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A Joint Statement
From Organizations with Long-Standing Histories of Concern
Regarding Perceived Overregulation of Childcare Providers in General,
and Religious Childcare Providers in Particular,
by the Pennsylvania Department of Public Welfare

Submitted by

PENNSYLVANIA FAMILY INSTITUTE,
COMMONWEALTH FOUNDATION,
AMERICAN FAMILY ASSOCIATION OF PENNSYLVANIA,
CONCERNED WOMEN FOR AMERICA OF PENNSYLVANIA,
COMMONWEALTH EDUCATION ORGANIZATION,
EAGLE FORUM OF PENNSYLVANIA,
REACH FOUNDATION and
REACH ALLIANCE

In Response to Proposed Rulemaking

By the

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3270, 3280, 3290 AND 3300]

Child Care Facilities

[36 Pa.B. 2686]

[Saturday, June 3, 2006]

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INTEREST OF THE RESPONDENTS

The above-named signatories, collectively, having a long history of advocating for meaningful choice in the education and upbringing of children for parents; advancing public policies based on the nation's founding principles of limited constitutional government, economic freedom, and personal responsibility for one's actions; and working to support and strengthen families regarding the welfare and education of children by returning authority to parents; feel compelled to raise strong objection to the regulatory changes proposed by the Department of Public Welfare (DPW), as published in the Pennsylvania Bulletin [36 Pa.B. 2686, Saturday, June 3, 2006].

The proposed changes to the Child Care Facilities regulations, particularly section 3270, Child Day Care Centers [55 PA. CODE Chapters 3270] incorporate all of the objectionable elements about which these signatories have historically raised serious.

Several of the signatories have given detailed summaries of their concerns and objections in written form and in testimony to legislative bodies. Testimony has been entered during previous attempts by the DPW to change the regulations, members have given testimony during legislative hearings and committee meetings, as well as detailed objections to the DPW's attempts to enforce their interpretation of the distinction of Article IX and Article X were submitted in the form of an Brief of *Amici Curiae*[1] presented to the Commonwealth Court in the St. Elizabeth's matter, in which the court has held that DPW has no authority to seek to license nonprofit religious child-care 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).]

SUMMARY OF ARGUMENT

The signatories assert that the Department of Public Welfare (DPW) lacks statutory authority to demand that religious child care centers be licensed, which was upheld by the by the Commonwealth Court of Pennsylvania in the afore-mentioned St. Elizabeth's matter.

Secondly, while the purpose of these sections has to do with health and safety, see § 921(a), safety is spelled out in specific terms, *see* § 921(c). Not only is licensure not provided for by statute as to religious daycare, but DPW's licensure requirements do not further the safety concerns spelled out by statute. At the same time, the licensure requirements undermine a number of other public policy concerns.

Thirdly, compliance with certain sections of the proposed regulations will clearly and possibly significantly add to the operating cost of all daycare operations, and to cost of DPW supervision, if compliance with the requirements is to be monitored. Having staff develop, write and update meaningful "plans" for the instruction of each child in care will require significant amounts of time from skilled staff. If, as voiced during a meeting where the Department presented these changes to a group of stakeholders, these "plans" could just be downloaded and printed for each child from a website with age-appropriate information, then this amounts to mere meaningless paper shuffling and busywork. It would be the position of the signatories that

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[1] **Attached as Appendix A**

if such plans are to be truly beneficial to the child, it would require all those that work with the child at the center, and the parents, periodically evaluate the strengths and weaknesses of the child to come to a working plan. All of these items will require significant amounts of staff time and are bound to increase overhead for the centers, which in turn means a reduction in the availability of affordable childcare.

In response to the question of parental involvement in developing such "plans," a Department spokesperson said that such involvement of parents in the process "... would be up to the childcare center, if they chose to include parents in this process." This demonstrates another instance where the Department is writing regulations which de facto marginalizes parent's involvement in the plans for care fore their children, or places the daycare provider in the position of having to cover costs of staffing time for scheduling parent meetings and processing the information into meaningful plans, again raising the cost of childcare or marginalizing the parents role in the care of their child.

It is also noteworthy that at the aforementioned meeting where the Department was outlining the proposed regulations, the question was addressed to the Department representatives regarding the training and function of the department inspectors to review these "plans" for appropriateness and completeness. The Department spokesperson said that "at the present time ...' there were no plans to have their inspection staff review these individualized "plans" for appropriateness, nor were there plans developed to train the inspectors in how to evaluate the "plans." This would indicate that the Department knowingly will have no enforcement mechanism to check compliance, other than "checking if a paper" is on file for each child – which again demonstrates that the Department is adding requirements which are not critical to a program plan or to "health and safety" of the children, thus becoming possibly only more "paper shuffling" and busywork for both the childcare provider and the DPW inspector.

Let it be noted that in order to adequately comply to the requirements and have special trained DPW staff available, or train all of the present inspection staff to be able to evaluate the individual educational "plans" will increase the taxpayers cost for the government's side of the cost of these regulations, again squeezing the system, and making less affordable available to especially the poor and inner city parent.

In summary, <u>all</u> of the historically objectionable interpretations and applications of regulations by the DPW, <u>even in the face of court rulings</u> overturning some of the requirements they set forth for religious daycare providers, have been incorporated in the proposed revision.

In addition, several new demands have been added which will increase costs for the operation of all daycare centers, potentially further reducing the availability of affordable daycare for the poorer parent.

For those offering parents the opportunity to avail themselves of a religious-based childcare ministry, the new added requirements which are not based on "health and safety" add to the undue burden born by these ministries in defending themselves against allegations from department inspectors during their annual visits of the need to comply with program-related or licensure related mandates. Since the Department continues to adamantly refuse to recognize the

Article IX - Article X, distinctions set forth by the legislature nearly thirty years ago, setting forth the guidelines for the Department's relationship with religious daycare providers, and in fact now sets forth in the proposed regulations all these points of contention, even though under Article IX of the Act the Department s is limited to issues regarding "health and safety." Clearly, since some of these proposed requirements are programmatic, we object to their adoption and enforcement.

Yours truly,
PENNSYLVANIA FAMILY INSTITUTE

Michael Geer
President

cc: Independent Regulatory Review Commission;
Hon. Jerry Birmelin, Chair, House Committee on Children and Youth (Majority Chair);
Hon. Michael C. Gruitza, House Committee on Children and Youth (Minority Chair);
Hon. Jane C. Orie, Chair, Senate Committee on Aging and Youth (Majority Chair);
Hon. LeAnna Washington, Senate Committee on Aging and Youth (Minority Chair);
Hon. Thomas W. Corbett, Jr., Attorney General of Pennsylvania

Attachments: Appendix A

APPENDIX A

Pennsylvania Family Institute
In Response to Proposed Rulemaking by the Department of Public Welfare

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 *AMICI*, PENNSYLVANIA FAMILY INSTITUTE, COMMONWEALTH FOUNDATION, AMERICAN FAMILY ASSOCIATION OF PENNSYLVANIA, CONCERNED WOMEN FOR AMERICA OF PENNSYLVANIA, COMMONWEALTH EDUCATION ORGANIZATION, SHENANGO INSTITUTE, EAGLE FORUM OF PENNSYLVANIA, REACH FOUNDATION and REACH ALLIANCE IN SUPPORT OF PETITIONER, ST. ELIZABETH'S CHILD CARE CENTER

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The Pennsylvania Family Institute (PFI) is a non-profit research and education organization, based in Harrisburg, which focuses on public policies and cultural trends in Pennsylvania that impact families. PFI has long been an advocate for parental choice in the education and upbringing of children. Throughout its 16 years of existence, the Pennsylvania Family Institute has provided testimony and information to policy makers and the public about issues relating to education, child-rearing, religious freedom, taxation, and more. This expertise can aid the court because it is directly related to the issue at hand. PFI has more than 30,000 families across the Commonwealth as members.

The Commonwealth Foundation is an independent, non-profit research and educational institute that develops and advances public policies based on the nation's founding principles of limited constitutional government, economic freedom, and personal responsibility for one's actions. The activities of the Foundation are therefore committed to challenging the general perception that government intervention is the most appropriate or most efficient means of solving societal problems. This expertise is at the heart of the issue involved in this case: greater regulation of and less freedom for religious daycare.

The American Family Association of Pennsylvania ("AFA of PA") is a pro-family organization incorporated in Pennsylvania in 2000 as Pro-Family Alliance, Inc., and licensed as an affiliate of the American Family Association. AFA of PA works to support and strengthen families. As a result of its involvement in strengthening families, AFA of PA has developed expertise regarding the welfare and education of children.

Concerned Women for America of Pennsylvania is a state affiliate of Concerned Women for America (CWA). CWA is a 25 year old grass-roots, public policy organization that has as part of its focus reforming education by returning authority to parents.

The Commonwealth Education Organization (CEO) is a non-profit, nonpartisan educational organization concerned with promoting academic values and sound fiscal management in Pennsylvania's schools. CEO is dedicated to quality education for all children. CEO promotes fundamental academic pursuits in positive, healthy learning environments which foster individual achievement. CEO recognizes the inalienable right of parents to direct the education of their children at the local level.

The Shenango Institute is a regional public policy think-tank, based in western Pennsylvania, which focuses on economic issues from a free market perspective. The Shenango Institute is a supporter of parental choice and competition in education.

The Eagle Forum of Pennsylvania is a public policy organization which supports parents' rights to guide the education of their own children and to protect children against immoral instruction and materials.

The REACH (Road to Educational Achievement Through Choice) Alliance and REACH FOUNDATION are Pennsylvania's grassroots coalitions dedicated to ensuring parental choice in education. In 1991, REACH was founded to coordinate the efforts to pass school choice legislation in Pennsylvania. Since then, REACH has grown into a broad, diverse coalition that includes members from the business community, ethnic and religious organizations, parents, and taxpayer groups. REACH Alliance was instrumental in the drafting, passage, and recent expansion of Pennsylvania's landmark Educational Improvement Tax Credit (EITC) program.

REACH continues to educate Pennsylvania citizens and the General Assembly to ensure that parents have a true choice in their children's education.

SUMMARY OF ARGUMENT

Amici agree with Petitioner that the Department of Public Welfare (DPW) lacks statutory authority to demand that religious child care centers be licensed. Because that issue has been addressed extensively by Petitioner, Amici will not duplicate the same. Suffice it to say that the statute applying to religious daycare, 62 P.S. §§ 901-922, does not provide for licensure. Moreover, while the purpose of these sections has to do with health and safety, see § 921(a), safety is spelled out in specific terms, *see* § 921(c). Not only is licensure not provided for by statute as to religious daycare, but DPW's licensure requirements do not further the safety concerns spelled out by statute. At the same time, the licensure requirements undermine a number of other public policy concerns.

ARGUMENT

I. DPW LICENSURE REQUIREMENT ON RELIGIOUS DAY-CARE PROVIDERS LIMITS AVAILABILITY AND RAISES COST OF QUALITY DAY CARE WITHOUT IMPROVING HEALTH AND SAFETY OF CHILDREN.

Since the passage in 1996 of federal welfare reform legislation, and the enactment of similar "workfare" reforms in Pennsylvania, the need for additional day-care slots to care for the children of those moving off public assistance and into the workforce has increased. Non-profit religious day-care providers have played a significant and effective role in meeting that need, to the benefit of government, society, families, and children.

Public policy should not and must not diminish the supply of quality child-care, or force it out of the range of affordability. Certainly, this would be counterproductive both to the aims of welfare reform, but more importantly, to the well-being of children and families.

However, the efforts by DPW to force religious day-care providers to submit to licensure and to comply with the myriad of accompanying regulations, will only serve to diminish the supply, increase costs, limit the legitimate choices and options for families, and perhaps force some children into sub-par, unsupervised "black-market" day care situations.

Many of the regulations which DPW has adopted in the past, proposed for the future (and which it has billed as "necessary" for health and safety) are only marginally, if at all, related to health and safety. Centers that are compelled to submit to licensure not only fall under current regulation, but by default must meet future regulations, whether or not they protect the health or safety of children.

The real questions are, "What truly comprises health and safety?" and "Does licensure guarantee that health and safety?" There is plenty of data indicating that licensure provides no guarantees at all, and that it may indeed create a false sense of security that all is well within the center.

Experience has demonstrated that when shortages in the supply of day-care slots do appear, it is most likely that they are caused by regulations. Of all state regulations, those that directly affect staff/child ratios and staff qualifications most directly impact on the supply of day care. The *National Day Care Study*, commissioned by the US Department of Health, Education, and Welfare, confirmed that the staff/child ratio was the most important determinant of providers' costs but found only a "slight" correlation between staff-child ratios and quality. *See National Day Care Study*, Washington DC, US Government Printing Office, 1979.

A news report, filed by reporter Dan Gunderson of Minnesota Public Radio, highlights a typical impact that state licensure regulations have on the supply of child-care. While the example cited is from Minnesota, it correlates well with Pennsylvania and other states:

State Regulations Dampen Day Care
By Dan Gunderson
October 21, 1997

Anchor: Businesses in Minnesota and around the country are being encouraged to help in the welfare-to-work movement by providing child care for workers. There are 37 so-called corporate child-care centers in Minnesota. But recently, one of the first companies in the state to offer child care to employees closed its center. The owner says state regulations forced him out of the child-care business.

Reporter: Anderson Fabrics is a rapidly growing company in the small northern Minnesota community of Blackduck. More than 300 employees work here. Most are women. Eleven years ago, owner Ron Anderson saw his employees were struggling to find good child care. So he opened an on-site daycare center. Three years ago, he spent $300,000 on a new child-care facility. Last year, he says, the company subsidy of the center was $72,000.

Anderson: You got people making $7.50 per hour, and they're single parents. The two don't mix. You can't charge enough to meet your expenses in a daycare center and meet all the state regs and have these people afford it.

Reporter: Anderson says, the child-care center averaged 25-35 kids a day. Workers paid $.75 - $1.00 per hour less than other area daycares charge.

Reporter: Just across a parking lot from the bustling factory, Anderson Childcare now sits empty. Ron Anderson says he had the center built to the highest standards and tried to follow the rules. But, he says, his frustration is epitomized by an incident this summer when a state inspector cited the facility for unsafe and unsanitary practices.

Anderson: She observed a child climbing on a table. Everybody thinks, "Table. How high is a table?" Well it was this table - 14 inches off the ground. If a 2-year-old wants to climb on that table, nothing's gonna stop 'em unless you got 'em all chained to the floor. And then we got written up for a child taking a cracker from the table and sitting on the carpet and eating it. Unsanitary practices. These people don't think. It's not so much being written up, it's all the paperwork.

Such incidents irritated Ron Anderson. But what really forced the child care center to close was a long-running dispute with the state over staff qualifications.

Anderson: This is the day I decided to shut it down.

Anderson says he's always struggled to find qualified child-care workers, even though he paid more than the state average daycare wage. When the child-care center was short-staffed, he would recruit mothers from his plant to fill in.

Reporter: Last month, the state Department of Human Services told him to remove all unlicensed workers immediately from the child-care center. Anderson says it angers him that people who qualify to operate home daycare facilities are not qualified to work in his center.

Anderson: You can't have five people standing outside your door, waiting to go to work, if somebody doesn't show up. So you either send the kids home, or you use a little common sense and bring a mother over from the plant to care for the kids.

Reporter: Emma Randall brought her son to the center every day. She's one of the unlicensed workers who filled in when there was a staff shortage. She says it's an insult to be told she's not qualified to care for children

Randall: He's my son. He's six years old. I haven't killed him. You know, that teaching certificate doesn't tell you anything. There are lousy teachers out there, too. It doesn't say my son's gonna be safe or anything. What he got here was he was safe. He was protected. He enjoyed himself.

Reporter: Emma Randle and dozens of other Anderson Fabrics workers have had to scramble to find a place for their kids. Many say they are now paying more, and their children are 30 miles away instead of across the back parking lot.

Reporter: Wanda LaDuke is angry about what she sees as government intrusion..

LaDuke: I think the system sucks, to tell ya the truth. I don't like people telling me how to raise my child and who to leave my child with. If I trust 'em, I'll leave my child there. If I don't, I won't leave 'em. That's what the state's trying to do. They have no right to tell me how to raise my child and who I can leave my child with.

Reporter: The State Department of Human Services says Anderson Childcare has been given many opportunities to meet state regulations. Director of Licensing Jerry Kerber says, having licensed staff is critical to ensuring good care for children. He says, surveys show parents rely on the state to protect their children.

Kerber: Conceptually, parents want only the best care for their children. But when it comes to making the decision, the number one factor is cost. Number two is convenience. And they hang a lot of significance on the fact there is some regulatory oversight of the service.

Reporter: Kerber says most child-care centers in the state have no trouble operating within the rules.

But the Executive Director of the Minnesota Child Care Association says centers are much more heavily regulated than home daycare providers. David Ewald says there's a critical shortage of licensed staff. Many child-care centers in the state have to turn away children because they don't have enough workers who meet state guidelines.

Ewald: There should be a little flexibility in the system to allow for people who could do a fine job of caring for children - maybe under the supervision of appropriately qualified staff. But we need to look at adding some flexibility to the system.

Reporter: A 60-member task force is now examining child-care regulations in Minnesota. Jerry Kerber from the Department of Human Services says they will make

> recommendations for change to the 1998 Legislature. He says, one recommendation might well be to relax regulations for corporate child-care centers to encourage more businesses to provide child-care to workers. Ron Anderson says he'll reopen his daycare in Blackduck tomorrow. If - as he puts it - the regulations reflect a little common sense.1

Pennsylvania regulators learned this lesson (albeit briefly) in the early 1990's. After enacting comprehensive regulations in 1992, DPW recognized in 1994 that many of those regulations would best be deleted or amended because they were found, in its own words, to be "confusing," "excessive," "unnecessarily burdensome," or simply "unnecessary." As DPW noted, compliance with some of these regulations raised the cost so significantly as to make it "prohibitive to many facilities" and "available day care [was] reduced as a result of prohibitive cost." *See* 24 PA Bulletin 4891, *et. seq.*

The bottom line: state licensure regulations – which are often arbitrary and only tangentially related to health and safety at best – can and often do create the environment where costs go up, and supply diminishes. This can have the result of forcing families into latch-key situations, "underground" day-care providers, or worse. The imposition of these same regulations on non-profit religious day-care centers, through recognition of licensing authority, can also be expected to result in higher costs and decreased supply – with no commensurate measurable increase in health and safety.

It is clear that a large proportion of parents who seek childcare for their children currently choose religious childcare. This reduction in available religious childcare centers due to licensing and regulatory mandates will inevitably have a serious deleterious impact on the right of parents to choose religious facilities.

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1 Available at http://news.minnesota.publicradio.org/features/199710/21_gundersond_day-m.

II. DPW LICENSURE REQUIREMENT ON RELIGIOUS DAY-CARE PROVIDERS LIMITS PARENTAL CHOICE IN DAY-CARE ARRANGEMENTS.

It is important to note that the St. Elizabeth's center was issued a cease and desist order based on its refusal to be licensed – not because the health or safety of children at the center was in danger. This suggests that ultimately DPW seeks to demand that St. Elizabeth's and all non-profit religious day-care centers meet each and every day-care regulation it promulgates.

This licensure, and the concomitant submission to open-ended regulation, also threatens parental choice in significant ways. Many, if not most, religious day-care providers operate centers as a mission, which results in a number of significant benefits to children, families, the taxpayer, and society as a whole.

First of all, religious day-care is typically provided at a lower cost, since churches and other religious institutions often provide facilities, and cover janitorial service, utilities, and other capital and operating overhead costs at no charge to the center. This is a tremendous benefit, especially in lower income settings where commercial day-care costs are prohibitive.

Second, staffers and volunteers themselves often feel a sense of "mission" or "calling" to serve the children and families at a religious day-care center. Parents and children can often instinctively sense the high level of love and caring exemplified in these settings – caring that is not always matched at centers motivated by other purposes.

Third, religious day-care facilities very often are able to maintain greater staff longevity, again owing to the religious mission and dedication of the staff and volunteers. This longevity, experts say, is key to the well-being of children in day-care settings. *See Healthy Child Care America*, Volume 3, Number 1, January 1999. *Early Brain Development and Child Care.* American Academy of Pediatrics, pp 6-8.

Regulations requiring certain numbers of credit hours in "early childhood education" for staff members are indefensible on the issue of health and safety, and they may cause the disqualification of many long-time child-care staffers at work in church day-care centers all across Pennsylvania.

Quite frankly, these arbitrary guidelines hurt all day-care providers. A *Washington Post* article from January, 1992 spoke glowingly of the quality, loving care that senior citizen day-care staffers provide. The director of one facility in suburban Washington told about a 72-year old grandmother they employed at the center – a woman with no college credits in the field.

> "I really didn't realize how great it would be" said the center director. "The children love her to death – when she comes in they go right to her. She's very nurturing, very patient."
>
> Said one parent, "It's not quite the same as a grandparent's unconditional love, but its nice for them to be around elderly people and see the warmth and love they can give."

At Day Care, A Meeting of Generations, WASHINGTON POST, Jan. 27, 1992, p. B-1.

Love and nurturing can't be taught in Early Childhood 101, and yet government regulators and child care advocates say such educational mandates are "health and safety related." And so, the children suffer, and parents are deprived of sending their children to places where they would be best served. In that same *Washington Post* article, an executive with KinderCare Learning Centers, Inc., said that state regulations were hampering their efforts to hire these quality, loving, nurturing senior citizens:

> "We haven't figured out how to blend our desire to expand in this area with dealing with state certification requirements. There is a reluctance on the part of that group [senior citizens] to go back to school for extensive training."

Id.

Additionally, what amounts to DPW requiring the licensure of the religious mission of these centers provides the state with an undue and virtually unlimited ability to direct and restrict

the programs of these religious providers, and thereby eliminate their distinctive qualities that are so attractive and beneficial to so many parents and children. Many parents choose religious day-care centers *because* of the religious values, teaching and standards they employ in the care of children. These parents are the best determiners of what constitutes quality. Imposition of licensure virtually assures that the religious distinctive will be blurred or erased entirely.2

In 1989, another time when there was a significant push for increased day care regulation, the *Harrisburg Patriot-News* editorialized on the question of whether, in their words, "additional bureaucratic intervention" was warranted, or whether it can guarantee perfection. Said the *Patriot-News:*

> We don't think so. Rather, we fear the result of placing additional bureaucratic burdens [on day care] is going to be a reduction in the availability of affordable day-care at a time when it is increasingly hard to find. Government oversight is no substitute for parental inspection of day-care providers, which is the best guarantee that a child has been placed in good hands.

More Red Tape for Child Care, HARRISBURG PATRIOT-NEWS, Monday, September 25, 1989.

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2 Consider, for example, the Federal "Act for Better Childcare," a legislative proposal from the late 1980s that had the endorsement of most national "quality child care" advocacy groups. When first introduced, Section 19 of the bill said that day-care providers cannot have any "sectarian purpose." Defined very broadly, that provision caused quite a controversy, as it unmasked the real intentions of some of the "child care advocates."

Under that bill, religious institutions providing subsidized day care would have been required to cover religious images and pictures with sheets to hide them from view. Religious personnel could not assist in providing day care, nor could religious teaching be provided for the young. The bill further required that rooms and facilities used for subsidized day-care at religious day-care centers be permanently set aside for non-religious uses.

The net effect of such onerous regulation would be to either eradicate the religious mission of the centers (a primary factor in why parents choose religious day-care) or to force them out of business entirely.

It must be noted that this bill had the support of dozens of so-called "mainstream" national and state-based advocacy groups, including some here in Pennsylvania, groups which continue to press for licensure of religious day care providers today. Given this track record, it is quite understandable that religious day care providers and parents are wary to anyone, and especially those enamored of these concepts, the blank check licensure provides.

We agree. Licensure of non-profit religious day-care centers will create a homogenization of child-care center, rendering parental choice virtually meaningless.

III. DPW LICENSURE REQUIREMENTS ON NON-PROFIT RELIGIOUS DAY-CARE PROVIDERS COULD FORCE IMPOSITION OF CONTRARY VALUES AND TEACHING IN DAY-CARE TRAINING, TEACHING AND STANDARDS.

DPW's current regulations of non religious, for profit day care are statutorily authorized by Article X of the Public Welfare Code which grants the Department explicit licensing authority and broad regulatory authority, over program and staffing, among other areas. Amici do not believe these regulations are statutorily authorized under Article IX. Yet, DPW claims identical authority under both statutes. Therefore, if this Court were to accept DPW's position, it would effectively impose a licensing mandate on religious nonprofits and grant DPW regulatory authority identical to that contained in Article X.

In addition, a grant of licensure and regulatory authority to DPW over program and staffing will not end with the intrusions contained in DPW's current regulations. If DPW were to gain control over religious nonprofit facilities via licensing, it could promulgate more intrusive regulations in the future and require compliance.

For years, early childcare advocates (lobbyists) are encouraging more government regulations and national standards for day care centers. Advocates have lobbied for a two-part policy initiative that would provide government with increased impact in the area of childcare while minimizing the child-rearing role of parents.

Part one is a grant program that would fund the expansion of preschool to allow the enrollment of more children with the eventual goal of universal childcare serving every child in Pennsylvania. *See Early Childhood/School Readiness Initiative*, Pa. H.B. 1671 (2001), § 4. The

second part requires that funding for preschools be directly linked to a set of quality standards designed by a bureaucratic committee. *Id.* § 6(d)(6). In order to receive state dollars, childcare providers must conform to government's concept of quality.

These government-mandated standards take the form of accreditation programs, administered by groups like the National Association for the Education of Young Children (NAEYC). Community colleges cooperate with NAEYC in the development of Child Development Associate (CDA) degrees. Federal programs like Head Start actually pay for their teachers to complete this accreditation process—80 percent of CDA certified teachers are in Head Start. *See* DeJarnette, Robin. *Universal Child Day Care: The Latest Attack on the Family.* The Family Foundation. 1998.

A major problem is the agenda that groups like NAEYC are pushing through these accreditation programs. For example, NAEYC's *Anti-Bias Curriculum: Tools for Empowering Young Children* featured instruction for teachers on "constructing nonsexist gender identity" in two-year-olds, which includes the following activities:

- showing toddlers books that feature anatomically correct pictures of the human body;
- making copies of an outline of a body drawn by a preschooler and asking toddlers to fill in all body parts to show if the picture is a boy or a girl;
- using anatomically correct dolls in play areas.

See National Association for the Education of Young Children (NAEYC). Louise Derman-Sparks and the ABC Task Force. *Beginnings: Working with 2-Year-Olds*. Anti-Bias Curriculum: Tools for Empowering Young Children. 1989.

Teachers are also told to discuss children's genitals during diaper changes in order to point out the differences between boys and girls. *See id.* The anti-bias curriculum for two-year-

olds also includes reading books about boys and girls that "contradict gender stereotypes," as well as books that feature families with two daddies or two mommies. *Id.*

Since NAEYC is the accrediting agency for the federal government's childcare programs, more government regulations and standards in childcare may lead to the national use of curricula like those endorsed by NAEYC. *See id.*

It is not fanciful to believe that it will only be a matter of time before DPW jumps on this bandwagon and promulgates new and expanded regulations designed to promote "tolerance" and "anti-bias" programs which it deems necessary for appropriate social development of children. In fact, DPW's current regulations proclaim that the regulations were promulgated, in part, to promote social development in children. 55 Pa. Code § 3270.1. Therefore, DPW already claims to have authority to control this area. The only question remaining is how it will ultimately define and regulate the "social development of children."

While these programs claim to make sure every child starts school ready to learn, there is a deeper issue to consider. As the government steps up regulations and imposes standards, it also removes childcare even further from the family and private sector where it belongs. The government, not parents, ends up defining how children should be raised and what values should be instilled in them under the claim of "health and safety."3

More than 40 years ago, economist Milton Friedman offered an indictment of government credentialism that is even more compelling today. Licensure, Friedman noted, "almost inevitably becomes a tool in the hands of a special producer group to maintain a monopoly position at the expense of the rest of the public. There is no way to avoid this result."

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3 Furthermore, government funded childcare programs greatly limit choices in the marketplace by encroaching upon the ability of many home-based and church childcare centers to provide alternative quality programs that many working parents prefer for their children.

Those who testify in support of licensure of non-profit religious day-care centers say that the goal of licensure is to guarantee health and safety, and that the regulations that come with licensure are baseline, and by no means onerous. That point is debatable; but what is not is that, as in the examples cited above demonstrate, licensure becomes the ever tightening noose that could very well eliminate distinctive faith-based day-care centers. The result would become a monopoly of homogenized centers that don't meet the wishes of parents, but instead mirror the myopic, monochromatic values and directives of those who press so strenuously for licensure.

The burden of proof should be on the regulators to prove their regulations benefit health and safety in a significant and cost effective way. Licensure removes that burden of proof.

It is unfortunate that DPW, in its demand for licensure, seems to be flowing against the tide of increasing parental choice in all areas of education and child care, and against the growing recognition of the value of faith-based organizations to civil society. In Washington, here in Harrisburg, and in capital cities all across America, policy makers are acknowledging the significant benefits that accrue to families and society thanks to the work of faith-based organizations, including child-care facilities

The negative impact on religious day care could be especially tragic in the inner city, where many parents would prefer to have their children raised in a religious environment – an ironic result, given proponents professed aim of helping the poor. While early childhood development strategies are seldom of enduring benefit to disadvantaged children, religious institutions and the strong moral values they inculcate have an unchangeable record in helping inner city youth escape drug addiction, illiteracy, and poverty. Among black male teenagers in the inner city today, those with religious values are 47 percent less likely to drop out of school; 54 percent less likely to use drugs; and 50 percent less likely to engage in criminal activity. *See*

Michael Novak, *The New Consensus on Family and Welfare* (Washington, DC: The American Enterprise Institute, 1987) p. 34.

As has been stated, licensure is no guarantee of safety or quality. What comes closer is a system where parents are vested with the ultimate responsibility for the quality of their children's day-care, and are provided with the information to make good choices. Since parents typically come into contact with the day-care staff and observe the facility at least twice a day, parents are in the best position to monitor day-care facilities effectively. Complaints by parents can then form the basis for official action, including unannounced inspections by state or local authorities. Religious day-care providers could file with the state, meet real, legitimate health and safety guidelines (as religious schools are required to do), and still be free to provide the quality day-care that comes with their religious mission.

CONCLUSION

Should DPW have licensing authority over religious daycare, availability of daycare will be limited, parental choice will suffer, and curriculum choices will be forced upon religious institutions and religious parents. Amici respectfully request this Honorable Court to reject DPW's claimed authority to license nonprofit religious childcare ministries like St. Elizabeth's, and to dismiss the Department's Cease and Desist Order.

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving two copies of the foregoing document upon each of the persons below, by First Class Mail, which service satisfies the requirements of Pa. R.A.P. 121:

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