

# Children's Healthcare Is a Legal Duty, Inc.

Box 2604, Sioux City IA 51106  
Phone 712-948-3500  
Web page: [www.childrenshealthcare.org](http://www.childrenshealthcare.org)

Number 2, 2008, © by CHILd, Inc.  
E-mail: [childinc@netins.net](mailto:childinc@netins.net)  
Written and edited by Rita Swan

*Equal rights for children under the law*



*Jetta Bernier, Executive Director  
Massachusetts Citizens for Children*

## Massachusetts legislature again rejects church bill

In Harwich, Massachusetts, 5-year-old Lisa Sheridan died of pneumonia in 1967 with a quart of pus in one tiny lung because her Christian Science mother would not take her to a doctor. The mother was convicted of manslaughter.

In 1971 the Christian Science church persuaded the state legislature to place a religious defense in the criminal code. Church lobbyists told legislators that many other states had laws just like it and that insurance companies reimbursed the bills for their prayer treatments.

Indifferent to the welfare of children, bill supporter Senator James Kelly told his colleagues that the legislature should not “[impose] its moral views

upon anyone else, except where the rights of others should be protected.”

The new law was an ambiguous exemption to the misdemeanor of non-support, but the church indicated to its members that it gave them a legal right to withhold medical care from a child regardless of the child’s illness or injury. In its booklet of legal advice for Christian Science parents the church quoted the exemption and then said, “This is a criminal statute and it expressly precludes imposition of criminal liability as a negligent parent for failure to provide medical care because of religious beliefs.” (*Legal Rights and Obligations of Christian Scientists in Massachusetts*, 1983, p. 19)

In 1986 Christian Science toddler Robyn Twitchell died near Boston after five days of suffering from a twisted bowel and then peritonitis. His parents called the church’s public relations manager Nathan Talbot for advice more than once during the illness, and it is highly likely they were following Talbot’s advice in their decision to withhold medical care.

The parents were charged with manslaughter. Their attorneys and the church argued strenuously that the religious defense to the misdemeanor carried over to be a defense to manslaughter.

The Twitchells were convicted. The Massachusetts Supreme Judicial Court overturned their conviction on a technicality but also ruled that parents had a legal duty to obtain medical care for a child regardless of their religious beliefs, and the exemption did not abrogate that duty.

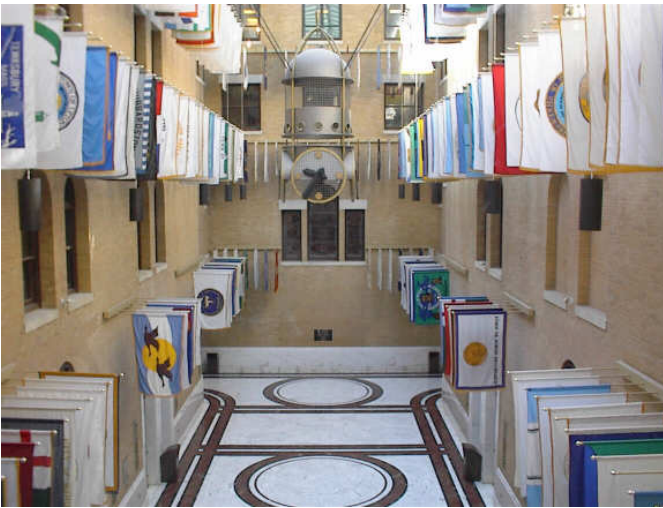
### INSIDE

Nebraska maintains metabolic screening law .....	2
Modest victory in Iowa .....	5
Swan’s testimony to Iowa Board of Health .....	6
Amish win exemption from child labor laws.....	6
Former Amish child laborer speaks out .....	7

## Jetta and Ken go to work

Jetta Bernier, Executive Director of Massachusetts Citizens for Children, and CHILD member Ken Casanova worked tirelessly to repeal the exemption. They formed a coalition of more than twenty state organizations that met regularly in Jetta's office. After five years of hard work the exemption was repealed in 1993.

State Representative Byron Rushing, who has the Christian Science church international headquarters in his district, regularly introduces bills to provide a religious defense to felony crimes against children. The bills have always died.



*Great Hall of Flags*

Credit: Massachusetts Art Commission

In 2007 the church pulled out all the stops to get a religious defense to the crimes of “assault and battery on a child” and “wanton or reckless behavior creating serious bodily injury or sexual abuse to a child.” A two-page color spread ran in a church periodical with photos of Rushing addressing a crowd of Christian Scientists at the Great Hall of Flags in the Statehouse and enjoining them to besiege their legislators to pass the bill.

## Church: let parents explain reasonable spiritual treatment to jury

Always before, Rushing was the sole sponsor, but now his bill, titled “An Act to Further Religious Freedom,” had 32 co-sponsors. Also, this year the church added the qualification that the exemption was for parents who “*reasonably* provided to the child spiritual treatment through prayer in lieu of medical treatment.” (emphasis added)

The church claimed that the bill did not provide an exemption from prosecution or even change the prosecutor's burden of proof, but simply gave parents the opportunity to explain their motives to a jury.

## Ken: recklessness is not reasonable

Jetta and Ken went to work again, forming another coalition, holding meetings, and planning strategy. Jetta's colleague Laura Gold obtained support from several district attorneys. Ken wrote a masterful 10-page paper opposing the bill. He pointed out that current law and judicial rulings had already defined when it was unreasonable for a religious objector to withhold medical care, namely when it is “wanton or reckless,” and already allowed parents to explain themselves to a jury.

The injuries to children described in the crimes that the church wanted a religious defense to are very serious, for example, “substantial impairment of the physical condition, including any burn, fracture of any bone, subdural hematoma, injury to any internal organ. . . , permanent disfigurement, protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death.”

When parents wantonly or recklessly allow those harms to befall their children, Ken asked, should the state excuse them because they relied on prayer instead of medical care?

## Bill would resurrect prior confusion

The legislature repealed the religious exemption in 1993, he said, so that parents with religious objections to medical care would not be confused about their legal responsibilities as the Twitchells and their church claimed that they had been. The church's bill re-introduces the same confusion, he claimed.

In March, 2008, the Joint Committee on the Judiciary held a hearing on the bill. The testimony against the bill was signed by Massachusetts Citizens for Children, the state chapter of the American Academy of Pediatrics, Massachusetts Medical Society, Boston University School of Public Health Bioethics and Human Rights, Cambridge Family and Children's Services, Communities for People, Global Lawyers and Physicians working for Human Rights, Massachusetts Adoption Resource Exchange, Massachusetts Society for the Prevention of

Cruelty to Children, Suffolk University Law School Child Advocacy Clinic, and six district attorneys.

The Judiciary Committee sent the bill with several hundred others to the House Rules Committee for “study,” which we were told meant that the bill would die, and it did.

Massachusetts remains one of only five states with no religious exemption in either the civil or criminal code pertaining to care of sick children.

## **Metabolic screening upheld in Nebraska court, maintained by legislature**

In 2008 the Nebraska Supreme Court again upheld a state law requiring metabolic screening of all babies, and a state senator withdrew his amendment in Nebraska’s unicameral legislature to create a religious exemption to the screening law.

Mary and Josue Anaya of Omaha believe withdrawing any blood from the body is sinful and could even shorten a person’s life. Their conflicts with the state go back to 2003, when their eighth child was born at home with no physician attending her birth.

When they applied for a birth certificate, the state informed them that they must get the infant screened for metabolic disorders. After they refused, the county attorney brought a civil action to compel them to get the screening. The Anayas challenged the law as an unconstitutional infringement on their parental and religious rights.

The Nebraska Supreme Court unanimously upheld the law, and the U.S. Supreme Court declined to review it. *Douglas County v. Anaya*, 269 Neb. 552 (2005)

Since they live just across the Missouri River from Iowa, the Anayas had their next baby in Iowa, which allows all parents to refuse metabolic screening.

The Anayas presented their experience to the legislature as an injustice and argued for a religious exemption, but their bill died in committee.

### **State takes temporary custody**

In 2007 the Anayas gave birth to their tenth child at home in Nebraska. When they refused to have metabolic screening, the district attorney ob-

tained an order for temporary custody of Baby Joel. The judge ordered that the baby be held in the hospital until the test results returned. Mrs. Anaya was allowed to be in the hospital with Joel and to nurse him.

When test results came back negative, the baby was returned to his home and the court moved to dismiss the case. The Anayas, however, moved to appeal on grounds that their religious liberty rights had been violated and that Joel was not neglected.

### **Metabolic diseases rare**

Their state senator sponsored a bill to add a religious exemption to Nebraska’s metabolic screening law. Proponents included ACLU Nebraska, which has represented the Anayas and a Church of Scientology couple; Nebraska Family Council; and Family First, which focuses on protecting religious liberty. One said the test caused severe pain to some infants for more than half an hour. All emphasized that the metabolic diseases are rare. Some pointed out that statistically there is more risk to children from dog ownership, football, and bathing than from metabolic diseases. They also pointed out that most states allow parents to refuse the test.

Dr. Khalid Awad, an Omaha neonatologist, testified in support of Nebraska’s universal newborn screening law. He said the blood test was the only way to identify the metabolic diseases. The diseases are generally catastrophic and the damage irreversible without early detection, he said.

One senator pressed him on the requirement that the test be done within 48 hours after birth. The Church of Scientology parents have a religious belief in “silent birth,” which prohibits talking to a newborn or causing them any distress for the first week of life. They sued in federal court for a religious right to delay the test and lost. *Spiering v. Heineman*, 448 F.Supp.2d 1129 (D. Neb. 2006)

### **Keep focus on infant’s best interests**

Awad closed with a plea for a focus on the best interests of vulnerable newborns:

It is essential to remember that the patient here is the newborn infant, and they need to have their best interests for their life represented and spoken for. I don’t question the sincerity of people’s beliefs. . . . But at the end of the day, people make ill-informed decisions and

there are irreversible repercussions to the child. It isn't a matter of convenience for the medical community; it is a matter of what works best for the state of Nebraska to collect these specimens and test all these children effectively and efficiently. It's not my convenience; it's what's best for the child.

### **Mom speaks for brain-damaged son**

Patricia Crawford of Omaha testified against any exemption. Her middle child was born in Louisiana, where metabolic testing was not then required. By the time the boy was diagnosed with phenylketonuria (PKU), the brain damage could not be reversed, and he had to be placed in a state institution where the average cost of care per patient is \$158,000 a year. The boy has never uttered a word, needs help with every aspect of daily life, and is unaware of common dangers.

Crawford pointed out that brain damage forever robs the child of freedom to choose his own beliefs.

Jeanne Egger of Lincoln also opposed the exemption. Two of her sons were born with galactosemia, which is rapidly fatal without early detection and treatment.

### **Christian Scientists took foolish risk with baby**

The last witness was Janice Soderquist, a CHILD member from Axtell. She grew up in a Christian Science family. Because that religion approves of medical attention at childbirth, her sister was born in a hospital where she tested positive for PKU.

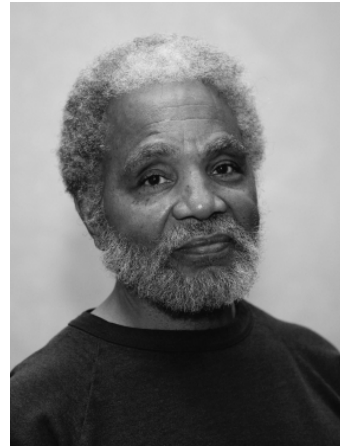
"Because of their religious beliefs," Janice continued, "my parents refused to put my sister on the diet needed to prevent the damage from this terrible disease. Back in those days the state did not follow up with our family. My parents got to do what they wanted to do. Fortunately, praise the Lord, the test must have been a false positive because my sister developed normally without the diet. . . . To my mother and grandmother, this was a great victory for Christian Science, but it looks to me now like Russian roulette and a very foolish risk to take with a child's life."

### **CHILD asks Chambers for help**

The Health and Human Services Committee voted in favor of the religious exemption.

With the bill going to the floor, CHILD contacted Senator Ernie Chambers, a longtime opponent of religious exemptions from children's healthcare, and faxed materials for him to use in floor debate. A few hours later his secretary called and relayed the message that "it's all taken care of."

It was hard to believe. However, Chambers and Senators Gwen Howard and Steve Lathrop strongly opposed the exemption in floor debate and then the sponsor withdrew the exemption amendment saying he had promised the chairman to do so if it became controversial.



*Photo by Brent Nicastro*

Chambers is Nebraska's longest serving legislator and the only African-American ever to serve in the unicameral. He is famous for one-man filibusters. Because of term limits, which some say were enacted just to get rid of him, 2008 is his last year in the legislature.

### **Chambers told the unicameral:**

My opposition to these types of amendments always has been and remains ferocious. Whatever adults want to do with themselves, with their own health based on a religious belief or any other reason is fine, but there are times when the state has to look out for the interests of children. I will resist this amendment to the maximum, and if this amendment is adopted. . . , I will fight this entire bill. Although it's on Select File, I probably can't get a full eight hours. But I will fight this bill. . . .

They used to bring what was called the Christian Science amendment, and I fought it off down through the years. There were senators who felt a need to support it and they would come to me and tell me that they were glad that I opposed it because they couldn't. . . .

Whenever medical science has reached a point where protection, even of a preventative nature, can be afforded children, that is what I am in favor of seeing put in place and acted upon.

## Supreme Court upholds screening law again

In December the Nebraska Supreme Court upheld the metabolic screening law against the Anayas' challenge for a second time. The Court again ruled that the state need have only a rational basis for a neutral law of general applicability. The Anayas cited a 1996 ruling in which the Court had required the higher standard of strict scrutiny when religious freedom was involved. The Court rejected the relevance of that case because the federal Religious Freedom Restoration Act was then in effect but was overturned by the U.S. Supreme Court the next year.

The Court did, however, rule that the state Department of Health and Human Services should not have taken custody of the Anayas' baby and retained custody until test results became available. The Court said the district attorney had other means available to compel the metabolic screening. *In re the interest of Anaya*, 276 Neb. 825 (2008)

### Comment

Common sense is a wonderful invention. In CHILD's view metabolic screening and other child protection measures are a simple matter of weighing risks against benefits. There should be limits on the state's power to intrude on a family. There should be limits on the state's power to order medical tests, and we have published what in our view are appropriate limits. See "When should testing be required?" in the CHILD newsletter 2005 #1, available in our newsletter archives at [www.childrenshealthcare.org](http://www.childrenshealthcare.org).

When the intrusion is very small (a few drops of blood from the baby's heel), when a catastrophic disease of reasonable prevalence can be detected, and when medical science has a treatment that will prevent the damage from the disease, then requiring the test is appropriate in our view.

Opponents argue that we let parents take risks with their children that are much more likely to harm them than a metabolic disorder. Let us, however, take bathing babies as an example. We could pass a law prohibiting baths for babies. That would not be in the best interests of children. We could station social workers in all homes with young children to monitor their baths. That would be massive intrusion into family privacy and would surely be ruled unconstitutional.

Bathing babies is not inherently dangerous and has substantial benefits. We therefore allow parents to do it without state oversight, but we also have child endangerment laws with criminal penalties for leaving a very young child unattended in a bathtub.

We thank Senator Ernie Chambers for his 38 years of public service in the legislature. He is the main reason Nebraska has never had a religious exemption from child abuse or neglect in either its civil or criminal codes and is one of only five states requiring metabolic screening without exception.

CHILD presented Chambers with the Imogene Temple Johnson Friend of Children Award to honor his work to secure for Nebraska children the "equality before the law" promised in the state motto.

## A victory in Iowa

CHILD and Iowa allies achieved a modest victory this summer on Iowa's lead-screening regulations.

In 2007 the legislature passed a law requiring that children have a blood lead-level test when entering kindergarten. Over CHILD's opposition the bill provided that the Iowa Department of Public Health (IDPH) "may" offer a religious exemption to the test. One legislator tried to amend "may" to "shall," but we asked legislators to oppose the amendment, and it was defeated.

### Protective conditions for exemption proposed

We then worked to communicate to the IDPH that the legislature had at least given them authority to set conditions for the religious exemption. We proposed that the department regulations require the religious objectors to read educational materials about the risks, symptoms, and remedies for lead poisoning and to complete a risk assessment questionnaire administered by a healthcare provider as Maryland requires.

The IDPH released its draft regulations in May, 2008, and opened a period for public comment on them. The draft allowed religious objectors to refuse the test for their children simply by signing a notarized statement on their sincere religious beliefs against it. Several Iowa CHILD members sent comments asking for more protective conditions to be placed on getting a religious exemption. The



*Rep. Roger Wendt*

Healthy Siouxland Initiative coalition, Siouxland Lead Coalition, and State Representative Roger Wendt, D-Sioux City, also wrote letters supporting CHILD's proposals.

In June the IDPH released its final regulations with no changes to the religious exemption.

We had one last chance to make an impact: the Iowa State Board of Health had to vote on the regulations. Usually their votes on regulations are just *pro forma*, but we did not want to miss a chance. We were told we could have two minutes to testify and drove the 200 miles to Des Moines to do so in July.

The day before the board meeting the IDPH e-mailed us the form they had developed for the religious objectors to sign. It included good information on the foolish risks the objectors were taking by refusing the test. We were grateful for that but still hoped for the risk assessment questionnaire to be required as well.

One board member, Dr. John Stamler, an Iowa City ophthalmologist, spoke strongly in support of our proposals.

The board did not vote to change the regulations but did agree to gather information on the number of Iowa children with religious exemptions from health care laws, the trends in the numbers, and what risks they may represent.

### **Warning added to exemption form**

Afterwards, we spoke with the Attorney General's office and suggested that the religious objectors' form add a warning pointing out that an exemption from a test is not an exemption from getting treatment for a sick child. This is an especially important issue with immunizations, as many parents with religious exemptions from immunizations assume that they also have an exemption from getting medical treatment after the child contracts a vaccine-preventable disease.

A week later the official form for the objectors was made public. We were quite pleased to see this paragraph in the form they have to sign to get a religious exemption:

The religious exemption from blood lead testing does not relieve a parent from an obligation to provide necessary medical treatment for a sick or injured child. Be advised that mandated reporters have a legal duty to report your child as neglected if they have reason to believe the child is being deprived of necessary medical treatment.

The Christian Science church has publicly claimed this year that religious exemptions are enacted because legislators believe Christian Science heals disease as effectively as medical care. We therefore consider the "disclaimer" in Iowa's religious exemption form important.

The IDPH reports that fewer than five kindergarteners were given religious exemptions from the lead-level test in 2008.

---

## **From CHILD's testimony to Iowa Board of Health**

We have long called for protective conditions to be placed on the religious exemption to lead screening.

The lobbyist for the Christian Science church opposes such conditions. He claims that Christian Science children should be exempted from the test because their "prayer treatment" both prevents children from getting elevated levels of lead in their blood and heals any harms caused by lead exposure.

Last month the church wrote in the *Wall Street Journal* that legislators pass laws allowing parents to rely on "proven prayer-based care" for children because they've heard "testimonies as to the undeniable effectiveness of prayer, at least as taught in Christian Science." (June 21)

Who on the Board of Health or in the Department [of Public Health] believes that testimonials are proof that parents can ignore all of society's accumulated knowledge about health and their children will be fine? Yet every religious exemption from medical care becomes evidence put before

parents by church officials that their prayer-treatments are not only a *legal* substitute for medical care of sick children, but also *safe* and *effective*.

### **No religious exemption for food production**

Last year a cheesemaker in Cresco closed because some Old Order Amish dairy producers would not agree to the use of electricity and other modern production methods to make the cheese. (*Des Moines Register*, Jan. 16, 2007)

Iowa did not give the Amish a religious exemption allowing them to make cheese without modern equipment. Why? Because the cheese was being sold to the public and might not be safe to eat.

Shouldn't you as policymakers care about the health of children in faith-healing sects as much as you care about protecting yourselves and the general public?

The certificate for a religious exemption requires religious objectors to give up any right to sue health care providers or the state for injuries caused by lead. It is distasteful for the state to focus on financial matters when there is little concern in its policies for the welfare of children who may be injured. There are more losses than money when a child is brain-damaged by lead poisoning. The child has lost the freedom to make his own decisions as an adult. He has lost much of what makes life meaningful. And society has lost the potential contributions he could have made.\*

Who are these children in faith-healing sects to you? What obligation do you feel for their welfare? We urge you to amend the rules to reduce the health risks to children of religious objectors.

\*Note—After my testimony, the Attorney General's office told us that the liability disclaimer was put in as a way to discourage the parents from asking for a religious exemption and was not primarily intended to protect the state.

---

## **Amish win exemption from child labor laws**

Iowa (see previous article) does not allow the Amish to act out their religious beliefs on cheese-making, but has many religious exemption laws that restrict helpless children's access to health care.

Likewise Ohio would not allow the Smucker's family to act out their Christian Science beliefs that bacteria are unreal when they make their jams and jellies, but Ohio does have a religious defense to manslaughter allowing them to withhold lifesaving medical care from their children.

For some legislators cheese and jelly are more important than a small minority of children.

### **Amish 14-yr.-olds allowed to work fulltime in sawmills and factories**

After losing in three legislative sessions the Amish finally won an exemption from federal child labor laws in 2004 when it was tucked into an omnibus federal spending bill. It allows youths aged 14-17 to work fulltime in the Amish wood-working factories and sawmills if they are supervised by "an adult member of the same religious sect" as the child, are protected from "exposure to excessive levels of noise and sawdust" and flying debris, and do not operate power-driven machinery.

Ironically, the omnibus spending bill with the exemption also contained a provision prohibiting the federal money from being used to purchase goods or services "rendered, whole or in part, by forced or indentured child labor."

### **Religious exemption may be unconstitutional**

Congressman Major Owens, D-NY, pointed out that the exemption deprives Amish children of protections extended to others, creates an incentive for employers to hire children of one religion, and requires the Labor Department to document the religion of employees, all of which may be unconstitutional.

As with other religious exemptions, however, there is no easy way to file a constitutional challenge because parents must give permission for children to sue and the religious exemptions were created for the parents' benefit.

Opponents also pointed out that the occupational fatality rate in the lumber and wood products industry is five times higher than the national average and therefore federal law prohibits youths under 18 from doing even part-time work in sawmills.

Congressman Joseph Pitts, R-Pennsylvania, who has 20,000 Amish in his district, retorted, "Is it more dangerous to work in a sawmill than to have a federal bureaucrat destroy the ability for a Christian

community to teach their children in a way that is culturally appropriate?"

Pitts also argued that his bill provided more protection for the Amish youths than public high school students get in their shop classes where they are allowed to operate power machinery.

Congress ignored the letter below, which, in our view, vividly illustrates the difference between taking a half-hour shop class and working more than 40 hours a week in a sawmill.

## Letter to Congress

October 21, 2003

Dear Senators and Representatives:

I was born and raised Amish. Both my brother and I were forced at a very young age to work in a sawmill that was owned and operated by our Amish uncle. As soon as we left elementary school at age 14 it was decided by various leaders in the community that we would work on the sawmill because our family was poor and needed the money. We protested this decision, but our protests were overruled by the leaders in the Amish community.

The sawmill work was extremely dangerous and strenuous. We worked around saws, belts, cables and other power equipment used to move and cut logs. We rolled heavy logs onto carriages where they were clamped and cut. We lifted and carried boards weighing hundreds of pounds. Often times we had to step over tracks while carrying these boards, which created risks for slipping or twisting. My brother and I were lucky in that neither of us suffered a serious injury, but to this day I have back problems due to the two years of hard physical labor that I did on that sawmill.

My brother and I each earned less than minimum wage in these jobs, about \$20 per day. The days were at least 8 hours long, and often 10 hours. We did not receive any of this money as it was paid directly to our parents.

Our experience in the sawmill convinced me that sawmills are completely inappropriate places for children to be working. There was nothing about our Amish upbringing that made the sawmill any less dangerous for us than it was for children of other religions. I am now 31 years old, a tool maker

and a father of two young children. There is no way I would allow my children to work in a sawmill and I am grateful for laws that prevent all children, regardless of faith, from working in sawmills.

For these reasons, I was shocked and dismayed when I read news articles stating that Congress was considering a change in the law that would allow Amish sawmill owners to employ Amish children as young as 14, while preserving child labor protections for children of other faiths. This would be a tragic mistake, as Amish children need these protections at least as much as non-Amish children.

Amish children, because of their parents' financial condition and the lack of educational opportunities, are particularly vulnerable to exploitation by sawmill owners. I had also thought that the U.S. Constitution would prohibit such blatant discrimination based solely on a child's religion.

I do not think that the safety provisions included in the proposed legislation will make these jobs safe for children. Sawmills are inherently dangerous for children and cannot be made safer by simply limiting the use of power equipment or the distance between the children and such equipment, or requiring adult supervision. I had all those things on the sawmill, and it was still much too dangerous for children.

I applaud those Senators and Representatives who are standing up for Amish children and ask you to please continue your opposition to this proposed legislation. I implore others who might be considering the proposal to reject it and maintain current child labor protections for Amish children as it is for any other child, regardless of religion. I speak for many Amish children who have no choice in this matter, because for them it is futile to speak out. Thank you for listening to my concerns.

John Miller, Mansfield, OH 44906

## About CHILD, Inc.

A member of the National Child Abuse Coalition, CHILD is dedicated to stopping child abuse and neglect related to religious beliefs, cultural traditions, or quackery. CHILD provides research, public education, and amicus briefs. It opposes religious exemptions from child health and safety laws.