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Submission of Comments

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From PA-Based Religious Organizations Which Have Members
Which Could Be Impacted by Future Actions Initiated by the DPW:

American Council of Christian Churches (Pennsylvania Regions)
Association of Christian Schools International (Northeast Region)
Evangelical Congregational Church
Keystone Christian Education Association
Pennsylvania Association of Regular Baptist Churches;

and from

Local Churches/Schools Which Operate Ministries to Children
and Have Each Been Served with a Cease and Desist Order from the DPW
for Failure to Obtain a License to Conduct Their Ministries to Children;
and Each of Which Could be Impacted by Future Actions Initiated by the DPW:

Akron Grace Evangelical Congregational Church, Akron
Calvary Bible Church, Wrightsville
Faith Baptist Church, Sellersville
Lighthouse Fellowship and Christian School, Red Lion
Newport Assembly of God Church, Newport
Red Lion Bible Church, Red Lion
Somerset Alliance Church, Somerset
St. Thomas Assembly of God Church, St. Thomas.

**In Response to Proposed Rulemaking
by the Department of Public Welfare of Pennsylvania
Reference Regulation No. 14-506
as Published in the *Pennsylvania Bulletin* on June 3, 2006.**

June 30, 2006

We write in response to the published request for comment with each of the signatories having a set of common concerns. Each signatory has involvement, either as an association of religious ministries or as a local, neighborhood entity in religious ministry to and for children. While there is significant variation in the doctrinal perspectives of the signatories, there is a common concern when government encroaches into the religious affairs of institutions, families, religious workers, and children.

It is commonly known that religious groups and ministries such as the signatories have registered their long-standing objections to the Department's attempts to impose its licensing regulations on religious institutions. It is likewise commonly known that these objections are rooted in the well-founded belief that the Department has no statutory authority to impose such regulations;

should be mandated. (As the regulations are currently formulated, it appears that the Department views fire safety violations with [the] same degree of concern as providing meals at improper times.)

The Department could produce a separate document that sets forth additional guidelines for care that the Department deems to be beneficial, but the violation of which would not be considered sufficiently significant to constitute grounds to close a facility. This could be provided to all facilities upon opening and inspectors could discuss these items with the facilities and make suggestions for changes when they visit the facilities.

We sincerely hope that the Department will seriously consider the approach we have suggested. We believe that it will serve the citizens of Pennsylvania far better than its current approach.

Our concerns with the current proposal are the same as those from the 1999 proposal. All of us as signatories have the same general comments as follows:

1. A very important development that has occurred on the licensing and control issue since 1999 is that a case involving the matter has now moved through a departmental administrative hearing and has been heard by the Commonwealth Court of Pennsylvania. That Court decisively ruled against the Department's position and has held that DPW has no authority to seek to license nonprofit religious childcare ministries. See further *St. Elizabeth's Child Care Center v Department of Public Welfare*, 895 A.2d 1280 (Pa. Commw. Ct. April 3, 2006), *petition for allocatur filed*, 284 MAL 2006 (Pa. April 24, 2006).
2. We continue in our assertion that the Department is not empowered to write regulations and claim that they apply equally to Article IX and Article X institutions.
3. We continue in our assertion that it is highly improper for the Department to intrude into the religious affairs of religious ministries. We have previously provided documentation and illustration of how this intrusion is embedded in the Department's regulations and is highly objectionable to the signatories and others. Yet, it appears prudent to again state the position of the signatories and similarly minded folks throughout the Commonwealth. To do so, we quote from the Brief of *Amici Curiae* presented to the Commonwealth Court in the *St. Elizabeth's* matter. That Brief stated on pages 9 and 10:

III. *Amici* and the Dichotomy Between Secular and Religious Care of Children

The issue before this court is *not* whether the activities conducted at *St. Elizabeth's* and the other four "childcare" facilities have *some* characteristics that are present in for-profit or secular day care. There are children present and there are educational, child rearing activities occurring at both. The issue before this court is *not* whether traditional health and safety laws and regulations apply to the activities conducted by *St. Elizabeth's* and the other five churches. They do.

The issue before this court is whether the Legislature created a dichotomy between Article IX (62 P.S. §901-22) and Article X (62 P.S. §§1001-1087) of the Public Welfare Code of 1967. *Amici* believe a dichotomy is clear in both the titles and substances of the two Articles. Article IX applies to non-profit facilities and Article X to for-profit facilities. Article IX gives DPW

authorization to supervise (but licensing is not mentioned) and Article X authorizes licensing (accompanied by extensive regulatory power). The differences between the two Articles are striking.

Likewise, there is a striking parallel between the legal dichotomy separating Article IX and Article X childcare entities and another legal dichotomy, to wit: between religious day schools and those day schools that are public or licensed. While religious day schools and public schools carry out some similar activities, and while health and safety laws apply equally for both, an intended legal dichotomy exists between them. The Legislature exempted religious preschools/nursery schools, kindergartens, elementary and secondary schools from licensure (24 P.S. §6701, et seq.) while enacting extensive laws and mandating extensive regulations applicable to both public schools and licensed private schools. The Legislature enacted the following language as part of the compulsory attendance laws, and to *Amici* it is apparent that these provisions are part of an effort to continue this dichotomy:

It is the policy of the Commonwealth to preserve the primary right and the obligation of the parent or parents, or person or persons in *loco parentis* to a child, to choose the education and training for such child. Nothing contained in this act shall empower the Commonwealth, any of its officers, agencies, or subdivisions to approve the course content, faculty, staff or disciplinary requirements of any religious school referred to in this section without the consent of said school.

24 P.S. §13-1327(b)(2)
(Emphasis added)

Religious institutions that undertake a day care ministry, such as St. Elizabeth's and the other four churches, do so for the very same reason that churches undertake the ministry of religious day schools. They seek to minister spiritually to children and their families. The spiritual aspects of ministry are embedded throughout the program and curriculum, inseparable from the various components. These institutions are not motivated by financial gain, and, in reality, they typically subsidize the expenses of the day care ministries from the general treasury of the church. The staff at these day care ministries are not motivated by purely secular or professional goals, and many of the spiritually faithful choose to volunteer their time or serve at lower salary levels rather than engage in secular professions, investing in the lives of the children for the purpose of making a spiritual difference in their lives.

Amici believe it just as inappropriate to allow DPW to license ministries to children in a religious day care as has been deemed inappropriate by the Legislature to license ministries to children in a religious day school.

The Brief of the *Amici* provides a number of pages of further explanation and illustration. The Brief is attached as an Appendix.

4. The current proposal which contains new amendments and attempts to re-affirm the existing regulations continues to include all of the components to which many have historically and repeatedly raised objection, including objection to licensing of religious ministry, objection to government intrusion into religion-based hiring and enrollment criteria, and objection to government intrusion into program/teaching content/guidance of children.

5. The current proposal continues to label a full range of mandates as all being "health and safety" even when some of the mandates are clearly not so. An old wise saying may summarize this point. "If you call a lamb's tail a leg, how many legs does a lamb have?" The correct answer is "four." The underlying truth is that the lamb's tail is a tail no matter if someone *calls* it a leg. The same applies to programmatic mandates. No amount of labeling a programmatic element with the title of "health and safety" can magically transform that element to be other than what it is. The signatories are acutely aware of the need for health and safety protections, but the Department stretches that concept beyond reason. In the current proposal, the mandate for a program plan to be developed and on file for each child is another illustration of a programmatic matter being inappropriately labeled "health and safety."
6. The current proposal continues the Department's pattern of not differentiating in matters of health and safety between urgently important issues and issues of lesser importance. We continue to believe that the Department should identify the health and safety elements that are *necessary* for health and safety.
7. The current proposal continues the Department's pattern of a one-size-fits-all mentality without regard to the size of the facility, the community, or other important variables.
8. The current proposal continues a pattern of empowering Department officials to enforce rules of other agencies when the Department lacks the knowledge and expertise of the other agencies. For example, the well-meaning proposed inclusion of a ban on passenger vans for transporting the children further illustrates this ongoing weakness in Department procedures and thinking. (67 Pa. Code Sect. 171.121 provides an exception to the general rule, albeit a narrow one; but this exception is not to be found in the Department's proposal.) Furthermore, it should be noted that reference to a federal mandate under the Americans with Disabilities Act for special needs children does not note the presence of an exclusion for religious institutions. (This presence of this federal exception illustrates how Pennsylvania government can and should keep itself free from situations where religious elements are intertwined with child rearing.)

While none of the signatories were privy to any of the discussions leading to the proposed regulations, we can guess, based upon previous experience, that individuals and groups sought for the inclusion of their own "pet" agenda items. This could have included dozens of topics, and it could be that the Department is worthy of commendation for passing over many items not considered *necessary* for health and safety. Additionally, it appears that the Department has made an effort to update its documents in view of changes in areas such as inoculations, TB, etc. The inclusion of kindergarten students as school-age is also commendable.

We, the signatories, do appreciate the opportunity to provide comment and trust our comments are helpful to all who read them.

Appendix

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 1751 CD 2005

ST. ELIZABETH'S CHILD CARE CENTER,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF PUBLIC WELFARE,
Respondent

BRIEF OF
KEYSTONE CHRISTIAN EDUCATION ASSOCIATION,
EVANGELICAL CONGREGATIONAL CHURCH,
PENNSYLVANIA ASSOCIATION OF REGULAR BAPTIST CHURCHES,
ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL,
THE AMERICAN COUNCIL OF CHRISTIAN CHURCHES,
AKRON GRACE EVANGELICAL CONGREGATIONAL CHURCH,
NEWPORT ASSEMBLY OF GOD CHURCH, and
CALVARY BIBLE CHURCH
AS AMICI CURIAE
IN SUPPORT OF PETITIONER,
ST. ELIZABETH'S CHILD CARE CENTER

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TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents-----	i
Table of Authorities-----	iv
Descriptions of <i>Amici</i> -----	1
I. The Keystone Christian Education Association-----	1
II. Evangelical Congregational Church-----	2
III. Pennsylvania Association of Regular Baptist Churches-----	3
IV. The Association of Christian Schools International-----	4
V. The American Council of Christian Churches-----	4
VI. Akron Grace Evangelical Congregational Church-----	5
VII. Newport Assembly of God Church -----	6
VIII. Calvary Bible Church-----	6
Interest of <i>Amici</i> -----	7
I. Immediate Impact on other Religious “Childcare” Ministries -----	7
II. <i>Amici’s</i> History of Civil Obedience-----	7
III. <i>Amici</i> and the Dichotomy Between Secular and Religious Care of Children---	9

Argument

I. DPW Lacks Statutory Authority to Require a Nonprofit Religious Children’s Ministry to be Licensed ----- 11

II. Additional Reasons for *Amici’s* Adamant Rejection of DPW’s Claimed Authority to License Religious Childcare Ministries----- 12

 A. The Christian faith compels *Amici’s* constituents to preach and teach the Bible to children and adults, which mission must not be regulated by DPW licensure requirements----- 12

 1. Children’s ministries are inseparable from other church ministries----- 12

 2. Despite DPW assurances to the contrary, there is every reason to fear insignificant intrusions into *Amici’s* religious ministries----- 14

 B. DPW’s claims that it is not regulating curriculum are misleading and inaccurate----- 17

 1. Control over curriculum----- 17

 2. Application of regulations offensive to religion----- 20

 3. Additional actual and potential interference with the exercise of religion----- 22

 4. Curriculum and “social development” do not legitimately constitute “health and safety”----- 23

 5. There has been long-standing opposition by *Amici* and others to DPW’s claimed licensing authority----- 26

III. Application of DPW’s Licensing and Regulatory Scheme to the Religious Childcare of St. Elizabeth’s Would Violate the Religious Clauses of the First Amendment of the United States Constitution and the Religious Liberty Clause of the Pennsylvania Constitution----- 28

Conclusion-----30

Addendum "A"

Certificate of Service

TABLE OF AUTHORITIES

Cases

Pages

Cantwell v. Connecticut, 310 U.S. 296 (1939)----- 21

Everson v. Board of Education, 330 U.S. 1, 15, 16 (1947)----- 15, 28

Statutes

Public School Code of 1949, as amended (24 P.S. §13-1327(b)(2))----- 10, 25

Public School Code of 1949, as amended 24 P.S. §6701, et seq.----- 9

Public Welfare Code-Article IX (62 P.S. §901-922)----- 8, 9 11, 12, 16
22, 25, 26

Public Welfare Code-Article X (62 P.S. §§1001-1087)----- 9, 11, 16, 19
22, 23, 25, 26

Rule of Court

Pennsylvania Rule of Appellate Procedure No. 531----- 1

Regulations

55 Pa. Code §3270.3----- 22

55 Pa. Code §3270.101----- 20

55 Pa. Code §3270.111----- 20

55 Pa. Code §3270.113----- 20

55 Pa. Code Chapter 20, Appendix A----- 19

Pursuant to Pennsylvania Rule of Appellate Procedure No. 531, the Keystone Christian Education Association, the Evangelical Congregational Church, the Pennsylvania Association of Regular Baptist Churches, the Association of Christian Schools International, the American Council of Christian Churches, the Akron Grace Evangelical Congregational Church, the Newport Assembly of God Church and the Calvary Bible Church file this brief amicus curiae in support of Petitioner, St. Elizabeth's Child Care Center. These organizations have an intense interest in the questions involved in the instant appeal.

DESCRIPTIONS OF AMICI

I. The Keystone Christian Education Association

The Keystone Christian Education Association (hereinafter referred to as "KCEA") was organized in 1974 as a nonprofit religious corporation. Its offices are in Harrisburg, Pennsylvania. KCEA's primary purpose is to promote Christian education in the schools, churches and homes that make up its constituency. Its constituents carry out their conservative Biblical mission through various ministries including prayer meetings, youth and children's camps and clubs, worship services, service projects, youth activities, Bible schools and clubs, missionary ventures, day care and day school ministries. "Day care" includes a variety of ministries that provide supervisory guidance and care for pre-school children. "Day school" is the collective term for kindergarten, elementary and secondary compulsory school education and, increasingly, academic pre-kindergarten ministries. The design, scope and other characteristics of the programs offered by each constituent are determined by the resources available and the opportunities to fulfill their religious mission, both to their congregants and the community.

KCEA has, by strict count, 80 member churches and day schools. In a broader sense, it assists and consults with well over twice as many churches and schools which cannot or have not paid membership dues but still need and regularly seek the help and assistance of KCEA. However, since the day schools associated with KCEA typically have students enrolled from many different churches and since the individual churches and schools have direct ties to numerous other churches and pastors within their respective ecclesiastical groupings, it can be fairly and accurately stated that KCEA speaks for and represents the concerns of hundreds of Pennsylvania conservative protestant churches and tens of thousands of parishioners and clergymen. These constituents are conservative and Biblical in conviction and creed while holding diverse doctrinal positions. They include Baptist, Methodist, Presbyterian, Mennonite and Bible churches.

II. Evangelical Congregational Church

The Evangelical Congregational Church (hereinafter referred to as the “E. C. Church”) has its headquarters in Myerstown, Pennsylvania. It has 125 member congregations located in the Commonwealth of Pennsylvania. Founded in the early 19th century by Jacob Albright, the roots of the E. C. Church are part of the German Methodist tradition. The E. C. Church is also a member denomination of the National Association of Evangelicals.

The Evangelical School of Theology, also located in Myerstown, is the E. C. Church’s graduate level seminary, offering Master of Divinity and Master of Arts in Religion degrees to a student body of about 200 students from two dozen different denominational bodies, preparing men and women for pastoral ministry and Christian

service vocations. The E. C. Church has a two campus retirement village in Myerstown that provides nursing, assisted living and residential levels of care. It also operates Twin Pines, a 200 acre camp and retreat center in the Poconos that provides facilities for summer children and youth camping experiences and fall, winter and spring youth and adult retreats.

Each of the churches in the denomination conducts Sunday School classes for children and youth as well as nursery and toddler care and children's church services. Most E. C. Churches also have some form of additional children and/or youth activities. These include Kids' Club, Awana, Pioneer Club, Bible quizzing, Christian Endeavor, and Son Life among others. A dozen churches either serve as hosts for day care centers or provide their own day care program as part of their local church mission.

III. Pennsylvania Association of Regular Baptist Churches

The Pennsylvania Association of Regular Baptist Churches (hereinafter referred to as "PARBC") was organized in 1949. It has its offices in Wellsboro, Pennsylvania. Its purpose is to provide a fellowship of independent Baptist churches with an intense love and loyalty to the Word of God and to encourage and promote the establishment of Baptist churches at home and abroad through educational and missionary endeavors.

The PARBC has 93 member churches and also consults and supports an additional 56 churches composed of diverse races and ethnic groups. These churches share in the same Biblical mandate to educate children and youth. The various means used to achieve this objective include: Sunday schools, Bible schools, day schools, youth clubs, day care ministries, youth camps and missionary trips. PARBC churches include several day care ministries, a dozen pre-schools and more than two dozen day schools

offering kindergarten through twelfth grade. Additionally, care is typically provided to infants and children during church services and during a full range of adult activities sponsored by local churches. These churches represent thousands of Pennsylvania families.

IV. The Association of Christian Schools International

The Association of Christian Schools International (hereinafter referred to as "ACSI") is a nonprofit religious organization that provides support services to more than 5,200 Protestant Christian school programs throughout the world. One of ACSI's eleven U.S. regions is the Mid-Atlantic Region, with headquarters in Lancaster, Pennsylvania. Last year that office served 173 early education programs, stand-alone kindergartens and elementary and secondary schools in Pennsylvania. ACSI services include teacher and administrator conferences, early education and school accreditation, teacher certification, and the publication of curriculum materials, all in support of the instruction the students receive in member schools.

V. The American Council of Christian Churches

The American Council of Christian Churches (hereinafter referred to as "ACCC") is a fundamentalist, multi-denominational organization which was formed in 1941. ACCC offices are located in Bethlehem, Pennsylvania. The ACCC is composed of seven constituent bodies representing various denominations. The counsel and representation of the ACCC are sought by hundreds of churches across the Commonwealth; many of which have direct ties to the ACCC. Many associated churches have Christian day schools and day cares, which minister to children from their churches and from many other churches, significantly broadening the influence and

ministry of ACCC. The preference of ACCC constituents for conservative Biblical education is clear. Its connection to hundreds of churches, schools, day cares and other ministries gives the ACCC the privilege of speaking for and representing thousands of children and adults in Pennsylvania. The constituent bodies represented by ACCC include Presbyterian, Methodist, Baptist, Independent Bible and many other independent churches.

The denominations and individual churches the ACCC works with have various ministries including Sunday schools, Christian day schools, day cares, summer camps, vacation bible schools and backyard Bible clubs to name a few. These ministries vary according to the needs of the communities, available opportunities to fulfill the religious mission and financial resources. The burden of ACCC is a mandate to provide religious education and direction to children and their families. One of the purposes of the ACCC is to attempt to preserve the rights of Bible believing churches and individuals to freely practice and promote their religious beliefs.

VI. Akron Grace Evangelical Congregational Church

The Akron Grace Evangelical Congregational Church belongs to the E. C. Churches, which has been in existence since the early 1800's. The purpose of the Akron Grace Evangelical Congregational Church is to cause its members and constituents to intimately know Christ and to make Him fully known to people of all ages. Members and constituents attempt to live out this mission to children through various corporate ministries, such as: Christian Endeavor youth ministry, Core Group youth Bible studies, Life Builders youth work camps, Sunday School (ages 2-12th grade), Junior Christian Endeavor (elementary school age), junior choir, junior church, vacation bible school and

our Helping Hands Day Care ministry. These ministries exist for families of the church and the community at large.

VII. Newport Assembly of God Church

Newport Assembly of God is a church corporation founded in 1951. It is located in Newport, Pennsylvania and consists of approximately 500 members and adherents. The church is Biblical in conviction and creed. The primary purpose of the church is to promote the teaching and compassion of Jesus Christ through various ministries which include worship services, a community food pantry and compassion outreaches, relief and missionary work abroad, youth clubs, children and youth activities, Bible schools, prayer meetings, home fellowship groups and a day care ministry. The church networks with many community churches, businesses, social agencies and organizations to address physical, spiritual and emotional needs of individual families.

VIII. Calvary Bible Church

Calvary Bible Church has been a part of the rural community near East Prospect, Pennsylvania since 1950. The church seeks to reflect the character of Jesus Christ by being faithful to the teachings of the Bible in every aspect of individual and community life. Each week up to 500 people participate in the various functions and ministries of the church including Sunday and mid-week services of worship, Sunday School for all ages, nursery care for infants during church services, junior church, AWANA, junior and senior youth, Released Time, Calvary Care (pre-school and before and after school care), local ministry to nursing homes and the prison, and missionary work abroad. Through these ministries the church serves the members of Calvary Bible Church and various needs in the community.

INTEREST OF *AMICI*

I. Immediate Impact on Other Religious “Childcare” Ministries

The issues now before this court will affect more than St. Elizabeth’s Child Care Center or even one religious group. The decision of this court will immediately affect at least four other unlicensed children’s ministries (of which *Amici* are aware) that DPW (hereinafter referred to as “DPW”) has ordered to obtain a license (certificate of compliance) or to appeal its order within DPW’s administrative appeal process. Three of these: 1) Akron Grace Evangelical Congregational Church (Helping Hands Day Care); 2) Newport Assembly of God Church; and 3) Calvary Bible Church are Protestant, and are among the present *Amici*. All of these are from distinct denominations. The fourth religious child care center is Word of God Day Care, a religious ministry of Word of God Roman Catholic Parish in the Roman Catholic Diocese of Pittsburgh. Requests to have the administrative proceedings in these four cases stayed pending the disposition of this appeal have been filed with the DPW’s Bureau of Hearings and Appeals. Beyond these five church-based ministries, there are hundreds of other children’s ministries providing day care across Pennsylvania which are also not licensed that will be impacted by this court’s decision.

II. *Amici’s* History of Civil Obedience

So that *Amici’s* support of St. Elizabeth’s petition is accurately understood and appreciated, it is emphasized that neither *Amici* nor their constituents have ever promoted, and they do not now promote, the defiance or disobedience of state and federal health and safety rules, regulations and laws. In fact, a common tenet of the faith of

Amici and their constituents is that civil government has been ordained by God for the good of mankind. According to the Bible, government has an obligation to punish criminals, citizens are to pay taxes and honor and respect are to be given to government and its officials. Romans 13:1-7, Titus 3:1-2 and I Peter 2:13-17.

Amici and their constituents have a long history of complying with requirements such as Pennsylvania Department of Labor and Industry building code regulations for houses of worship, Pennsylvania Department of Transportation regulations for the maintenance and safe operation of buses and vans, screenings for histories of child abuse and criminal background checks before hiring workers and teachers who minister to children and Department of Agriculture inspections of food service. These are laws and regulations designed to insure the health and safety of *Amici* constituents and the general public.

It is equally important to note that *Amici* and their constituents have a consistent record of permitting and cooperating with supervisory inspections of their facilities by DPW. *Amici* acknowledge and defer to the role given to DPW under Article IX of the Public Welfare Code (62 P.S. §§901-922), to wit: to supervise childcare facilities for safety and health purposes, notwithstanding a record of DPW abuses of some of those supervisory inspections. *Amici* constituents have cooperated with unannounced DPW inspections while licensed facilities have typically received DPW announced inspections—inspections by appointment.

III. *Amici* and the Dichotomy Between Secular and Religious Care of

Children

The issue before this court is *not* whether the activities conducted at St. Elizabeth's and the other four "childcare" facilities have *some* characteristics that are present in for-profit or secular day care. There are children present and there are educational, child rearing activities occurring at both. The issue before this court is *not* whether traditional health and safety laws and regulations apply to the activities conducted by St. Elizabeth's and the other five churches. They do.

The issue before this court is whether the Legislature created a dichotomy between Article IX (62 P.S. §901-22) and Article X (62 P.S. §§1001-1087) of the Public Welfare Code of 1967. *Amici* believe a dichotomy is clear in both the titles and substances of the two Articles. Article IX applies to non-profit facilities and Article X to for-profit facilities. Article IX gives DPW authorization to supervise (but licensing is not mentioned) and Article X authorizes licensing (accompanied by extensive regulatory power). The differences between the two Articles are striking.

Likewise, there is a striking parallel between the legal dichotomy separating Article IX and Article X childcare entities and another legal dichotomy, to wit: between religious day schools and those day schools that are public or licensed. While religious day schools and public schools carry out some similar activities, and while health and safety laws apply equally for both, an intended legal dichotomy exists between them. The Legislature exempted religious preschools/nursery schools, kindergartens, elementary and secondary schools from licensure (24 P.S. §6701, et seq.) while enacting extensive laws and mandating extensive regulations applicable to both public schools and

licensed private schools. The Legislature enacted the following language, as part of the compulsory attendance laws, and to *Amici* it is apparent that these provisions are part of an effort to continue this dichotomy:

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24 P.S. §13-1327(b)(2)
(Emphasis added)

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Amici believe it just as inappropriate to allow DPW to license ministries to children in a religious day care as has been deemed inappropriate by the Legislature to license ministries to children in a religious day school.

ARGUMENT

I. DPW LACKS STATUTORY AUTHORITY TO REQUIRE A NONPROFIT RELIGIOUS CHILDREN'S MINISTRY TO BE LICENSED

On June 13, 1967, Articles IX and X of the Public Welfare Code became law. Despite DPW's protestations and claims, the two Articles were never synonymous, and neither Article ever authorized DPW to require licensure of a nonprofit religious ministry to children.

As previously stated, Article IX applies to nonprofit institutions and provides only for supervision by DPW to insure the health and safety of children in attendance. Article X applies to for-profit childcare facilities and does authorize licensure by DPW. The proof is in a review of the statute (not regulations). It is respectfully submitted that a thorough and unbiased review of each Article will establish a lack of statutory authority for DPW to impose licensure, by any name or designation, on religious ministries to children.

In this respect, *Amici* agree with the statutory arguments set forth by St. Elizabeth's.

**II. ADDITIONAL REASONS FOR AMICI'S ADAMANT REJECTION
OF DPW'S CLAIMED AUTHORITY TO LICENSE RELIGIOUS CHILDCARE
MINISTRIES.**

A lack of statutory authority is sufficient reason, in and of itself, to thwart DPW's intimidating attempt to impose licensure on religious children's ministries. Therefore, it should be sufficient for St. Elizabeth's (and *Amici*) to prove that Article IX is not an enabling act for DPW licensure of religious ministries to children. However, *Amici* believe that this court will benefit from an expansion upon their particular reasons for so strenuously objecting to what DPW contends is "no big deal." Some of the most significant reasons are set forth below.

A. The Christian Faith Compels *Amici's* Constituents to Preach and Teach the Bible to Children and Adults, which Mission Must Not Be Regulated by DPW Licensure Requirements.

1. Children's ministries are inseparable from other church ministries.

Amici and their constituents believe the Great Commission (Matthew 28:18-20) and many other Scripture passages given by the Lord and His apostles in the New Testament are literal commands to be followed by all believers. The Christian faith is to be individually and corporately practiced, including being transmitted to others. Both the Old and New Testaments require Christians to reach all age groups. The Scriptures are very specific in commanding believers to teach those who are new to the faith and those who are children. Those Scriptures include Deuteronomy 6:1-9, Psalm 78:6, Proverbs

22:6, Psalm 145:4 and Ephesians 6:4 to identify but a few. The Lord taught by example as He gathered the little children to Himself (Matthew 19:14).

Christian churches and religious organizations have attempted to honor these Biblical commands by creating and developing various ministries to and for all age groups. Ministries to children have been no exception. Latch-key support to school age children, day care ministries and preschool programs are some of the religious ministries of the Christian church developed in more recent decades.

Methods for transmission of the Christian faith include, but are not limited to, preaching, formal teaching, reading and other traditional pedagogical methods. However, the Scriptures also teach that the actions of believers transmit a message. Believers are admonished to practice evidences of Godliness such as love, joy, peace, patience, hope, meekness, and the Golden Rule found in the Old Testament (Leviticus 19:18) as well as in the New Testament (Matthew 7:12). *Amici* constituents attempt to integrate these basic truths into the informal and formal teaching given to the youngest of the young children in various childcare ministries; and continue through school age and through adulthood.

It is within this framework that *Amici* constituents minister to children through a broad range of programs. With the elimination of Bible reading and prayer from public schools, a significant number of *Amici* constituents founded Christian schools to implement their faith in the academic setting. Major changes in the familial, moral and social aspects of our society have caused many *Amici* constituents to develop day care ministries, variously titled, to minister to children of working parents and children of parents who simply desire additional Christian instruction for their children.

However, regardless of the wide variety of the ministries, there is a common thread running through all of them. Every children's ministry of a constituent *Amici* is designed to be a spiritual or religious ministry. They provide services either as a direct ministry to children and parents in the hope and expectation of "leading them to Christ" or leading them to live a life that would please God, or as an indirect ministry such as caring for children in a loving, caring, supportive Christian manner in the absence of the parent. If a fee is charged, it is designed to cover a portion of expenses, not make a profit.

2. Despite DPW assurances to the contrary, there are many reasons to fear significant intrusions into *Amici's* religious ministries.

Since the 1970's, DPW has repeatedly performed unannounced inspections at unlicensed religious childcare facilities throughout Pennsylvania. As part of those inspections, DPW inspectors routinely, but erroneously, inform officials of these ministries that Pennsylvania law requires them to obtain a license or certificate of compliance. Typically, DPW officials also try to coax ministry officials into licensing by comforting them with assurances that a license does not mean that DPW will interfere in religious matters; that health and safety are the only concerns of DPW. Some religious organizations have capitulated and accepted a license. However, the consequences of being lulled into a sense of hope and/or belief that DPW has good intentions and ignoring DPW's lack of statutory licensing authority are sobering.

James Madison advised that:

It is proper to take alarm at the first experiment with our liberties...
The free men of America did not wait until usurped power had
strengthened itself by exercise, and entangled the question in
precedents. They saw all the consequences in the principle,
and they avoided the consequences by denying the principle.
(Emphasis added)

Madison's timeless *Memorial and Remonstrance*, from which this passage is taken, is reproduced in full by the U.S. Supreme Court as an Appendix to its decision in *Everson v. Board of Education*, 330 U.S. 1, 63 (1947).

Amici have not and will not accept the claim that DPW has legitimate licensing authority over their various constituent ministries to children. They understand too well the existing and potential hazards of doing so. The issues in this case involve, in no minor way, who will control the religious instruction given to children in the Commonwealth of Pennsylvania. "Licensure" is a broad form of governmental control. A license is a permit to exist or act. It can be revoked. It is also broader than specific regulations. For example, driving a vehicle in Pennsylvania is a privilege; not a right. Therefore, it is appropriate to control who receives a driver's license. However, it is more than a privilege to teach children religious values in Pennsylvania; it is a Constitutionally protected right. A license simply cannot be required to exercise the right to instruct children in Commonwealth religious institutions.

Madison's advice is as wise and timely today as it was more than 200 years ago. This is one reason why *Amici* so steadfastly oppose DPW on this issue of licensing. Just as no person can legally operate a vehicle in the Commonwealth without a license,

religious institutions would not be able to teach or instruct children without a license, except at the discretion of DPW.

Although *Amici* do not claim the wisdom or even the credibility of James Madison, it would be foolish to ignore his advice. *St. Elizabeth's* is a watershed case. If the licensure of religious instruction by DPW is not rejected here, it will be very difficult to ever retrieve the principle, and DPW would be authorized to promulgate ever more expansive and intrusive regulations.

DPW's efforts to unilaterally obliterate the aforedescribed statutory dichotomy between for-profit day care and nonprofit religious ministries have haunted and intimidated many in the Christian community since the 1970's. In spite of the clear and distinct dichotomy between Articles IX and X institutions, DPW has insisted that profit and nonprofit childcare facilities must be licensed (certificate of compliance). Where religious ministries refused to seek its permission to operate, DPW has threatened and demanded that religious institutions license their children's ministries, often with the issuance of "cease and desist" orders/letters to religious ministries. Typically, when *Amici's* ministries retained legal counsel to respond, that counsel asserted that DPW does not have statutory authority to either issue a "cease and desist" order or require a license religious facilities.

There is attached hereto a copy of a letter dated July 24, 1985 directed to the Administrator of the Centre County Christian Academy in Bellefonte, the written response of the Academy's counsel, Sandra E. Wise, Esq., another letter dated February 18, 1987 from DPW to the same Academy and a second response from the Academy's attorney, all of which are collectively marked Addendum "A". These documents are

examples of DPW's intimidating efforts, that go back more than two decades, to force licensure of children's ministries. Similar letters and responses were issued to a number of *Amici* constituents over the years. However, until recently, DPW did not pursue further action against these ministries and their legal counsel's response to DPW appeared to end the matter. In fact, despite the two previous threatening letters to this Academy, DPW has to date not pursued an administrative action against it.

Now, in the form of St. Elizabeth's case (and at least four other cases), DPW has forced the issue into the administrative hearing process. Three of the ministries now under attack are Protestant but all five have convictional positions against the licensure of their teaching ministries.

Amici representatives and many other religious leaders have taught and warned against the licensing of any Bible teaching ministry, for such a requirement is akin to requiring the Church to have a license before it can preach the Gospel. Unfortunately, opposition to licensure has cost *Amici* and their constituents innumerable man-hours and thousands upon thousands of dollars in the form of consultations, negotiations, discussions, legal research and attorney's fees.

B. DPW's Claims That It Is Not Regulating Curriculum Are Misleading and Inaccurate.

1. Control over curriculum:

DPW routinely has asserted that its license imposes no restriction on what is taught in religious instruction ministries. While DPW may not have current regulations that interfere explicitly and directly with the formal teaching of doctrine or the formal

doctrinal tenets of sponsoring religious bodies, the overall assertion is simply not accurate because there is much more to religious instruction than the written curriculum.

In professional terms, “explicit” curriculum is that part of the education plan that is usually written and demonstrated as a scope and sequence, textbooks, lesson plans, and written summaries to parents and directors. “Explicit” curriculum includes the highly visible position of the institution on issues deemed important. DPW claims no desire to interfere with the “explicit” curriculum, for now.¹ However, if licensure is imposed, *Amici* will have no defense if DPW does overtly interfere with the “explicit” curriculum.

Furthermore, in education, especially in religious education, there are two other essential components of curriculum that DPW does purport to have the authority to control. “Implicit” curriculum is an essential part of learning and includes the latent values and attitudes the teacher and institution seek to embed within learning experiences. This component requires the instructor to apply “explicit” curriculum to practical, age-appropriate conduct. “Implicit” curriculum is typically not identifiable in the written literature but is reflected in the attitudes, actions, and guidance provided by the teacher and the institution. When the content of the “explicit” curriculum is not backed by consistent action on the part of the authority figure(s), it is hypocrisy. Hypocrisy is problematic to learning and tends to provide strong negative reinforcement and even cynicism toward the content, concepts, and materials presented. A teacher and institution attempting to transmit values to children must have latitude to demonstrate the practical outworking of those values. DPW’s ability to limit “informal” instruction is just

¹ Although DPW’s inspectors do review the developmental program of a childcare ministry to detect its “quality.”

as problematic as limiting “formal” teaching, and the former may be even more dangerous than the latter.

The third component of curriculum is the “null” curriculum and, consistent with its name, denotes the elements that a teacher and institution seek to exclude because they run counter to the “explicit” curriculum and/or to the “implicit” curriculum. Some elements may be in the “null” curriculum because they displace things deemed more important. This component of the curriculum is typically not written and includes significant elements related to values and attitudes. By their very natures, “implicit” and “null” curriculum must work in tandem.

In religious education the selection of staff, the planning of programs, and the motivation and control of students are all components of the curriculum. The long-term position of DPW in these three areas is in conflict with *Amici*. Ironically, it is also in conflict with some of the greatest thinkers known to men. Aristotle and *Amici* grasp the same concern but in different contexts. Aristotle said that “educating the mind without educating the heart is no education at all.” DPW’s regulations state that it is unlawful for a church or religious organization providing care to discriminate in hiring and enrollment based upon religion. (55 Pa. Code Chapter 20, Appendix A). *Amici* constituents would be forced to hire employees who could hold offensive or contrary religious beliefs, values, and attitudes in order to become licensed. Karl Menninger would have understood *Amici*’s concerns. He said that “what the teacher is, is more important than what he teaches.”

The Article X licensure regulations DPW is attempting to impose on *Amici*’s children’s ministries require state involvement in evaluating the appropriateness of toys

and materials used in the ministry (§3270.101). While the requirement may seem unoffensive on the surface, the “implicit” and “null” curriculum philosophy of the institution may create an educational environment with elements that will be misinterpreted by DPW. DPW regulations also require state involvement in evaluating the program (§3270.111). This requirement is ripe for DPW to take exception to the means by which religious institutions seek to guide children in the proper way to live, priorities for life, way to view oneself and use of time.

DPW regulations also affect programming, curriculum, and even religious tenets regarding child rearing, by excluding all forms of physical punishment (§3270.113). Virtually every method of child guidance has some element of “control.” For example, taken literally, one cannot employ time-tested techniques of discipline such as a “time-out” without abridging the regulations. Similarly, under subsection (c) of section 113, DPW can take exception to frank religious teaching about wrongs, sins, and eternal punishment. Any conflict over these aspects of program would always result in the DPW license being held over the “head” of the ministry. And, even if the DPW inspector is a deeply religious person, conflicts will naturally arise, for even deeply religious peoples may offend another’s perspective of religion without knowing that he or she is doing so.

2. Application of regulations offensive to religion:

In more than one meeting with DPW personnel, representatives of *Amici* and other spokespersons for Pennsylvania religious organizations have illustrated how the application of the licensure requirements can and do conflict with the deeply held religious beliefs of *Amici* constituents. Broad and weighty concepts such as “culture,” “lifestyle,” “self-esteem,” and “shame” can and will be superimposed, with politically

correct meanings and spins, on children's ministries, thereby offending *Amici* constituents' strongly held religious values. Similarly, when DPW has licensure power over the teaching and guiding of children, performed by individuals and institutions with deeply held religious beliefs, in areas as diverse as sexual activity, attitudes, values, entertainment, use of time, appropriate music, dance, gender model and consequence of actions, it will be fertile ground for not only offending religion, but forcing on *Amici* constituents a scheme that is contrary to their religious beliefs.

DPW officials have often proposed that when the implementation of its licensure requirements offends religious beliefs, religious providers should apply for a waiver from the specific part(s) of the regulations that they deem offensive. The Department makes this claim now, but the decision of whether to grant or deny a waiver rests solely in DPW's discretion. If DPW refuses to grant a waiver, under licensing authority, that would require a religious ministry to incur a costly, time-consuming appeal of the denial of the waiver through the DPW administrative hearing process that each ministry may have to follow in order to teach religious values to children. And, given the fact that administrative hearing officers lack authority to decide constitutional claims, it would also require judicial review. This is the epitome of prior restraint. *Cantwell v. Connecticut*, 310 U.S. 296 (1939). Moreover, as the *Cantwell* Court stated: the ability of a court to judicially correct governmental abuses does not cure the original constitutional deficiency. *Cantwell* @ 306. *Amici* should never be required to make advance application for a waiver so they can teach their faith to their children.

3. Additional actual and potential interference with the exercise of religion:

DPW claims the same licensing authority over religious childcare ministries as it has over Article X for-profit facilities. The scope of Article X with respect to what constitutes “child day care” is quite broad. On its face, it includes any “care in lieu of parental care given for part of the twenty-four hour day to children under sixteen years of age, away from their homes, but does not include child day care furnished in places of worship during religious services.” 62 P.S. § 1001. DPW’s regulations restate this broad definition, but also state that the regulations will be applicable to such care in nonprofit facilities. Those regulations may currently exclude care provided in places of worship during religious services, but outside of this category, they clarify that care in facilities at other places and at times when a “parent is not present at all times” is covered. 55 Pa Code §3270.3 (b) (2)-(3).

DPW has been less than candid by asserting that, since they do not impose their regulations on childcare conducted “in places of worship during religious services,” there is no regulation of religion. DPW’s understanding of what constitutes “places of worship” and “religious services,” and a religious ministry’s understanding of those terms may differ markedly. Many of the children’s ministries that *Amici* and their constituents pursue are not conducted in the Church proper (sanctuary). Instead they may take place in a range of other facilities within a church complex and elsewhere. DPW could easily decide that these ministries are not conducted “in places of worship” during “religious services” under its current regulations.

Therefore, under its current regulations, unless stopped by this court, DPW could change its current *unwritten* policy and claim licensing authority over children’s

ministries that would not normally be considered “child day care centers.” These could include such ministries as vacation bible school classes, weeknight youth meetings, Sunday School classes and many other religious “ministries” conducted outside of Church sanctuaries, where the children are almost always under 16 years of age and most parents are rarely present. Suffice it to say that the current interpretation of Article X regulations by DPW, if allowed to stand by this court, gives DPW great and dangerous discretion to license and regulate children’s ministries that traditionally have been considered religious activity.

4. Curriculum and “social development” do not legitimately constitute “health and safety”:

At stake also in this case is the ability of a children’s ministry to guarantee and provide children a safe facility within the traditional meaning of “health and safety.” If, as a result of this court’s decision in this case, DPW is granted licensure authority to impose a broader definition of “health and safety” on children’s ministries, DPW will be granted the authority to crush religious freedom.

Traditionally, “health and safety” includes elements such as fire prevention, safe vehicles, wholesome food, health screenings, building inspections and background checks for potential workers. In this context even the administrative law judge found that St. Elizabeth’s operated a healthy and safe facility.

However, this court should be aware that there is a strong move afoot by some sociologists, teachers, government officials and owners of for-profit childcare to redefine “health and safety” in terms of “quality” and “curriculum.” This point was demonstrated at a public stakeholders meeting sponsored by DPW in 1999. Some *Amici* participated in

that event. On one of the days the meeting room was decorated with large posters that read: "Curriculum IS Health and Safety." The proponents of this position are forceful in their efforts to advance their perspective. They strongly advocate a new function for government (DPW), one that defines the "proper" philosophy by which to teach and direct children in order to yield the "right" kind of adults for society. It is a position that superimposes this "proper" philosophy on all who work with children (including religious children's ministries) in the name of "health and safety."

If DPW is given the authority through licensure to impose such a definition of "health and safety" on religious children's ministries it will be devastating. For religious institutions, the essence of the curriculum or program is the essence of the learning. The idea that "health and safety" equal curriculum is ripe with the bitterness of subtle but effective religious oppression.

If DPW is allowed to license religious institutions, there is every reason to believe that the policies and regulations of DPW will expand to include a prescription for "quality" as defined by some governmental "expert," not just safety and healthy care with pluralism. This trend is already clearly evident in the accreditation programs administered by DPW and others.

In rejecting the notion that regulating curriculum and proper social development of children falls within the context of health and safety, it should be remembered that hundreds of thousands of Pennsylvania's children attend parochial pre-schools and kindergartens, and fulfill their compulsory school attendance requirements at parochial elementary and secondary schools. These religious (parochial) schools are not required to be licensed, their staffs are not under state certification requirements and the content of

their teachings is not regulated. 24 P.S. §13-1327(b)(2). Yet, this unlicensed method of delivering quality religious and faith based education to children whose parents are not present and who are, for the most part, under 16 years of age, has been an overwhelming success legally, constitutionally and religiously for many years in this Commonwealth.

The Legislature did not grant DPW the broad licensing authority over religious ministries to children that DPW now attempts to usurp. One of the clear benefits of the statutory dichotomy between Articles IX and X is that it guarantees that religious ministries to children should not have to face an action similar to that being made against St. Elizabeth's. St. Elizabeth's is a nonprofit religious institution. It is not a business entity that can pass its legal costs through to consumers. When an action such as this instant case is taken against a religious institution ministering to children, valuable resources are siphoned away from needed children's ministries. In that event the entire community suffers financially and spiritually.

As noted previously, non-licensed religious childcare in Pennsylvania is not unsupervised. There are a host of laws protecting the health and safety of children in such ministries. Since 1985 a criminal background check and a child abuse background check have been required for all childcare workers whether they work at a licensed facility or one that is non-licensed. The Department of Labor and Industry is responsible for building safety requirements that apply equally to licensed and non-licensed facilities. The U.S. Environmental Protection Agency and the state Department of Environmental Protection have detailed provisions for safe water and air that is asbestos free, and these apply to all facilities. Transportation laws are clear as to the safety restraints required for children under age 4 and for the transportation of children on field trips. Child abuse

reporting laws are longstanding; and, again, apply to both licensed and non-licensed facilities.

It must be noted that many DPW regulations relating to health and safety are simply an incorporation of existing laws and regulations that already obligate or bind religious children's ministries. Therefore, DPW is in many ways a second, and unnecessary, enforcement agent for the mandates created by other government entities within the area of their expertise. The important difference is that DPW claims licensing power over religious instruction and curriculum.

5. There has been longstanding opposition by *Amici* and others to DPW's claimed licensing authority.

DPW's contention that religiously affiliated Catholic and Christian children's ministries do not genuinely object to its efforts to impose licensure on religious children's ministries is disingenuous. *Amici* and others have worked closely with the Pennsylvania Catholic Conference for many years to oppose, in every venue, the claimed authority of DPW to license religious children's ministries and to impose regulatory mandates that exceed what would be required to assure the health and safety of children. DPW's regulations were opposed by several *Amici*, the Pennsylvania Catholic Conference and others, in draft form prior to their adoption. Whenever efforts have been made to amend the Public Welfare Code in a manner that might tend to eradicate the distinction between Article IX nonprofit ministries and Article X for-profit facilities, they have been successfully opposed in the General Assembly by several *Amici*, the Pennsylvania Catholic Conference and others. In short, DPW has been well aware of the opposition of

major segments of the religious community to the DPW interpretation of the language in the Code since it first adopted that position.

Amici are aware of religious institutions that have no conflict of conscience in accepting a DPW license. However, this serves to underscore the seriousness of DPW's ultra vires licensure campaign. The reasons for which some religious institutions have accepted a license are, no doubt, many and complex, and may include: (1) Religious institutions are, by nature, law-abiding entities and tend to reflexively accede to comments or demands by an official regarding licensure. (2) DPW's initial contact with many institutions is often friendly and filled with assurances that DPW's only interest is the health and safety of the children and not affecting religious matters. (3) Some may submit voluntarily, seeking a governmental credential as a means of assuring parents who are in the process of determining whether to entrust their children to the institution and its staff. (4) Some may submit to licensure in order to avoid the consequences and expenses of resisting, but while explicitly reserving their rights to object to DPW's authority should DPW seek to enforce any of its regulations beyond health and safety. (5) Some may have even committed institutions to licensure without consulting with their church leadership or pastor. It is therefore unrealistic and implausible for DPW to make the leap of logic required to assert that its regulations are not religiously burdensome because a few religious entities have acquiesced (perhaps under duress) to DPW's claimed authority.

**III. APPLICATION OF DPW'S LICENSING AND REGULATORY
SCHEME TO THE RELIGIOUS CHILDCARE MINISTRY OF ST.
ELIZABETH'S WOULD VIOLATE THE RELIGIOUS CLAUSES OF THE
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE
RELIGIOUS LIBERTY CLAUSE OF THE PENNSYLVANIA CONSTITUTION.**

Amici will not attempt to duplicate St. Elizabeth's arguments as they relate to the violation of the Religious Clauses of the First Amendment. *Amici* will simply emphasize one additional reality that emanates from DPW's attempt to put itself in a position to dictate instruction and control the hiring practices of children's ministries.

It is well-established law that government is to be neutral on matters of religion. The state is to neither promote nor attack the exercise of religion. A wall of separation (for better or for worse) has been built forbidding government and religion to unite and work together. The Religious Clauses of the First Amendment to the U.S. Constitution embrace the twin concepts of protection of religious freedom (free exercise) and church-state separation (nonestablishment) *Everson v. Board of Education*, 330 U.S. 1, 15, 16 (1947).

Ironically, DPW's efforts in the instant case, if allowed to survive and blossom, will not only hinder the free exercise of religion, they will have state government intricately involved in dictating and controlling the details of religious instruction and who gives that instruction. Many early childhood development programs at colleges and universities have a mindset regarding "appropriate childhood development" that is contrary to what *Amici* believe. Requiring that those in charge of child care ministries attain such degrees in order to be hired, in itself, constitutes significant governmental

control over these ministries. DPW will be in a position to approve and disapprove the content of religious teachings. If DPW does not approve of the instruction or the instructor, it will have the authority to refuse to grant a license or revoke a license. Such a scenario goes far beyond neutrality or even “burdening” religious practice. It puts the state in the business of dictating religious practice. It allows the state to mandate what religious precepts can and cannot be taught, not in public schools, but in nonprofit, religious ministries.

Frederick Bastrat may have written it best.

It is not true that the function of law is to regulate our consciences, our ideas, our wills, our education, our opinions, our work, our trade, our talents, or our pleasures. The function of law is to protect the free exercise of these same rights.

Frederick Bastrat, The Law (1948) (Emphasis added).

If, as a result of this proceeding, DPW may license *Amici's* children's ministries, the Commonwealth of Pennsylvania ultimately will have the authority to dictate religious curriculum, instruction and course content. In other words, the Commonwealth will be in a position to lawfully control religious instruction. If they may license religious childcare in its various forms under Article IX, there will be very few venues, as we now know them, for teaching Biblical truth and religious principles to groups of children in full freedom and with full doctrinal integrity. This will have dramatic effects on religious liberty for both religious institutions and for parents who desire religious training for their children.

CONCLUSION

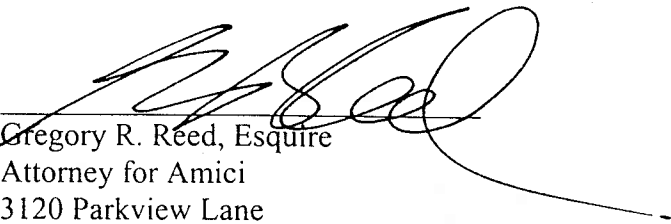
Because of the precedent setting nature of this case, *Amici* and their constituents will be forced to conduct (or close) their children's ministries in accordance with the final opinion and order in this appellate process. If the administrative law judge's decision, in the form of a final order of DPW's Bureau of Hearing and Appeals, is affirmed, it will mean the death knell to hundreds of religious childcare ministries across the Commonwealth of Pennsylvania. The impact of this appeal will be broad and deep. The impact will not be limited to St. Elizabeth's Child Care Center in Whitehall nor will it be limited to the Catholic Church. The impact will reverberate through the entirety of many religious communities.

If *Amici* were permitted to make only one succinct statement to summarize its support of St. Elizabeth's, it would be this: **this litigation is not about safety and health or even the well-being of children, it is about control.** If health and safety were the issues, St. Elizabeth's would not be the Petitioner. St. Elizabeth's would have been successful before the administrative law judge. Not only is the record clear, but so is the administrative law judge's findings of fact. The facilities, staff and environment at St. Elizabeth's are safe. DPW found no health or safety violations or concerns at St. Elizabeth's facilities.

The real issue in this appeal is control. Who will control the content of the religious instruction given to the children in nonprofit religious children's ministries in Pennsylvania? Who will control the qualifications of the men and women who staff the children's ministries of *Amici's* constituents?

WHEREFORE, *Amici* and their numerous constituents respectfully request this Honorable Court to reverse the final order of the Bureau of Hearing Appeals and find that the Pennsylvania Department of Public Welfare has no authority to require or mandate St. Elizabeth's Child Care Center to obtain a license, certificate of compliance or any equivalent document as a prerequisite or condition precedent to conducting its children's ministry.

Respectfully submitted,



Gregory R. Reed, Esquire
Attorney for Amici
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Harrisburg, PA 17111
(717) 238-0434
Attorney I.D. #23705

ADDENDUM “A”



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
CENTRAL REGION
COMMUNITY SERVICE CENTER

P.O. BOX 500
SELINGROVE, PA. 17870

TELEPHONE: 717-374-2675

July 24, 1985

Mr. Robert Bailor, Administrator
Centre County Christian Academy
P. O. Box 47
Bellefonte, PA 16823

Dear Mr. Bailor:

I am writing in regard to the Academy's Wee Wisdom
Play School and Day Care program.

As you are aware, the Department of Public Welfare
has taken the position that the Day Care portion of the program
needs to be licensed. Such licensing is mandated in the Common-
wealth of Pennsylvania under the provisions of the Public
Welfare Code, Articles IX and X, Act of June 13, 1967 (Attached).

This is to request the position, in writing, of the
Christian Academy on the issue.

Thank you for your response.

Sincerely yours,

Harold M. Crozier
Day Care Field Supervisor
DPW - Central Region

Attachment

LAW OFFICES
BALL & SKELLY
511 N. SECOND STREET
P. O. BOX 1108
HARRISBURG, PENNSYLVANIA 17108

WILLIAM BENTLEY BALL
JOSEPH G. SKELLY
PHILIP J. MURREN
RICHARD E. CONNELL
SANDRA E. WISE
MICHAEL CHEREWKA

TELEPHONE
AREA CODE 717
232-8731

September 12, 1985

Mr. Harold M. Crozier
Day Care Field Supervisor
Pennsylvania Department of Public Welfare
P. O. Box 500
Selinsgrove, Pennsylvania 17870

In Re: Centre County Christian Academy -
Day Care Program

Dear Mr. Crozier:

We have been retained by Centre County Christian Academy to provide representation with respect to the matters raised in your letter dated July 24, 1985, regarding Wee Wisdom Play School and Day Care. The letter asks for the Academy's position concerning licensing of the day care program. It is our understanding from your letter that the Department does not claim authority to license the play school program, and, therefore, we do not address that matter. This letter sets forth the position of Christian Academy on licensing of its day care program.

Christian Academy is a nonprofit religious institution providing a religious ministry of day care for children. There are two, three and five-day programs with day care from 11:30 a.m. to 5:30 p.m. There is no instruction in the day care program.

Article IX of the Public Welfare Code authorizes the Department to "supervise" children's institutions. There is no authorization in the Code for the Department to grant or withdraw permission to a religious institution to provide care as part of its religious mission. Beyond statutory considerations, however, are constitutional issues which affect this matter.

Mr. Harold M. Crozier
September 12, 1985
Page 2

I assume you are aware of the recent Commonwealth Court decision - Commonwealth of Pennsylvania v. Ruff Edge Farms, Inc., et al. In his opinion, Judge James G. Collins stated that "[r]egulation of the Ruff Edge Day School through DPW's licensing provisions, therefore, are not reasonable and cannot be imposed." The court noted that:

"The education and training of young children has been an essential tenet of many faiths. The requirement that any religion first have a license, such as in the instant matter, prior to preaching the gospel to young children, is clearly a violation of the Free Exercise Clause of the First Amendment of our Constitution." Slip op. at 6.

The court's analysis applies to Christian Academy's day care program. The Academy believes that it is commanded by God to raise and nurture children in the admonition of its Lord. The program of care at the day care is scriptural and spiritual - its purpose being the formation of the image of Christ in the children in attendance. Staff members and volunteers in the day care program must be "born again" Christians and must be living witnesses to their fundamentalist beliefs.

The Department's 8-A Child Day Care Services for Children Regulations contain many provisions which the religious institution would find religiously objectionable. The religious institution does not oppose reasonable regulations related to fire, safety and building occupancy requirements, but it believes that the Department's requirement that it seek a license in order to fulfill its religious mission violates the Free Exercise and Establishment Clauses of the First Amendment. Since Commonwealth Court has held that DPW cannot impose its licensing requirements upon religious day care institutions, Christian Academy is not required to seek a license for its day care program.

The day care would have no objection to permitting a representative of DPW to come in and look over its child care operation. It would also welcome advisory recommendations to improve its program since it wants to have a program of superior quality. However, it must be emphasized that Christian Academy does not view this inspection as mandatory or as an application for a license.

Mr. Harold M. Crozier
September 12, 1985
Page 3

If you have further questions concerning this matter,
please do not hesitate to contact me.

Very truly yours,

Sandra E. Wise

Sandra E. Wise

SEW/jr

bcc: Rev. Theodore E. Clater ✓
Mr. Robert Bailor



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
CENTRAL REGION
COMMUNITY SERVICE CENTER

P.O. BOX 500
SELINGROVE, PA. 17870

TELEPHONE: 717-374-2675

February 18, 1987

Rev. Robert Bailor, Administrator
Centre County Christian Academy
P. O. Box 47
Bellefonte, PA 16823

Re: Wee Wisdom Preschool and Day Care
P. O. Box 47
Bellefonte, PA 16823

Dear Rev. Bailor:

The Department has reason to believe that you continue to operate a facility which provides day care services to children. As you have previously been informed by representatives of this office, such facilities are subject to licensure by the Department of Public Welfare under Articles IX and X of the Public Welfare Code.

Under Section 1031 of the Public Welfare Code, it is a summary offense for a person to operate a child care facility without a license (62 P.S. Section 1031). Operation of a facility without a license subjects the offender to a fine of not less than \$25 nor more than \$300 for each day of operating without a license. Furthermore, the Department is authorized to seek injunctive relief to prevent your continued operation of an unlicensed facility (62 P.S. Sections 1052; 921.). Your prompt attention to this matter is, therefore, important.

Enclosed please find appropriate day care regulations, a copy of 55 Pa., Chapter 20, a copy of Articles IX and X and an application for licensure/approval. Please complete the application and return by March 5, 1987 to the above address. Upon receipt of the application we will contact you to schedule an appointment to begin the licensing/approval process.

If you are no longer providing day care services please notify this office by the above date.

Sincerely,

Terrance A. West
Terrance A. West
Regional Day Care Director

Enclosures

LAW OFFICES
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TELEPHONE
AREA CODE 717
232-8731

March 5, 1987

Mr. Terrance A. West
Regional Day Care Director
Central Region Community
Service Center
Pennsylvania Department of
Public Welfare
P. O. Box 500
Selinsgrove, PA 17870

In Re: Wee Wisdom Play School and Day Care

Dear Mr. West:

We represent Centre County Christian Academy which operates as one of its ministries the Wee Wisdom Play School and Day Care. We previously had correspondence with the Department of Public Welfare in September, 1985 concerning the Department's demands at that time that the Christian Academy obtain a license for the operation of its pre-school ministry to children. As before, our position has been that Article IX of the Public Welfare Code does not authorize the Department to license this pre-school ministry, or (as your letter of February 18, 1987, states) "to seek injunctive relief to prevent [its] continued operation".

This position was sustained in a decision by Commonwealth Court Judge James Gardner Colins, dated July 8, 1985, in the case of Commonwealth of Pennsylvania, Department of Public Welfare v. Ruff Edge Farms, Inc. (No. 164 C.D. 1985). Judge Colins stated in that case:

Mr. Terrance A. West
Page Two
March 5, 1987

"As correctly noted by amici in their brief, the education and training of young children has been an essential tenet of many faiths. A requirement that any religion first have a license, such as in the instant matter, prior to preaching the gospel to young children, is clearly a violation of the Free Exercise Clause of the First Amendment of our Constitution." (Slip Opinion, p. 6).

We had presumed that Centre County Christian Academy would not be further approached by the State with respect to this matter.

Very truly yours,

Sandra E. Wise
Sandra E. Wise

SEW/jr

cc: Rev. Robert W. Baylor
bcc: Rev. Theodore E. Clater ✓

CERTIFICATE OF SERVICE

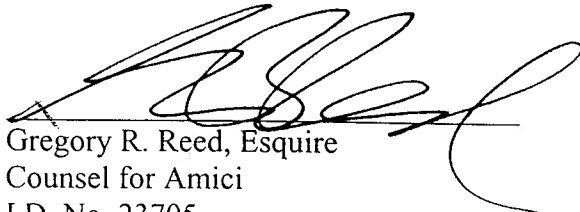
I hereby certify that I am this day serving the specified number of copies of the foregoing document upon the following individuals in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

Service by first class mail addressed as follows:

John A. Kane, Esquire
Chief Counsel
Department of Public Welfare
3rd Floor West, Health and Welfare Building
Harrisburg, PA 17120

Philip J. Murren, Esquire
Ball, Murren & Connell
Counsel for Petitioner
2303 Market Street
Camp Hill, PA 17011

Date: December 5, 2005



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