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October 23, 2018

Mr. Roger Severino  
Director of the Office for Civil Rights  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington D.C. 20201

Dear Mr. Severino,

We write in reference to deeply disturbing press reports that South Carolina has requested a waiver from Department of Health and Human Services (“HHS”) to allow federally funded, faith-based foster agencies within the State to deny applications of prospective Jewish and other foster parents on the basis of religion. ADL urges HHS to reject any such request as it is both immoral and unconstitutional.

It is our understanding that the requested waiver is based on a concern that a government-funded faith-based foster care agency, Miracle Hill Ministries, will lose its federal funding because of the agency’s religious requirements for foster parents,<sup>1</sup> which prohibit foster placement with non-Christian families. Indeed, news reports reflect that Miracle Hill rejected a local Jewish woman as a voluntary mentor for children in its care simply because of her faith.

According to a May 2018 news report, “[i]n South Carolina, officials with DSS said there are over 4,600 kids in foster care, and the state needs an additional 1,500 foster homes for them.”<sup>2</sup> Furthermore, the Department of Social Services (“DSS”) web-site states that there are “... more than 500 children looking for forever homes in SC,”<sup>3</sup> and a search of the DSS web-page today reflects that 229 children are eligible for adoption.<sup>4</sup>

<sup>1</sup> See “South Carolina is Lobbying to Allow Discrimination Against Jewish Parents,” The Intercept, October 19, 2018 <https://theintercept.com/2018/10/19/south-carolina-foster-parent-discrimination-miracle-hill-ministries/> (web-page last visited October 23, 2018).

<sup>2</sup> See “South Carolina in critical need of foster parents,” WCSC, May 2, 2018, <http://www.live5news.com/story/38089846/south-carolina-in-critical-need-of-foster-parents/> (web-page last visited October 23, 2018).

<sup>3</sup> See <https://dss.sc.gov/adoption/> (web-page last visited October 23, 2018).

<sup>4</sup> See <https://portal.dss.sc.gov/adoptioninquiry/Search.aspx> (web-page last visited October 23, 2018).

When it comes to children in need, we can think of a no more compelling interest than placing them in loving and stable homes free of abuse, deprivations and predation. No child should be denied a loving foster or adoptive home simply because a prospective parent is Jewish, another faith, a different race or LGBTQ. Granting the requested waiver is immoral because it would only serve to harm the most vulnerable in our society.

Furthermore, neither HHS nor federal taxpayers should be supporting discrimination. The prospective, publicly-funded discrimination sought by the waiver is not only grossly unfair, but it raises serious legal issues. For example, a child placement agency refusing, based on its religious beliefs, to place a child with an otherwise qualified Jewish, Muslim, African-American, or Hispanic family could violate 42 U.S.C. 1981.

It appears that the waiver request is based on the Religious Freedom Restoration Act (“RFRA”). However, that law should not be interpreted to sanction discrimination. Indeed, the U.S. Supreme Court in its *Burwell v. Hobby Lobby* decision rejected the possibility of using RFRA as a vehicle to discriminate, stating:

*The principal dissent raises the possibility that discrimination ... for example on the basis of race, might be cloaked as religious practice to escape legal sanction. ... Our decision today provides no such shield. The Government has a compelling interest in providing ... equal opportunity ... without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal. See 134 S. Ct. 2751, 2783 (U.S. 2014).*

Furthermore, the taxpayer-funded discrimination sought by the waiver could violate the Establishment Clause of the First Amendment under the third-party harm doctrine, as well as by unconstitutionally advancing or endorsing the religious missions of faith-based foster care agencies.

Our nation’s religious liberty protections such as RFRA are intended as a shield for exercise of religion, and not a sword to harm or discriminate against others. In light of the detrimental impact granting the requested waiver would have on the neediest children and the serious legal issues raised by the waiver request, we urge its rejection in the strongest terms.

Sincerely,



Jonathan Greenblatt  
CEO and National Director

cc: The Honorable Alex M. Azar II Secretary,  
U.S. Department of Health and Human Services