

United States Senate

WASHINGTON, DC 20510

March 13, 2019

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

Dear Secretary Azar:

We write to express our strong opposition to the decision by the Department of Health and Human Services (HHS) to grant a religious exemption from federal nondiscrimination laws and regulations for state-contracted child welfare agencies in South Carolina. With this waiver, HHS has openly condoned taxpayer-funded discrimination and elevated the religious beliefs of state-contracted foster care providers over the best interest of vulnerable children in the foster care system. With HHS's stamp of approval, Miracle Hill Ministries and other South Carolina faith-based foster care agencies can now legally turn away qualified foster and adoptive parents just because they do not share the agency's faith. This unprecedented action runs counter not only to the principles on which the United States was founded, but also to the goals of the foster care system.

The First Amendment protects Americans' rights to practice a faith (or not practice a faith) and to live free of a government-established religion. By granting child welfare agencies the ability to discriminate on the basis of religion, you are infringing on the constitutionally guaranteed religious freedom rights of prospective foster parents, foster children, and their biological parents. HHS wrongfully cites the Religious Freedom Restoration Act (RFRA) as a justification for its discriminatory waiver. RFRA, however, was intended to *prevent* religious-based discrimination rather than facilitate it. And RFRA cannot be used to override the protections of the First Amendment.

The primary goal of the child welfare system is to serve the best interests of children. As you know, there is a serious need for safe, loving foster families for the more than 4,000 children in South Carolina's foster care system and over 400,000 children in foster care nationwide. Allowing child placement agencies to turn away qualified adoptive and foster parents based on their religion reduces the number of available homes at a time when the need for qualified adoptive and foster parents is only exacerbated by the opioid crisis.

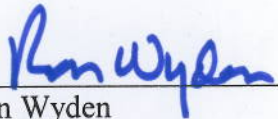
The Department justifies the waiver by claiming that faith-based providers experience hardship when they are asked to adhere to nondiscriminatory regulations. Yet, these long-standing federal protections against discrimination have been applied to partnerships between the federal government and faith-based providers for decades. By granting this waiver, you are subjecting children to a greater hardship – potential separation from siblings, group home placement, or ultimately aging out of the foster care system without ever being placed in a loving and stable

home – to appease a contractor. With 20,000 foster youth aging out of the system each year without a permanent place to call home, it is inexcusable to deny these children a family based on purely discriminatory reasons that have nothing to do with the child’s best interest.

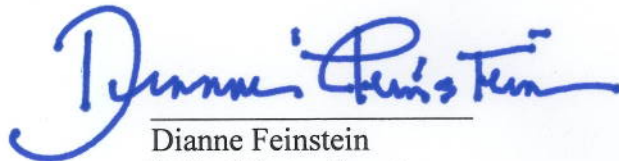
This is particularly concerning for LGBTQ foster children, who represent one out of five foster youth. LGBTQ foster children have a higher likelihood of experiencing long roads to permanent placement and would particularly benefit from the opportunity of being placed with diverse foster and adoptive families who will be accepting and respectful of their sexual orientation and gender identity.

We strongly condemn this waiver. This waiver not only is an unconstitutional interpretation of RFRA but it condones taxpayer-funded discrimination that will deny children access to the qualified, welcoming, and safe families they deserve. It is unconscionable to disregard essential nondiscrimination protections and turn potential foster parents away due to their religious identify and beliefs. We strongly urge you to revoke this waiver and refrain from permitting any other similar measures that sanction taxpayer-funded religious discrimination.

Sincerely,



Ron Wyden
United States Senator



Dianne Feinstein
United States Senator



Robert Menendez
United States Senator




Charles E. Schumer
United States Senator



Kirsten Gillibrand
United States Senator




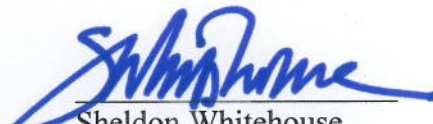
Richard J. Durbin
United States Senator

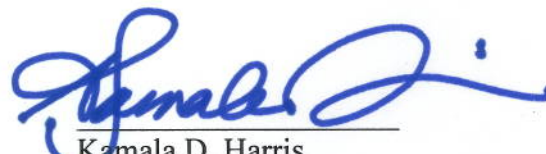

Chris Van Hollen
United States Senator



Richard Blumenthal
United States Senator

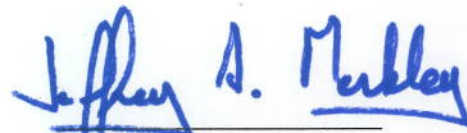

Tammy Duckworth
United States Senator

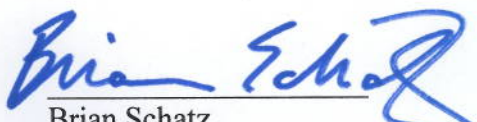

Sherrod Brown
United States Senator



Sheldon Whitehouse
United States Senator



Kamala D. Harris
United States Senator



Mazie K. Hirono
United States Senator


Jeffrey A. Merkley
United States Senator


Brian Schatz
United States Senator


Mark R. Warner
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Cory A. Booker

Cory A. Booker
United States Senator

Tim Kaine

Tim Kaine
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Jeanne Shaheen

Jeanne Shaheen
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Elizabeth Warren

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Catherine Cortez Masto

Catherine Cortez Masto
United States Senator

Christopher Murphy

Christopher Murphy
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Patrick Leahy

Patrick Leahy
United States Senator

Maria Cantwell

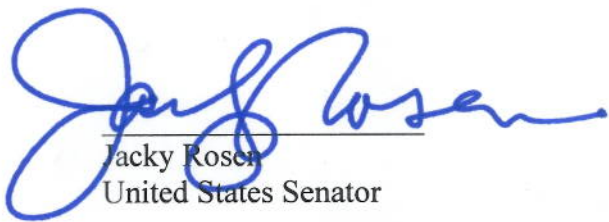
Maria Cantwell
United States Senator

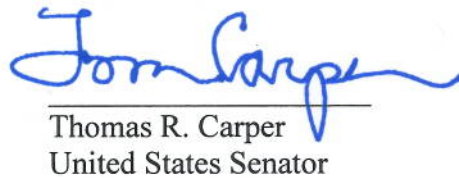
Bob Casey, Jr.

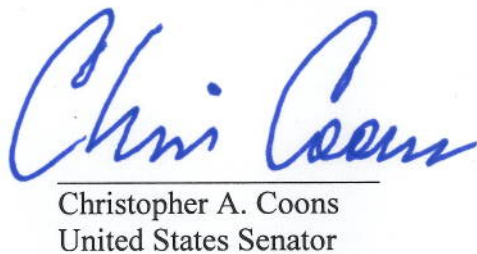
Robert P. Casey, Jr.
United States Senator

Maggie Hassan

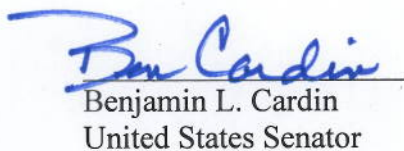
Margaret Wood Hassan
United States Senator

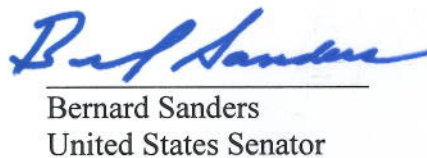

Jacky Rosen
United States Senator

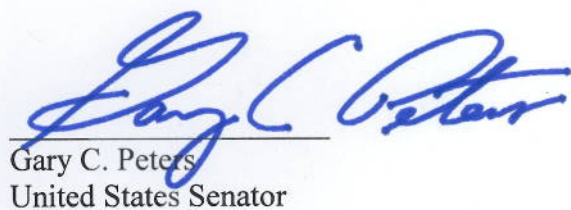

Thomas R. Carper
United States Senator

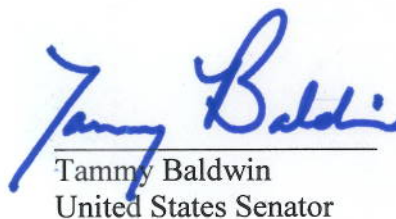

Christopher A. Coons
United States Senator

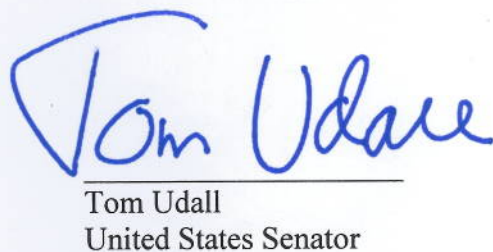

Debbie Stabenow
United States Senator

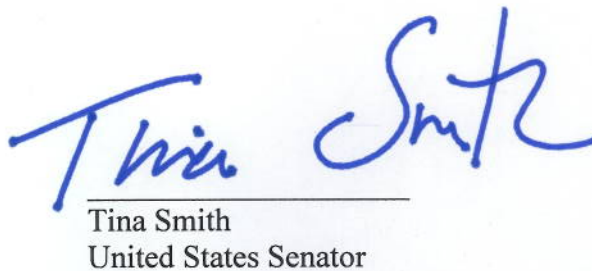

Benjamin L. Cardin
United States Senator

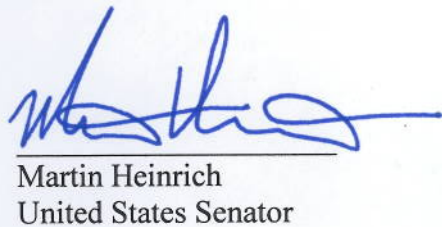

Bernard Sanders
United States Senator

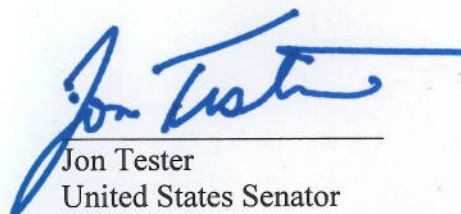

Gary C. Peters
United States Senator


Tammy Baldwin
United States Senator


Tom Udall
United States Senator


Tina Smith
United States Senator


Martin Heinrich
United States Senator


Jon Tester
United States Senator

Patty Murray

Patty Murray
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