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The Honorable Glenn Youngkin
Governor of Virginia
PO Box 1475
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An Open Letter to Governor Youngkin about Virginia Childcare Policy

Dear Governor Youngkin:

Our state government's policies for early childhood care and education are undergoing dramatic change. While many proponents of the changes view them with enthusiasm, ODACS has serious concerns about the current state of Virginia childcare policy as well as of the future direction of childcare policy in our Commonwealth. We believe that it is important that you know that there exists among a significant number of people a very different perspective from that held by proponents of what we refer to as Universal Childcare. **Our primary objective for sending you this letter is to help secure the freedom of our churches to operate their children's ministries free from entanglement with the state.** To that end, we hope in this letter to help you to understand as thoroughly as possible the opinion of ODACS churches on the subject.

SOME HISTORICAL BACKGROUND

ODACS churches have long been staunch proponents of Virginia's Religious Exemption from childcare licensure.¹ The Religious Exemption (§22.1-289.031), currently one of nine licensure exemptions in the Code,² is the exemption with the deepest roots both historically and legally. In large part through the efforts of Independent Baptist churches, which had organized in order to work together to defend their Religious Freedoms, the Religious Exemption was passed into law in 1979 after what at the time was a very high profile political battle in the General Assembly. Shortly thereafter, the constitutionality of the new law was challenged in court, with four Independent Baptist churches being named as defendants and with both Free Exercise and Establishment Clause concerns being examined. Independent Baptist churches chose Dr. Jack Knapp, one of my predecessors as executive director of ODACS, to be their leader at about this time, and he guided the group through the crisis of the court challenge. The case moved slowly throughout the 1980's, with a district court finding the Religious Exemption to be unconstitutional. The case was then appealed to the U. S. Court of Appeals for the Fourth Circuit. In 1988, the Fourth Circuit reversed the lower court's ruling,³ stating in part that "... exemptions such as those challenged ... in the present case actually lessen the risk of entanglement between church and state. The burdensome issue-

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HISTORICAL BACKGROUND (continued)

by-issue free exercise litigation that would be necessary absent a general exemption ‘results in considerable ongoing government entanglement in religious affairs.’ Amos, 107 S. Ct. at 2872 (Brennan, J., concurring). This would both chill and interfere with religious groups” In other words, the Fourth Circuit ruled that the Religious Exemption is not unconstitutional. The case was subsequently appealed to the United States Supreme Court, which declined to hear the case, thus upholding the decision of the Fourth Circuit.

Since then, ODACS ministries have used the Religious Exemption from childcare licensure as the legal basis for the operation of their preschools and daycares, which are considered child day programs under the law. Other church ministries such as Sunday school classes, church nurseries, and vacation Bible schools are not considered child day programs under the law and therefore are also not subject to licensure (§22.1-289.030.A.7).⁴

In the 1990’s, stakeholders began in earnest to request that the General Assembly expand the list of childcare licensure exemptions. By the mid-2010’s, the total number of licensure exemptions in the Code had grown to 14. Since at the time Virginia’s childcare licensure laws were still under the purview of the Department of Social Services, and since VDSS desired that the list of exemptions be shortened, the General Assembly in 2016 passed SJ 63,⁵ which created a study group headed by VDSS and assigned the task of studying the licensure exemptions and recommending changes to the General Assembly.

In the summer of 2016, ODACS participated in all of the meetings of the study group. Our account of the tenor of the first meeting is that it very quickly became an unwarranted and specious attack on the Religious Exemption. In the third meeting, a proposal was presented that would have essentially doubled the number of words in the Religious Exemption Code (then §63.1-1716, now §22.1-289.031), creating what ODACS would consider to be *licensure in effect*. None of the other exemptions were targeted for any increase in Code verbiage, let alone such a dramatic increase. ODACS resisted adamantly and successfully. At another point of one of the meetings, the Code section that protects other church ministries (then §63.1-1715.A.10, now §22.1-289.030.A.7) was presented with the term *church nurseries* conspicuously omitted, after it had been included in the Code for many years. ODACS adamantly insisted on its inclusion, and after lengthy discussion our efforts were finally successful.

By the way, the opening question posed to the study group in the first meeting in 2016 was this: “Can we not all agree that all child care in Virginia should be licensed or at least regulated?” The answer from ODACS was an emphatic NO!

Based on the study group’s recommendations, SB 539⁶ was passed by the 2018 General Assembly. This bill cut the list of licensure exemptions in half and moved the Sunday school exemption to a new section that defines several types of child care as not being child day programs. SB 539 included a one-year delay in its enactment, so the new law became effective on July 1, 2019. It was the hope of ODACS that after three years of intense negotiation, Virginia would settle into a new status quo of childcare policy that would last many years.

Meanwhile, also in 2018, ODACS was briefly involved in a standoff with VDSS over how VDSS was implementing the new fingerprint background check requirement for Religiously Exempt child day programs. VDSS decided to use federal grant money to pay for background checks temporarily during initial implementation of the policy. ODACS ministries were concerned whether any strings would be

HISTORICAL BACKGROUND (continued)

attached to the money; VDSS would not answer our questions on that topic, but they also would not grant us the option of self-payment. ODACS asked Delegate Bobby Orrock to submit an opinion request to Attorney General Herring regarding the legality of the VDSS policy.⁷ The end result was that VDSS changed its policy by allowing our churches to self-pay for the background checks. Just a couple of days after the policy was changed, the Attorney General's office responded that our questions were now moot and therefore would not be answered.

After that, our hope of settling into a new status quo for childcare policy was quickly eliminated in 2019 when SB 1095 was introduced in the Virginia Senate. This bill moved purview of all early childhood policy from VDSS to VDOE; it also sought "the development of a statewide unified public-private system for early childhood care and education in the Commonwealth."⁸ ODACS initially did not take a position on the bill, choosing rather to raise several important questions that we felt needed to be answered first.⁹ Among our concerns was that though the State Board of Social Services had a seat for a member representing Religiously Exempt childcare centers, SB 1095 removed that seat without replacing it with similar representation under the proposed law. Another concern that ODACS raised was that this bill came too quickly on the heels of the implementation of SB 539; in fact, SB 539 had yet to become effective law when SB 1095 was introduced in 2019. In the end, SB 1095 passed the Senate but then failed to pass the House.

In 2020, proponents of Universal Childcare made a second attempt at it, this time with companion bills HB 1012 and SB 578.¹⁰ This time ODACS opposed the bills, alone.¹¹ Despite our opposition, the bills passed and became effective on July 1, 2021. The only silver lining in this transition was that the Religious Exemption and the Sunday School clause were copied from VDSS Code and pasted to VDOE Code intact. Since then, ODACS has begun in earnest to monitor the work of the State Board of Education and of the newly formed Early Childhood Advisory Committee.

SOME RELIGIOUS AND PHILOSOPHICAL BACKGROUND

Foundational Questions

To ODACS ministries, there are three foundational questions that should serve as the starting point in all education policy discussions. **First, to whom does a child belong?** We believe that the Bible teaches that God gives children to parents, that parents are accountable to God for the blessing and responsibility of child rearing, and that children are to submit themselves to parental authority (Exodus 20:12, Deuteronomy 6:6-7, Deuteronomy 11:18-21, Psalm 127, Proverbs 1:8-9, Matthew 18:3-6, Matthew 19:14, Ephesians 6:1-4, Colossians 3:20-21). **Second, why does the life of a child have value?** We believe that each child is designed by God in the image of God and has an eternal soul. Therefore, each individual child has infinite value. (Genesis 1:26-28, Genesis 2:7, Psalm 139:13-16, John 3:16, Romans 6:23, Romans 8:9-11, I Corinthians 15:51-58, Ephesians 2:4-10). **Third, why do children sometimes do that which is wrong?** We believe that all human beings, children and adults alike, have a depraved nature as a result of man's Fall into sin. Therefore, children by nature often do wrong and need to be taught to do right. It is because of this depraved nature that human beings are in need of the forgiveness and redemption of a Savior (Genesis 3:1-19, Psalm 14:1-3, Psalm 51:1-6, Isaiah 64:6, Jeremiah 17:9-10, Romans 1:18-32, Romans 3:9-18, Romans 3:21-26, Romans 5:6-12, Galatians 5:17-24, Ephesians 2:1-10, James 2:10-12).

The State's Rights vs. Parental Rights

Based on what we believe to be the correct answers to the foundational questions, we further believe that parents have the primary interest in the upbringing of children. Any interest that the state may have

SOME RELIGIOUS AND PHILOSOPHICAL BACKGROUND (continued)

can at best be only secondary to parental interest. We do acknowledge that in rare and extreme cases, parents may forfeit that interest through abuse, and the state may legitimately step in to rescue a child and hopefully place the child in a safe home with new parents. However, any attempt by the state to assert itself as having the primary interest in the upbringing of children is a usurpation of God-given parental rights and will ultimately prove to be counterproductive to children, to families, and to society. Parental rights include the right to choose which school, preschool, or daycare to enroll their children in, or to educate their school-age children at home. Additionally, they include the right to keep the child at home during the most important and formative preschool years. Daycares, preschools, and K-12 schools, especially those operated by local churches, are accountable first to parents and to God, not to the state.

Separation of Church and State

We believe that a correct understanding of the principle of Separation of Church and State is to view the principle as a two-sided coin. On one side is the autonomy of the local church; in other words, the church should be able to operate free from state interference in matters of conscience. On the other side of the coin is denominational neutrality of the state; in other words, the state should be free from the domination of or control of any religion or denomination. Neither side of the coin prohibits either an employee of the state from actively participating in the worship and outreach of a local church, nor does either side prohibit a church member from participating in the workings of government and from being guided by the dictates of his conscience as he does so. In practical application, this means that a church should enjoy tax exempt status, but it also means that a church should operate its ministries without asking for help from the taxpayers. Furthermore, it means that the state should not attempt to control the church on matters of conscience. Regarding curriculum, the church should teach God's Truth as it understands that Truth, free from any effort of the state to control what is being taught. Regarding hiring, the church should hire only people that willingly ascribe to the Truth as the church understands it, free from any effort of the state to control who is doing the teaching and influencing.

Foilure of Kindergarten to Praduce "Readiness"

We find the "readiness" claims of proponents of Universal Childcare to be specious. The history of American kindergarten informs our viewpoint on this matter. The idea of kindergarten started in Germany in the 1800's and was eventually imported to the United States.¹² Initially most American kindergartens were operated privately. In the mid-1900's, there was robust debate about whether government should offer kindergarten and whether kindergarten should focus mostly on socializing or whether it should include academic rigor. The compulsory attendance age was still age six, and first grade was called first grade because it actually was the first grade. However, as it became apparent that government-run education was failing to deliver on its promises, rather than question the centralized model that they had set up, proponents of government-run education explained the failure by claiming that children were not "ready" for school at age six. The solution that they proposed was kindergarten. I myself was a small child during the transition to compulsory kindergarten, the purpose of which was to produce "readiness." All of this effort was said to be research-based and data-driven. For a while kindergarten was voluntary and lasted half a day. In time, however, it gradually became a full-day program; and in most places it became compulsory. Now we fast forward five or six decades and find that again that the explanation for the failure of government education to deliver on its promises is that children are not "ready" for kindergarten. This time however, instead of just trying to add one more year of education to its control, the state is trying to gain control of child rearing starting at birth! Is not this new effort a tacit admission of the failure of kindergarten to deliver on its promise of producing children who are "ready" for school? Based on this history, cannot we expect a transition to compulsory attendance, possibly starting even at

SOME RELIGIOUS AND PHILOSOPHICAL BACKGROUND (continued)

birth? Furthermore, is not Virginia's new early childhood education law a "more of the same" proposal of centralized education control that will eventually fall well short of delivering on its promises, just as compulsory government-run kindergarten has?

Safety Claims

ODACS ministries take strong exception to the assumption that exemption from licensure automatically results in less safety for children. We debated this point ardently with VDSS officials and with universal licensure advocates during the 2016 study group meetings. The question that must be asked is this: What is it that makes a child safe? Does increased government control of childcare automatically make children safer? We believe that the answer lies not in laws and regulations but in something deep inside the mind and heart of the caregiver. The best data that we have found to illustrate our perspective on the safety question was a recent review of five years of child abuse data published by VDSS. A review of the data¹³ revealed that, while rare in both licensed and unlicensed settings, ***a founded case of child abuse was almost five times less likely to occur in a Religiously Exempt childcare center*** than it was to occur in a licensed center!¹⁴ In other words, we believe that Religiously Exempt childcare centers are among the safest childcare centers in the state, *if not the safest*.

Concerns about "Cradle to Career" System

We are deeply concerned with the movement in America to establish "cradle to career" initiatives. While the flowery promotional rhetoric sounds enticing, the push appears to us to be toward an ever-increasing control of government over individual lives. We believe that this push is consistent with the failed Marxist vision for human happiness. "The communists boast that their free educational programs cover the span from the cradle to the grave."¹⁵

CONCERNS ABOUT CURRENT EARLY CHILDHOOD POLICY IN VIRGINIA

Concerns about the New 0-5 Learning Standards

We find it difficult to comprehend how the state can believe that it can effectively set, implement, and assess learning standards for infants and toddlers! We view the promises of the new Birth to Five Learning Guidelines¹⁶ as overly ambitious, utopian, and illusory.

Contradiction in Assessment Models, Public K-12 and 0-5 vs. Private K-12 and 0-5

Now that the Virginia Department of Education has published its new 0-5 learning guidelines, a troubling new policy contradiction is in place, one that ODACS predicted when it opposed SB 578 in 2020 and which was a big part of the basis of our opposition.

For many years now, VDOE has used its Standards of Learning (SOL's) to measure the effectiveness of public school instruction. To its credit, the State Board of Education resisted efforts to trade in the SOL's for Common Core, citing in part the large investment of time and money that it had already made in the SOL's.¹⁷ SOL's are incumbent on government schools only; private schools are not required to implement them, and private schools are prohibited from voluntarily administering the SOL tests as a means of comparison. For many years, we believe, both the public education sector and private education sector have been comfortable with this arrangement.

However, with the new Birth to Five Learning Guidelines, a very different, and we would argue a very contradictory, model of assessment is being set up. Immediately there are many private, religious, and even church-operated daycares that are being required to implement the state's 0-5 standards.

CONCERNS ABOUT CURRENT EARLY CHILDHOOD POLICY IN VIRGINIA (continued)

Amazingly to our ODACS ministries, many church-operated daycares are willingly aligning their curricula to the 0-5 standards as a condition for receiving taxpayer subsidies. VDOE is eagerly asserting control over the curricula of church-run ministries, a move that we hope would still sound absurd even to VDOE were it applied to private K-12 and the SOL's.

We view this new development as a blatant disregard for the principle of Separation of Church and State. Because we oppose the new assessment model on principle, and because we believe this new contradictory model to be dangerous to the autonomy of our churches and their children's ministries, ODACS is renewing its efforts to admonish its ministries to resist licensure and to forego the use of state childcare subsidies.

Direction of VQB5

An important vehicle for implementation of the new contradictory assessment model is VQB5, the new quality rating system currently being developed by VDOE. For the moment, participation is voluntary, but it is required of licensed centers and of centers that receive state childcare subsidies. VQB5 is being presented as if it were an objective measure of quality, but ODACS believes that the philosophical basis of VQB5 is one that we do not share. To score well under VQB5, a childcare center must align its curriculum with the VDOE 0-5 learning standards; in other words, VQB5 will quickly become a means of accomplishing state control over the curricula of private and religious preschools and daycares. Are not ODACS ministries justified in their concern that participation in VQB5 may not always be voluntary?

CONCERNS ABOUT THE FUTURE OF EARLY CHILDHOOD POLICY

All of the history and concerns that have been rehearsed in this letter lead ODACS ministries to a series of urgent questions about the future of early childhood policy in our Commonwealth. **How long can contradictory assessment models coexist under VDOE? Is compulsory preschool the end game of the Universal Childcare agenda? If so, at what age would compulsory preschool begin? At age 4? At birth? Once VDOE controls the curricula of church-run preschools and daycares, will it seek to control the curricula of other church-run children's ministries? Will the state ever try to develop "a statewide unified public-private system" for K-12 education in the Commonwealth?**

The history and concerns also move ODACS to renew its efforts to challenge young parents to seriously consider keeping their children at home during the preschool years, rather than opting out of the role of being the primary influencers of the child at that critical time of the child's development. We believe that we have a two-fold mandate: to defend the liberty of our church-run daycares and preschools to operate without government interference and to remain open for those who genuinely need the service, but also to defend the right of parents to keep their children at home during the most formative years of development.

CONCLUSION

Mr. Youngkin, we appreciate your service to the citizens of Virginia. We know that you have an enormous responsibility and that you and your staff must deal with a broad array of urgent policy matters. We appreciate your taking the time to understand our concerns, and we ask that as Virginia childcare policy continues to change, you will take the views of ODACS churches and schools into serious consideration. **Again, our primary objective for sending you this letter is to help secure the freedom of our churches to operate their children's ministries free from entanglement with the state.** In view of that objective, we

would welcome future communication with you on this issue. We also would like to extend to you an invitation to visit one or more of our church-run daycares or preschools.

We pray that God will bless you with good health, discernment, and wisdom as you discharge the duties that you have solemnly sworn to perform. Thank you, and God bless you!

Sincerely,



Dan Zacharias
Executive Director

P.S. Because we believe this issue to be of utmost importance, we are also sending this letter to the Lieutenant Governor, to the Attorney General, to each member of the Virginia Board of Education, and to the Chief School Readiness Officer.

"Teach me Thy way, O LORD; I will walk in Thy truth..."
Psalm 86:11

¹ <https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.031/>

² <https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.030/>

³ <https://law.justia.com/cases/federal/appellate-courts/F2/846/260/397215/>

⁴ <https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.030/>

⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=bil&val=sj63>

⁶ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=sb539>

⁷ <https://www.vaodacs.com/assets/Uploads/PDF-Files/Childcare/Fingerprint-Background-Check-Implementation-Report-January-25-2018.pdf>

⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=sb1095>

⁹ <https://www.vaodacs.com/assets/Uploads/PDF-Files/Lobbying-State-Government/Sample-Letter-for-HB-2458-SB-1095-and-SB-1313.pdf>

¹⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1012>

¹¹ <https://www.vaodacs.com/assets/Uploads/PDF-Files/Lobbying-State-Government/ODACS-Position-on-HB-1012-SB-578-and-5B-599.pdf>

¹² <https://daily.jstor.org/kindergarten-become-just-another-grade/>

¹³ <https://www.vaodacs.com/assets/Uploads/PDF-Files/Childcare/VCPS-Investigations-Summary-2009-2014.pdf>

¹⁴ <https://www.vaodacs.com/assets/Uploads/PDF-Files/Childcare/Virginia-Child-Abuse-Safety-Gap.pdf>

¹⁵ <https://allincities.org/node/47511/print>

¹⁶ <https://www.doe.virginia.gov/early-childhood/curriculum/va-elds-birth-5.pdf>

¹⁷ https://www.doe.virginia.gov/news/news_releases/2010/jun16.shtml