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MEMORANDUM

TO: Interested Persons
FROM: A. Eric Johnston
DATE: January 25, 2018
RE: **HB76 – Daycare Bill**

Last year, in February at the beginning of the 2017 regular session of the Alabama Legislature, we were blindsided with a bill that would have totally removed the statutory state licensure exemption of church daycare ministries that has been in effect since 1981. The purpose of the statute was to prohibit inference by state authorities in this important church ministry. A similar law was passed at about that same time protecting church schools from state regulation.

In the last 38 years there have been changes. We recognize that. However, none of those changes are sufficient to require state licensure of a church ministry.

There was important catalyst for this effort, the Childcare Development Block Grant Act of 2014 (“CCDBG”). This Obama era grant law extends millions of dollars to states to license all daycares, including church ministries. The ideal situation for the Alabama Department of Human Relations (“DHR”) and others who would benefit from the CCDBG would be for there to be a blanket licensure law and that is what they tried to establish.

Although there was a diligent effort last year to address this situation, a suitable compromise was not reached. The bill died.

The bill was refiled this year as HB76. It was essentially the compromise version from last year and left in several objectionable things. Primarily, the sticking point last year and the problem with the bill as filed this year is that while it did not require licensure of all church daycares, it did require DHR to do annual inspections of church daycares. Churches could not agree to that encroachment on ministry.

Yesterday, we reached agreement on a bill to modify the 1981 law. It is attached. We believe it is appropriate and wise to modify the law at this time, rather than leave this as a simmering issue. The very strong catalyst of the CCDBG is something that will not go away and it is something that needed to be addressed.

It is a fact that daycare has become a profitable industry. There were virtually no for-profit daycares in 1981. Daycares were basically small ministries of churches. Those still exist. We have larger churches, with larger daycares. The problem is there are for profit daycares masquerading as church daycare ministries. We recognize this problem must be resolved. There is no evidence of a need to regulate valid church daycare ministries. There is a need to remove the for-profit charlatans from masquerading as ministry.

The compromise we have worked out requires licensure of church daycare ministries that take federal funds. We have not had a problem with that from the beginning. It has always been an axiom in religious freedom issues that if you take federal or state funds, then you are subject to reasonable federal or state regulation. Consequently, if an Alabama church which has a daycare ministry wishes to fund it with federal funds, then it must comply with the federal requirements. The federal requirements are that DHR will license and regulate.

We had actually drafted a bill that provided more regulation than the now agreed upon compromise. We believe that bill better addressed existing needs to assure church daycare ministries were operating as such, as well as, providing proper protection of children. The proponents of HB76 did not wish to accept our bill but preferred their own bill.

With several adjustments we were able to accept the bill. The primary sticking point of annual required inspections by DHR has been removed. The bill as it now exists requires little more of churches than in the past, such as providing adequate insurance coverage, which is done by any legitimate operation, and providing health reports.

The CCDBG puts the State of Alabama in the position of having to do something with the 1981 law. The change will help DHR to comply with the requirements of CCDBG. The bill will unmask masquerading church daycare ministries and it will protect legitimate church daycare ministries.

This is an issue that would not resolve itself and it is necessary to resolve it in the manner that we have done. It is possible the bill could be defeated this year, but it would return next year. Next year, there will be a significant difference in the makeup of the Alabama Legislature. We do not know whether that body would be more sympathetic to federal and state regulation and therefore we believe it appropriate to resolve the issue now.

It is important to realize this bill does not compromise religious freedom. This bill will better protect religious freedom of churches with daycare ministries. It protects religious freedom from further efforts to regulate in this area. If we do not address the problem now, we will be continuously attempting to address it in the future.

Please call me if you have any questions or concerns. Feel free to distribute this memorandum to your members or constituents.

AEJ/pmm