quality care or training, it does not allow the family the full freedom to decide what will be best for their own child. Obviously, the parents are in a better position to know what is best for their child.

I urge you to vote against HB 200 in its present form.

Sincerely yours,

William T. Farley

WTF:ck

INCLE SAM? A BABY SITTER



State Or Federal

Please get government out of Baby Sitting Business

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HB 200	DATE1/18/89		
SPONSOR Rep. Vincent			
NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mrs Mary E. Doybox	7645 N. Moritana		V
Mrs Mary L. Doubed Joseph Moore coalition	58 S. Rodney Hlm Mt		
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William T Farley	1014 Choteau Helena		X
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Pastor	1010 Birch Helena		X
Ray Jain	4417-3 Au no. (+7411		X
Ballood AANW	1615 Cleveland Helen	X	
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Marty Nelson	St. Thomas Child & Fam. Cnfr. 416 23 ad St. N	X	
Mancy Charackles	516 Cleveland Bozeman	V	
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BILL NO.	HB 200	DATE	1/18/87
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COMMITTEE

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HB 116

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SPONSOR Rep. McDonough			
NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
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HUMAN SERVICES & AGING COMMITTEE

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