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TWO VISIONS OF CHILD CARE: STENHOLM/SHAW VS. HAWKINS/DOWNEY

INTRODUCTION

This week the House of Representatives is expected to vote on two competing child care bills that represent dramatically different approaches in meeting the child care needs of American families. Representative Charles Stenholm, the Texas Democrat, and Representative Clay Shaw, the Florida Republican, are co-sponsors of the bipartisan "Family Choice and Child Care Improvement Act" (H.R. 4294). It gives parents the right to choose the child care setting they wish, including child care that includes religious activities.

By contrast, Democrats Augustus Hawkins of California and Thomas Downey of New York are expected to co-sponsor a bill similar to the measure they introduced in the House last session. It would limit severely parental choice and effectively prohibit the funding of child care programs with any religious activities. Hawkins and Downey apparently will make last minute cosmetic changes to their bill to give it the appearance of giving parents greater choice of daycare. These changes should be scrutinized very carefully. Since Hawkins and Downey long have fought against choice, their rhetorical bows to it at this late hour are likely to raise suspicions of their intent.

George Bush has said that he will veto any child care bill that fails to guarantee real parental choice as embodied in the Stenholm/Shaw bill.

Irreconcilable Differences. The two House bills are headed toward a showdown on the House floor because they are irreconcilable. The Hawkins/Downey approach reflects the belief that social service bureaucrats, not parents, should choose how children are raised. It seeks to replace religious values and institutions with secular values and institutions by using tax dollars to help the secular institutions and to penalize the religious institutions. Because this approach is so unpopular with grass roots Americans, the Haw-

cause this approach is so unpopular with grass roots Americans, the Hawkins/Downey bill is expected to be rushed to a vote with little opportunity to debate its provisions.

Respecting Parents' Rights. The Stenholm/Shaw bill, introduced this March 15, enjoys broad bipartisan support. Over two years after the Act for Better Childcare (ABC) bill was introduced, placing child care on the national agenda, the Stenholm/Shaw bill attracts the broadest public and political support because it is the only child care proposal that respects fully parents' rights to raise their children free from state interference.

Well over 90 percent of American pre-schoolers are in the care of their parents, relatives, neighbors, or church-based programs.¹ The Stenholm/Shaw bill respects the wishes of the vast majority of parents who have made these child care choices; the bill thus ensures that federal assistance is available to all parents. The Hawkins/Downey approach, by contrast, ignores parental preferences. Its main concern, it seems, is to fund child care arrangements that meet with the needs of such special interests as the National Education Association (NEA), state child care bureaucrats, and child development professionals.

PRINCIPLES OF A SOUND CHILD CARE BILL

There are four key principles to sound legislation to help American parents raise young children.

Principle #1: A federal child care bill must guarantee that all parents assisted by the program have the right to choose who cares for their children and to determine the moral and religious principles by which their children will be raised. Each parent must be guaranteed choice among a wide variety of providers, including grandparents, neighbors, private sector and public sector daycare centers, and churches.

Principle #2: A federal child care bill must guarantee that parents will be able to use government assistance at religious daycare providers, including those that offer hymns, prayers, and Bible stories as part of their child care programs.

Principle #3: A federal child care bill must preserve diversity among child care providers. The current child care system is composed primarily of neighbors, churches, and private sector daycare providers, such as the 4,000 Montessori centers throughout the U.S. These facilities should not be driven out of business by unfair competition from a new taxpayer-subsidized govern-

1 The Bureau of the Census, U.S. Department of Commerce, "Who's Minding the Kids," *Household Economic Studies*, series P-70, No. 9, May 1987, and other demographic data supplied by the Census Bureau. See Robert Rector, "The American Family and Day-Care" *The Heritage Foundation Issue Bulletin*, No. 138, April 6, 1988, p. 16.

parental choice rather than to provide arbitrary support only to those parents whose children attend public sector or government-sponsored daycare programs.

Principle #4: A federal child care bill must should not create a bloated new daycare bureaucracy nor expand federal regulatory control over daycare.

The Stenholm/Shaw bill fulfills all four of these principles. The Hawkins/Downey bill violates all four.

The Stenholm/Shaw bill guarantees parental choice among a wide variety of care givers; the Hawkins/Downey bill effectively prohibits choice as it allows bureaucrats and special interests, not parents, to determine how children will be raised. The Stenholm/Shaw bill guarantees assistance to parents who want child care that includes religious activities for their children; the Hawkins/Downey bill will effectively deny assistance to these families. The Hawkins/Downey bill establishes a new government daycare system in the public schools, subsidized by taxpayers, which ultimately will drive most private and religious daycare programs out of business because they will be virtually denied government funds and will be unable to compete against subsidized public school daycare.

THE STENHOLM/SHAW BILL

The bipartisan Stenholm/Shaw bill has three major components.

First, the bill increases by \$2.25 billion federal grants to the states for child care over five years through the existing Title XX program, also called the Social Service Block Grants,² which now gives the states almost \$3 billion per year for child welfare, job training, child care, and other social services needs. The Stenholm/Shaw bill restructures the Title XX program by ensuring that all parents receiving federal child care assistance have the option of obtaining a child care certificate that enables them to choose who cares for their child.

Second, the Stenholm/Shaw bill expands the existing Earned Income Tax Credit, which supplements the take-home wages of low-income parents, including those families that care for their own children in the home. The bill also contains a new "Infant Child" tax credit, with a maximum value of \$430 per year for low-income mothers caring for their own children under age one in the home.

² Title XX of the Social Security Act, P.L. 92-672

Third, the Stenholm/Shaw bill offers an additional authorized expenditure of \$3.2 billion over five years for Head Start.

Guaranteed Parental Rights

Stenholm and Shaw argue that moderate-income and poor parents, as well as rich parents, should be able to choose how their children are raised. The child care programs of their bill thus have been designed to guarantee parental choice.³ The Stenholm/Shaw Title XX program expansion allows state governments to provide grants to daycare centers to increase daycare supply in areas short of daycare facilities. States may even use funds to provide daycare in public schools. But, ultimately, parents will decide who cares for their children. Each parent assisted under the Title XX program has the option of receiving a daycare certificate; if they do not like the government-selected daycare program, they may choose to use the certificate from the government to reimburse a provider of their choice.

The Stenholm/Shaw bill contains three indispensable parental choice provisions, all absent from Hawkins/Downey. Under Stenholm/Shaw, each parent receiving assistance is:

- 1) Guaranteed the right to a certificate;
- 2) Guaranteed the right to use the certificate among a wide variety of providers, including grandparents, neighbors, churches, and private sector daycare programs; and
- 3) Guaranteed the right to use certificates in child care programs that include religious activities.

States' Rights. States retain the freedom to determine at what income levels families become eligible for Title XX assistance. As in existing law, the Stenholm/Shaw bill gives states the right to set standards for caregivers receiving certificates. No daycare provider violating state law would be eligible to receive certificates. But no state could prohibit parents from using certificates for particular types of providers such as relatives or churches.

The Stenholm/Shaw provisions are designed to accommodate the way American parents now use daycare. Some 65 percent of children under age five are cared for by parents in the home. Another 11 percent are cared for by aunts and grandparents while the parents are employed, an arrangement favored by inner-city families. Another 13 percent of children are cared for

³ Both the Stenholm/Shaw and the Hawkins/Downey bills will authorize similar sums of added money for Head Start. The original Hawkins/Downey bill transformed the Head Start program into a day care program for the middle class by raising the eligibility threshold to \$31,200. The current Head Start program is not primarily a day care program; most of the children's mothers are not employed, and most Head Start programs are half-day. Neither Hawkins/Downey nor Stenholm/Shaw permits parental choice under Head Start.

by small, informal providers, generally neighbors caring for one or two children in their own homes.

Only 11 percent of children under age five are cared for by formal daycare centers.⁴ Among these daycare centers some 80 percent are for-profit, private sector programs or churches.

Parents' Preferences. The Stenholm/Shaw Title XX parental choice provisions also respect the parental preferences revealed by polls. Most parents prefer parental care for their children. When parental care is not feasible, parents prefer: first, care by relatives; second, care by friends and neighbors; third, care by churches. All of these real preferences of parents are incorporated into the Stenholm/Shaw bill but are excluded by the Hawkins/Downey bill. Only 6 percent of parents would prefer to place their children in the secular daycare programs which would be the primary recipients of the funds under Hawkins/Downey.⁵

The Hawkins/Downey bill purports to solve the alleged problem of a widespread shortage in daycare. In fact, however, many existing daycare programs have vacancies. Example: the major daycare chains, La Petite Academy, Gerbers, and Kindercare, have average vacancy rates nationwide of 25 percent. In fact, the *Boston Globe* reported this month that "[t]hroughout the country, day-care providers are facing an excess of slots, notably at the preschool level..."⁶ Child care expert, Gary Neugebauer, publisher of *The Childcare Information Exchange*, estimates that there are two licensed daycare slots for each child actually enrolled in daycare.⁷

Religion and Child Care

While the Supreme Court has held that the government may not give funds directly to institutions engaged in religious activities and instruction, it also has ruled that the government may give funds to individuals who in turn use these funds in religious institutions.⁸ Example: an elderly person receiving Social Security from the federal government may place these funds directly in the collection plate of any church or synagogue without violating the separa-

4 Bureau of the Census, "Who's Minding the Kids?", *op. cit.* and other census data; see Robert Rector, "Fourteen Myths About Families and Child Care," *Harvard Journal on Legislation*, Summer 1989, pp. 526-527.

5 Associated Press/Media General poll, June 1986.

6 "Where Did the Kids Go?" *The Boston Globe*, March 13, 1990, pp. 23 and 25.

7 Kelly, "Hands off child care: Further Federal Involvement would be counter-productive, costly," *Barron's*, January 2, 1989.

8 David M. Ackerman, "Church-State and Non-discrimination aspects of H.R. 3660, The "Act for Better Child Care Services of 1988", as approved by the House Subcommittee on Human Resources: A Legal Analysis," *CRS Report for Congress*, Congressional Research Service, Library of Congress, July 15 1988. See also David Ackerman, "Day Care and the Law of Church and State: Constitutional Mandates and Policy Options," *CRS Report to Congress*, Congressional Research Service, Library of Congress, March 1, 1989.

tion of church and state prescribed by the First Amendment. The G.I. Bill, moreover, has provided benefits to millions of veterans to attend public and sectarian educational institutions. Similarly, the Supreme Court has ruled in *Mueller vs. Allen* (1983)⁹ and *Witters vs. Washington Department of Services for the Blind* (1986)¹⁰ that if the government gives educational assistance to individuals through mechanisms like tax credits or vouchers, the individual may freely use the funds for education that includes religious instruction.¹¹ The Court has held that as long as the individual, not the government, determines where the funds are used, the separation of church and state has not been violated. These rulings make the provisions in the Stenholm/Shaw bill with respect to child care in religious settings constitutionally sound.

THE ORIGINAL HAWKINS/DOWNEY BILL: PARENTAL CHOICE AND RELIGION

Last year's Hawkins/Downey bill, which passed the House on October 5 as part of the Omnibus Budget Reconciliation Act, was, in effect, nullified when the House and Senate agreed to strip all non-budgetary items out of the budget bill. This original Hawkins/Downey bill virtually prohibited parental choice. The bill's public school daycare program, which would provide child care assistance to families earning up to \$33,000 per year, prohibited choice completely. The Title XX provisions allegedly permitted choice by allowing states, in accord with existing Title XX law, to offer certificates to parents. But states were free to prohibit choice completely under Title XX if they wished. The result: choice under such a system would have been very limited. The reason: under the current Title XX program nearly half the states offer no certificates at all. Instead bureaucrats select which daycare programs receive subsidies. In those states that offer certificates, the certificate programs generally are limited. Only two states offer certificate programs statewide; programs often are restricted to a single county. Nor do the certificates themselves offer true choice to parents. In most cases, the certificates can only be used with one or two daycare centers selected by the bureaucrats.

"Silence" on Religion. Advocates of the original Hawkins/Downey bill claimed that their legislation permitted churches to participate in federally funded daycare programs. This claim was misleading because the public school daycare program prohibited religious activities entirely. The other daycare programs permitted churches to receive funds only if the church purged all religious content, such as prayers, hymns, and bible stories, from its daycare program.

The public school programs and the daycare programs under Titles 3 and 4 of the original Hawkins/Downey legislation explicitly prohibited funds from

9 *Mueller vs. Allen*, 463 U.S. 388 (1983)

10 *Witters vs. Washington Department of Services for the Blind*, 474 U.S. 481 (1986)

11 *Ibid.*

being used for daycare which included religious activities. The Title XX section did not contain an explicit prohibition, but instead maintained "silence" on religion. Yet since neither Downey nor Hawkins said that they intended Title XX certificates to be used for daycare that included religious activities, and since the "silence" provision was offered as an alternative to explicit provisions in other bills allowing certificates to be used for daycare that includes religious activities, courts would have been forced to conclude that it was the intent of Congress in enacting Downey/Hawkins to prohibit such use. Many non-church private sector daycare programs also have religious activities which would have had to be purged from their programs as well.

THE NEW HAWKINS/DOWNEY BILL

The swell of popular support for the bipartisan Stenholm/Shaw bill apparently has convinced Hawkins and Downey that it will be very difficult to pass legislation overtly restricting parental choice and discriminating against parents who wish religious care for their children. To make their bill appear palatable, Hawkins and Downey are expected to incorporate two "choice" provisions in their bill. While their bill's \$2.5 billion public school child care provision will prohibit choice altogether, the two Congressmen may alter the Title XX section to contain one or more provisions borrowed from the Senate bill. Possible provisions might be:

- 1) A guarantee that any parent receiving assistance under the new Title XX funds has the option of receiving a certificate instead of placing the child in a government-selected child care center subsidized by direct grants;
- 2) A statement which would authorize states to permit parents to use certificates in child care programs that include religious activities, but would not guarantee parents this option.

Limiting Choice. At first glance, these provisions could improve this year's Hawkins/Downey bill. At second glance, the putative improvement dissolves. Even if both Senate provisions are added, the Hawkins/Downey Title XX program will not guarantee parents choice; in reality choice will be severely limited. This would be so for four reasons:

- 1) While the Stenholm/Shaw bill guarantees that parents could use certificates with a wide range of providers, the "new" Hawkins/Downey bill will not. Permitting the state to restrict the parents' use of certificates to one or two child care centers offers almost no real choice. Since the majority of existing certificates under the Title XX program appear to be limited in this manner, therefore even with the addition of the Senate language the Hawkins/Downey bill will not guarantee real choice.
- 2) While the Stenholm/Shaw bill guarantees that parents assisted under Title XX are free to choose child care by grandparents, neighbors, and private sector child care centers, the new Hawkins/Downey bill would allow bureaucrats to prohibit parents from using certificates to pay for care of a

child by a grandparent. Restrictions of this sort are nearly universal under the existing Title XX program.

3) While Stenholm/Shaw gives parents receiving assistance the right to select church child care that includes religious activities, Hawkins/Downey, even with the added Senate language, allows states to deny assistance to any parent seeking religious child care for their children.

4) While the Stenholm/Shaw bill provides all its child care funds in programs that guarantee choice, the Hawkins/Downey bill would dispense nearly half of its childcare funds through a public school program that prohibits choice. Over time the highly organized National Education Association union will press successfully to expand the public school child care program. But the Title XX program, while better serving the needs of parents, will not have organized special interests to promote it. Thus the certificate programs under Title XX will remain limited while the anti-choice public school child care system will mushroom.

Additional Restrictions on Religious Care

Even if parents are allowed certificates under the Hawkins/Downey bill, restrictions would make it difficult or impossible for parents in many states to use their certificates for religious child care.

One Hawkins/Downey restriction, for instance, requires state governments to impose a wide array of secular regulations on churches receiving certificates. This would create great problems in the thirteen states that currently partially or fully exempt religious child care from state licensing and regulation. These states are: Alabama, Florida, Illinois, Indiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, North Dakota, Pennsylvania, South Carolina, and Virginia. Churches in these states would not be willing to relinquish their present autonomy from secular regulation in order to receive certificates. The result: parents in these states would not be able to use certificates in existing religious child care programs. Thus the anticipated Hawkins/Downey religious "solution" would be no solution precisely in those southern states where public concern for equal treatment of religious child care is strongest.

Forcing Secular Standards. A second Hawkins/Downey restriction, if the bill adds the "Senate religious language," requires a church receiving even one child care certificate for a disadvantaged child to secularize much of its child care program. Contrary to the legal principles established in the Civil Rights Act of 1964, churches thus would be forced to replace their own religious criteria in hiring child care workers with secular standards¹² This, for example, would force the church to replace Sunday school teachers with individuals trained in child development and would force churches to replace administrators trained in Christian Education with individuals trained in

12 S.5, "Act for Better Child Care Services Of 1989", Section 122(b)(3)(A).

secular child development. Though some of these results might be mitigated through costly litigation, the apparently intended effect of the Senate provisions would be to profoundly discourage churches from accepting vouchers.

A third Hawkins/Downey restriction, if the bill adds the Senate religious provisions, would prevent a church that receives a certificate for one child care slot to show preference for children of that religion for all the other child care slots in the church even though no government funds were received for these other slots.¹³

A fourth Hawkins/Downey restriction would force churches that accept even one certificate to relinquish control over their employment standards throughout the entire church organization to the federal government. This means that churches might be required to hire alcoholics, drug users, and others whose conduct violates the churches' religious teachings. Few churches would be willing to submit to such secular control of their internal operations. To remain independent, therefore, the churches almost surely would refuse the certificates available under the Hawkins/Downey bill. In contrast, the Stenholm/Shaw bill does not require churches receiving certificates to employ persons whose conduct violates the religious teachings of the church.

Bureaucracy Run Amok

In addition to restricting parental choice, the Hawkins/Downey bill would create a bloated new daycare bureaucracy. For example, the original Hawkins/Downey bill:

- ◆ ◆ Imposed 183 new federal mandates on state governments and local recipients of funds. Many of these new mandates, such as the requirement that programs be "developmentally appropriate," would be expanded into voluminous detailed federal regulations.¹⁴

- ◆ ◆ Mandated nearly 120,000 reports on daycare by the year 2000.

- ◆ ◆ Micro-managed every aspect of state daycare programs.

Eroding State Authority

One of the most far reaching regulations that would have been imposed on state governments by the original Hawkins/Downey bill was the "ratchet" provision. Under this, states receiving federal daycare funds could at any future point make their daycare regulations more severe, but could never relax their regulations without the specific written approval of the federal Department of Health and Human Services (HHS). Example: Some states require that daycare workers in facilities receiving state funds have fifteen college

13 S.5, Section 122(b)(2)(B).

14 Chapter II, Section 8088(2) and Section 8003(b)(8)(A). All citations to parts of the original Hawkins/Downey bill refers to the bill as included in the Budget Reconciliation Act (H.R. 3299).

courses in child development; under Hawkins/Downey, a state could not reduce this requirement to fourteen courses without Washington's specific approval. In effect this provision would transfer total authority for the regulation of daycare from state legislatures to the federal HHS bureaucracy.¹⁵

Regulating Grandmothers

Over 60 percent of children live in states where a grandmother caring for even one neighbor's child in her own home is required to be licensed or regulated. For the most part, these state requirements are nominal, with no serious attempt being made to enforce them.¹⁶ This would have been changed dramatically by the original Hawkins/Downey bill. It required states to enforce vigorously all regulations and prohibited states from reducing the regulations' scope or severity. The bill would have forced states to create a huge "daycare police" to ferret out the hundreds of thousands of mothers and grandmothers who, in their own homes, care for one or two neighbor children without government regulation. States that failed to stamp out this unregulated care would lose federal funds.

The original Hawkins/Downey not only required states to impose existing regulations on grandmothers but also required new health, safety, and nutrition regulations on small in-home providers even when no government funds were received.¹⁷ Thus under the bill, in states where nearly 60 percent of children reside, a grandmother caring for even one neighbor's child – and receiving no government funds – would be required to be licensed or regulated, and would be forced to fill out periodic reports on the nutrition content of meals and snacks given the children. In response to this regulatory intrusion, many of the 1.6 million women providing informal care for one or two children in their own homes would simply leave the market.

Creating a Permanent Daycare Lobby

The original Hawkins/Downey bill mandated the creation of nearly 38,000 local daycare commissions. The result of this would have been to create a permanent political infrastructure, funded by the taxpayers, to lobby for future increases in government daycare spending. Even Downey has criticized this feature of the bill, stating that it showed that it was concerned less about caring for children than about "guaranteeing that there are armies of lobbyists for child care spending in the future."¹⁸ Yet despite his criticism, the offending provisions remained in the original Hawkins/Downey legislation. It seems very likely that they will remain in the current bill. Downey also advocates many of the most severe new regulations like the "ratchet" provision, described above, which transfers nearly complete regulatory power to the federal bureaucracy.

15 Section 658C(c)(2)(D).

16 Chapter 3, Section 658C (c)(2)(C).

17 Section 658C(c)(2)(C) and Sections 658F(a) and 658H(d).

18 Paul Gigot, "On Child Care, A Liberal Sings Republican Song," *The Wall Street Journal*, March 9, 1990.

CONCLUSION

If there were a national referendum of parents, asking them if they prefer a child care policy guaranteeing them a wide range of choice in how their children are raised or a policy severely limiting choice while expanding the public schools to care for pre-schoolers, there is no doubt how parents would respond. Public opinion polls show that only 6 percent of parents would prefer to have their children cared for in the secular daycare programs that will receive nearly all of the Hawkins/Downey child care assistance.

Parents vs. "Professionals." Obviously parents have had no role in designing the Hawkins/Downey child care bill. This bill's authors apparently believe that social science "professionals," not parents, should choose how children are raised. The Hawkins/Downey bill would create a new government daycare system that prohibits or severely restricts parental choice and would drive much religious, private sector, and Montessori child care out of business.

This is not the case with the bipartisan Stenholm/Shaw bill. It seeks to assist parents while guaranteeing that they, not bureaucrats, choose who will care for their children. The Stenholm/Shaw bill guarantees that those who seek religious child care are given equal treatment. As such, the Stenholm/Shaw bill serves parents and children, not the special interests.

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