



A M E R I C A N
A S S O C I A T I O N F O R
S I N G L E P E O P L E

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June 29, 2001

Charles Ingram
Department of Social Services
Commonwealth of Virginia
Eastern Regional Office
Suite 300 / Pembroke 4
Virginia Beach, VA 23462

Re: Licensing of Davis Day Care
Darlene Kay Davis, licensee

Dear Mr. Ingram:

I am writing to you to support the renewal of the day care license of the Davis Day Care Center owned by Darlene Kay Davis. Ms. Davis is a member of our organization.

The American Association for Single People is a nonprofit and nonpartisan organization which promotes the well being and human rights of unmarried individuals, couples, parents and families. Over 1 million households in Virginia are headed by unmarried adults. Among these unmarried households are more than 126,000 in which occupants identified themselves to the Census Bureau as “unmarried partners.”

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.

We are concerned about the precedent that would be established by such unconstitutional state action and are worried about the effect it would have on other unmarried adults who have business or professional licenses in Virginia.

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.

Promoting the well being and human rights of unmarried individuals, couples, parents, and families

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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.

“Accordingly, we hold that the trial court erred in refusing to issue petitioner a certificate of honest demeanor or good moral character.”

The state law prohibiting unmarried cohabitation may not legally serve as a basis for denying Ms. Davis the license. That statute existed at the time of the *Cord* case and did not prevent the Supreme Court from ruling the way it did in that case. Furthermore, the anti-cohabitation statute is unconstitutional.

In *Doe v. Duling*, 603 F. Supp. 960 (1985), the federal district court ruled that Virginia’s fornication and anti-cohabitation statutes violated the federal Constitution. The only reason that ruling was reversed on appeal was that the plaintiffs in the Doe case lacked standing to challenge the statute because they were not threatened with any imminent harm by it. (*Doe v. Duling*, 782 F.2d 1202 (1986)) In contrast, Ms. Davis does have standing to challenge the constitutionality of the statute because the state is threatening to deny her a business license on the basis of this unconstitutional law.

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 using 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. She 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:

THOMAS F. COLEMAN
Executive Director

cc: Darlene Kay Davis
ACLU of Virginia