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MEMORANDUM

August 29, 2008

To: State Leaders and Legislators

From: Christopher J. Klicka, Esq.

Re: Federally Mandated Child Welfare Reform

On June 25, 2003, President George W. Bush signed into law the Keeping Children and Families Safe Act of 2003 (S.342). This act requires states to implement two provisions for protecting families during the child investigative process. This act will:

Require child protective services workers to be trained in their duty to protect the statutory and constitutional rights of those they are investigating;

Require child protective services personnel to advise individuals subject to a child abuse and neglect investigation of the complaint or allegation made against them.

In order to ensure implementation, states should enact legislation that will ensure that the constitutional rights of innocent families are protected during child protective service investigations. To this end, the following information has been compiled for your review:

- 1) Suggested Model Language: measures for states to adopt in order to curtail abuses that occur during social worker investigations.
- 2) Adopted Amendments to the Keeping Children and Families Safe Act. Provisions the Home School Legal Defense Association worked to introduce. U.S. Congress Report Language on Children and Families Safe Act.
- 3) Congressional report language indicates the intent of Congress to protect the constitutional rights of families who are the subject of an investigation.

- 4) In an attached document, recent legislative reform language as passed in Alaska, Arizona, Arkansas, California, Idaho, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Virginia, Washington, and Wyoming. The statutes are categorized according to whether they include all of the desired language for the safeguarding of a family's rights.

Just recently, in one week alone, I had five innocent families in various states harassed by social workers: 1) Home school family turned in for homeopathy, home births, and home schooling, 2) another family turned in for home schooling, swimming in a feeding trough (they live in the city), and bug bites, 3) another family a messy yard, 4) another family turned in by a doctor because family switched doctors 5) and yet another a family for home schooling in the summertime!

In a 2002 California Supreme Court decision, the court stated,

Frankly, it is difficult to conceive how a social worker, whose work is directly governed by state law and regulation, could claim to have a reasonable belief that a warrantless removal that is expressly prohibited by state law and regulation is somehow permitted by the Constitution.

Moodian v. County of Alameda Social Services Agency 206 F.Supp.2d 1030 at 1035 (N.D.Cal., 2002)

We need the relief soon.

The best argument for these amendments is to say “it is federal law—you need to implement this in order to not jeopardize your federal funding.”

1. MODEL LANGUAGE BASED ON OUR FEDERAL AMENDMENTS IN CAPTA (KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003)

Model Child Welfare Amendment #1:

“All representatives of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the specific complaints or allegations made against the individual.”

Model Child Welfare Code Amendment #2:

“All child protective services workers must be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact during investigation through treatment. The training curriculum must include instruction in the Fourth Amendment to the U.S. Constitution and parents' rights.”

Here is the link to my testimony before the congressional committee which puts the amendments in context. Christopher J. Klicka's testimony before the Subcommittee on Select Education of the House Committee on Education and the Workforce can be found at: <http://www.hsllda.org/docs/GetDoc.asp?DocID=1721&FormatTypeID=PDF>

**2. THE NEW CAPTA FEDERAL STATUTORY LANGUAGE AS PASSED
(KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003)**

The Office of the Federal Register has assigned law numbers to the CAPTA bill signed (approved) by the President:

S. 342/P.L. 108-36

Keeping Children and Families Safe Act of 2003 (CAPTA) (June 25, 2003; 117 Stat. 800; 32 pages.)

States must make:

(xvii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

(xviii) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

**3. US HOUSE OF REPRESENTATIVES REPORT LANGUAGE, ACCOMPANYING
CAPTA (THE KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003)—
EVIDENCES THE INTENT OF CONGRESS.**

HOUSE OF REPRESENTATIVES

1st Session

108-26

KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003

MARCH 6, 2003- Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following
REPORT [To accompany H.R. 14]

COMMITTEE VIEWS

The bill also improves the training of child protective services personnel to ensure that they are knowledgeable in best practices for promoting collaboration with families and that they are fully aware of the extent and limits of their legal authority and the legal rights of parents in carrying out such investigations. H.R. 3839 requires that states have provisions in place that address the training of child protective services personnel in their legal duties, which may consist of

procedures to inform such personnel of such duties, in order to protect the legal rights of children and families.

Protecting individual rights

During the hearings on CAPTA, the Subcommittee heard concerns about the number of parents being falsely accused of child abuse and neglect and the aggressiveness of child protective services personnel in their investigations of alleged child abuse. Mr. Christopher Klicka of the Home School Legal Defense Association described numerous cases of innocent families being aggressively investigated on allegations of child abuse and neglect only to have such cases later determined to be unsubstantiated or false. In his testimony describing a conversation with a former social worker, Mr. Klicka stated, "In the old days, social workers tried to prove a reported family was innocent and considered the family innocent until proven guilty. Now the system operates on the principle that a family is guilty period."

The Committee looked carefully for ways to ensure that the individual rights of parents being investigated on allegations of child abuse or neglect were protected, while not compromising the intent of the child protective services system--to ensure that the best interest of the child is the primary focus. To that end the Committee wanted to enhance the training of child protective services personnel to ensure that they are knowledgeable in best practices for promoting collaboration with families and that they are fully aware of the extent and limits of their legal authority and the legal rights of parents in carrying out such investigations. H.R. 3839 requires that states have provisions in place that address the training of child protective services personnel in their legal duties, which may consist of procedures to inform such personnel of such duties, IN ORDER TO PROTECT THE CONSTITUTIONAL AND STATUTORY RIGHTS OF CHILDREN AND FAMILIES.

For instance, the Committee believes that child protective services personnel should understand that they don't have the authority to demand entry in the family home when investigating an allegation.

The bill also permits states to use their CAPTA dollars to develop and deliver information related to improving public education on the role and responsibilities of the child protective services system and the proper and appropriate basis for reporting suspected incidents of child abuse and neglect. It is the hope of the Committee that by requiring states to improve the training of social workers in proper and appropriate investigating techniques, and provide more education on appropriate reporting of child abuse and neglect by the public that incidents of aggressive investigating behavior and incidents of false reports of child maltreatment cases will be significantly decreased.

The Committee also heard concerns about how most of these families were never informed of the specific allegations made against them in the first place. The Committee firmly believes that individuals being investigated for alleged child maltreatment should be informed of the specific allegations made against them. H.R. 3839 addresses this issue by requiring states to have policies and procedures in place to require social workers, at the initial time of contact, to advise individuals who are subject to a child abuse and neglect investigation of the complaints or allegations made against them. However, it is not the intent of the Committee that by requiring states to have such policies and procedures in place that such advisement be too descriptive as to inadvertently provide identifying information that may reveal the source of such allegation or

complaint. The bill specifically states that such advisement be in a manner that is consistent with laws protecting the rights of the informant.

In addition, the Committee wants to ensure that individual rights are protected by giving individuals who have been subject to a child abuse and neglect investigation an opportunity to be heard when they feel they have been wrongfully accused or have been the subject of an overly aggressive child maltreatment investigation. H.R. 3839 requires citizen review panels to provide for public outreach and comment in order to help states assess the impact of the procedures and practices of their child protective services system upon the children, families, and individuals in the community.

4. US SENATE REPORT LANGUAGE ACCOMPANYING CAPTA (The Keeping Children and Families Safe Act of 2003)—EVIDENCING THE INTENT OF CONGRESS

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, submitted the following REPORT [To accompany S. 342]

IV. EXPLANATION OF LEGISLATION AND COMMITTEE VIEWS

Individual rights

The committee has also included a requirement for training of CPS workers on their legal responsibilities in order to protect the constitutional and statutory rights of children and families.

While the committee is strongly committed to the main mission of the child protective services system--to ensure that child safety and the best interests of the child are protected, **THE COMMITTEE BELIEVES IT IS IMPORTANT FOR CHILD PROTECTIVE SERVICES PERSONNEL TO UNDERSTAND AND RESPECT FOURTH AMENDMENT LIMITATIONS ON THEIR RIGHT TO ENTER A HOME WHEN INVESTIGATING AN ALLEGATION WITHOUT A COURT ORDER.** [emphasis added]

The committee firmly believes that individuals being investigated for alleged child maltreatment should be informed of the specific allegations made against them. S. 342 addresses this issue by requiring States to have policies and procedures in place to require child protection workers, at the initial time of contact, to advise individuals who are subject to a child abuse and neglect investigation of the complaints or allegations made against them. The committee recognizes that it is a basic right for all citizens to be informed of what crime they are being accused of at the time they are being asked for an interview or entry into their home.

Citizen review panels

The committee has modified the section on Citizen Review Panels to provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to assess whether State and local CPS agencies are effectively accomplishing their duties.