

October 3, 2018

The Honorable Alex M. Azar II
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

I am writing you today with grave concerns over South Carolina's request for a religious exemption from federal nondiscrimination laws and regulations for its faith-based foster care providers. South Carolina Governor Henry McMaster personally requested an exemption from the Department of Health and Human Service (HHS) for one of its faith-based providers, Miracle Hill, to enable the agency to discriminate against potential foster families who are non-Protestant and lesbian, gay, bisexual, transgender and queer (LGBTQ) based on cited religious and moral commitment.¹ Miracle Hill refused to allow a Jewish woman to mentor children in foster care through their agency because of her religious faith.² Miracle Hill has also denied and referred qualified foster applicants to other child welfare agencies because applicants were same-sex couples.³ If HHS approves this exemption, it will sanction taxpayer-funded discrimination based on religion, sexual orientation and gender identity and prevent a significant share of Americans from opening their homes to foster children. Such an exemption would elevate the religious beliefs of taxpayer-funded foster care providers over the best interests of the children in care and would be a serious threat to the safety and protection of LGBTQ youth in foster care in particular.

It is never acceptable to use federal funds to discriminate based on religion, sexual orientation or gender identity, but the timing of this waiver request is particularly concerning given the spike in foster care caseloads across the country brought on by the opioid epidemic. Children across the country are sleeping in hotels, assessment centers, and temporary shelters due to the lack of licensed foster parents. Allowing child welfare agencies to close the door to willing and fully qualified foster and adoptive parents due to a difference in religious belief opens the door to taxpayer-funded discrimination on the basis of religion, sexual orientation or gender identity, and other characteristics, and it deprives vulnerable children of safe and loving homes. It will only serve to worsen the foster care crisis.

I have received communications indicating that the Principal Deputing Assistant Secretary and former Acting Director of the Administration of Children and Families, Steven Wagner, is

¹ Posner, S. (June 15, 2018). South Carolina sought an exemption to allow a foster-care agency to discriminate against Non-Christians. The Nation. Available: <https://www.thenation.com/article/south-carolina-sought-exemption-allow-foster-care-agency-discriminate-non-christians/>

² Angelina Davis (2018). Scrutiny of Miracle Hill's Faith-Based Approach Reaches New Level. Greenville News: Greenville, SC. Available: <https://www.greenvilleonline.com/story/news/2018/03/01/miracle-hill-foster-care/362560002/>

³ Naranjo, J. (July 28, 2018). LGBT advocates considering lawsuit over faith related foster care denials. The Post and Courier: Charleston, SC. Available: https://www.postandcourier.com/news/lgbt-advocates-considering-lawsuit-over-faith-related-foster-care-denials/article_b9649194-8b82-11e8-9833-fb6cf1fe45b6.html

working to grant South Carolina's request for an exemption under the Religious Freedom Restoration Act (RFRA). In addition, at a recent Heritage Foundation event, HHS representatives directly solicited faith-based providers to request a RFRA exemption if they feel that they are experiencing a "burden" to their religious expression from federal nondiscrimination laws.⁴ Although the South Carolina request for an exemption has not directly stated that these faith-based organizations intend to discriminate against LGBTQ prospective foster parents, the provider that spurred the state's waiver request does not accept same-sex couples. Moreover, numerous states have recently passed laws allowing faith-based foster care providers to discriminate against LGBTQ parents, in addition to parents who do not follow the same religion (or any religion) as the providers.⁵

LGBTQ youth are disproportionately represented in our child welfare system where many either were kicked out of their homes or ran away due to experiencing discrimination related to their sexual orientation or gender identity.⁶ As these youth enter our child welfare system, many report experiencing further conflict, discrimination, and violence related to their sexual orientation and gender identity by foster parents and child welfare agencies.⁶ HHS-funded research has shown that LGBTQ youth are more likely to experience longer roads to permanency with higher numbers of failed foster care placements.^{7,6} These large disparities in outcomes for LGBTQ foster youth impact their mental and physical health. LGB youth are almost five times more likely to attempt suicide as compared to heterosexual youth.⁷ HHS needs to demonstrate through their policies and actions that LGBTQ youth are supported and properly cared for with identity-affirming care.

LGBTQ families are especially qualified to provide safe, stable, nurturing, welcoming, and identity-affirming homes to LGBTQ youth.⁸ These children deserve to be placed by agencies that respect their identity and are guided solely by what is in the best interest of the child. Allowing agencies to put their religious beliefs ahead of the best interest of the child when determining placements could result in situations such as placing LGBTQ youth in group homes rather than with families; placing LGBTQ youth with providers or families who may subject them to conversion therapy (a harmful, medically discredited practice to change the sexual orientation or gender identity of an LGBTQ child or adult); or denying placements of foster children with LGBTQ kin.

⁴ May 23, 2018. Keep kids first: Prioritizing the needs of children in adoption and foster care. The Heritage Foundation. Available: <https://www.heritage.org/event/keep-kids-first-prioritizing-the-needs-children-adoption-and-foster-care>

⁵ Kelly, J. (May 22, 2018). Faith-based laws and foster care: Destined for Supreme Court? The Chronicle of Social Change. Available: <https://chronicleofsocialchange.org/youth-services-insider/faith-based-laws-foster-care-headed-supreme-court/30941> and May 17, 2018. Wildeman, Mary Katherine. South Carolina foster care group defends policy that allows only for Christian foster families. The Post and Courier. Available: https://www.postandcourier.com/health/south-carolina-foster-care-group-defends-policy-that-allows-only/article_ce9c717a-2922-11e8-a5d9-8b4e1d05f01c.html

⁶ Human Rights Campaign. LGBTQ Youth in the Foster Care System. Available: https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf?_ga=2.255406984.1279621117.1528725329-49473348.1528725329

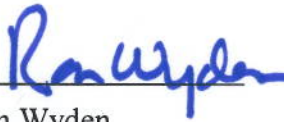
⁷ CDC. (2016). Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9-12: Youth Risk Behavior Surveillance. Atlanta, GA: U.S. Department of Health and Human Services.

⁸ Paige, R. U. (2005). Proceedings of the American Psychological Association, Incorporated, for the legislative year 2004: Minutes of the annual meeting of the Council of Representatives. American Psychologist, 60, 436-511. Available: <http://www.apa.org/about/policy/parenting.pdf>

The First Amendment offers Americans the right to practice a faith (or not practice a faith) and to live free of a government-established religion. I agree that the freedom to choose and practice a religion is a foundational American value and should not be impeded by government. But these protections are not limitless, and the veil of religious freedom must be rejected when used to violate anti-discrimination laws, cause harm to protected groups, or allow federal dollars to advance a discriminatory agenda. Indeed, I appreciate the important role religiously affiliated institutions historically have played in partnership with the government to serve children in foster care. Effective government collaboration with faith-based groups has not and does not require the sanctioning of federally funded religious discrimination.

If HHS grants this religious exemption to taxpayer-funded faith-based foster care providers, it will open the door to widespread discrimination against LGBTQ youth and prospective foster parents who are LGBTQ, of a different faith or religiously unaffiliated. I strongly encourage HHS to refrain from granting this exemption and instead, enforce federal laws and regulations barring discrimination and support the rights of all qualified parents who answer the call to foster and adopt children in foster care. These children deserve the welcoming and loving families that LGBTQ couples and those from all faith backgrounds are yearning to provide.

Sincerely,



Ron Wyden
United States Senator