APPEAL NO. 05-2371

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TEEN RANCH, INC., MATTHEW KNOCK AND MICHAEL KOSTER
APPELLANTS-PLAINTIFFS,

V.

MARIANNE UDOW, MUSETTE MICHAEL, AND DEBORA BUCHANAN
APPELLES-DEFENDANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION
CIVIL CASE NO. 5:04 CV 0032
(HONORABLE ROBERT HOLMES BELL)

BRIEF OF AMICI CURIAE ANTI-DEFAMATION LEAGUE IN SUPPORT OF APPELLEES' BRIEF

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INTEREST OF *AMICUS*

The Anti-Defamation League ("ADL") was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States. Today ADL is one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. It has twenty-eight regional offices around the country, including one located in Michigan, dedicated to this purpose. Among ADL's core beliefs is strict adherence to the separation of Church and State embodied in the Establishment Clause of the First Amendment. Separation, ADL believes, preserves religious freedom and protects our democracy.[1]

ADL emphatically rejects the notion that the separation principle is adverse to religion. To the contrary, a high wall of separation is essential to the continued flourishing of religious practice and beliefs in America and the protection of minority religions and their adherents. From day-to-day experience serving its constituents, ADL can testify that not only governments and religions but also those they serve suffer when the two become entangled. In the familiar words of

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[1] In furtherance of this belief, ADL has participated in the major church-state cases of the last half-century. See ADL briefs *amicus curiae* filed in *Van Orden v. Perry*, 125 S. Ct. 2854 (2005); *Locke v. Davey*, 540 U.S. 712 (2004); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Mitchell v. Helms*, 530 U.S. 793 (2000); *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Agostini v. Felton*, 521 U.S. 203 (1997); *Rosenberger v. Rector of University of Virginia*, 515 U.S. 819 (1995); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993); *Lee v. Weisman*, 505 U.S. 577 (1992); *Witters v. Washington Department of Services for Blind*, 474 U.S. 481 (1986); *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Engel v. Vitale*, 370 U.S. 421 (1962); and *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1948).

Justice Black: "[A] union of government and religion tends to destroy government and to degrade religion." *Engel v.Vitale*, 370 U.S. 421, 431 (1962).

I. SUMMARY OF THE ARGUMENT

When the Michigan Family Independence Agency ("FIA") places children in Teen Ranch's religiously focused treatment program and pays Teen Ranch for their care, it directly funds the children's indoctrination into Teen Ranch's religious beliefs. Because government-sponsored indoctrination into the religious beliefs of a particular faith is prohibited by the Establishment Clause, such practices should not be condoned by this Court. Teen Ranch seeks to escape the Establishment Clause through an appeal to the Supreme Court's private-choice cases, but Teen Ranch's claims cannot be reconciled with the fact that FIA assigns the wards in its care to residential programs. Teen Ranch also fails to recognize that, were it to apply to the case at bar, the Charitable Choice Act would bar state funding of Teen Ranch's proselytizing efforts rather than endorse Teen Ranch's right to public funding. The decision of the District Court should be upheld.

INTRODUCTION

At the heart of this case lies the fate of religious freedom for perhaps the most vulnerable segment of our society – abused, abandoned, and neglected children. By infusing its religious beliefs into its publicly-funded residential care program and proselytizing kids placed there by FIA, Teen Ranch set aside essential

Establishment Clause principles to advance its own parochial agenda at the expense of the religious freedom of children entrusted to its care by FIA.

For close to a half-century, the U.S. Supreme Court has consistently interpreted the meaning of neutrality under the Establishment Clause and balanced free exercise rights with Establishment Clause restrictions. Two bright-line principles have stood the test of time: (1) government cannot directly aid or advance religion and (2) government cannot support religious coercion and indoctrination. These core principles safeguard religious freedom by allowing Americans to practice their diverse faiths without government interference, endorsement, or support. Because of these protections, Americans are among the most religious people in the western world by choice, not by government mandate.

The record in this case is clear: FIA directly paid for Teen Ranch's residential program and was responsible for placing children in Teen Ranch's care. Thus, FIA was obligated to cut Teen Ranch's funding because to do otherwise would plainly support coercive religious indoctrination and proselytizing in violation of the Establishment Clause. In an effort to evade the law, Teen Ranch wholly misconstrues Supreme Court precedent on private choice, as well as federal and state charitable choice statutory provisions. In this regard, Teen Ranch argues that its program satisfies constitutional standards because young, impressionable, and vulnerable children can object or "opt out" of a religious program. This

position is untenable. From a child's perspective, opposing an adult authority figure, at the risk of losing a mentor's love, care, and kindness, or in this case food, shelter, and healthcare, is daunting to say the least.

The legal implications of this case go well beyond the unconstitutional funding of Teen Ranch because it highlights the serious danger to individual religious freedom posed by charitable choice laws, first enacted in 1996. These policies for the first time allowed houses of worship and other religious institutions, like Teen Ranch, to obtain public contracts and social service dollars. But unlike traditional religiously-affiliated social service providers, such as Catholic Charities, Lutheran Social Services, and Jewish Federations, pervasively religious institutions directly receiving government funds through charitable choice initiatives are not bound by the strict constitutional safeguards that for decades have ensured religious freedom within publicly funded social services. Casting away these safeguards allows religiously focused social service providers, like Teen Ranch, to ignore constitutional constraints on religious coercion and indoctrination.

The lower court's decision is faithful to long-standing Supreme Court precedent and the Establishment Clause's core protections. It should be affirmed.

II. FIA FUNDING OF TEEN RANCH IS PATENTLY UNCONSTITUTIONAL

A. The Establishment Clause Strictly Prohibits Direct Funding of A Program Infused with Religious Worship, Indoctrination, and Proselytizing, Such as Teen Ranch

The First Amendment's Establishment Clause dictates that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I.[2] While this prohibition may on its surface appear simple, the courts have mapped complex boundaries in sensitive areas dealing with government funding for private schools and treatment programs. *Mitchell v. Helms,* 530 U.S. 793, 807 (2000). But courts have always maintained that the state should make no laws "that have the 'purpose' or 'effect' of advancing or inhibiting religion," *Zelman v. Simmons-Harris,* 536 U.S. 639, 648-49 (2002), and have repeatedly upheld the prohibition "'against government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.'" *DeStefano v. Emergency Housing Group, Inc.*, 247 F.3d 397, 416 (2d Cir. 2001) (quoting *Bowen v. Kendrick*, 487 U.S. 589, 611 (1988)). A violation of this rule occurs whenever religious indoctrination can be attributed back to the government. *Helms*, 530 U.S. at 809.

Under Michigan law, when a child becomes a ward of the state, the court "commit[s] [her] to the family independence agency . . . for placement in or

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[2] Although the First Amendment speaks of "Congress," it applies to the states through the Fourteenth Amendment. *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940).

commitment to such an institution or facility as the family independence agency . . . determines is most appropriate." (M.C.L. § 712A.18(1)(e); *see also* Appellee's Mot. Summ. J.; Ex. O ¶ 7.) As the Court made clear in *Helms,* Establishment Clause dangers arise, in cases such as this one, "'where the government makes direct money payments to sectarian institutions.'" *Helms*, 530 U.S. at 843 (quoting *Rosenberger v. Rector of Univ. of Va.,* 515 U.S. 819, 842 (1995)). Because the FIA is entirely responsible for placing children at Teen Ranch and paying for their care, the religious indoctrination of these children while residing at Teen Ranch is wholly attributable to the state agency.

In *Johnson v. Economic Development Corp.,* 241 F.3d 501 (6th Cir. 2001), this Court held that the Establishment Clause prohibits "aid to an 'institution in which religion is so *pervasive* that a *substantial portion of its functions* are subsumed in the religious mission.'" *Id.* at 510 (emphasis in original) (quoting *Hunt v. McNair,* 413 U.S. 735, 743 (1973)); *see also Bowen v. Kendrick*, 487 U.S. 589, 610 (1988); *Agostini v. Felton*, 521 U.S. 203, 232 (1997). There can be no question that religious coercion and proselytizing pervade every aspect of Teen Ranch's publicly-funded residential care program. Despite repeated demands from FIA, Teen Ranch has refused to remove religious indoctrination from its program, claiming instead that it is entitled to "*practice* and *express* [its] religious beliefs

when carrying out the funded activities, i.e. the residential care of troubled youth." (Appellant's Initial Br. 7 (emphasis in original).)

Remarkably, Teen Ranch touts that its instructors encourage children to pray at each meal, make various devotions during the day, and attend church services. (Appellant's Initial Brief 5.) Indeed, the record in this case dispels any doubt that Teen Ranch's mission is an aggressively religious one. The program description minces no words:

- Teen Ranch is a unique ministry, one developed for the sole purpose of changing the lives of children and developing a closer relationship with Jesus Christ. (Appellee's Mot. Summ. J.; Ex. R, Welcome to Teen Ranch.)
- Christian principles permeate our program . . . And again, that's why Teen Ranch was founded 37 years ago. (Appellee's Mot. Summ. J.; Ex. P 3.)
- Our passion at Teen Ranch is to reach Kids for Christ! We are all about leading kids to Christ. (Appellee's Mot. Summ. J.; Ex. V 1.)

Although this litigation uncovers no deceptive practice, it confronts one that is completely at odds with the First Amendment. Even after this suit was filed, Teen Ranch president and founder Matthew Kock defended the religious content of its residential care program by stating that "Two weeks ago, a young girl in our

care made a decision for Christ directly because of this program!" (Appellee's Mot. Summ. J.; Ex. AA 2.) This practice is diametrically opposed to the principles embodied by the First Amendment.

It is beyond question that FIA's funding of the Teen Ranch program is unconstitutional.

B. The FIA's Funding Scheme is Not a Private Choice Program Because FIA is Solely Responsible for Placing Children at Teen Ranch and for Paying Teen Ranch for Their Care

Teen Ranch goes to great lengths to escape the Establishment Clause by trying to fit the FIA's funding of its program into the realm of the private choice exception clarified in *Zelman*. However, this is like painting stripes on a horse and trying to pass it off as a zebra.

In determining whether the indoctrination can be attributed to the government, the Court has differentiated between instances where the government directs the funds itself and instances where the funds are directed by the independent choice of a private individual. *Zelman*, 536 U.S. at 649. In *Zelman*, the Court held that Ohio's school voucher program, which allowed the state to contribute tuition dollars to schools chosen by the parents of children residing in certain districts, was one of true private choice and did not violate the Establishment Clause, even though many of the participating schools were religious. *Id.* at 644-45.

The Court based its decision on the fact that the government funds were directed to the religious schools by the independent choices of the children's parents, not by the government. *Id.* at 662-63. The Court reasoned that when funds were made available to religious schools through the choice of a private individual, "'no imprimatur of state approval can be deemed to have been conferred on any particular religion, or on religion generally.'" *Id.* at 650 (quoting *Meuller v. Allen*, 463 U.S. 388, 399 (1983)). The private choice of individuals provides the "insulating material between government and religion" and makes such funding permissible under the Establishment Clause. *Freedom From Religion Found., Inc. v. McCallum,* 324 F.3d 880, 882 (7th Cir. 2003).

There is simply no private, individual choice under FIA's funding scheme. Unlike the *Zelman* program, FIA – not the children, and certainly not their parents – has exclusive control over placement of children with Teen Ranch and the ninety-five other residential care programs it contracts with for the children's care. These kids have been committed to the care of the FIA by the Michigan state probate courts because they are troubled or come from unsuitable homes. (*See* M.C.L. §§ 400.114 -.115e; M.C.L. § 712A.18(1)(d); M.C.L. § 803.302.) After such a commitment, their parents, family, friends, or other private citizens have no authority to limit the FIA's discretion when it places a child in a treatment facility like Teen Ranch. Thus, when FIA assigns a child to Teen Ranch's religiously

infused program, it undeniably places its "imprimatur of state approval" on Teen Ranch's particular religious beliefs, making such a placement impermissible under the Establishment Clause.

In its brief, Teen Ranch reiterates its argument that the opt-out provisions of the Charitable Choice Act (42 U.S.C. § 604a) and Michigan's implementing legislation (2003 P.A. 172 § 220), which allow a child to object to the "religious character" of FIA's placement, create a private choice where none before existed. This argument is beyond any plausible statutory construction.

First, the Charitable Choice Act does not apply to funding for Teen Ranch's program. Because it is administering a residential care program, the FIA is only eligible for reimbursement from the federal government for a portion of its foster care placement cost under Title IV-E of the Social Security Act. 42 U.S.C. § 670, *et seq*. Title IV-E is silent regarding services provided by religious organizations, and unlike Title IV-A, it does not authorize indirectly-funded private choice programs, such as vouchers. *See id.*

Second, 2003 P.A. 172 § 220(1) prohibits the use of direct funds "for any sectarian activity, including sectarian worship, instruction, or proselytization." *See*

2003 P.A. 172 § 220(1).[3] This prohibition applies across the board to both religious and secular institutions, meaning that houses of worship or other religious institutions housing or hosting a publicly-funded residential care program are barred from injecting any religious content into a program funded by the State. Given the explicit prohibition contained in § 220(1), § 220(2)'s reference to "religious character" cannot be read in a way that authorizes a house of worship or other religious institution to infuse religious content into its residential care programs. Quite the opposite, the statute seeks to protect individual religious freedom by preventing government funded proselytization.

Moreover, the choice of a private individual is meant to avoid the appearance of government approval or support for religious indoctrination, thereby preventing an Establishment Clause violation in the first instance. Merely allowing the children under the care of the state to take corrective measures after their First Amendment rights have been violated is not in keeping with this goal.[4] The outward appearance of approval projected by the act of placement alone

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[3] Amici's discussion of 2003 P.A. 172 § 220 does not imply that Teen Ranch properly raised a claim under this provision, and respectfully urges the court to affirm the lower court's dismissal of this claim based on F.R.C.P. 8, 11th Amendment, and supplemental jurisdiction grounds.

[4] The pressure on children placed with Teen Ranch to accept its religious values is far greater than the pressure the Court found to be impermissible in *Santa Fe Independent School District v. Doe,* 530 U.S. 290 (2000) and *Lee v. Weisman*, 505 U.S. 577 (1992). In *Santa Fe*, the Court dismissed the argument that student led prayer at a football game was permissible because students were not required to attend the game. 530 U.S. at 312. Furthermore, in *Lee* the Court rejected the argument that a non-sectarian invocation at a high-school graduation was permissible because student attendance was not required. 505 U.S.at 595. Similarly, this Court should reject Teen Ranch's argument that young children would ask to leave Teen Ranch on religious grounds.

violates of the Establishment Clause. The fact that a child under the state's care can thereafter contest the placement on religious grounds is irrelevant.

C. Teen Ranch's Reliance on the Federal Charitable Choice Act and 2003 P.A. 172 § 220 is Completely Misplaced Because Both Provisions Bar Direct Funding of Inherently Religious Activity

Both the federal Charitable Choice Act and 2003 P.A. 172 § 220 codify Establishment Clause precedent prohibiting use of direct funds for "sectarian worship, instruction, or proselytization." 42 U.S.C. § 604a(j); 2003 P.A. 172 § 220(2). Even assuming the Charitable Choice Act was applicable and 2003 P.A. 172 § 220 created a private choice program, Teen Ranch's reliance on these provisions would be misplaced. As discussed above, it is indisputable that FIA directly funded Teen Ranch's residential care program and that FIA funds supported religious indoctrination and proselytizing in clear violation of these statutory prohibitions.

III. THE TEEN RANCH PROGRAM UNDERSCORES THE DANGERS TO RELIGIOUS FREEDOM POSED BY CHARITABLE CHOICES LAWS AND POLICY

Charitable choice laws, for the first time, authorized churches, synagogues, mosques and other religious institutions to compete on equal terms with religious-affiliated and secular institutions for public social service dollars. Since the 1995 inception of these laws, concerned organizations and groups, which advocate religious freedom through strict separation of church and state, have warned of the

grim consequences for Americans' religious freedom and for the integrity our nation's religious institutions that can arise from the implementation of charitable choice without strict constitutional safeguards. Teen Ranch embodies these concerns and is a troubling omen of things to come when tens of billions of dollars in federal social service funds are made available to our nation's religious institutions without proper constitutional safeguards.

America's religious institutions have historically played a vital role in addressing many of our nation's most pressing social needs and have acted as a critical complement to government-funded programs. Prior to the first charitable choice laws, government-funded partnerships with religiously-affiliated organizations, such as Catholic Charities, Jewish Community Federations, and Lutheran Social Services, have helped combat poverty and provide housing, education, and health care to those in need. But unlike Teen Ranch, these successful partnerships have provided excellent service to communities without unduly entangling government and religion. These programs have strictly adhered to appropriate constitutional safeguards, thereby protecting program beneficiaries from unwanted and unlawful proselytizing. In so doing, they have upheld the integrity and sanctity of America's religious institutions, which have flourished as a result of their independence from government.

By incorporating separately from their affiliated churches and abiding by strict constitutional safeguards, religious-affiliated groups like Catholic Charities provide outstanding government-funded social services while respecting their beneficiaries' religious freedom and the independence of the Church. Religiously-affiliated groups, like Catholic Charities, have taken the following measures ensure their programs are administered in accordance with the Establishment Clause:

- Prohibiting unwanted and unconstitutional religious proselytizing to beneficiaries of social services while they receive government funded services;
- Removing religious art, icons, scripture, or other religious symbols from facilities in which social services are provided;
- Informing beneficiaries of alternative secular social service providers and assisting them in obtaining those services if a beneficiary so desires;
- Advising beneficiaries that any participation in privately funded religious activities outside of the government-funded program is strictly voluntary and is never a condition for receiving benefits;
- Ensuring that any religious activity occurs at a time and location separate from the government-funded program;

- Maintaining accounting systems or "firewalls" to separate government dollars from core religious activities.

As currently implemented, Teen Ranch's residential care program does not attempt to employ any of these safeguards, nor does it satisfy the minimal safeguards contained in existing charitable choice laws. Teen Ranch's attempt to compare itself to a religious-affiliated group like Catholic Charities is misguided. Although the charitable principles of the Catholic faith motivate the good works of Catholic Charities, Catholic Charities does not proselytize the recipients of social benefits, as was happening at Teen Ranch.

CONCLUSION

Last term, Supreme Court Justice O'Connor cautioned that — "[t]hose who would renegotiate the boundaries between church and state must . . . answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?" *McCreary County v. ACLU of Ky.*, 125 S. Ct. 2722, 2746-47 (O'Connor, J., concurring), *cert. denied*, 125 S. Ct. 2988 (2005).

Teen Ranch seeks to redefine those boundaries, and thereby challenges the very underpinnings of our liberty and religious freedom. The district court's judgment should be affirmed.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C), I certify the foregoing Amicus Brief in Support of Appelles' Brief is proportionally spaced, has typeface of 14 points or more, and contains 3,484 words, as calculated by Microsoft Word.

Dated: May 8, 2006

David S. Prohofsky

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he mailed a copy of the foregoing via first class mail to the following on the 8th day of May, 2006:

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