

AASP Fights for Virginia Member

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The Department of Social Services has apparently threatened not to renew the day care license of Ms. Davis, simply because the Department believes that she is living with an unmarried partner. Ms. Davis has been successfully operating her day care center for nearly 17 years and has the support of her clients. It would be a travesty of justice, and a violation of the state and federal constitutions, for the Department to deny her a license now merely because of her unmarried living arrangement.

In view of the decision of the Virginia Supreme Court in *Cord v. Gibb*, 219 Va. 1019, 254 S.E.2d 71 (1979), unmarried cohabitation should not preclude an otherwise competent and honest person from obtaining a professional license in Virginia.

The words of the Supreme Court more than 20 years ago in the Cord case are equally applicable today to the situation of Ms. Davis:

"While Cord's living arrangement may be unorthodox and unacceptable to some segments of society, this conduct bears no rational connection to her fitness to practice law. It can not, therefore, serve to deny her the certificate required by Code section 54-60."

Finally, there is no consensus that unmarried cohabitation is immoral. A Gallup Poll released on May 24, 2001, shows that a majority of adults believe that unmarried cohabitation is morally acceptable. The finding of that poll is consistent with social science research which shows that among adults who have married in recent years, a majority of them cohabited beforehand. Thus, Virginia's anti-cohabitation law is not consistent with the attitudes and practices of most adults.

It is unconstitutional to use the power of criminal law against unmarried adults based on the religiously-based moral beliefs of one segment of the population. (Cf. *People v. Onofre*, 51 N.Y.2d 476 (1980); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972). Also, use of government authority to enforce private morality of a segment of the public would implicate the Establishment Clause of the Virginia and United States Constitutions.

On behalf of Ms. Davis, as well as all 126,000 unmarried couples in the state who could be harmed by a negative precedent in the Davis case, I urge you to grant the license to Ms. Davis.

Ms. Davis is competent, honest, and has the

support of her clients. She has successfully operated the day care center for many years. It would be irrational for her license to be denied now.

Respectfully submitted:

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Executive Director

New Hampshire Repeals Death Tax

House Bill 170 was passed by the New Hampshire Legislature and became law on July 5, 2001. The bill repealed the legacies and succession tax (death tax) which was imposed on transfers of assets after a death.

Prior to the bill's passage, transfers from one spouse to another were exempt from the death tax, as were transfers from parent to child or child to parent.

However, transfers from a single person to a friend, domestic partner, or lateral relative (sibling, aunt, uncle, etc.) were taxed up to 18 percent.

The repeal of the death tax has the effect of removing this unfair aspect of the tax law.

The Concord Monitor reported that dozens of people, many of them elderly and without children, attended one of the first hearings on the bill.

Jane Hutchinson, a 78-year-old widow told lawmakers that when she began planning her estate, her lawyer advised her to move to Maine.

"This is my home," she said. "It's like being punished for not having children."

Several lawmakers warned that if the state did not change the policy, it could face a lawsuit from a taxpayer who claims the tax is unconstitutional. The constitution requires all taxes to affect taxpayers equally, except for "reasonable" exemptions.

"The question we need to ask ourselves is, do we think this is 'reasonable'?" said Sen. Clifton Below, a Lebanon Democrat. "That is, in this day and age, is there such a distinction between lineal descendants and the many cases where people want to pass property to an unmarried partner, a caregiver or (friends or relatives who are) like children?"

Bills similar to HB 170 are currently pending in legislative committees in New Jersey, Indiana, Iowa, and Nebraska.