Attachment 3

Statement of Jim Jones on Senate Bill 1182

March 20, 2017

Chairman Siddoway and Members of the Committee:

I would have personally appeared before the Committee but am still getting accustomed to a new course of treatment for a life-threatening illness. I elected to pursue a possible cure after having been informed of the available alternatives. Unfortunately, infants and toddlers do not have the ability to choose whether to seek medical treatment. The choice for them is made by others, for better or for worse.

This statement reflects my personal views and should not be considered in any way to reflect the views of the court system. I chose to sever my ties to the judiciary in order to express my opinions on issues of public importance.

First, let me say that I respect Senator Johnson and the work he has done on the faith healing issue. However, I do have serious concerns about the wording and possible negative consequences of enactment of SB 1182. Those concerns are:

- If it ain't broke, don't fix it.

During my 12 years on the Supreme Court, I recall only once where a parent whose parental rights were being terminated for neglect sought to invoke the religious exemption under the statute that SB 1182 seeks to amend. It was clear in that case that the defendant's claim for exemption was without merit and merely raised in desperation as a last resort. It may be that magistrate judges encounter cases where the exemption is an issue, but it was never brought to my attention that there was a problem with the statute that needed to be addressed or clarified. That being the case, it is hard to see why the statute needs to be changed.

- Beware of the law of unintended consequences.

A provision in the current law prevents people without real religious convictions from misusing the religious exemption. Presently, Idaho Code section 16-1602(31), which defines "neglected," only allows the exemption to be used by a parent or guardian who chooses "treatment by prayers through spiritual treatment alone in lieu of medical treatment." This language allows the withholding of medical treatment where it is based only upon prayer. SB 1182 allows medical treatment to be withheld where it is based in whole "or in part" on prayer. The bill does not specify how much part prayer must play in refusing medical care. Presumably, so long as a delinquent parent asserts that prayer

played at least some part in the denial of medical care, it would suffice to get the parent off the hook. If a judge found that prayer only played a tiny role in the decision to deny a child life-saving care, there would be no basis to find neglect. Courts could expect to see this dodge used frequently in child protective proceedings by parents with little or no religious scruples. Indeed, defense lawyers would be remiss in failing to frequently assert it as a defense.

- The faith healing exemption appears to violate Idaho's Constitution.

Article I, section 4 of the Idaho Constitution guarantees religious liberty for Idaho citizens. However, it mandates a strict separation of church and state, more so than the U.S. Constitution. Among other things, it flatly states that no preference shall "be given by law to any religious denomination or mode of worship." Idaho statutes providing a religious exemption for faith-healing practices do not appear thus far to have been tested in court for compliance with this prohibition. However, it would certainly seem to apply to a denomination that advocated and practiced faith healing or to the practice of faith healing itself. The great majority of Idaho citizens who do not advocate or practice faith healing are subject to criminal penalties under Idaho Code section 18-1501 for endangering the health of a child and risk losing their parental rights under Idaho Code section 16-2005(1)(b) for failing to provide medical care for their children. Yet, those statutes provide a specific preference by law for faith healing adherents by giving them an exemption from both the civil and criminal statutes. It would certainly be wise to seek legal guidance as to the constitutionality of this preference before taking action on SB 1182.

- Does the right to life end at birth for some kids?

Since at least the 1980s, when I served as Idaho Attorney General, the Legislature has passed numerous laws intended to support the right to life by using the power of the government to require women to carry a fetus to term. To my knowledge, none of those measures contained a religious exemption. The question arises as to whether the right to life of some children in our great state ceases upon birth. If so, this appears to be directly at odds with the Legislature's long-standing policy in favor of supporting the right to life and raises questions as to how strong that policy really is.