



The Governor's Task Force On Children at Risk

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July 1, 2015

Governor Butch Otter
Office of the Governor
State Capitol
PO Box 83720
Boise, ID 83720

Dear Governor Otter:

As Chairman of the Idaho Governor's Task Force on Children at Risk, I have been requested by the Task Force to communicate serious concerns we have about Idaho's religious exemptions as they might impact child medical neglect cases.

In 1972, Idaho enacted religious defenses to criminal injury of children. The law created, in effect, a defense to manslaughter as well. Idaho parents with religious objectors to medical care have the legal right to let their children die without medical care. There is no record of any debate or discussion of these religious defenses. They were part of a larger bill that passed both chambers within four days after they were introduced in the final week of session.

In 1974, the federal administration began requiring states to enact religious exemptions to civil child abuse and neglect laws to be eligible for federal funding. Many states, including Idaho and Oregon, then enacted religious exemptions to neglect. The United States Department of Health and Human Services removed this requirement in 1983 and in 1987 clarified the regulatory language, "Such an eligibility requirement was not required by the [Child Abuse Prevention and Treatment Act] and thus should not be imposed by Federal Regulation." Oregon has recently removed these religious exemptions.

Idaho maintains religious exemptions related to medical care in civil and criminal context. *See*, Idaho Code §16-1602(28)(a) (defining "neglect" in child protection cases); and Idaho Code §18-1501(4) (where parent chooses treatment by prayer or spiritual means alone shall not be violation of the duty of care to such child). Involuntary manslaughter requires the prosecution to prove an unlawful act is perpetrated causing the death of a human being (§18-4006). In the case where injury to child (§18-1501) results in death, such a criminal violation may not be pursued because a parent might use the religious exemption referenced above. Additionally, civil child neglect actions to promote the welfare of a child might be curtailed for the same reason.

Idaho remains as one of only six states that still have religious exemptions that can provide a defense to manslaughter, since Oregon recently repealed its exemptions.

Idaho Vital Statistics records indicate that from 2002 to 2011, 107,490 Idaho residents died. During that same ten years, 2403 Idaho children under the age of 18 died and there were 1216 stillbirths for a total of 3619 deaths. That calculates to 3.37% of the Idaho deaths during the decade were children.

In the Peaceful Valley Cemetery in Canyon County, there were 130 persons who died during the same decade. Forty of those graves are children or stillborns, as indicated by birth/death dates. If children in this cemetery died at the same rate as Idaho children statewide, there would only be four child graves during that decade. However, based upon the apparent forty child deaths in that cemetery, there is a child mortality rate of 31%, or about ten times the Idaho pediatric population as a whole.

It is reported that the population in this area has a concentration of religious followers who subscribe to the belief that faith healing should prevail over medical care. Because of reporting laws and the religious exemptions in Idaho, while some of these deaths are known to the press, to the Idaho Department of Health and Welfare or to the medical community, many of these children who died had no contact with mandatory reporters of child abuse.

Our First Amendment right to religious freedom does not include the right to abuse or neglect children. In 1944, the U.S. Supreme Court ruled, "The right to practice religion freely does not include liberty to expose the community or child to communicable disease, or the latter to ill health or death. . . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158 (1944). Children need to be protected until they can make their own medical decisions.

In addition to this information, the Idaho Child Fatality Review Team has issued its 2015 Report, and found two children died in circumstances where upon review of medical records, proper medical care would have saved them from death. The medical care was lacking because of the religious beliefs.

The American Academy of Pediatrics, the Idaho Chapter of the American Academy of Pediatrics and the American Medical Association are all on record opposing religious exemptions to child abuse laws. I have attached a letter from Dr. Paul McPherson, Medical Director CARES of St. Luke's Children's Hospital, and a copy of the October 28, 2013 American Academy of Pediatrics Journal policy position on informed refusal and exemptions in medical care for your review.

Dr. McPherson explains his position:

Because I am a firm believer of religious freedom, I would suggest the standard for state intervention (when contrary to parental religious beliefs) would be limited in scope. It should include, and only include, pediatric cases in which the child's death or severe disability is imminent and would, within a reasonable degree of medical certainty, be prevented by the administration of appropriate medical care. The law would not be used to mandate routine medical care (i.e. well child visits, immunizations, etc.) or coerce parents to give consent for the same.

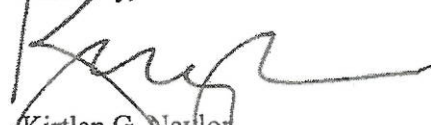
I have also attached (with the permission of the sender) a copy of an email sent by Canyon County Prosecuting Attorney Bryan Taylor to Senator Dan J. Schmidt referencing this issue. Prosecutor Taylor states in part:

As a prosecutor, I feel as though it is my responsibility to protect our children. A religious defense to crimes against children prevents a prosecutor from intervening when necessary. It is important that parents know they have a legal duty to provide their children with the necessities of life regardless of their religious beliefs.

The Governor's Task Force on Children at Risk has reviewed these matters and is concerned for the well-being and protection of Idaho's children in circumstances where children have no voice in medical choice. We collectively share the concerns and philosophy shared by Dr. McPherson that religious freedoms must be protected; but vulnerable children must also be appropriately sheltered from unnecessary harm and death.

We would encourage you to consider amending the religious exemptions to exclude them from application where a child's death or severe disability is imminent. We will continue to review this matter as information becomes available.

Sincerely,



Kirtlan G. Naylor
Task Force Chairman

KGN:tjw

Enclosures: AMA Resolution on Medical Neglect, EM Taylor Followers of Christ 2-19-2015, McPherson Letter Faith Based Healing 2-9-2015

cc: Prosecutor Bryan Taylor, w/Enclosures
Dr. Paul McPherson, w/Enclosures