

APPENDIX C:
Letters From
**Child Welfare/
Nondiscrimination**
Experts

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Kyle Yasuda, MD
President
American Academy of Pediatrics
601 13th Street NW, Suite 400N
Washington, DC 20005

Dear Dr. Yasuda,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,


The Honorable John Lewis, *Chairman*
Subcommittee on Oversight


The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support

American Academy of Pediatrics

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AAP Headquarters

345 Park Blvd
Itasca, IL 60143
Phone: 630/626-6000
Fax: 847/434-8000
E-mail: kidsdocs@aap.org
www.aap.org

Reply to

AAP Washington Office
601 13th St NW, Suite 400N
Washington, DC 20005
Phone: 202/347-8600
E-mail: kids1st@aap.org

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August 14, 2019

The Honorable John Lewis
Chairman
U.S. House Committee on Ways and Means
Subcommittee on Oversight

The Honorable Danny Davis
Chairman
U.S. House Committee on Ways and Means
Subcommittee on Worker and Family Support

Dear Chairmen Lewis and Davis:

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, I am writing to share our response to your July 11 letter regarding what we know about how to best promote appropriate matches between foster parents and children, including how to address the needs of vulnerable populations including lesbian, gay, bisexual, transgender, and questioning (LGBTQ) children and youth.

America's pediatricians represent all faiths and serve children and families of all faiths. The AAP wishes to underscore its recognition of the important role of religion in the personal, spiritual, and social lives of many individuals, including health providers. Balancing that role with efforts to ensure children have appropriate access to needed health and social services is critical to meeting their health needs and supporting their health and wellbeing. AAP respects the important contributions of religious providers while promoting the best practices for providing optimal care for children. The free exercise of religion is an important societal value, which must be balanced with other important societal values, such as protecting children from serious harm and ensuring child health and well-being.

In considering that balance, AAP and the South Carolina chapter of the AAP both took a position opposing South Carolina's proposed waiver to allow federally-funded child welfare service providers to reject prospective foster parents whose religion, sexual orientation, or marital status do not match the provider's expressed religious beliefs. AAP based that decision on our understanding of the unique health needs of children in foster care and the best practices for addressing those needs as identified by our pediatrician experts.

In responding to this inquiry, AAP will provide input on what children's needs are, and what the science and best practices tell us best meets those needs. We appreciate your commitment to promoting policies to best meet the needs of vulnerable children and urge you to ensure that federal policy does not undermine children's access to needed care and services, including loving families for children in out-of-home care.

Children in Foster Care have Unique Needs and Vulnerabilities

Children in foster care have such unique vulnerabilities and health disparities that the AAP categorically classifies them as a population of children with special health care needs. This population faces greater health needs because of their experiences of complex trauma, including abuse, neglect, witnessed violence, and parental substance use disorders (SUD).

Children in foster care have typically experienced multiple caregivers, impacting their ability to form a safe, stable, and nurturing attachment relationship with a caregiver. One third of children in foster care have a chronic medical condition, and 60 percent of those under age 5 have developmental health issues.ⁱ Up to 80 percent of children entering foster care have a significant mental health need.ⁱⁱ Ensuring access to appropriate and trauma-informed services is critical to meeting the needs of this vulnerable population.

In FY 2017, nearly 270,000 children entered foster care, up from 251,352 in FY 2012. Parental substance use was a factor for the removal in over a third of those cases, second only to neglect as a factor for placement in foster care. Of note, infants represented nearly a fifth of all removals from families to foster care, totaling 50,076 in FY 2017. A total of 442,995 children were in foster care on the last day of FY 2017.ⁱⁱⁱ As the opioid epidemic continues to contribute to rising foster care placements, we need federal policies that support child and family healing and that provide a sufficient number of nurturing, high-quality foster and adoptive families.

Children fare best when they are raised in families equipped to meet their needs. Child welfare services can support the intensive family preservation services and parental SUD treatment needed to help families heal when it is possible to keep children together with their parents. When out-of-home placements are necessary for a child's health and safety, access to quality parenting from foster or kinship care providers can support a child's healing.

High-quality foster parent training and recruitment is essential to ensure sufficient access to families with the necessary background and training in trauma, child development, and parenting skills. Considering the ongoing opioid epidemic and its impact on rising foster care placements, there is a significant need to expand recruitment broadly to meet growing need and to also better support and retain foster families and kinship caregivers.

Best Practices for Recruiting Foster and Adoptive Parents and Matching them with Children

Children need a family who will love and accept them. The central focus in appropriately matching children to foster, kinship, and adoptive placements should always be what a child needs. Child welfare agencies engaging in best placement practices prioritize goodness-of-fit, placing a child with who is best suited to their needs rather than simply who is available. Wherever possible, kinship care placements are a best practice for maintaining a child's family, community and cultural ties and promoting optimal outcomes. Research suggests that children in kinship care have less frequent placement disruption, increased stability of the home environment, and lower risk of behavioral health problems compared to children placed with non-kin caregivers.^{iv}

When kinship care is not available, there is an immense responsibility for the child welfare system to ensure the highest possible quality of foster families. The best practice in placing a child with a non-relative foster family is to focus on prioritizing one who can provide a child with a familiar and affirming family environment to best approximate the ties that kinship can maintain. Depending on the circumstances, this can entail culture, race/ethnicity, religion, and related factors. Non-discriminatory paid caregiving is an essential need for serving children in foster care.

Ultimately, foster parenting rests on the quality of relationships. A focus on recruiting and retaining foster parents who have an open, accepting, tolerant, and nurturing parenting style driven by compassion for the child's trauma and needs is vital to helping children heal and thrive. Ensuring appropriate evidence-based preplacement and ongoing training and education of foster parents to promote this approach is critical to developing a supply of high-quality foster families. Ongoing training on trauma and its intersection with child development is also important to supporting foster parents in working productively with children and youth to promote their flourishing. This must also entail a focus on promoting safe, stable, nurturing relationships between foster parents and children.

Foundational to these best practices is also a recognition that disrupted placements cause children additional trauma and are associated with poorer behavioral health outcomes and longer stays in foster care.^v Failure to promote best practices and appropriately match children with well-trained, broadly accepting and loving families causes harm to children and compounds the challenges of the child welfare system by contributing to a strain on the supply of foster families. It is essential to work diligently to ensure a good fit for a child, including a focus on ensuring that a family accepts and honors a child's identity. This necessarily means casting a wide net for available, capable foster parents, including those who may be single, in a same-sex relationship, or who practice any particular religion.

Unique Needs of LGBTQ Children and Youth

All children and adolescents deserve the opportunity to learn and develop in a safe and supportive environment. LGBTQ youth face high rates of bullying and other factors that contribute to health disparities such as higher rates of depression and suicidal ideation, higher rates of substance use, and more sexually transmitted and HIV infections.^{vi} LGBTQ youth are overrepresented in the foster care system, and once in placement they are more likely to be living in a group home, to have a higher number of placements, and to report experiencing discrimination when compared to youth who did not identify as LGBTQ.^{vii} Adolescents are especially sensitive to unsupportive environments and the behaviors of adults around them, and the experience of discrimination based on race, gender identity, sexual orientation, and other categories can lead to immediate and long lasting behavioral health harms.^{viii} LGBTQ youth who report high rates of acceptance by family and caregivers, however, have greater behavioral health outcomes.^{ix}

Supportive and affirming communities, schools, friends and families can buffer all young people – especially LGBTQ youth – from negative experiences and outcomes while simultaneously promoting positive health and well-being.^x Policies that single-out or discriminate against LGBTQ youth are harmful to social-emotional health and may have lifelong consequences.^{xi} All health care entities receiving federal funding, including those that are faith-based, should be welcoming to and supportive of children & youth who are members of the LGBTQ community to support their optimal health and well-being.

Most Effective Approaches for Supporting and Addressing the Needs of LGBTQ Children and Youth

The AAP supports families in all their diversity, because the family has always been the basic social unit in which children develop the supporting and nurturing relationships with adults that they need to thrive. Children may be born to, adopted by, or cared for temporarily by married couples, nonmarried couples, single parents, grandparents, or legal guardians, and any of these may be of any sexual orientation or gender identity. Children need secure and enduring relationships with committed and nurturing adults to enhance their life experiences for optimal social-emotional and cognitive development.

Scientific evidence affirms that children have similar developmental and emotional needs and receive similar parenting whether they are raised by parents of the same or different genders.^{xii} If two parents are not available to the child, adoption or foster parenting by a single adult remains an acceptable option to provide a loving home for a child and should be available without regard to the sexual orientation of the parent(s).^{xiii}

All children and adolescents deserve the opportunity to learn and develop in a safe and supportive environment. Preplacement and ongoing evidence-based education and training of all foster parents on the needs of LGBTQ youth is vital to ensuring they receive the caring approach all children need. Child welfare services staff also need this training and education.

“Conversion” or “reparative therapy” is never indicated or acceptable for LGBTQ youth.^{xiv} This type of therapy is not effective and may be harmful to LGBTQ individuals by increasing internalized stigma, distress, and depression.^{xv} The AAP does not support the use of federal funds to promote approaches that do not treat LGBTQ youth as they do all others, that discriminate or condone discrimination against them, their families, or LGBTQ parents, or that support, condone, or provide “conversion” or “reparative therapy”.

The AAP advocates for policies that are gender-affirming for children – an approach that is supported by other medical professional organizations. In 2016, the AAP joined with other organizations to produce the document, “Supporting & Caring for Transgender Children,” a guide for community members and allies to ensure that transgender young people are affirmed, respected, and able to thrive.^{xvi} Transgender children should receive placements based on their gender self-identity, and receive all appropriate care and treatment, including gender affirming care as is indicated.

Protecting Children from Discrimination

Faith-based organizations play an important role in providing child welfare services and families to provide nurturing homes for children. However, no federal policy changes should allow for discrimination against children or families in child welfare services on the basis of religion, sexual orientation, or gender identity. All children who enter the child welfare system should receive compassionate, high-quality, and trauma-informed care and support services. The AAP opposed South Carolina’s child welfare services based on the view that entities providing child welfare services should not engage in discrimination against children or families based on sexual orientation, gender identity, marital status, or faith.

The Need for More Quality Foster Homes

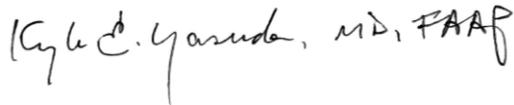
Currently, many states are experiencing a serious shortage of family foster homes. This crisis exacerbates the challenges of promoting goodness-of-fit in foster and adoptive placements and increases the likelihood that children will receive poorer quality care. We need federal policies that promote high-quality family foster homes and support the recruitment and retention of families capable of this difficult and important work. This includes improving the supports, services, education, and training foster parents receive, so that they are empowered and equipped to best meet the needs of the children for whom they are caring.

Faith-based providers are an essential part of the service provider community. Partnership with faith communities is important for promoting cultural ties and providing a conduit for committed families to serve vulnerable children and families, addressing their health needs and supporting their health and wellbeing. The best practice in ensuring that all providers appropriately address the needs of children in foster care is ensuring that they are willing to meet all children and families where they are, and to provide them with quality and compassionate care. The AAP wishes to underscore its recognition of the important role of religion in the personal, spiritual, and social lives of many individuals, including health providers. Balancing that role

with efforts to ensure children have appropriate access to needed health and social services is critical to promoting optimal outcomes for all children.

Thank you again for the opportunity to provide input on this important issue. If the AAP can be of any further assistance, please do not hesitate to contact Zach Laris in our Washington, D.C. office at 202/347-8600 or zlaris@aap.org.

Sincerely,



Kyle E. Yasuda, MD, FAAP
President
KEY/zml

ⁱ Szilagyi, M. et al. (2015). Policy Statement: Health Care Issues for Children and Adolescents in Foster Care and Kinship Care. *Pediatrics*. 2015; 136; e1131. Retrieved from <http://pediatrics.aappublications.org/content/pediatrics/136/4/e1131.full.pdf>.

ⁱⁱ Ibid.

ⁱⁱⁱ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau (2017). The AFCARS Report FY 2016. Retrieved from <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf>.

^{iv} Rubin DM, Springer SH, Zlotnik S, Kang-Yi CD, Council on Foster Care, Adoption, and Kinship Care. Needs of kinship care families and pediatric practice. *Pediatrics*. 2017;139(4) e20170099; DOI: 10.1542/peds.2017-0099

^v Rubin DM, O'Reilly AL, Luan X, Localio AR. The impact of placement stability on behavioral well-being for children in foster care. *Pediatrics*. 2007;119(2):336-344pmid:17272624

^{vii} Baams L, Wilson BDM, Russell ST. LGBTQ youth in unstable housing and foster care. *Pediatrics*. 2019;143(3): e20174211.

^{viii} National Academies of Sciences, Engineering, and Medicine 2019. *The Promise of Adolescence: Realizing Opportunity for All Youth*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25388>, 131

^{ix} Ibid., 133.

^{xii} AAP Committee on Psychosocial Aspects of Child and Family Health, "Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian—Policy Statement," *Pediatrics* Apr 2013, 131 (4) 827-830; DOI: 10.1542/peds.2013-0376.

^{xiii} Ibid.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Anthony Romero
Executive Director
The American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Dear Mr. Romero,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

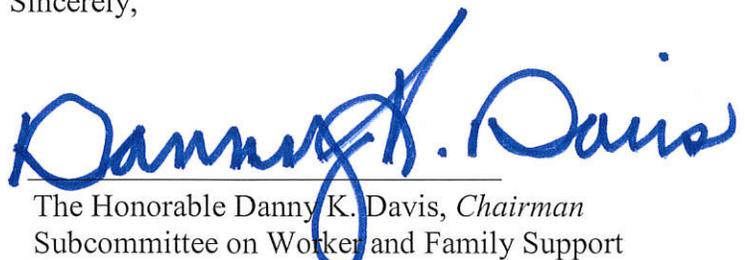
We therefore request that you provide responses to any of the following questions that are within your area of expertise:

1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
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4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,


The Honorable John Lewis, *Chairman*
Subcommittee on Oversight


The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support

September 9, 2019

Hon. John Lewis
Chairman
U.S. House Committee on Ways and Means
Subcommittee on Oversight

Hon. Danny Davis
Chairman
U.S. Committee on Ways and Means
Subcommittee on Worker and Family Support

Dear Chairmen Lewis and Davis,

Thank you for the opportunity to provide information related to your investigation into the Department of Health and Human Services (HHS) waiver to permit discrimination against prospective foster parents by government-funded agencies providing public child welfare services in South Carolina, and other waivers being considered by HHS.

The ACLU has been involved in substantial litigation involving the use of religious eligibility criteria by government-contracted, taxpayer-funded child placing agencies. We represent the plaintiffs in *Rogers v. HHS*, a challenge to HHS and South Carolina's authorization of the exclusion of prospective foster families based on their faith in South Carolina's public child welfare system.¹ We also represented the plaintiffs in *Dumont v. Lyon*, a challenge to Michigan's practice of permitting agencies to use religious criteria to exclude same-sex couples, which resulted in a settlement in which the State agreed to enforce the non-discrimination requirement in its foster care and adoption contracts.² In addition, the ACLU is counsel to intervening defendants in *Fulton v. City of Philadelphia*, a case in which a foster care agency is suing the



National Political
Advocacy Department

915 15th Street NW
6th FL
Washington DC 20005
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

¹ See Complaint, available at https://www.aclu.org/sites/default/files/field_document/rogers_v_hhs_complaint_-_file_stamped.pdf.

² Case documents available at <https://www.aclu.org/cases/dumont-v-gordon>.

City because it will not allow government-contracted agencies to exclude families for reasons unrelated to the ability to care for a child, including sexual orientation.³

Through this experience and advocacy around this issue in state legislatures, we have seen the impact of policies that authorize the use of religious eligibility criteria in the public child welfare system. As we will elaborate, such policies deny children foster or adoptive placements that would be in their best interest by putting the religious beliefs of agencies above the needs of the children in their care. Moreover, allowing the use of a religious litmus test for participation in this government program undermines rather than advances religious liberty, bringing us back to a time when members of minority faith communities were told they “need not apply.” Nothing in the Religious Freedom Restoration Act or the First Amendment requires the federal government to support such harmful policies; indeed, the use of religious eligibility criteria in government programs violates the Establishment Clause.

Allowing the use of religious criteria to exclude qualified foster and adoptive families denies children access to families they need.

When a state removes children from their families because they cannot safely remain at home, it has a duty to care for them, including finding them a foster family and, if necessary, permanency with another family through adoption. Many states contract out public child welfare services to private organizations, including faith-based organizations, and pay them tax dollars for this important work. Well-established child welfare standards recognize that foster and adoptive family placement decisions must be made based on the individual needs of each child.⁴ And with over 440,000 children in foster care across the country, nearly a quarter of whom are waiting for a family to come forward to adopt them,⁵ there is a critical need to access every family that is willing and able to open their heart and home to a child. Many of the children in foster care have significant medical or emotional needs, are older children, or are part of a sibling group, making it difficult to find families willing to adopt or foster them.

³ Case documents available at <https://www.aclu.org/cases/fulton-v-city-philadelphia>.

⁴ See, e.g., Child Welfare League of America, *Standards of Excellence for Adoption Services* (Rev. Ed.) (2000). Washington, D.C., at 56-57.

⁵ See Administration for Children and Families, Children’s Bureau, “Trends in Foster Care and Adoption”, available at <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

When the government authorizes state-contracted agencies to use religious criteria to exclude prospective foster and adoptive families, this exacerbates the shortage of families, resulting in more children being placed in group homes, separated from siblings, and aging out of foster care without ever finding the security of a family. And the exclusion of qualified families means that some children will lose out on placements that would be in their best interest.

Those who support allowing state-contracted agencies to exclude families based on religious criteria argue that this is harmless because prospective families who are rejected can just go to another agency. The main problem with this is that it overlooks the people the child welfare system was created to serve—*the children*. In Michigan, an agency did not place a child with his siblings because they were in the care of a same-sex couple and the agency was unwilling to place children in same-sex parent families.⁶ For three other children in Michigan, their adoptions were delayed because the agency caring for them was unwilling to work with a married same-sex couple.⁷ In South Carolina, children in the care of the state’s largest state-contracted foster care agency cannot be placed with families of their own faith unless their faith is evangelical Christian because the agency accepts only families who share that faith. Children who are devout Jews, Muslims or adherents of other faiths are denied the option of being placed with a family that practices their faith. And when agencies exclude same-sex couples, the LGBTQ children in these agencies’ care, some of whom could have their needs best met by a same-sex couple, are denied that possibility. Professional child welfare standards emphasize the importance of having a diverse pool of prospective families in order to be able to meet the diverse needs of the children in foster care. Allowing state-contracted agencies to limit children’s options based on a religious test means some children’s needs will go unmet, yielding to the interests of the agencies caring for them.

Whether or not prospective families can find another agency to work with, *children* in foster care cannot raise their hands and say “please transfer me to an agency that will place me with a family based on my needs, not their religious beliefs.”

⁶ See Michigan Department of Health and Human Services, Division of Child Welfare Licensing, Special Investigation Report, May 2, 2018, available at <https://cwl-search.apps.lara.state.mi.us/Home/ViewReport/236855>.

⁷ See Michigan Department of Health and Human Services, Division of Child Welfare Licensing, Special Investigation Report, Jan. 13, 2017, available at and <https://cwl-search.apps.lara.state.mi.us/Home/ViewReport/208062>.

Moreover, when families are turned away because an agency has a religious objection to their sexual orientation or religion or anything else, there is not necessarily another comparable agency nearby for them to turn to; sometimes there is no agency at all. When Kristy and Dana Dumont set out to adopt a child from foster care in Michigan, they reached out to two agencies in their county and both turned them away because of their religious objection to accepting same-sex couples.⁸ In less populated parts of the country, the next closest agency could be hours away. In addition, not all agencies are equivalent. Some specialize in certain populations of children such as medically needy children or older children. Different agencies offer different support services for families and different training schedules. If agencies are permitted to exclude families based on religious criteria, some families may not be able to find an agency in their area that would be appropriate for their circumstances. If same-sex couples or non-Christians are only able to choose from a subset of the agencies that are available to other families, making it harder to find an agency that is a good fit, that could mean fewer families for children.

Even where there are other agencies nearby, discrimination is a deterrent to families fostering or adopting, shrinking the pool of families available to all children. When prospective foster or adoptive parents experience the sting of discrimination, they will not necessarily be willing keep knocking on doors and risk further humiliation. For some families, having to navigate a system that permits discrimination against them will be a barrier that prevents them from ever coming forward.⁹

Those who support allowing agencies to use religious eligibility criteria claim that if agencies are not allowed to do so, faith-based agencies will shut down, resulting in fewer services for children. There is no factual basis for this claim. Most faith-based agencies follow professional child welfare standards and accept all qualified families, regardless of their religious beliefs. In the many states and cities across the country that require government-contracted agencies to accept all qualified families and, thus, prohibit discrimination based on characteristics

⁸ See Complaint, *Dumont v. Gordon*, available at https://www.aclu.org/sites/default/files/field_document/001_complaint_1.pdf.

⁹ See *Voice for Adoption et al, as Amici Curiae Supporting Affirmance in Favor of Defendants-Appellees in Fulton v. City of Philadelphia* (“Child welfare amicus brief”), at 8-12, available at https://www.aclu.org/sites/default/files/field_document/fulton_v_city_of_philadelphia_-_voice_for_adoption_et_al_amicus_brief.pdf

unrelated to the ability to care for a child, faith-based agencies play an important role in providing these services.¹⁰

In cases where agencies have chosen to stop providing state-contracted public child welfare services because they were unwilling to comply with states' requirements to accept all qualified families, other agencies, including other faith-based agencies, stepped in to provide those services.¹¹ There is no shortage of foster care agencies; there is a shortage of families, and allowing agencies to turn away qualified families based on religious criteria only makes it worse.

Because excluding families based on religious criteria flies in the face of well-established child welfare standards and reduces children's opportunities to find a family in which to grow and thrive, the major child welfare professional organizations have uniformly and consistently opposed such policies.¹² These groups include the Child Welfare League of America, the North American Council on Adoptable Children, Voice for Adoption, and Children's Rights. This is an issue about which there is a clear consensus among child welfare professionals. Not a single child welfare organization has supported policies like the HHS waiver that authorize the use of religious criteria to exclude prospective foster or adoptive parents.

Allowing the use of religious criteria to exclude qualified foster and adoptive families undermines religious liberty.

HHS issued the waiver to South Carolina in the name of protecting religious liberty but it actually undermines this cherished freedom.

¹⁰ See Brief of Massachusetts, et al, as Amici Curiae in Support of Philadelphia in *Fulton v. City of Philadelphia* ("States' amicus brief"), at 22, available at https://www.aclu.org/sites/default/files/field_document/fulton_v_city_of_philadelphia_-_states_amicus_brief.pdf

¹¹ *Id.*, at 22-27; Memorandum opinion, *Fulton v. City of Philadelphia*, No. 18-2075, July 13, 2018, at 15-17, available at https://www.aclu.org/sites/default/files/field_document/052_order_denying_pi.pdf.

¹² See, e.g., Child welfare amicus brief; Child Welfare League of America, Statement on HHS Waiver of Child Welfare Practices, available at <https://www.cwla.org/wp-content/uploads/2019/01/CWLA-Statement-on-HHS-Waiver-of-Child-Welfare-Practice.pdf>; North American Council on Adoptable Children, "NACAC Opposes Decision to Permit Discrimination in South Carolina," available at <https://www.nacac.org/2019/01/25/nacac-opposes-decision-to-permit-discrimination-in-south-carolina/>; Children's Rights, "South Carolina's Waiver to Discriminate," available at <https://www.childrensrights.org/waiver-south-carolina-discrimination/>.

In granting a waiver to South Carolina, HHS's actions permit the state's largest state-contracted foster care agency to accept only prospective foster parents who share the agency's evangelical Christian faith. The agency has turned away families because they are Jewish, Catholic and Unitarian Universalist.¹³ In states that authorize religiously-motivated discrimination by state-contracted child welfare agencies, there are numerous other agencies that restrict eligibility to Christian families.¹⁴

Allowing taxpayer-funded agencies that provide public child welfare services to restrict eligibility based on religious beliefs subjects members of minority faith communities to exclusion from this important government program, denying them full and equal participation in American life. To allow certain Christians to access the full menu of agency options so that they can choose the one that works best for the family, while members of all other faiths or no faith must accept a limited choice of options is anathema to the First Amendment principle of that the government must not give preference to any particular religious belief. As Melissa Garlick of the Anti-Defamation League (ADL) put it:

People who are ready, willing and able to foster children should not be turned away simply because they are Jewish, Catholic, Muslim, Hindu, Sikh, Mormon or following the wrong Protestant tradition. And such discrimination and [the] position that governments must allow such discrimination by taxpayer-funded agencies providing government services would set a dangerous precedent, within and outside the foster care context,

¹³ See "Scrutiny of Miracle Hill's faith-based approach reaches new level," Greenville News, March 1, 2018, available at <https://www.greenvilleonline.com/story/news/2018/03/01/miracle-hill-foster-care/362560002/>;

Lydia Curie, "I was barred from becoming a foster parent because I am Jewish," Jewish Telegraphic Agency, Feb. 5, 2019, available at <https://www.jta.org/2019/02/05/opinion/i-was-barred-from-becoming-a-foster-parent-because-i-am-jewish>; Complaint, *Maddonna v. United States Department of Health and Human Services*, available at <https://www.au.org/sites/default/files/2019-02/Maddonna%20v.%20HHS%20Complaint%202.15.19.pdf>; Complaint, *Rogers v. United States Department of Health and Human Services*, available at https://www.aclu.org/sites/default/files/field_document/rogers_v_hhs_complaint_-_file_stamped.pdf.

¹⁴ See, e.g., Christian Homes and Family Services, <https://christianhomes.com/foster-care/> (prospective families must "[b]e of the Christian faith and both active members of the same church, where both of you attend weekly"); Arrow Child & Family Ministries, <http://www.arrow.org/services-programs/foster-care/meeting/>; Loving Houston Adoption Agency, <https://lovinghoustonadoptionagency.files.wordpress.com/2017/04/questionnaire.pdf>; South Texas 4 Kids, <https://www.4kidsofTX.org/>; see Brief for the States of Texas et al, as Amici Curiae in Support of Appellants and Urging Reversal in *Fulton v. City of Philadelphia* at 6 (providing link to Texas state website listing contracted foster care and adoption agencies), available at https://www.aclu.org/sites/default/files/field_document/2018-09-04_-_amicus_brief_-_texas_et_al.pdf.

for religious liberty for all in America. . . . There was a time in America when the Jewish community was explicitly told ‘Jews Need Not Apply.’ That should not be happening in the 21st century in taxpayer-funded government programs.¹⁵

In addition, as mentioned above, when agencies limit families to individuals of one faith while serving children of diverse faith traditions, children of minority faiths are denied the opportunity to be placed with families that practice their faith. Allowing children of one faith the chance to be part of a family in which they can participate together in worship and other religious traditions while taking that possibility off the table for children of all other faiths is the antitheses of the government giving equal respect to all faiths.

Because of these concerns, numerous faith leaders and organizations dedicated to religious liberty, including the ADL, the Hindu American Foundation and Muslim Advocates, have strongly opposed policies that allow the use of religious eligibility criteria by state-contracted, taxpayer-funded child welfare agencies.¹⁶

Neither RFRA nor the Constitution requires the government to allow state-contracted, taxpayer-funded agencies to exclude prospective foster or adoptive families based on religious eligibility criteria. In fact, the Constitution prohibits such conduct.

In issuing the waiver to South Carolina, HHS said it deemed the waiver to be required by the Religious Freedom Restoration Act (“RFRA”). It was not. RFRA protects against government burdens on the exercise of religion. 42 U.S.C. 2000bb-1. Prohibiting state-contracted, government-funded child welfare agencies from

¹⁵ Press briefing with Leslie Cooper, Deputy Director, ACLU LGBT & HIV Project, Mary Boo, Executive Director, North American Council on Adoptable Children, Melissa Garlick, Civil Rights National Counsel, Anti-Defamation League, Rev. David W. Key Sr., Founding Pastor, Lake Oconee Community Church, (June 21, 2019) (audio on file with American Civil Liberties Union).

¹⁶ Brief for Amici Curiae State Clerk of the General Assembly of the Presbyterian Church (USA), et al in Support of Defendants-Appellees and Affirmance in *Fulton v. City of Philadelphia*, available at https://www.aclu.org/sites/default/files/field_document/fulton_v_city_of_philadelphia_-_faith_leaders_amicus_brief.pdf; Brief of Amicus Curiae Coalition of Religious and Religiously Affiliated Organizations in Support of Appellees City of Philadelphia, et al, in *Fulton v. City of Philadelphia*, available at https://www.aclu.org/sites/default/files/field_document/fulton_v_city_of_philadelphia_-_adl_et_al_amicus_brief.pdf.

discriminating against qualified families based on race, religion, sexual orientation and other characteristics that have no bearing on the ability to care for a child does not burden anyone's exercise of religion. No one is forced to accept taxpayer dollars to provide a government service such as foster care and adoption services for wards of the state. The Supreme Court has made clear that the government's refusal to fund constitutionally protected activity does not constitute a burden on the exercise of that right. *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) ("A refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity.") (citing *Harris v. McRae*, 448 U.S. 297, 317, n.19 (1980)); *id.* ("[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right.") (citing *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 549 (1983)). This is no less true when the right at issue is the free exercise of religion. *See Locke v. Davey*, 540 U.S. 712 (2004) (state's decision not to fund religious instruction in its scholarship program did not violate the Free Exercise Clause). *See Agency for Int'l Dev. v. Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) ("As a general matter, if a party objects to a condition on the receipt of [government] funding, its recourse is to decline the funds."). If agencies feel that providing public child welfare services for wards of the state in a manner the government deems to best serve the interests of children in state custody, they are not required to do so.

Some government-contracted child welfare agencies that have religious objections to complying with non-discrimination requirements are now making similar arguments based on the Free Exercise Clause. Such a claim was rejected by a unanimous panel of a federal appeals court. *Fulton v. City of Phila.*, 922 F. 3d 140 (3d Cir. 2019), cert. pet. pending; *see also Dumont*, 2018 WL 4385667 at *28-31 (the court was "unconvinced that St. Vincent can prevail on a claim that prohibiting the State from allowing the use of religious criteria by those private agencies hired to do the State's work would violate St. Vincent's Free Exercise or Free Speech rights."). Contrary to the arguments made by these contracted agencies, the Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017), guarantees religious organizations equal treatment; it offers no support for the position that a government contractor's religious beliefs give it the right to opt out of requirements applicable to all other contractors.

When contractors choose to accept tax dollars to provide this government service, neither RFRA nor the Free Exercise Clause entitles them to alter the government services to conform to their religious beliefs.

The consequences of interpreting RFRA or the Free Exercise Clause to require governments to allow discrimination by state-contracted child welfare agencies are staggering. If faith-based organizations have a right to a government contract that allows them to offer government services only to those who meet their religious criteria and to alter those services to conform to their faith, that would apply to an organization whose religious beliefs prevent it from accepting interracial couples, single people, people who don't go to church, or anyone else who does not meet the agency's religious requirements. And it would apply to a foster care agency that, based on its religious beliefs, allowed sick and injured children in its care to be treated only with prayer and not with medical intervention, or an agency whose religious beliefs say it must discipline children using corporal punishment that violates the state's child abuse policies.

This interpretation would also have implications for government-contracted work of all kinds, not just in the child welfare context. It would invite limitless claimed rights to effectively dictate how government programs are run, making it impossible for governments to partner with the private sector in the provision of social services and other government programs. As seventeen states and the District of Columbia explained in its amicus brief in *Fulton*:

The implication of the ruling that [the agency] seek[s] is that the private organizations that provide [child welfare] services should be able to tailor contractual requirements based on religious belief to serve only those they choose in the particular manner that they choose. Such a framework would at a minimum hinder, and potentially preclude altogether, government agencies' reliance on contractors to deliver services mandated by state law and policy to be provided to all who qualify for them.¹⁷

Not only is there no basis in RFRA or the First Amendment to support HHS's waiver and similar policies; to the contrary, authorizing the use of religious eligibility criteria by state-contracted, taxpayer-funded child welfare agencies violates the Constitution's Establishment Clause. The government cannot use religious criteria in screening individuals seeking to participate in a government program such as fostering or adopting children out of foster care. It makes no difference whether that conduct is done by government employees or contractors hired by the state to provide the government service. The Supreme Court has made clear that the Establishment Clause forbids the government from delegating a

¹⁷ States' amicus brief, at 19.

government function to a religious organization and then allowing that government function to be performed using religious criteria. See *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982). This violates the Establishment Clause principle that “civil power must be exercised in a manner neutral to religion.” *Bd. of Educ. Of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 704 (1994). In the only case addressing a challenge to the use of religious eligibility criteria by state-contracted child welfare agencies, the court denied motions to dismiss, recognizing that the allegations that the State authorized the use of religious eligibility criteria by state-contracted child welfare agencies stated a claim for a violation of the Establishment Clause. *Dumont v. Lyon*, 341 F. Supp. 3d 706 (E.D.Mich. 2018).

* * *

We suggest that it would be helpful to ask the following questions of HHS officials to understand what, if any, measures have been taken to protect against the substantial harms to children and religious liberty resulting from authorizing the use of religious eligibility criteria to exclude qualified families in federally funded foster care programs:

1. Would other religious objections to prospective families would be entitled to the same treatment as religious-based exclusions of families that do not share the agency's faith? Religious-based exclusions of same-sex couples? Transgender people? Single people? Interracial couples? Families that don't attend church? Are there any limits on the classes of prospective families that could be excluded by federally funded agencies based on religious beliefs?
2. What has been done to ensure that children in Miracle Hill's care who are from non-evangelical Christian faith traditions have the opportunity to be placed with families who share their faith given that Miracle Hill excludes all Jews, Muslims, Hindus and Catholics who do not agree with Miracle Hill's statement of faith?
3. When granting a waiver to allow discrimination by federally funded agencies, what do you do to ensure that there are other comparable agencies nearby that will serve those who are excluded so that children don't lose out on potential families?
4. Are you certain that everywhere in the country, there are agencies available to work with all kinds of families? For example, everywhere agencies exclude

people because of their faith or sexual orientation, are there other comparable agencies nearby who will accept everyone? What have you done to ascertain this?

5. Will you fund additional agencies so that there are agencies providing duplicative services to different communities in all areas? For example, where an agency accepts only Christians, will you fund the state to contract with other agencies that will accept people of all faiths to provide the same services in the same part of the state area?

Sincerely,



Ronald Newman
National Political Director



Leslie Cooper
Deputy Director, LGBT & HIV Project



Ian S. Thompson
Senior Legislative Representative

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Rachel Laser
President and CEO
Americans United for Separation of Church and State
1310 L Street NW, Suite 200
Washington, DC 20005

Dear Ms. Laser,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

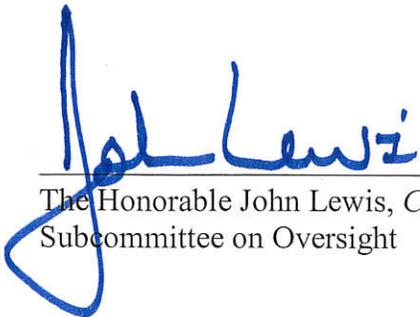
Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

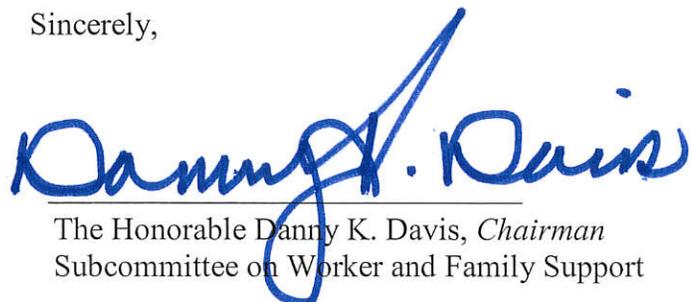
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



1310 L Street NW,
Suite 200
Washington, DC 20005

www.au.org
(202) 466-3234

August 30, 2019

The Honorable John Lewis
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Danny K. Davis
Chairman
Subcommittee on Worker and Family Support
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Lewis and Chairman Davis:

Thank you for asking for the perspective of Americans United for Separation of Church and State as you investigate the waivers granted or currently being considered by the U.S. Department of Health and Human Services regarding state child welfare systems. I am pleased to respond on behalf of Americans United to questions 3-5.

With a national network of more than 300,000 supporters, Americans United for Separation of Church & State has been safeguarding our American value of religious freedom for all people since 1948. The U.S. Constitution grants all Americans the right to believe—or not believe—without government interference or coercion. But it also ensures that no one can use religion as a justification for overriding the laws that protect the rights of others.

Americans United supports the use of reasonable and appropriately tailored accommodations to ease government-imposed burdens on the practice of religion. Such accommodations, however, must not foster the advancement of religion, nor may they be so broad as to harm third parties. Religion cannot be used to justify policies that deny children safe, loving homes and refuse prospective parents and mentors the opportunity to help children in need.

Americans United represents Aimee Maddonna, a devout Catholic and mother of three children, who was turned away from serving as a mentor at Miracle Hill Ministries, a government-funded foster care agency, because she was the “wrong” religion. Aimee filed a lawsuit in February 2019 to challenge the waiver granted by HHS that allows Miracle Hill to accept federal funds and continue to use religion to discriminate against prospective parents and volunteers like her.

Below, we provide responses to your questions, based on our work with Aimee and our more than seven decades of expertise in this area of the law. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Rachel K. Laser
President & CEO

Americans United for Separation of Church and State Responses to July 11 Letter

- (3) Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?**

These discriminatory policies interfere with the obligation to make a placement in the best interest of the child.

Children in foster care are in the care and custody of the state. If the children cannot safely remain in the care of their parent or parents because of abuse or neglect, the state child welfare agency may initiate a court proceeding to remove the children from their families and place them in the custody of the state. The state child welfare agency is then responsible for recruiting and identifying an appropriate family to foster the children until they can be reunited with their birth parent(s). If the children ultimately cannot be reunited with their parent(s), parental rights are terminated, and the agency must timely seek a permanent family for the children, preferably through adoption. The foster parents' relationships with their children are by definition intended to be temporary, and the state exercises continuing authority over the children being fostered until they are either returned to the birth parent(s) or placed for adoption.

The state agency often contracts with foster care agencies to fulfill these obligations; the contractors are paid federal and state taxpayer funds to arrange for or place children with foster or adoptive families. These foster care agencies are performing a government function on behalf of the government (and receiving a fee for doing it).

The state and its contractors must make child welfare decisions for children in foster care based on the best interest of the child standard. Because the state has an obligation to make reasonable efforts to reunify the family, the parent's and child's religion could be a relevant factor in order to ensure consistency for the child. South Carolina, for example, says that religious education

provided to children in foster care must be “in accordance with the expressed wishes of the natural parents, if such wishes are expressed.”¹ The religion of the parent(s) of the child in the foster care system or the religion of the prospective foster parents may, thus, be considered within the range of factors for the healthy placement of the child. But policies that allow the child welfare service provider’s religious views to affect a placement decision can be detrimental to the foster care process and the goals it seeks to further.

Allowing contractors to reject prospective parents and volunteers solely because they don’t share the agency’s faith elevates the religious beliefs of the contractor above the best interest of the children. It could lead to children from religious backgrounds that differ from the faith of their foster care agency being placed in homes that coerce them to practice a faith that is different from their own. It would also reduce the number of qualified foster and adoptive parents who are able to open their homes to these children and result in a less diverse pool of foster parents, which is needed to ensure that the needs of every child in foster care are met. Expanding these policies would only make these problems worse.

The child welfare service provider’s role is intentionally temporary and child-focused. Proselytizing or other forms of religious coercion by the agency should never be considered to be in the best interest of the child or appropriate when providing services under governmental authority.

These policies violate the Constitution.

These policies would violate the Constitution in two main ways.

First, these policies violate the Establishment Clause of the U.S. Constitution because they detrimentally affect third parties.² Although the government may offer religious accommodations even where it is not required to do so by the Constitution,³ its ability to provide religious accommodations is not unlimited: “At some point, accommodation may devolve into an unlawful fostering of religion.”⁴ Thus, when crafting an exemption, the government “must take adequate account of the burdens” an accommodation places on nonbeneficiaries⁵ and ensure it is “measured so that it does not override other significant interests.”⁶ In short, the government may

¹ S.C. Code Regs. 114-550(H)(11).

² E.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 729 n.37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring); *Cutter*, 544 U.S. at 726 (may not “impose unjustified burdens on other[s]”); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.8 (1989) (may not “impose substantial burdens on nonbeneficiaries”).

³ Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.

⁴ *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted). As an initial matter, an accommodation must lift an identifiable government-imposed burden on free exercise rights. See, e.g., *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 601 n.51 (1989) (“[g]overnment efforts to accommodate religion are permissible when they remove burdens on the free exercise of religion”); *Texas Monthly*, 489 U.S. at 15 (plurality op.) (accommodation must “remov[e] a significant state-imposed deterrent to the free exercise of religion”); *Wallace v. Jaffree*, 472 U.S. 38, 84 (1985), (O’Connor, J., concurring) (an accommodation must lift a “state-imposed burden on the exercise of religion”).

⁵ *Cutter*, 544 U.S. at 720; see also *Estate of Thornton v. Caldor, Inc.* 472 U.S. 703, 709-10 (1985).

⁶ *Cutter*, 544 U.S. at 722.

not make a person bear the costs of another person's religion because that would force one person to support someone else's religious beliefs.

In *Estate of Thornton v. Caldor*, the United States Supreme Court (in an 8-1 opinion) struck down a Connecticut law granting employees "an absolute and unqualified right not to work on their Sabbath."⁷ In ruling that the law violated the Establishment Clause, the Court focused on the fact that the right not to work was granted "no matter what burden or inconvenience this imposes on the employer or fellow workers."⁸ The law provided "no exception," and no account of "the imposition of significant burdens."⁹ The "unyielding weighting in favor of Sabbath observers over all other interests contravenes a fundamental principle of the Religion Clauses," and is unconstitutional.¹⁰

In *Cutter v. Wilkinson*, the Court upheld the Religious Land Use and Institutionalized Persons Act (RLUIPA),¹¹ RFRA's sister statute. The Court explained that "[p]roperly applying RLUIPA" includes taking adequate account of other significant interests.¹² The Court distinguished RLUIPA from the Connecticut Sabbath law in *Caldor*, concluding that RLUIPA, unlike the Sabbath law, did not "elevate accommodation of religious observances over an institution's need to maintain order and safety."¹³ This principle applies equally to RFRA, which contains the same legal test and congressional purpose as RLUIPA.¹⁴

The Court acknowledged the limitations imposed by the Establishment Clause yet again in *Burwell v. Hobby Lobby Stores, Inc.*¹⁵ In holding that RFRA afforded certain employers an accommodation from the Affordable Care Act's contraceptive coverage requirement, the Court concluded that the accommodation's effect on women who work at those companies "would be precisely zero."¹⁶ In his concurrence, Justice Kennedy emphasized that an accommodation must not "unduly restrict other persons, such as employees, in protecting their own interests."¹⁷

⁷ 472 U.S. at 710-11.

⁸ *Id.* at 708-09.

⁹ *Id.* at 710.

¹⁰ *Id.*

¹¹ 42 U.S.C. §§ 2000cc - cc-5.

¹² *Cutter*, 544 U.S. at 722.

¹³ *Id.*

¹⁴ Compare 42 U.S.C. § 2000bb-1, with 42 U.S.C. § 2000cc-1. See generally *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 661 (10th Cir. 2006). Accordingly, courts rely on RFRA and RLUIPA cases interchangeably in interpreting and applying the statutes. *Grace United Methodist Church*, 451 F.3d at 661; *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1226-27 (11th Cir. 2004). Furthermore, RFRA itself makes clear that it does not affect the Establishment Clause and is bound by the well-understood confines of the Establishment Clause. See 42 U.S.C. § 2000bb-4 ("Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause)"). Congress never contemplated that RFRA would afford exemptions or accommodations that impose material harms on third parties. See, e.g., 139 Cong. Rec. S14,350-01 (daily ed. Oct. 26, 1993) (statement of Sen. Kennedy ("The act creates no new rights for any religious practice or for any potential litigant. Not every free exercise claim will prevail, just as not every claim prevailed prior to the *Smith* decision."); 139 Cong. Rec. S14,352 (daily ed. Oct. 26, 1993) (statement of Sen. Hatch) (RFRA "does not require the Government to justify every action that has some effect on religious exercise").

¹⁵ 573 U.S. 682 (2014).

¹⁶ *Id.* at 727.

¹⁷ *Id.* at 737-40 (Kennedy, J., concurring).

Indeed, every member of the Court reaffirmed that the burdens on third parties must be considered.¹⁸

These policies also violate the Constitution in so far as they delegate government authority to religious organizations. Taxpayer-funded foster care entities are subject to constitutional and statutory requirements, just as the government would be if it were providing child welfare services directly—the state cannot do through a private contractor what it cannot lawfully do directly. In *Larkin v. Grendel's Den*,¹⁹ for example, the Supreme Court overturned a law that allowed churches to veto applications for liquor licenses in their neighborhoods. The Court explained that the government cannot delegate or share “important, discretionary governmental powers” with religious institutions.²⁰ These policies, however, delegate government authority to religious organizations and specifically allow them to use religious criteria to determine who gets and who is denied public services.

Under these policies, a faith-based adoption or foster care provider could take government funds to provide services to the public and then use a religious litmus test to determine whom they will serve. This is not just unfair, but unconstitutional.

These policies are also unnecessary to preserve private adoption arrangements.

Contrary to arguments made to support these discriminatory policies, they are unnecessary to ensure that birth mothers who are undergoing private adoptions may choose homes for infants in accordance with their religious beliefs. In private adoptions, the birth parent(s) often choose the adoptive family and therefore may consider religion. They may select an adoptive family based on the family’s religion or decide to work with an agency to coordinate the adoption based on that agency’s religious affiliation.

(4) Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?

Laws prohibiting discrimination against qualified prospective parents do not adversely affect placements of children and in fact, help ensure the state and its contractors can match children with families that best meet their needs. Some falsely argue that nondiscrimination laws would reduce placements by forcing faith-based child welfare agencies that refuse to comply with these laws to close. But allowing foster care agencies that discriminate to continue to make child placements will not increase the number of placements: the problem currently faced by the foster care system is not a shortage of agencies, but a shortage of qualified homes. This is demonstrated by the over 123,000 children waiting to be adopted and the nearly 20,000 youth who “aged out” of foster care without finding a forever home in the year 2017 alone.²¹ There are many faith-

¹⁸ See *id.* at 693; *id.* at 739 (Kennedy, J., concurring); *id.* at 745 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ., dissenting).

¹⁹ 459 U.S. 116, 127 (1982).

²⁰ *Id.*

²¹ U.S. Dep’t of Health & Human Servs., Admin. for Children & Families, Admin. on Children, Youth & Families, Children’s Bureau, [The AFCARS Report: Preliminary F Y 2017 Estimates](#) (Aug. 2018).

based and secular agencies that follow well-established professional child welfare standards and, thus, accept all families that are deemed capable of providing a safe, loving home for a child. Allowing foster care agencies to discriminate, in contrast, reduces the pool of potential parents and makes it harder to place children.

It is important to note the laws prohibiting discrimination against qualified prospective parents do not require the government to stop partnering with faith-based organizations, nor do they force faith-based organizations to close their doors. They simply require faith-based organizations to comply with nondiscrimination laws in order to continue to receive government funding. Any faith-based organization may continue to do what it wants when providing privately funded charitable activities and may continue to pursue their religious mission in ways that they see fit with their own funds.

It is true that some religious organizations, like Catholic Charities, have chosen to stop providing foster-care licensing services in the face of nondiscrimination requirements. But plenty of other organizations—religious and not—have stepped in to fill any gaps.²² For example, in Massachusetts, where Catholic Charities Boston decided to stop providing child welfare services, a network of agencies successfully filled in the gap so that there was no decrease in the average percentage of foster children placed for adoption (prior to Catholic Charities’ decision, 72% of foster children were placed for adoption, and two years after its decision to stop services, that percentage rose to 73%).²³ Similarly, in Washington, DC and Illinois other existing foster care providers stepped in to provide the services that Catholic Charities would no longer provide with little to no disruption.²⁴ In each case, according to state governments, “service disruption did not ensue, and children continued to be placed in similar numbers.”²⁵

(5) What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

The threat of allowing faith-based care providers to discriminate against qualified parents on the basis of religion using federal dollars can be illustrated by the story of Aimee Maddonna, a devout Catholic and mother of three who lives in South Carolina. Aimee’s father was in the foster system and wanted to make the lives of other kids in the system better, so he opened his home, and Aimee grew up with many foster brothers and sisters. Now, as Aimee is raising her own family, she wants to open her home to kids in foster care as well.

Aimee was thrilled when Miracle Hill Ministries, a local foster care agency, told her that her family would be a good fit. But after inquiring about what church Aimee attends, Miracle Hill rejected her because they only allowed volunteers and mentors who are Evangelical Protestants.

²² See Br. Of Mass., Ca., Conn., De., D.C., Haw., Ill., Iowa, Md., Minn., N.J., N.Y., Ore., Penn., R.I., Vt., & Wash. In Support of City of Philadelphia in *Fulton v. City of Philadelphia*, No. 18-2574, 2018 WL 4862577 at *22-23 (3d Cir. filed on Oct. 4, 2018).

²³ *Id.* at *24.

²⁴ *Id.* at *25.

²⁵ *Id.* at *24-26.

Despite accepting \$600,000 of federal and state taxpayer money last year alone, Miracle Hill imposes a religious litmus test on potential parents and volunteers.

Aimee couldn't pass Miracle Hill's test because she's Catholic. Neither could Beth Lesser or Lydia Currie, who were denied the opportunity to mentor children by Miracle Hill because they are Jewish. Miracle Hill also rejected Eden Rogers and Brandy Welch, a same-sex Unitarian couple, who wanted to open their home to children in foster care.

By discriminating against qualified potential parents and volunteers, Miracle Hill punishes children in South Carolina's foster care system. It denies them relationships with mentors. It also reduces the number of qualified foster and adoptive parents who are able to open their homes to these children, making it even more difficult for these children to find a loving home.

After receiving complaints that Miracle Hill, the state's largest foster care agency, refused to work with non-evangelical Protestant volunteers and potential parents like Aimee Maddonna, the South Carolina Department of Social Services (DSS) investigated. It concluded that Miracle Hill was violating both state and federal nondiscrimination laws and policies that prohibit discrimination with government dollars.²⁶ But Miracle Hill claims it has a religious freedom right to engage in this blatant religious discrimination.

When South Carolina Governor Henry McMaster found out about the violation, he did not denounce the religious discrimination. Instead he issued an executive order specifically to allow state-funded foster care agencies to continue applying religious tests on potential foster families.²⁷ Recognizing he lacked the authority to waive federal nondiscrimination laws, however, McMaster also wrote to HHS, requesting that it grant faith-based foster care agencies in South Carolina a religious exemption.²⁸

On January 23, 2019, the Trump Administration granted that exemption.²⁹ Using a gross misinterpretation of RFRA, the Administration set out a new policy that allows taxpayer-funded child placement agencies to turn away potential parents and volunteers who cannot meet a religious test—in violation of a federal nondiscrimination provision.

This waiver turns RFRA on its head—it uses RFRA to disqualify individuals from participating in government programs solely because of their religion. It harms children, prospective parents and volunteers, and all taxpayers whose dollars are being used to support this discrimination. It also threatens core civil rights and religious freedom protections. The government should never fund religious discrimination and never make vulnerable children pay the price.

²⁶ Letter from Jacqueline Lowe, Licensing Director, South Carolina Department of Social Services Child Placing Agency and Group Home Licensing, to Beth Williams, Miracle Hill Ministries (Jan. 26, 2018).

²⁷ S.C. Exec. Order No. 2018-12, 42-4 S.C. Reg. 11-12 (March 13, 2018).

²⁸ [Letter](#) from Henry McMaster, Governor of South Carolina, to Steven Wagner, Acting Assistant Secretary, U.S. Department of Health and Human Services Administration for Children and Families (Feb. 27, 2018).

²⁹ [Letter](#) from Steven Wagner, Principal Deputy Assistant Secretary, U.S. Department of Health and Human Services Administration for Children and Families, to Henry McMaster, Governor of South Carolina (Jan. 23, 2019).

Children in foster care have been entrusted to the state for care, stability, and safety. Adoption and foster care agencies that accept government funds to serve these children have a duty to act in the best interest of each child. Using a religious litmus test to reject qualified and caring parents who want to volunteer, foster, and adopt makes it even more difficult for these children to find loving homes.

In addition, the exemption clearly harms potential parents who are rejected from the government program. No qualified parent should be denied the opportunity to provide a loving home to children in need because they are the “wrong” religion.

Despite being subject to two lawsuits,³⁰ including one Americans United is litigating on behalf of Aimee, HHS is expected to issue new regulations that will expand this policy nationwide. This expansion would extend the harm faced by the children in foster care and prospective mentors and parents like Aimee in South Carolina to children and parents all across America.³¹

Faith and civil rights organizations oppose the discriminatory provisions.

A broad and diverse cross-section of organizations—including child welfare, education, civil rights, religious, and secular groups—have denounced HHS policies that exempt federally funded foster care and adoption agencies from religious nondiscrimination protections. A recent letter signed by 125 organizations opposes a nationwide exemption because it “will harm children and families and violate our nation’s fundamental protections for religious freedom.”³²

Among the 125 signers are nearly 50 religious groups and denominations, including the African Methodist Episcopal Church, Alliance of Baptists, Hindu American Foundation, Interfaith Alliance, National Council of Churches, NETWORK Lobby for Catholic Social Justice, Union for Reform Judaism, and YATOM: The Jewish Foster & Adoption Network. These faith-based groups—many of which are involved in foster care and adoption work—recognize that effective government collaboration with faith-based groups does not require the sanctioning of government-funded religious discrimination.

When several states have considered similar policies to allow state-funded child welfare agencies to use religion to discriminate, faith leaders and organizations have spoken out. Over the past two years, more than 220 faith leaders, congregations, and state faith-based organizations in

³⁰ Americans United represents Aimee Maddonna, *Maddonna v. U.S. Dep’t of Health and Human Servs.*, No. 6:19-CV-00448-TMC (D.S.C. filed on Feb. 15, 2019); and the ACLU, Lambda Legal, the ACLU of South Carolina, and the South Carolina Equality Coalition represent Eden Rogers and Brandy Welch who were rejected by Miracle Hill because they are Unitarian and a same-sex married couple, *Rogers v. U.S. Dep’t of Health and Human Servs.*, No. 6:19-CV-01567-TMC (D.S.C. filed on May 30, 2019).

³¹ Sam Baker & Jonathan Swan, [Scoop: Trump’s Plan to Let Adoption Agencies Reject Same-Sex Parents](#), Axios, May 24, 2019.

³² [Letter](#) from Coalition Against Religious Discrimination to Alex Azar, Secretary of U.S. Department of Health and Human Services (July 22, 2019).

Arkansas,³³ Kansas,³⁴ Oklahoma,³⁵ and South Carolina³⁶ signed letters to their respective state leaders to oppose such bills. Among their ranks were Presbyterians, Hindus, Jews, Episcopalians, Methodists, Catholics, and Muslim leaders and congregations. The position of these leaders and organizations from across the nation is clear: they are committed to religious freedom, and religious freedom does not mean the use of taxpayer dollars to discriminate against children and families.

³³ [Letter](#) from Ark. Faith Leaders & Organizations to the Hon. Alan Clark, Comm. on Judiciary, Ark. Senate (March 28, 2019).

³⁴ [Letter](#) from Kan. Faith Leaders & Organizations to Kan. Legislators (May 3, 2018).

³⁵ [Letter](#) from Okla. Faith Leaders & Organizations to Gov. Mary Fallin (May 10, 2018).

³⁶ [Letter](#) from S.C. Faith Leaders & Organizations to Gov. Henry McMaster (June 29, 2018).

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Marian Wright Edelman
Founder and President Emerita
Children's Defense Fund
25 E Street NW
Washington, DC 20001

Dear Ms. Edelman,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services ("HHS") regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries ("Miracle Hill") to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization's voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

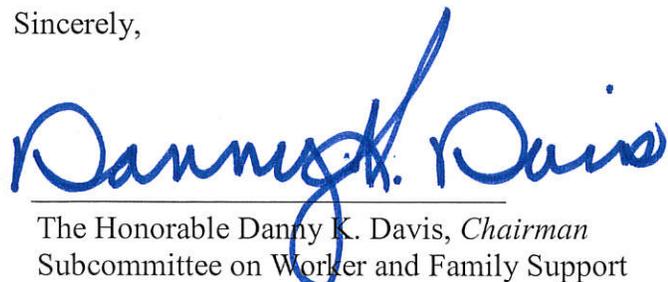
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



August 30, 2019

The Honorable John Lewis
Chairman, Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Danny K. Davis
Chairman, Subcommittee on Worker and Family
Support
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Representatives Lewis and Davis,

On behalf of the Children's Defense Fund (CDF), we write to offer our response to your July 11, 2019 letter regarding your investigation into the waivers granted or currently being considered by the Department of Health and Human Services (HHS) for state child welfare systems. We appreciate the opportunity to share our perspective and expertise on such a critical matter. CDF has worked for more than four decades to better support vulnerable children and improve outcomes for children who are at risk of placement in foster care or already in the care of public child welfare systems.

CDF strongly opposes exemptions that allow foster care providers to use federal funds to reject prospective foster parents whose religion, marital status or sexual orientation do not fall in line with the religious beliefs expressed by the provider. As elaborated on below in response to the questions posed in your letter, these exemptions do not promote the best interests of children involved in the child welfare system and do not take into account the needs of vulnerable youth in care including older youth, youth of minority religions, LGBTQ youth, youth of color and disabled youth. We strongly oppose the approval of such waivers in order to help ensure that every young person and parent is connected with a loving, stable family.

We offer the following responses to the questions posed in your July 11, 2019 letter:

Q1: What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?

The question of how to recruit foster parents is vitally important, as the child welfare community has long grappled with a shortage of high quality foster and adoptive homes. At a given time, well over 400,000 children remain in foster care in the United States with more than 120,000 waiting to be adopted. These numbers have increased every year for the last five years on a national level, as well as in 39 states, and have been exacerbated, especially, by the opioid crisis which, by some reports, accounts for more than one-third of all new cases entering the child welfare system. Now, with the implementation of the historic *Family First Prevention Services Act of 2018*, the child welfare system is prioritizing moving children out of institutional

settings and placing them with families. This is undoubtedly a positive step that will lead to improved outcomes for youth, but it also increases the need for more high-quality foster homes.

Unfortunately, the number of foster homes is not rising to meet the growing need for them and, in many states, it is declining. According to a survey from the Chronicle of Social Change, at least 15 states saw their number of foster homes decline between 2017 and 2018, with Mississippi, Minnesota and Rhode Island seeing declines of 35, 32 and 32 percent, respectively.¹ With a shortage of foster homes, caseworkers are forced to choose placements for youth simply because the placement is available, not necessarily because it is an ideal placement. This is especially true for youth deemed “hard to place,” including older youth, LGBTQ youth, sibling groups, youth of minority faiths, youth of color and youth with disabilities, who end up being placed in institutional care, seeing worse outcomes and aging out of the system at much higher rates than their peers.

It is crucial that states focus on recruiting not only more foster and adoptive families (or “resource families”), but the right families to meet the diverse needs of youth in their care. It is unconscionable, particularly during a time when so many youth are being denied the safety of a loving, stable family, that, for reasons that have nothing to do with merit, states and agencies are turning away people who want to be those very families. Instead of narrowing the view of what makes a good foster family to a particular demographic or faith, states should be expanding it. Children in foster care are extremely diverse, covering all races and ethnicities, sexual orientations, gender identities and gender expressions (SOGIE), and faiths. As one seeks to find appropriate placements for these youth, it is extremely important to recruit a similarly diverse group of foster parents, both in terms of demographics and attitudes. Recruiting a pool of foster parents of only one faith, background and attitude will make it impossible to meet the needs and affirm the identities of the diverse group of youth who need families. A youth needn't be placed only with a parent who shares their faith or demographic characteristics, but having a diverse array of foster parents increases the likelihood that a placement agency can find a family affirming of all of the aspects of a youth's identity.

The most effective recruitment tool for new foster parents is word of mouth, so making inroads to communities that have not traditionally been seen as target communities can lead to cascading gains. Conversely, a negative or unwelcoming experience can signal to a community that they are not welcome, as has been the case in states that have allowed foster placing agencies to discriminate, as well as those where discrimination is less explicit. For this reason, recruiting diverse foster parents requires a serious look at the barriers, even unintentional ones that signal to foster parents that they are not welcome. This means ensuring websites, brochures and promotional materials are intentionally reflective of a diverse array of families and available in multiple languages. Prominently displayed non-discrimination policies can symbolize to traditionally marginalized communities they, too, are welcome. Agencies can prove their commitment to recruiting and supporting diverse foster and adoptive families by intentionally connecting with these communities and planning recruitment events in locations that specifically target them, such as LGBTQ film festivals and religious minority community events. Targeted outreach has been shown to be more effective in recruiting foster and adoptive parents than general awareness campaigns, so agencies will need to be intentional about reaching an expanded array of target families if they want to build the diverse community of foster and adoptive parents needed to meet growing needs.

¹ The Chronicle of Social Change. 2018. “Who Cares: A National Count of Foster Homes and Families,” <https://www.fostercarecapacity.com/>.

To make sure there are enough foster and adoptive homes and the right foster and adoptive homes for all children who need them, it isn't enough to simply recruit families. Agencies need, also, to focus on retaining families, which requires re-examining the ways that they are trained and supported. Studies have shown that 30 to 50 percent of all foster parents step down within the first year, most often citing that they did not feel adequately supported or prepared.^{2,3} Particularly for foster parents who are serving youth with special medical or behavioral needs, training and support are crucial to promote placement stability and prevent burnout among foster parents. This includes not only initial training, but also the availability of continued training and resources that address concerns that arise during a placement. Providing this type of support can help stabilize placements that otherwise might fail.

This improved stability is crucial because studies consistently indicate that stability for youth in out of home care has dramatic impacts on physical and emotional development as well as long term outcomes for foster youth.⁴ Studies show that unnecessary placement changes negatively affect children, severing their connections to their peers and supportive adults, leading to poorer school outcomes and even impacting their ability to cope with stress on a biological level.^{5,6} Alternatively, keeping children in stable placements allows them to build strong relationships with caregivers, offering the felt safety necessary for healthy development.

Focusing on placement stability has the added benefit of aiding in foster parent recruitment. As previously stated, word of mouth is the number one way in which people are convinced to be foster parents. It follows that allocating resources to provide parents the support they need to maintain stable placements would not only reduce the need to recruit new foster placements, by strengthening the current pool, but would also help with recruitment efforts.

Confronting the dramatic shortages of foster parents would go a long way to ensuring good matches are made for youth in the system. Often, the problem is not that case workers don't know how to find the right homes for kids. It is that those homes are simply not available. Having a diverse array of available families who are trained and supported to care for youth would mean that caseworkers would have options to provide the right fit. However, it is important that caseworkers focus on matching youth to families that are prepared to accept and affirm all the myriad aspects of their complex identities. This requires tracking that information, including the SOGIE data that HHS proposed removing from AFCARS earlier this year (Document: 84 FR 16572),⁷ as well as including questions during foster parent screenings that specifically ask how families would respond to having youth with certain demographics or characteristics and what resources they would need to be able to parent those youth well. Providing caseworkers with this information and a robust pool of potential foster homes would be a significant step toward ensuring every youth receives an ideal placement.

² Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. (2005). Understanding foster parenting: Using administrative data to explore retention. Retrieved from: <https://aspe.hhs.gov/exccsum/understanding-foster-parenting-using-administrative-data-explore-retention>

³ Geiger, Jennifer M., Megan J. Hayes, Cynthia A. Lietz, et al. (2013). Should I stay or should I go? A mixed methods study examining the factors influencing foster parents' decisions to continue or discontinue providing foster care. *Children and Youth Services Review*, 35(9), 1356-1365.

⁴ (2010). Promoting Placement Stability (CW360°). Center for Advanced Studies on Child Welfare (CASCW), School of Social Work, College of Education and Human Development, University of Minnesota. Retrieved from the University of Minnesota Digital Conservancy, <http://hdl.handle.net/11299/185439>.

⁵ Rubin, D. M., O'Reilly, A. L., Luan, X., & Localio, A. R. (2007). The impact of placement stability on behavioral well-being for children in foster care. *Pediatrics*, 119(2), 336-344. doi:10.1542/peds.2006-1995

⁶ Fisher PA, Van Ryzin MJ, Gunnar MR. Mitigating HPA axis dysregulation associated with placement changes in foster care. *Psychoneuroendocrinology*. 2011;36(4):531-539

⁷ See CDF's comments on this NPRM here: <https://www.regulations.gov/document?D=ACF-2018-0003-0291>

Q2: LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?

Supporting LGBTQ youth, particularly in light of *the Family First Prevention Services Act of 2018*, needs to begin when they are still with their families of origin. Family First emphasizes the importance of providing services to families to help them keep children at home, acknowledging that what is generally best for kids is to support their families so they never have to enter the system in the first place. Knowing that a significant reason that LGBTQ youth are overrepresented in care is due to rejection of their sexual orientation, gender identity or gender expression allows the system to be proactive in protecting them. When working with families seen to be at risk of entering foster care, providing resources to help them be more affirming of their child's identity, including education and connection to other parents who have already reconciled their concerns, can help prevent family separation and the trauma that comes along with it.

The most important thing that we can do as a system to support LGBTQ youth when they do enter care is to make sure they are in caring homes that are affirming of their identities. A feeling of safety and belonging is vital for the growth and development of any youth regardless of their SOGIE, and this is something that needs to be a focus in the care of all children. However, studies indicate that LGBTQ youth in care – particularly those who enter the system because of rejection from their families – are unlikely to feel safety and belonging. One study from the Georgetown University Center for Child and Human Development found that as many as 56 percent of LGBTQ youth in care spend at least some time homeless because they feel safer on the streets than in group or foster homes, which puts them further at risk of substance abuse, risky sexual behavior, victimization or criminal justice involvement.⁸

Creating a sense of safety for LGBTQ youth in care requires removing institutionalized discrimination within the system. Conversion “therapy” and all forms of anti-LGBTQ discrimination against youth are unconscionable and contrary to the purpose of a system that is meant to act in their best interest. Even when youth are not the direct targets of discriminatory practices, as in the case of agencies that discriminate against LGBTQ foster parents, they feel the impacts of discrimination. Being placed by an agency that would tell them they could not be a suitable parent in the future or one that requires doctrinal statements denying their gender identity means LGBTQ youth will not feel safe in the placements made for them, even if the resource family itself is affirming. Not only does such a system signal to youth that they aren't valued or wanted as they are, it sends the same signal to the potential foster and adoptive parents who are most equipped to offer LGBTQ youth a safe, loving home.

We do not have enough resource families who are prepared to be, and expected to be, affirming of LGBTQ youth. As a result, these youth are being repeatedly placed in psychologically damaging systems where they are rejected for core parts of their identity, reporting twice the rate of poor treatment in care, longer stays in residential care and significantly more placements than their non-LGBTQ peers. Agencies that recruit and match foster and adoptive parents need to work toward LGBTQ cultural competence and affirmation, including actively supporting families that will be affirming of youths' identities. Since we cannot know or anticipate which children will identify as LGBTQ, we need to be extremely careful, especially when placing young children, to evaluate how a resource family would work with an LGBTQ youth in their care.

⁸ Mallon, Gerald P. *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems*. New York: Columbia University Press, 1998.

In the same way that agencies will screen potential foster and adoptive parents to see whether they would be able to parent children with other backgrounds, experiences and needs (for example, whether they felt they could parent a child of a different race, a child who had been sexually abused, or a child with a developmental disability), these agencies need to talk with potential families to ascertain how they would react to an LGBTQ youth. Understanding what strengths they feel they could bring to supporting a gay child or a transgender or gender-nonconforming child would help caseworkers to make placements in those children's best interest. Understanding a potential family's concerns would help ensure that these families were able to receive the right resources and supports to make sure that they are the best possible parents they can be for vulnerable LGBTQ youth.

However, caring for these youth is not simply a matter of recruiting the right foster parents. It is vital that there is at least a basic level of LGBTQ cultural competency across all systems of care. When LGBTQ youth access services, including health care, mental and behavioral health, mentoring and any other supports that they access, they should be met with professionals who are affirming of their identity. Failing to protect them from discrimination will make it more difficult for them to feel safe in any care context. This extends especially to schools, where LGBTQ youth are far more likely to experience bullying than their non-LGBTQ peers, leading to absenteeism and higher dropout rates.⁹ Foster parents and caseworkers need to be prepared to effectively advocate for the children in their care with school counselors and teachers to keep young people safe.

Further, it is important that services be available that are specifically designed for LGBTQ youth. Having groups and organizations in the community focused on offering services to LGBTQ youth provides support, connection and a place to belong for youth who all too often are denied those very basic things. In many communities these groups end up being a resource for other organizations in the community, particularly in regards to training those working with youth to be culturally competent. There is a significant learning curve when it comes to serving LGBTQ youth, especially transgender and gender non-conforming youth. Having education and professional development available is extremely important because even while intending to provide support for these youth, one can unintentionally act in ways that cause harm.

Lastly, the focus on these questions overall is on LGBTQ youth in foster and adoptive families, but we would be remiss in our duties if we did not acknowledge that LGBTQ youth are overrepresented in institutional care. Policies to ensure their safety and healthy development need to also ensure cultural competency and affirmation in these settings. This involves mandating policies that support these youth, such as placing transgender and gender-nonconforming youth based on the gender with which they identify, not the one they were assigned at birth, and strict non-discrimination policies. The staff in these facilities should be screened for bias in the same way we would ask foster and adoptive families to be and offered training to ensure cultural competency.

Q3: Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?

⁹ Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ.* 2018;67(8):1–114. Published 2018 Jun 15. doi:10.15585/mmwr.ss6708a1

Ten states (AL, KS, MI, MS, ND, OK, SC, SD, TX, VA) currently permit state-licensed child welfare agencies to refuse to place and provide services to children and families if doing so conflicts with their religious beliefs. Additional states have introduced bills recently to allow faith-based care providers to discriminate against qualified prospective parents in the name of religious freedom including Georgia Senate Bill 375¹⁰ and Colorado Senate Bill 241.¹¹

Georgia's SB 375 claims to allow more agencies to act in the interests of children and broaden opportunities for children to achieve permanency. However, this bill and the similar bills in other states actually close the door on qualified parents of faiths or with beliefs that differ from the faith-based agencies and prevent them from serving as resources for children in need of homes.

While extensive research has not been conducted on the impacts of discrimination on prospective foster parents, anecdotal evidence from multiple partners on the ground indicates that some qualified prospective foster parents^{12,13,14,15} – including LGBTQ foster parents, foster parents of minority religions and single foster parents – are discouraged or delayed from finding a successful placement when discriminatory practices are in place. Qualified prospective foster parents may be permanently deterred from trying to foster or adopt or may choose other avenues to creating a family because of experiences of discrimination. This especially harms Black prospective parents as Black foster and adoptive parents are more likely to be single and therefore likely to be discriminated against in the name of religious beliefs.¹⁶ When agencies turn away otherwise qualified foster parents because of differences in religious beliefs, they are turning away potential families for children and leaving children in their care without a supportive family longer than necessary or even leaving them to age out having never found a loving, stable family.

Rather than increasing adoptions for children and adolescents in foster care, these state laws and policies limit the pool of qualified foster parents and potentially cause serious negative impacts on children and adolescents in the child welfare system. By exacerbating the existing shortage of foster parents, these discriminatory laws and policies are delaying and preventing children from being placed with loving, stable families and placing them at higher risk of homelessness, involvement with the criminal justice system and future unemployment. Shortages of potential foster parents are detrimental to all children and adolescents in the child welfare system but are especially harmful for hard-to-place children including sibling groups, older youth, youth with disabilities, LGBTQ youth and youth of minority religions. Prospective parents of minority religions may be more likely to adopt or foster youth with the same religion,

¹⁰ Georgia. Legislature. Senate. *Keep Faith in Adoption and Foster Care Act*. SB 375. 2017-2018 Reg. Sess. *Georgia General Assembly*.

¹¹ Colorado. Legislature. Senate. *Colorado Children First Act*. SB18-241. 2018 Reg. Sess. *Colorado General Assembly*.

¹² Adoptions Together. "Using Faith to Discriminate: How Faith-Based Adoption Laws Hurt Us All." Adoptions Together, March 1, 2018. <https://www.adoptions-together.org/blog/2018/03/01/faith-based-adoption-laws-hurt-everyone/>.

¹³ Bewkes, Frank J., Shabab Ahmed Mirza, Caitlin Rooney, Laura E. Durso, Joe Kroll, and Elly Wong. "Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children." Center for American Progress. <https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.

¹⁴ Oakley, Cathryn. "Disregarding the Best Interest of the Child: Licenses to Discriminate In Child Welfare Services". Washington, DC: Human Rights Campaign Foundation, 2017.

¹⁵ "Trump's Anti-LGBTQ Agenda Will Keep Foster Children From Having a Loving Home." American Civil Liberties Union. <https://www.aclu.org/blog/lgbt-rights/lgbt-parenting/trumps-anti-lgbtq-agenda-will-keep-foster-children-having-loving>.

¹⁶ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. *Adoption and Foster Care by Gay and Lesbian Parents in the United States*. The Williams Institute and the Urban Institute. March 2007.

and LGBTQ individuals are more likely to adopt or foster sibling groups, older youth, youth with disabilities and youth of color.^{17,18} Allowing agencies to discourage or ban these prospective parents from fostering and adopting reduces the chances of these hard-to-place children finding permanent, stable homes and undermines the best interest of these children.

Within the child welfare system, states are responsible for making provisions for the religious needs of those in their care. In the New York case, *Wilder v. Sugarman*, the Second Circuit concluded that the state is required to make “reasonable efforts” to accommodate the religious preferences of foster children and their families of origin.¹⁹ Studies support the positive impacts and increased resilience that can result from connecting children with their religious communities and providing opportunities for them to practice their faith as religious involvement is associated with reductions in substance abuse, mental health concerns and antisocial behavior among adolescents in foster care.²⁰ Although children of specific faiths do not necessarily need to be placed with parents of the same faith to feel supported and have their religious beliefs respected, allowing agencies to create religious litmus tests limits the pools of prospective parents available to provide loving and supportive homes to these children. In the case of South Carolina’s Miracle Hill, for instance, prospective foster parents are required to be followers of Jesus Christ, to be active in and accountable to a Christian church and to agree to the ministries’ doctrinal statement before being considered. For prospective parents like Aimee Maddonna, this means that being Catholic, Jewish, Muslim, a less-active Christian or a different faith is enough to turn away otherwise qualified and loving foster care placements. By allowing foster care providers to turn away qualified foster parents if they do not meet the providers’ religious requirements, states are prioritizing the preferences of foster care providers over the needs of the children they are meant to serve and are failing to make reasonable efforts to accommodate the religious preferences of families of origin and foster children that do not have the same religion as faith-based providers.

By limiting the pool of loving and supportive foster parents, states are also failing to prioritize the best interests of their LGBTQ youth – who are already overrepresented in the foster care system. These discriminatory laws and policies make it more difficult to find supportive, permanent placements for LGBTQ youth and put these youth at even greater risk of hostility, religious conversion, sexuality conversion “therapy” and other abuses.²¹ Returning to the example of South Carolina’s Miracle Hill, when agreeing to the required doctrinal statement, prospective foster parents must agree that marriage should only be between one man and one woman, that God only creates each person as either male or female and that these two sexes are distinct and complementary. In addition to turning away LGBTQ prospective parents, religious litmus tests like that of Miracle Hill are turning away prospective parents that would be supportive to LGBTQ youth and youth that are gender non-conforming or may be questioning their gender or sexuality. This lack of safe and supportive placements can be significantly detrimental to the health and well-being of LGBTQ youth in foster care as it often leads to mental health concerns, more frequent placements, academic concerns and homelessness.

¹⁷ Brodzinsky, David, and Abbie Goldberg. “Practice Guidelines Supporting Open Adoption n Families Headed by Lesbian and Gay Male Parents: Lessons Learned from the Modern Adoptive Families Study,” May 2016, 31.

¹⁸ Brief for Amici Curiae Family Equality Council and COLAGE in Support of Appellees, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

¹⁹ *Wilder v. Sugarman*, 385 F. Supp. 1013 (S.D.N.Y. 1974)

²⁰ Collins, Mary Elizabeth & Scott, Judith C., 2019. “*Intersection of race and religion for youth in foster care: Examining policy and practice*,” *Children and Youth Services Review*, Elsevier, vol. 98(C), pages 163-170.

²¹ Maxwell, Larisa. “Fostering Care for All: Towards Meaningful Legislation to Protect LGBTQ Youth in Foster Care” 1 (n.d.): 21.

Not only does discrimination against qualified foster parents have negative impacts on the children and adolescents in the child welfare system, it also creates unnecessary financial burdens for states. By limiting the pool of qualified foster parents, these discriminatory laws and policies cost state and federal governments significant resources to keep children in care rather than moving them to qualified, loving families.²² A 2007 Williams Institute report, for example, found that if the federal government were to ban LGBTQ individuals from acting as foster parents, it would cost the US between \$87-\$130 million per year (\$107-\$160 million per year when adjusted for inflation).²³ Similarly, in 2009, when Kentucky was considering Senate Bill 68, The Child Welfare Adoption Act – which would have prohibited same-sex and different-sex unmarried couples from fostering or adopting – the Williams Institute estimated the impact it would have had on foster children and the state government. They found that prohibiting unmarried couples from fostering or adopting would have resulted in 630 foster children (11.2 percent of those care) being removed from their current homes or placement in the first year, an additional 85 children not being adopted or remaining in foster care longer (12.1 percent of all Kentucky adoptions that year), all at a cost of more than \$5.3 million to the state of Kentucky in the first year (\$6.3 million when adjusted for inflation).²⁴

Q4: Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?

There continues to be a shortage of qualified individuals willing to adopt or foster children in the child welfare system. As of 2017, there were over 440,000 children in foster care and over 120,000 waiting to be adopted. Although some argue nondiscrimination laws will result in the closure of faith-based agencies and further shortages in foster care providers, this has not been the case in the states that have already enacted nondiscrimination requirements. In a recent Amicus Brief regarding *Fulton v City of Philadelphia*, seventeen states and D.C. used their positive experiences with nondiscrimination enforcement to advocate for the Third Circuit Court of Appeals to uphold the District Court's decision not to issue a preliminary injunction requiring Philadelphia to allow discrimination against same-sex couples in the provision of foster care services.²⁵ In the experiences of the Amici States, nondiscrimination requirements have not caused shortages in foster care providers – including faith-based providers. Instead, in the few instances where faith-based agencies have chosen to discontinue their foster care or adoption services, the states were successfully able to fill any gaps by drawing on a diverse group of contractors to serve prospective parents and children in a nondiscriminatory manner and finding other ways to collaborate with the faith-based agencies.

According to the *Every Child Deserves a Family Act of 2017*, adoption is often the first choice for LGBTQ individuals and couples when considering building a family.²⁶ Although this makes LGBTQ individuals highly motivated resources for the child welfare system, prospective foster and adoptive parents are often discouraged or delayed by experiences of discrimination or fear

²² U.S. Congress, House, Committee on Ways and Means, Subcommittee on Human Resources, *Increasing Adoptions from Foster Care*, 130th Cong., 1st sess., February 27, 2013.

²³ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. "Adoption and Foster Care by Gay and Lesbian Parents in the United States." 2007..

²⁴ Williams Institute to Senator Kathy W. Stein, memorandum, February 24, 2009. "Kentucky Senate Bill 68 Cost Estimate".

²⁵ Brief for Massachusetts, California, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington as Amici Curiae in Support of Philadelphia, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

²⁶ U.S. Congress. Senate. *Every Child Deserves a Family Act*. S. 1303. 115th Cong., 1st sess. Introduced in Senate June 7, 2017 <https://www.congress.gov/bill/115th-congress/senate-bill/1303/text>

of hostility. On the other hand, inclusive and explicitly nondiscriminatory environments encourage same-sex couples to foster and adopt.²⁷ Currently, five states (CA, MI, NJ, NY, RI) and the District of Columbia explicitly prohibit foster care discrimination based on sexual orientation and gender identity and an additional four states (MA, MD, OR, WI) explicitly prohibit foster care discrimination based on sexual orientation alone.²⁸ By prohibiting discrimination against qualified potential parents, these states are working to address the shortage of prospective parents by reducing barriers to fostering or adopting and opening more homes to children in the child welfare system. In Massachusetts, for example, between 15 and 28 percent of adoptions of foster children have involved same-sex parents over the past 10 years.

Through enacting laws and policies that prohibit discrimination, states fulfill their legal obligation to act in the best interests of the children they serve by maximizing the number of potential homes available and ensuring the children have the best chances of finding safe and supportive placements. The more than 440,000 children in foster care have diverse experiences, identities and needs, making it crucial for foster care providers to recruit broad and diverse pools of parents that can best meet each child's needs and provide stable and supportive homes. For instance, because of adversities they may have faced, LGBTQ foster and adoptive parents, as well as those of other traditionally marginalized groups such as religious minorities, are more likely better able to relate to foster or adopted children's feelings of isolation or differentness and are more likely to be affirming of LGBTQ foster youth and youth with other marginalized identities.

By prohibiting discrimination on religious grounds, states are not only banning explicit discrimination against prospective parents with different faiths and LGBTQ parents, they are also banning implicit discrimination that is often related. A third of single adoptive parents are Black and half of single foster parents are Black (compared to 12 percent of all adoptive parents and 26 percent of all foster parents), which means that religious litmus tests that discriminate against single parents disproportionately harm Black prospective parents.²⁹ Banning discrimination against qualified parents therefore limits agencies' ability to implicitly discriminate on the basis of race, leads to more diverse placements and lessens the disproportionate negative impact on children of color, especially Black children.

Q5: What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

In the South Carolina waiver, there was an alarming omission of any mention of the well-being of children. It is important never to forget that the purpose of the child welfare system is to act in the best interest of vulnerable children. While the needs of foster parents, placement organizations and other adults involved in the system are important – especially in so much as supporting their needs helps to support the best interests of children – the well-being of children *must* be paramount. Anything less is tantamount to forgetting, or, worse, neglecting, our duties.

²⁷ Brief for Amici Curiae Family Equality Council and COLAGE in Support of Appellees, *Fulton v. City of Philadelphia*, 922 F.3d 140, 2019.

²⁸ Movement Advancement Project, "Foster Care Laws & Regulations." http://www.lgbtmap.org/equality-maps/foster_care_laws.

²⁹ Gates, Gary, M.V. Lee Badgett, Jennifer Ehrle Macomber, and Kate Chambers. *Adoption and Foster Care by Gay and Lesbian Parents in the United States*. The Williams Institute and the Urban Institute. March 2007.

In every decision made within the child welfare system, all involved parties must constantly be evaluating the impact those actions and decisions have on the vulnerable children we serve. The *only* thing we should be asking ourselves when considering a placement is whether that placement is the best option for the child. As we strive to recruit more foster parents for children, we should always be asking ourselves how we can find the best placements for the most kids, not what is most comfortable for us. When we consider policy changes to how we fund and regulate agencies that are tasked with recruiting and supporting foster parents, the only thing we should consider is how we recruit safe, loving, supportive families for every single child that needs them.

We are all responsible for the well-being of children who have experienced neglect and abuse. By providing this waiver and offering a federal stamp of approval for taxpayer-funded discrimination, HHS has ignored that the role and the profound responsibility of federally funded foster placement agencies is to act in the best interest of children. By placing the comfort of foster placing agencies over the needs of children who need safe, supportive, loving homes, we are doing a profound disservice and neglecting the sacred duty we have to these children.

The Children's Defense Fund strongly supports the investigation by the House Ways and Means Committee into the waivers granted or currently being considered by HHS. We appreciate the opportunity to respond to your request for input. We share your fears that these efforts by HHS will exacerbate the current foster parent shortage, leading to worse outcomes for youth who have already suffered abuse and neglect. The decision to grant these waivers stands in direct opposition to the cardinal rule of the child welfare system, to always act in the best interest of the child.

Thank you for your diligence in helping to ensure every child has the safe, loving, stable home they deserve. We would be happy to discuss any of our comments in more detail with you or others on your staff.

Sincerely yours,



Max Lesko
National Executive Director
mlesko@childrensdefense.org; 202-662-3611



Kathleen King
Interim Policy Director
kking@childrensdefense.org; 202-662-3576

A handwritten signature in black ink that reads "Steven Olender". The signature is fluid and cursive, with the first name "Steven" and last name "Olender" clearly distinguishable.

Steven Olender
Senior Policy Associate, Child Welfare and Mental
Health
solender@childrensdefense.org; 202-662-3698

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Frank Farrow
President
Center for the Study of Social Policy
1575 Eye Street NW, Suite 500
Washington, DC 20005

Dear Mr. Farrow,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

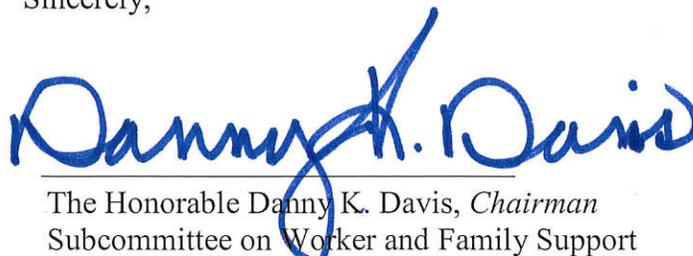
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



**Center for the
Study of
Social Policy**
Ideas into Action

August 15, 2019

The Honorable John Lewis, *Chairman*
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Chairman Lewis and Chairman Davis,

Thank you for the opportunity to provide comments on behalf of the Center for the Study of Social Policy (CSSP) in response to your inquiry regarding the investigation into the waivers granted to and currently under review for state child welfare systems by the Department of Health and Human Services. Our comments focus on the potential impact of these waivers on child welfare policy and practice - particularly as it relates to responsibly meeting the needs of children and youth who identify as lesbian, gay, transgender, bisexual, or questioning/queer (LGBTQ+¹) and ensuring that *all* children and youth are placed in safe, stable and caring homes.

CSSP is a national, non-partisan policy organization recognized for its leadership in reforming public systems and advancing policies that promote equity and improve the health and well-being of children and families. CSSP provides direct technical assistance to public child welfare systems and their partners including foster care agencies, and private and community-based providers. Our work also includes serving as the federal court appointed monitor in several state and county child welfare systems and providing technical assistance on improving policy and practice strategies impacting families with young children, adolescents and transition age youth, expectant and parenting youth, and those who identify as LGBTQ+. As a part of this work, CSSP leads the getREAL Project, a national initiative that works with child welfare agencies across the country to promote the healthy identity development and well-being of all children and youth, with particular

¹ We use the term LGBTQ+ expansively in the broadest sense possible. There are many other acronyms that reflect the diverse range of sexual orientations, gender identities, and gender expressions. However, we use LGBTQ+ to be uniform and brief. Language is constantly evolving, and so is this acronym. Through our work with youth and families we know that these categories are not always the most welcoming or appropriate terms. For example, youth may identify as gender queer or gender fluid. The term gender expansive is also frequently used in the field. Some youth with tribal affiliation identify as two spirited.

attention to supporting the sexual orientation, gender identity, and expression (SOGIE) of children and youth in foster care who identify as LGBTQ+. All of our work is devoted to ensuring children and youth have equitable opportunities to maximize their full potential.

Based on CSSP's extensive experience working directly with child welfare systems across the country and the expertise we have developed through this work, I have provided responses to the questions posed in your request below.

1. *What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?*

To support the well-being and permanency of children and youth in foster care, child welfare systems are charged with recruiting and retaining foster and adoptive parents who are able to provide temporary care, and in some instances, permanent homes. Research has shown that children and youth do best when they are able to remain with siblings, in their communities, and with kin whenever possible.^{2,3} **As such, best practice in recruiting qualified foster and adoptive parents begins with identifying and supporting kinship resources.** Importantly, how family is defined, and who is explored as a resource, should be based on the child and parent's definition of family and whom they deem as important family connections. States should utilize a broad definition of family to include all of the qualified resources considered by a child and parent and that includes extended family, relatives by marriage, and family friends.

When kinship resources are unavailable or not appropriate, states prioritize placement in family-based foster homes, preferably close to the child's home community and school. In addition to supporting a child's overall health and well-being, foster parents play a critical role in helping youth heal from trauma that may have occurred prior to a child's placement in foster care, as well as trauma experienced by removal and upon entering foster care. **To ensure child welfare systems are able to make good matches between foster parents and children, the system must have access to a large pool of well-trained foster parents who have access to appropriate services and supports to meet the child's needs.** This requires active foster and adoptive family recruitment efforts, including within the LGBTQ+ community.

To ensure that all children and youth, including those who identify as LGBTQ+, are able thrive in care, child welfare systems must ensure that all foster parents be able to meet the needs of any child who enters their home. This in part requires facilitating a good match between a child and foster parent by considering a child's needs and a foster parent's ability to meet those needs. While in reality, a child's needs

² Martin, Megan and Alexandra Citrin. (2014). Prevent, Protect, & Provide: How child welfare can better support low-income families. Center for the Study of Social Policy. Available at: <https://cssp.org/wp-content/uploads/2018/11/Prevent-Protect-Provide-Brief.pdf>

³ Child Welfare Information Gateway. (2014). In-home services in child welfare. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Available at: https://www.childwelfare.gov/pubPDFs/inhome_services.pdf

can be complex, are not always known when they first enter care, and change as a child grows and develops, children and youth do have universal needs that all foster parents must be equipped to meet. Important among these is the foster parents' ability to be nurturing and supportive and to help the child heal. Specifically, foster parents must be supportive of maintaining the child's connections to their existing social network, provide a safe and nurturing home, ensure access to necessary services and supports, including behavioral health and health care, and be willing to affirm and promote the child's healthy identity development. Support for identity development is especially important for older youth in care who require a safe and affirming placement to develop self-acceptance and build life affirming skills.⁴

When a placement is a poor fit and the foster parent is unable to meet a child's needs, it can cause further harm to the child. **For LGBTQ+ children and youth, there is a risk that placement in a non-affirming home will undermine their healthy development at a critical point in time and replicate the very harm, rejection, and trauma that may have precipitated their entry into care.**⁵ In our field work, we have heard many times directly from youth in care, child welfare caseworkers and administrators, and foster care providers about the harm caused by placements in non-affirming homes. Among these are stories of young people who were placed as infants and young children, and later as adolescents suffered harm and rejection based on their SOGIE at the hands of the foster or adoptive parents entrusted to care for them.

To prevent such harm, child welfare agencies must implement targeted recruitment and retention strategies for foster parents who are able to provide safe, stable, and affirming homes to LGBTQ+ children and youth, including within the LGBTQ+ community. All foster care agencies must be affirming of prospective foster parents, including those who identify as LGBTQ+, and explicitly advertise as such in an attempt to increase the pool of qualified foster parents. Foster care agencies must also ensure all foster parents are affirming of youth identities. Once a placement in a foster home occurs, the agency must ensure the foster parent is provided with ongoing training and support to fulfill their responsibility to the children and youth in their care, including those who identify as LGBTQ+. Further, child welfare systems must ensure their staff—and those supporting foster parents—are prepared for issues that will arise, both professionally and individually, in working with LGBTQ+ children, youth, and foster parents.

2. *LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?*

⁴ Harper Browne, C. (2014, September). Youth Thrive: Advancing healthy adolescent development and well-being. Washington, DC: Center for the Study of Social Policy.

⁵ Dettlaff, A. J., Washburn, M., Carr, L. C., & Vogel, A. N. (2018). Lesbian, gay, and bisexual (LGB) youth within in welfare: Prevalence, risk and outcomes. *Child Abuse & Neglect*, 80, 183-193. Available at: <https://doi.org/10.1016/j.chiabu.2018.03.009>

Not only are LGBTQ+ children and youth overrepresented in foster care but they also experience disparate outcomes compared to their cisgender, heterosexual peers including an increased risk of placement instability and overuse of congregate care. Based on NSCAW-II data, 19.6 percent of youth in out-of-home care identifying as LGB were moved from their first placement at the request of their caregiver or foster family, compared with only 8.6 percent of heterosexual youth being moved for this reason.^{6,7} Research has also shown that the percentage of LGB youth who were in group or congregate care was double that of their Non-LGB peers.⁸ In addition, only 44.8 percent of LGB youth were moved from their first placement due to the perceived need for lower levels of care, including step-downs from congregate care settings, while 65.5 percent of heterosexual youth were moved for this reason.^{9,10} Youth who experience multiple placements and placements in congregate care settings often experience longer stays in foster care—increasing the time they await permanency.

To increase permanency outcomes for LGBTQ+ children and youth, child welfare systems must explicitly implement policies and practices targeted at addressing disproportionalities and disparities related to placement including those discussed below.

Recruitment and Retention of Qualified Foster Parents. To reduce disparities in placements in congregate care and placement instability for LGBTQ+ children and youth, states must focus efforts on not only recruiting but also retaining foster parents who are affirming of every aspect of a child or youth’s identity, including their SOGIE. Providing foster parents with access to necessary training and supports is a critical retention strategy. Given the unique needs of LGBTQ+ children and youth in care, child welfare agencies should implement targeted supports for foster parents to ensure they have the tools needed to provide the best care. These services may include support on how to best promote healthy adolescent development and affirm a youth’s sexual orientation and gender identity. States should also provide guidance to

⁶ Dettlaff, A. J. & Washburn, M. (2016). Sexual Minority Youth in the Child Welfare System: Prevalence, Characteristics and Risk: A Guide for child Welfare Professionals. University of Houston, Graduate School of Social Work. Available at: https://cssp.org/wp-content/uploads/2018/08/Sexual-Minority-Youth-in-Child-Welfare_providers_final.pdf

⁷ Martin, M., Down, L., & Erney, R. (2016). Out of the Shadows: Supporting LGBTQ youth in child welfare through cross-system collaboration. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/wp-content/uploads/2018/08/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>

⁸ Dettlaff, A. J. & Washburn, M. (2016). Sexual Minority Youth in the Child Welfare System: Prevalence, Characteristics and Risk: A Guide for child Welfare Professionals. University of Houston, Graduate School of Social Work. Available at: https://cssp.org/wp-content/uploads/2018/08/Sexual-Minority-Youth-in-Child-Welfare_providers_final.pdf

⁹ Ibid.

¹⁰ Martin, M., Down, L., & Erney, R. (2016). Out of the Shadows: Supporting LGBTQ youth in child welfare through cross-system collaboration. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/wp-content/uploads/2018/08/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>

caregivers on a range of relevant topics, including identifying behaviors that may be related to experiencing rejection of one's sexual orientation and gender identity and strategies to help youth process these experiences in healthy ways. Providing these resources to caregivers will improve retention and also help reduce placement instability that often results from a foster parent's inability to meet the needs of a child or youth, and consequently can lead to unnecessary placement in an overly restrictive congregate care setting.

Implement Policies to Prevent Unnecessary Use of Congregate Care. Inappropriate congregate care placements often result from a limited pool of available foster parents and an inaccurate assessment of a child or youth's need. These factors are often attenuated for LGBTQ+ children and youth. **To address the disproportionate placement of LGBTQ+ children and youth in congregate care settings, states should implement policies that include specific steps to ensure that their placement practices prioritize family-based settings and include a comprehensive and accurate assessment of a child's needs.** Especially for older youth, their own self-assessments and preferences need to be an explicit part of the placement process. This is in line with the mandates established through the *Family First Prevention Services Act*. For states to meet these mandates responsibly and effectively, their policies should include accountability mechanisms to ensure children and youth are placed in the least-restrictive, most family-like settings possible that can meet their needs.

Leverage Training Policy. **To support the child welfare system's responsibility to ensure permanency for children and youth in care, states must leverage opportunities within their training policy for staff, caregivers, and service-providers.** States should implement training on guidelines for best practice to promote stable placements for all children and youth, including effectively serving those who identify as LGBTQ+. These guidelines should be inclusive and outline foundational principles including: affirming practice to support all aspects of a child's, youth's, and parent's identity, support for birth parents in developing healthy, affirming relationships with their children, and expectations for foster parents and congregate care providers. Youth should be meaningfully involved in the development and implementation of the guidelines to ensure they are effective in supporting positive youth outcomes. Supporting families and providers in understanding how to talk about these issues with one another, access and disseminate information on sexual orientation and gender identity, and how to support LGBTQ+ children and youth will enhance the nurturing capabilities of all.

Implement Non-Discrimination Policy. **Arguably the most effective approach to promoting permanency for all youth in care, including LGBTQ+ children and youth, is the implementation of non-discrimination policies and practices.** When children, youth, and families come into contact with the child welfare system, it is the responsibility of service providers—whether they are state, county, community-based, or faith-based—to provide children and youth with services and supports, including

placements, that promote their safety, permanency, and well-being. Non-discrimination laws ensure that these supports are available to everyone who needs them and that decisions are made in ways that protect the best interests of children, youth and families.¹¹

3. *Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?*

The rise in religious exemption laws and waiver policies come at a time when child welfare systems are faced with an increasing number of children and youth entering foster care. At the same time, there is an alarming dearth of prospective foster families. Policies that allow for discrimination contribute to this national shortage of foster homes by reducing the number of qualified foster parents who are able to care for children and youth. Fewer family-based foster homes increases the need for states to rely on congregate care settings. This will, and currently does, cost taxpayers money. For instance, youth are often placed in group homes when there are no foster family homes in which to place them.¹² It costs states upwards of seven to 10 times more to place a youth in a group home instead of a foster family placement.¹³

These policies are contrary to the mission and legal obligation of child welfare agencies to act *in loco parentis* as it compromises their legal responsibilities to ensure the safety, permanency, and well-being of the children in its care. When LGBTQ+ children and youth are placed in non-affirming homes, it jeopardizes their safety and well-being. States and agencies are provided with federal funding explicitly to carry out activities that promote child welfare's central mission, and the immediate and long-term impact of these policies directly violates their ability to do so.

Any policy that reduces the qualified pool of prospective foster parents and communicates that it is acceptable to discriminate on the basis of race, ethnicity, religion, sexual orientation, or gender identity is in direct opposition to acting in the best interest of the child. Delaying or preventing placement with permanent families—which agencies do by default when they restrict the pool of available foster and adoptive parents—can have life-long consequences for all children and youth in foster

¹¹ Martin, Megan and Valery Martinez. (2019). Supporting All Our Values: How Publicly Funded, Faith-Based Child Welfare Providers and Non-Discrimination Laws Can Promote Well-Being. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/resource/supporting-all-our-values/>

¹² Bartkowiak, Brittany. Group homes most expensive, least caring option for kids in foster care. Michigan Radio. May 26, 2015. Available at: <http://stateofopportunity.michiganradio.org/post/group-homes-most-expensive-least-caring-option-kids-foster-care>.

¹³ Annie E. Casey Foundation. (2015). Every Kid Needs a Family: Giving children in the child welfare system the best chance for success. Available at: <https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>.

care, not just those who identify as LGBTQ+. These consequences include increasing the likelihood that children age-out of the foster care system without permanence. Every year, about 20,000 youth age out of the foster care system without achieving positive permanency, often accompanied by a lack of a permanent connection to a family, fewer educational and employment opportunities, and increased likelihood of experiencing homelessness, early pregnancy, lack of access to health care, and involvement in the criminal justice system.¹⁴

Expanding these policies would further limit the ability of child welfare systems to meet the needs of all children and youth in care. It has the potential to exacerbate shortages in available foster homes, and lead to longer stays in care, and poor outcomes for children and youth, including aging-out. Further, expanding these discrimination policies could increase the ability of states and providers to discriminate on any number of individual foster parent characteristics, directly compromising the ability of child welfare systems to place children and youth in caring, safe homes.

4. *Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?*

When children, youth, and families come into contact with child welfare systems, it is the responsibility of service providers—whether they are state, county, community-based, or faith-based—to provide services and supports to children and youth in ways that promote their health and well-being. Decisions about where a child should live, with whom, and what supports and opportunities are available to them are all life-changing decisions. States are entrusted to make these decisions in ways that promote the best possible outcomes for the health, wellbeing and security of the children and youth in their care.

Non-discrimination laws ensure that child welfare’s supports and services are available to everyone who needs them and that decisions are made in ways that protect a child’s best interest.¹⁵ Non-discrimination laws also aid in promoting timely permanency by ensuring that agency staff consider the widest range of safe and responsible placements by considering family resources and adoptive parents regardless of their race, ethnicity, SOGIE, or religion. These laws increase the pool of prospective foster and adoptive placements by ensuring all those who are willing and able to provide care and permanency are able to become foster parents.¹⁶ Consequently, the network of prospective foster families available to children and youth grows, and makes clear that

¹⁴ Courtney, M.E., Dworsky, A., Cusick, G.R., Havlcek, J., Perez, A., & Keller, T. (2007). Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 21. Chicago: Chapin Hall Center for Children at the University of Chicago

¹⁵ Martin, Megan and Valery Martinez. (2019). Supporting All Our Values: How Publicly Funded, Faith-Based Child Welfare Providers and Non-Discrimination Laws Can Promote Well-Being. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/resource/supporting-all-our-values/>

¹⁶ Ibid.

a child or youth's placement in a safe and supportive home remains the agency's top priority.

5. *What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selecting and its role in ensuring that we act in the best interest of the child?*

The mandate and mission of child welfare is to promote the safety, permanency, and well-being of children and youth who are at-risk and/or have experienced abuse or neglect by a caregiver. This mission and mandate has been established and reaffirmed in federal policy, including the recently passed *Family First Prevention Services Act*. The existing child welfare mandate and mission do not prioritize these goals for some children over others. However, child welfare data consistently show disparities in safety, permanency, and well-being for LGBTQ+ children and youth. States must design and implement policies that reduce these disparities and increase the ability of child welfare to effectively meet the needs of *all* of children and youth in their care.

Research has shown, and federal policy including the *Preventing Sex Trafficking and Strengthening Families Act* has affirmed, the direct relationship between well-being and permanency.¹⁷ **Consequently, in order for child welfare systems to fulfill their mission of providing positive permanency for children who enter foster care, systems must also focus on implementing strategies that promote the well-being of youth in care.**

For LGBTQ+ children and youth, the connection between well-being and placement is particularly important as these youth experience disparate outcomes in both areas.¹⁸ To that end, research has shown us what works to reduce these disparities and improve outcomes. Affirmation of a youth's SOGIE and access to a supportive community network with nurturing adults are factors associated with positive health and well-being for LGBTQ+ children and youth.^{19,20} Additionally, states must provide youth with

¹⁷ Martin, Megan. "Raising the Bar: Child Welfare's Shift Toward Well-Being." Center for the Study of Social Policy, July 2013. Available at: <https://childwelfaresparc.files.wordpress.com/2013/07/raising-the-bar-child-welfareshift-toward-well-being-7-22.pdf>.

¹⁸ Martin, M., Down, L., & Erney, R. (2016). *Out of the Shadows: Supporting LGBTQ youth in child welfare through cross-system collaboration*. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/wp-content/uploads/2018/08/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>

¹⁹ Bird, Jason et al. "The Impact of Role Models on Health Outcomes for Lesbian, Gay, Bisexual, and Transgender Youth." *Journal of Adolescent Health*, 50, no. 4, April 2012, pp. 353-357. Higa, Darrel et al. "Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth." *SAGE Journals*, 45, no. 5, June 2012, pp. 663-687. Ryan, Caitlin et al. "Family Acceptance in Adolescence and the Health of LGBT Young Adults." *Journal of Child and Adolescent Nursing*, 24, no. 4, November 2010, pp. 205-213.

²⁰ Chalmers, Michelle and Jill Jacobs. "Taking a Stand: Sexual Orientation and Gender Identity Expression." Kinnect and Family Builders Network. Available at: <https://www.kinnectohio.org/taking-a-stand-sexual-orientation-and-gender-identity-expression/>.

access to a supportive network prior to and during times of crisis to help process trauma or associated feelings including rejection based on their SOGIE. Child welfare systems should integrate these concepts into policies that guide practice for workers, foster parents, and community-based providers.

To ensure children and youth in foster care are served in a manner that promotes their well-being, states should contract with providers who affirm all aspects of multidimensional youth identities and are able to provide holistic and comprehensive care. This includes ensuring all providers, including foster parents, and medical and behavioral health providers are affirming in their practices. Importantly, many LGBTQ+ children and youth note the significant role faith plays in their identity development. States should leverage affirming faith-based providers to ensure children and youth are able to connect to and receive support for the role of faith in their lives. If systems and their partners ignore the need to connect children with affirming providers, they will not only fail in achieving their mission, but also will do direct harm to the children and youth they are entrusted to protect and support. This harm has life-long consequences as shown in the outcomes data previously discussed.

To ensure child welfare systems carry out their legal mandates and mission, as noted in the request, policies and practices governing foster care and adoption must promote and affirm the best interest of all children and youth served, including LGBTQ+ children and youth. **The waivers recently approved and currently under consideration by HHS undermine the very mission of child welfare by compromising the safety, permanency, and well-being of children and youth in care.** Should you have any questions regarding my responses or wish to follow-up with additional questions, please do not hesitate to contact me or CSSP's Vice President of Public Policy, Megan Martin (megan.martin@cssp.org; 202.371.1565).

Sincerely,



Frank Farrow
President
Center for the Study of Social Policy

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Christine James-Brown
President and CEO
The Child Welfare League of America
727 15th Street NW, 12th Floor
Washington, DC 20005

Dear Ms. James-Brown,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

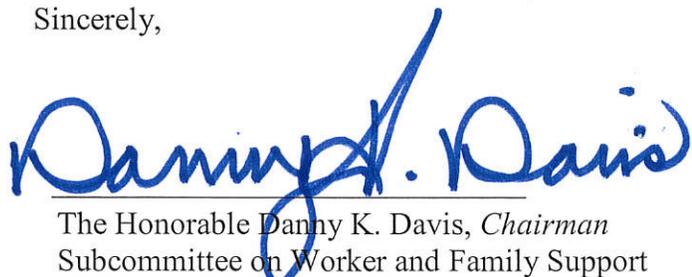
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



Response to July 12, 2019 Request for Testimony

House Ways and Means Committee

What are the best practices in recruiting qualified foster and adoptive parents and making good matches between them and the children in need of temporary or permanent homes?

Having strategies that support retention was documented throughout the 1980s, 1990s, and over the past 20 years. One of the first federally funded projects on foster parent recruitment, "Foster Parents Are People Like Us," dates back to the 1980s and states that without retention, recruitment is not cost-effective. For children who are in foster care or have been adopted, stability is essential. A solid approach to retention also supports foster families (the parents and their birth or previously adopted children) as well as agency staff and bolsters their standing in their communities.

The Child Welfare League of America (CWLA), our country's oldest advocacy and standard-setting organization, recommends reframing "recruitment and retention" as "planning, development, and support," by using targeted leadership, implementation science, and collaborative strategies. The aim is to assess how many foster and adoptive families are needed; help them develop the skills they need to work with diverse populations of infants, children, and young people; and support them with preservice training, mutual assessment (home studies), and in-service training. A qualified child welfare workforce is mandatory. If children have "special needs," then they must be served by agency staff with special skills. The direct service staff also must be supported by qualified supervisors who are trained in trauma-informed supervision.

The agency must have a model of practice that ensures all interactions between the foster parents and child welfare workers support the agency's mission and are trauma informed. Trauma-informed and responsive supports are essential for the foster parents and their families—not only the children who join their families, but also the children who are already family members.

An essential first step in recruiting foster and adoptive families is hiring and retaining competent child welfare workers and supervisors. The services staff are mandated to provide: access to sufficient resources for the children and families served; training and preparation; appropriate working conditions; quality supervision and coaching; adequate financial compensation; liability protection; and recognition for the services they provide.

A major component of retention is to ensure foster and adoptive parents have the ability (knowledge and skills), resources (time, place and finances), and willingness (motivation) in the following five domains:

- protecting and nurturing children;
- meeting children’s developmental needs and addressing developmental delays;
- supporting relationships between children and their birth families;
- connecting children with safe, nurturing, and enduring relationships (permanence); and
- working as a member of a trauma-informed child welfare team.

Foster parents should be informed of their rights and those rights must be supported by other members of the team. These rights generally include:

- immunity for any personal injury children might incur unless the foster parents’ negligence is established;
- notification of any court action or third-party review concerning children in their care;
- attendance at court hearings and reviews for children in their care;
- access to grievance procedures and appeal processes;
- participation in decisions regarding children in their care;
- acceptance of children into their family only when they assess they can meet safety, well-being, and permanence needs;
- maintenance of family traditions while being respectful of the cultural needs of children who join their families;
- receipt of information about the children in their care; and
- consideration as a permanent family for children in their care if the family and agency have determined that this is in the best interests of the children and the family.

Child welfare literature has documented for many years that a major reason foster families stop fostering is the lack of clarity in their role as a team member and not being treated with the dignity and respect that comes with that role. More recently, literature has revealed that another reason families discontinue fostering, especially in the first year, is the impact of fostering on the children already in the family.

In summary, the most effective approach to recruitment is first keeping the families who have already made a commitment and ensuring that they have the supports they need to be team members in child protection and trauma-informed care of children. In support of recruitment, public messages must emphasize the valuable contribution foster and adoptive families make to the children of their communities. These messages should focus on the demographic diversity of families who foster and adopt. Before “going public” with recruitment efforts, the agency must complete an assessment of populations for which and where foster or adoptive families are needed—for example, infants, medical needs, children who are substance-exposed, sibling groups, and/or youth with diverse sexual orientation and gender identity.

Another recruitment strategy is to involve the community that the child welfare agency serves. It is crucial that the community understands the agency’s mission, the needs of the children and families it serves, and how it can support and help address the needs of families whose children

are in care. Strategies must include engaging diverse communities for culturally responsive perspectives. Relationships with other systems that interact with the child welfare services are essential, including health and mental health services, schools, other community services, and the courts. These relationships provide a community-based network to support children and all their families.

With regard to matching children and families, the following factors must be considered:

- the families have a commitment, not a consumer approach to their role;
- the families can make a mutual decision with the agency regarding how their strengths meet the safety, well-being, and permanence needs of the children who may join them;
- the agency can provide the training and other supports that each foster and adoptive family will need for each child that joins their family, especially staff that implement a trauma-informed model of practice.

It is essential that the matching process gives special attention to the needs of each child already in the family, whether birth children, children previously adopted, or children brought into the family through another connection. The literature documents that issues to consider include children's understanding of the meaning of fostering or adopting, how it will change their family, their perspectives regarding having new brothers and/or sisters, and what happens when these brothers and sisters come and go. Most importantly, the literature cites children's exposure to those who have experienced trauma that is not commensurate with their own ages and stages of development.

It should be noted that every child in care and their parents have a service plan that the foster family has the responsibility to support. When children from multiple families are joined with a foster family, the foster family has not one, but multiple service plans to help implement. This includes supporting family time (parent/child visits), medical and other therapeutic appointments, court hearings, and other responsibilities. Therefore, an assessment must be made regarding whether and how the foster or adoptive family can support multiple plans.

Child welfare agencies are challenged by the mandate to adhere to the Federal 1997 Adoption and Safe Families Act (ASFA) to achieve child safety, well-being, and permanence outcomes for hundreds of thousands of children and young people of all ages, ethnic and cultural traditions, sexual orientation, and gender identities. These endeavors also are complicated by the need to keep siblings together. This challenge is amplified by the federal Family First Prevention Services Act of 2018.

All staff and foster parents, as well as managers, administrators, policy-makers, and legal decision-makers (courts) who work with children who are at risk and their birth families must: (1) share the same vision, mission, goals, and values, (2) use complementary evidence-based or -informed child welfare work practices; and (3) share accountability for achieving clearly defined, realistic, and achievable outcomes. A trauma-informed model of practice is essential.

LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approach is to help these youth?

One ongoing challenge in foster family recruitment is the frequent shortage of placements for youth in care. As noted in a recent *Child Welfare* journal:¹

“Older youth in foster care have complex needs that include both the needs of youth in the child welfare system as well as age-appropriate needs. For example, youth in out of home placement frequently have experienced chaos within their families of origin (Osborne, Delfabbro, and Barber, 2008), have family members with a history of mental illness (Ford, Vostanis, Meltzer, and Goodman, 2007) and may themselves have experienced trauma (Pecora et al., 2005) low educational attainment, including decreased rates of high school graduation, increased risk for school dropout, and academic achievement difficulties have been well documented (Dworsky and Courtney, 2009, Shin, 2004; Zetlin, Weinberg, & Kimm, 2004). Older foster youth are more likely than non-foster youth to experience criminal involvement and incarceration (Dworsky and Courtney). Risk of homelessness within the first six months of aging out of care is also high (Dworsky, Napolitano, & Courtney, 2013). A review of these findings suggest that older youth are at risk for poor life functioning outcomes when the exit out of care.”

An additional challenge is finding appropriate families who will care for youth who identify as LGBTQ. The child welfare agency plays a significant role in the recruitment of families for this population. The agency can and should be a part of the strategy to maintain a diversity of placement options. In addressing the needs of youth who identify as LGBTQ, the system and agencies supporting this population needs to develop guidelines and policies that are appropriate and affirming of their sexual orientation, gender identity, and expression (SOGIE).

CWLA’s best practice guidelines for this population of youth highlight that agency policies should: limit the use of independent living as a case goal; limit the use of congregate care; develop a youth-driven permanency model; and train all staff in permanency strategies and overcoming barriers to permanence for these youth.

In regard to addressing the needs of youth who identify as LGBTQ, agencies should employ targeted recruitment strategies to identify potential caregivers for each individual youth. In some instances, extended family members, friends of the youth or family, and other adults known to the young person may identify an adult willing to provide a home for the young person.

As we highlighted in our response to the first question, above, there are a number of important considerations for the child or youth in care. It is not best practice to make placement decisions based on available beds rather than the young person’s individual characteristics. This approach can lead to disastrous results for youth who identify as LGBTQ, who may be subjected to a series of caregivers who are insensitive or overtly discriminatory and end up in multiple placements.

¹Greeno, E.J., Uretsky, M.C., Lee, B.R., Ahn, H., Harburger, D.S. (2017). *Training and Preparation for Caregiving of Older Foster Youth: Perspectives of Foster Parents*; *Child Welfare Journal*, journal of Policy, Practice, and Program; Child Welfare League of America; Washington DC.

An important issue to consider for youth that identify as LGBTQ is the need to create a safe space for them to discuss or disclose their status or gender identity. As noted in the recent special issue on SOGIE of CWLA's *Child Welfare* journal (Volume 96, Number 1)²,

“Recent studies have found that the number of youth in foster care who are LGBTQ maybe close to double the rate of individuals who are LGBTQ in the general population (Wilson, et.al., 20, 2011). While all children in foster care face considerable trauma and stress, LGBTQ youth encounter a layer of societal heterosexualism and trans bias along with family rejection and norms in the child welfare system that diminish their self-worth. Not surprisingly, then, youth in foster care who are LGBTQ are at risk for behavioral health difficulties, contact with the criminal justice system, and other experiences of victimization (Child Welfare Information Gateway, 2013; Grant, Mottet, & Tranis, 2011).”

Best practices for agencies and providers serving young people that identify as LGBTQ should: (1) develop policies and practices governing the care of these youth who are in out-of-home care; and (2) provide guidance to professional and caregivers serving these individual youth in out-of-home (foster) care.

As expressed through our CWLA Best Practice Guidelines,³ states and agencies should address the integration of child welfare and juvenile justice agencies and focus on:

- the specific needs of youth in out-of-home care;
- an organizational culture that is inclusive;
- a family-centered approach that focuses on family-centered care;
- permanence for the young person;
- the promotion of positive adolescent development;
- collection and management confidential information so that the young person is in “safe space” for youth that choose to communicate their gender identity;
- policies that address the safety and appropriateness of group settings which may be more appropriate for some youth;
- providing appropriate health, mental health, and educational services to youth who identify as LGBTQ;
- matching each young person with the foster family with the requisite skills to meet their specific needs; and ensuring that all services are culturally responsive.

Youth who identify as LGBTQ are particularly vulnerable to experience failed or disrupted placements, multiple rejections, and frequent transitions. There can be many reasons for this, but one of the most obvious is a shortage of caregivers with the requisite competence to address the needs of this population. It is essential to have a model of practice that plans for recruitment, develops qualified families, and provides ongoing supports for foster families. Development of a

² Greif-Hackett, M.L., & Gallagher, S. (2018). Creating Safer Spaces for Youth who are LGBTQ in Broward County, Florida: Collecting SOGIE Data for Life Coaching Services. *Child Welfare*, 96(1), 27-51.

³ Wilber, S., Ryan, C., & Marksamer, J. (2006). *Serving LGBT Youth In Out Of Home Care: CWLA Best Practice Guidelines*. Child Welfare League of America: Washington DC.

cadre of families to address the diverse needs of children in care is based upon an assessment of the needs of children entering care and their families. This includes youth who identify as LGBTQ.

Agencies need to work with the young person to identify the setting that meets his or her needs. Agencies faced with a shortage of placement options cannot make these decisions tailored to the needs of the young person. As discussed in the answer to the first question above, agencies and states should employ targeted recruitment strategies to identify potential caregivers. The state and agency need to take affirmative steps to recruit caregivers, providers, and staff who share the goal of providing excellent care to all youth in care, including youth who identify as LGBTQ. As stated earlier, part of that recruitment strategy includes support for these caregivers. That includes training that discusses developmental and adolescent sexuality issues, working with the families of the youth, and accessing community-based services that serve youth who identify as LGBTQ.

Agencies responsible for developing and implementing these strategies and actions must ensure that staff and volunteers are comfortable talking with families who are diverse. These agencies must make an effort to speak directly to and about the resource families who identify as LGBTQ that are part of their program.

It is incumbent on agencies to provide opportunities for staff that lack experience working with the LGBTQ population to gain experience and cultural competence before conducting a family assessment or home study. An agency must have a means of educating staff to be culturally competent and communicate that expectation. Developing new materials or modifying existing materials to reflect the agency's policy regarding resource families who identify as LGBTQ should also be part of the educational process. Other actions by an agency should include:

- having photos of diverse groups of families as well as specific language and images that resonate with the community;
- reaching out to local LGBTQ community or advocacy centers, media, and key leaders who identify as LGBTQ to establish partnerships; and
- hosting recruitment activity/ies at a local LGBTQ venue or event or in a neighborhood that is LGBTQ-friendly.

These are critical steps. As we noted earlier, youth in care frequently face multiple moves while in out-of-home care for a range of reasons. This frequency increases when the young person identifies as LGBTQ. In a study based in Los Angeles, 13% of youth who identified as LGBT reported being treated poorly by the foster care system, compared with 6% of youth who did not identify as LGBT.⁴ That treatment also contributes to children and youth running from care. Seventy-eight percent of youth who identify as LGBT in one study were removed or ran away from foster placements because of the caregiver's hostility toward their sexual orientation or gender identity.⁵ Other research has found that as many as 56% of youth who identify as LGBT

⁴ Youth.Gov. (n.d.) Child welfare. Retrieved from <https://youth.gov/youth-topics/lgbtq-youth/child-welfare>

⁵ Feinstein,R., Greenblatt, A., Hass,L., Kohn,S.,] (2001). *Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System*; Retrieved from

in out-of-home care have spent some time without stable housing because they felt safer on the streets than in group or with foster families.⁶ Furthermore, youth in foster care are less likely than other youth to find a permanent home, whether through reunification with their birth or kin families or through adoption.⁷

A new report just published by the Department of Health and Human Services provides an analysis of factors associated with youth who run from care. Regarding sexual orientation the report stated:

“Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are more likely than heterosexual youth to run from home in the general population, and preliminary evidence suggests a similar pattern among the foster care population. A large, longitudinal study of youth in state custody assessed runaway behavior among youth with issues related to sexual development, defined broadly as “difficulties related to sexual development, including sexual behavior, sexual identity, sexual concerns, and the reactions of significant others to any of these factors” (Taylor, 2013). Such youth were 17 percent more likely than other youth to run from care and were also more likely to have an increased number of days on the run. These findings are consistent with findings that youth in the general population who identify as LGBTQ are overrepresented in the homeless population, and are more likely than youth who identify as heterosexual to be runaways or throwaways (i.e., evicted from their homes by parents; Cochran, Stewart, Ginzler, & Cauce, 2002; Corliss, Goodenow, Nichols, & Austin, 2011; Whitbeck, Chen, Hoyt, Tyler, & Johnson, 2004). Sexual orientation and gender identity may be particularly critical factors to examine among runaway youth, because they often emerge in middle to late adolescence—a time of high running risk (Nesmith, 2006).”⁸

Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state’s ability to make a placement in the best interest of the child, including the child’s religious beliefs? How would it affect the likelihood of appropriate foster care placement if these policies were expanded?

Ultimately, such policies need to be judged on whether or not the state child welfare agency is meeting the range of needs of children entering care. This includes having placements available where they are needed. The preference is to keep children with their families if that is in their best interests—especially in the more than 50% of cases where the goal is to reunify the child with their family.

https://www.researchgate.net/publication/234720629_Justice_for_All_A_Report_on_Lesbian_Gay_Bisexual_and_Transgendered_Youth_in_the_New_York_Juvenile_Justice_System.

⁶ Youth.gov. (n.d.). Child welfare. Retrieved from <https://youth.gov/youth-topics/lgbtq-youth/child-welfare>

⁷ Sullivan, C., Sommer, S., & Moff, J., (2001). *Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care*. Rockville, MD: National Criminal Justice Reference Service.

⁸ *Report to Congress: The Child Welfare System Response to Sex Trafficking of Children: Factors Associated with Youth Who Run from Foster Care*, Administration for Children and Families, Department of Health and Human Services, Washington DC: December 2018.

As we have already highlighted, there have to be sufficient numbers of foster families to meet the needs of all children. If the movement is to continue to reduce the use of group homes—as it has done for more than two decades, now reinforced with the passage of the Family First Prevention Services Act of 2018—then there continues to be a need to maximize having sufficient numbers of foster families and resources. In addition, the nation is once again experiencing a substance abuse crisis brought on by spikes in drug usage as a result of today’s opioid epidemic. This current trend is not unlike the national or regional challenges presented in the past by spikes in the use of cocaine, heroin, and methamphetamines.

These factors have increased the need for more foster families despite everyone’s desire to reduce the number of children and youth in foster care. As a society, we have seen the family structure change; this includes the growth of two-income families and single-parent households, which has had an impact on the recruitment and retention of foster families. The large need for foster families suggests the need to NOT be selective if there are competent and qualified adults willing to serve as foster parents.

CWLA believes that over the years, child welfare policy and practice has been driven in part by a lack of funding, both in quantity and in a range of funding options that could ostensibly address the continuum of services which are needed. This continuum includes prevention and intervention services that could help a family prior to their coming to the attention of child welfare. In addition, there should exist a range of appropriate foster families that can meet a range of needs: sibling groups remaining together, children and youth having their therapeutic needs met, and many other diverse needs.

As one example, six years after passage of the Fostering Connections to Success Act of 2008, 42 states told the Government Accountability Office (GAO) that they were having difficulty in finding homes for sibling group placements. That 2008 law directed states to keep sibling groups together so that children would not be isolated from their brothers and sisters. The GAO went on to describe specific evidence:

“The lack of available placements for sibling groups was a challenge identified in all four states we visited. One local office noted that this can be particularly challenging in high-cost urban areas where potential resource families have limited space. Additionally, siblings may have different needs that may require separate housing, as when one sibling has severe behavioral issues that require a higher level of care. Caseworkers in two states noted that groups in which siblings have different fathers can complicate placement with relatives. One group of foster parents we interviewed reported that the child welfare agency does not do enough to facilitate visitation between separated siblings, which is left to the foster parents to arrange.”⁹

States should maximize all federal funding sources so that there is greater investment in both the needed appropriate foster care settings and the continuum of child welfare services

⁹ Brown, K. (2014). *HHS Needs to Improve Oversight of Fostering Connections Act Implementation*. Washington, DC: Government Accountability Office.

Presumably, states that separate out state dollars to fund a separate line of foster homes are eliminating their ability to use those state dollars to match federal Title IV-E funds, which provide a match from 50% to as high as 83%.

Based on two decades of surveys of state financing of child welfare services, we know that states can change dramatically in how they draw down Title IV-E foster care funding. The state penetration rates (the percentage of children who are covered by matching federal foster care funds) cited in the latest Child Trends range from Indiana's reported high of 72% to Nebraska's self-reported low of 11%.¹⁰ That means, in this specific example, that anywhere from 28% to 89% of children are being funded by state-only dollars—which means less for other services that fall under child welfare, from primary prevention to post-placement services. Using state-only dollars for foster care placements when federal funding is available means that states' dollars may be diverted from other important services, including primary prevention of child abuse; funding for intervention services to prevent foster care placements; funding for post-permanency services for families that are reunified, kinship families, and families who adopt and the need to assist youth who do not find permanence.

In addition to draining limited financial resources from a broader continuum of child welfare services, these separate recruitment or support strategies may also contribute to the much-reported shortage of foster homes. As CWLA noted in its recommendations to the President's Commission on Opioids,¹¹ the impact of opioids and other substance on child welfare included the following data:

- In one state, Florida, the number of children in foster care in Florida increased from 18,040 to 22,364 between 2013 and 2015. Entries into foster care increased from 14,310 in 2013 to 17,677 in 2015—a number that has not been exceeded since 2007.

As recently reported, in Florida's 12th Judicial Circuit (Manatee, Sarasota and De Soto Counties), over the past 20 years child welfare caseworkers would bring in approximately 30 to 40 children a month, and about half would go into foster care. But now, according to local advocate Brena Slater, “We've had a 120 percent increase in the last three years.” Substance abuse tops the list of reasons cited for child removal this year. Substance abuse can include alcohol, marijuana or other drugs, but Slater says she's seen a clear connection to the rise in opioid use, pointing out that “our area never had more than one or two parents die a year of overdose and we have already had 23 parents die this year (2017).”

- According to a recent article in the *Washington Post*, “More than 1,000 children are born addicted to drugs in Maine each year, many of whom end up in foster care. According to

¹⁰ Rosinsky, K., Williams, C.W. (2016). *Child Welfare Financing: SFY 2016, Appendix F, Title IV-E Coverage Rates*. Washington, DC: Child Trends.

¹¹ President's Commission on Combating Drug Addiction and the Opioid Crisis. (2017). Memo and Recommendations to the President's Commission on Opioids. Retrieved from <https://www.cwla.org/wp-content/uploads/2017/09/CWLA-Comments-to-Opioid-Commission-Draft.pdf>

the report, there were more than 1,800 in foster care across the state in 2016, a nearly 45 percent increase in foster children here since 2011.”

- A recent report to the Governor of Indiana stated that “...national research indicates that 61% of infants and 41% of older children in out-of-home care are from families with some form of active SUD. These figures are increasing in Indiana where the percentage of children removed from homes due to parental SUD increased from 48% (5,101 children) in State Fiscal Year 2015, to 52.2% (6,223 children) in State Fiscal Year 2016.”
- The number of children in foster care in Alaska increased from 1,982 to 2,653 between 2013 and 2015. In 2010 Alaska’s Foster Care population had decreased to 1,791. Entries into foster care in 2010 had decreased to 887 children but by 2015 that number had increased by over 70%, to 1,513 children entering care.
- The number of children in foster care in Arkansas increased from 3,797 to 4,548 between 2013 and 2015. In addition, entries into foster care increased from 3,798 in 2013 to 4,065 in 2015. This is the highest number of entries since 2009, when the figure reached 4,161.
- In Arizona, the number of children in foster care increased from 14,399 to 17,738 between 2013 and 2015. In addition, entries into foster care increased from 10,790 in 2013 to 12,722 in 2015. At one point, in 2006, entries stood at 7,460.
- In Georgia, the number of children in foster care increased from 7,607 to 10,935 between 2013 and 2015. Entries into foster care increased from 6,005 in 2013 to 8,581 in 2015—a number considerably higher than the lowest number of the recent past of 5,469, reached in 2010.
- In Kansas, the number of children in foster care increased from 6,441 to 7,223 between 2013 and 2015. For many years, many observers and advocates at the national level would refer to the state’s child welfare system and highlight the progress being made; in fact, in 2009, the Kansas Foster Care population stood at 5,691. Today these numbers have increased by nearly 27%.
- The number of children in foster care in Louisiana increased from 3,955 to 4,545 between 2013 and 2015. In addition, entries into foster care increased from 3,475 in 2013 to 4,099 in 2015. This is the highest number of entries in more than ten years and much higher than the low of 3,131 entries in 2012.
- In Missouri, placements of children in foster care increased from 10,624 to 12,160 between 2013 and 2015. Entries into foster care increased from 6,401 in 2013 to 6,906 in 2015—much higher than the lowest number of the past ten years of 4,557, reached in 2008.

- Montana, which still feels the impact of the earlier meth-amphetamine epidemic, experienced an increase of 2,232 to 2,807 children in foster care between 2013 and 2015. Entries into foster care increased from 1,434 in 2013 to 1,940 in 2015. The 2015 number of entries into foster care is more than all of 2009 and 2010 combined.
- In North Carolina, the increase went from 9,036 to 10,324 between 2013 and 2015. Entries into foster care increased from 5,300 in 2013 to 5,597 in 2015. The 2015 number of entries is much more than North Carolina’s recent low point of 4,769 in 2010.
- The number of children in foster care in North Dakota increased from 1,227 to 1,359 between 2013 to 2015. The number of children taken into foster care on an annual basis rose from 951 to 1,037 within that same time frame—far more than the decade low of 789 in 2011. The number of children served (counting any time in care during the year) rose from 1,769 in 2011 to 2,332 in 2015.
- In Ohio, the number of children in foster care increased from 12,223 to 13,205 between 2013 and 2015. In addition, entries into foster care increased from 9,875 in 2013 to 10,360 in 2015. This is the highest number of entries since 2007.
- The number of children in foster care in West Virginia increased from 4,389 to 4,959 between 2013 and 2015. In addition, entries into foster care increased from 3,467 in 2013 to 3,950 in 2015. In 2010, entries stood at 2,955.”

Under these circumstances, and even when the country is not dealing with an epidemic of drug addiction, there is a need to leverage all federal and state funding available to build a census of family foster care appropriate to the needs of each child, as well as the need to fund a continuum of services starting with prevention. All of this needs to be funded at the same time.

Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally funded placements. How did those laws affect the ability of those states to make placements in the best interests of the child?

Some of our response to this question is similar to what we outlined in the previous question. States do not generally run two separate child welfare systems with one paid for by state/local funds and the other run with federal/state/local funds. To the extent that a state is able to maximize all funding sources, the better equipped they may be to fund a range of options in foster care placements and the surrounding services, including primary prevention and intervention services that can reduce the number of children in foster care.

The primary focus of child welfare agencies is the best interests of the child. State child welfare agencies, governed by federal statutes under Title IV-B and Title IV-E of the Social Security Act, are directed to make policies and take actions that are in “the best interests” of the child, as mentioned at least 18 separate times in the Title IV-B and Title IV-E plans.

Although some states have laws to protect youth who identify as LGBTQ, many have reported discrimination in their foster care placements and other settings. It is the role of the system and agencies to be advocates for fair and appropriate treatment and services for youth who are LGBTQ.

What further information would your own organization like to share with members of Congress and HHS in order to guide their policy discussions about foster and adoptive parents selection and its role in ensuring that we act in the best interests of the child?

Faith-based providers have a long and important history of providing essential services in foster care and the larger child welfare system. At times throughout our history, they provided services when federal, state, and local services were lacking. However, best practice demands that we remember the child and family are our clients—thus, their needs are paramount.

The CWLA *National Blueprint for Excellence in Child Welfare* serves as the foundation and framework for achieving the vision that all children will grow up safely, in loving families and supportive communities. They must have the resources needed to flourish, including connections to their culture, ethnicity, race, and language, and support for their sexual orientation and gender identity. This vision requires that all children, whether or not they receive child welfare services or are at risk for child abuse or neglect, will grow up with safety, well-being, and permanence.

Families, individuals, communities, providers, and other organizations can create the greatest opportunities for all children and youth to succeed and flourish. It is only by achieving a vision for all children and youth those who are most vulnerable can flourish. This means working together to better serve and protect children and support their families and permanence. This requires collaboration between families, individuals, communities, service providers, and policymakers to ensure the best possible opportunities for all children and youth.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Stan J. Sloan
Chief Executive Officer
Family Equality
113 19th Street NW, Suite 302
Washington, DC 20036

Dear Mr. Sloan,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

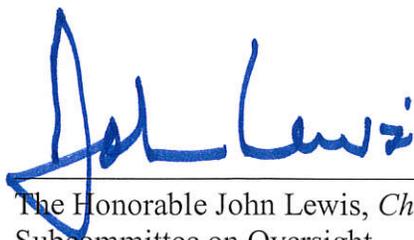
It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

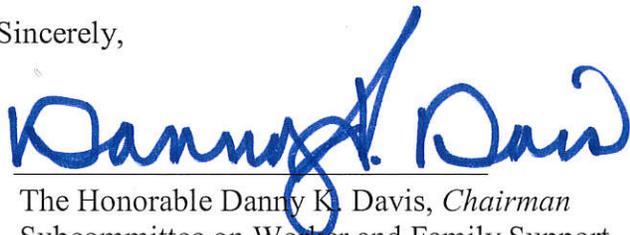
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight

Sincerely,



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



475 Park Avenue South, Suite 2100
New York, NY 10016
tel 646.880.3005
fax 202.697.5058
info@familyequality.org

August 30, 2019

The Honorable John Lewis, Chairman
Subcommittee on Oversight
The Honorable Danny K. Davis, Chairman
Subcommittee on Worker and Family Support
Ways and Means Committee
United States House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairmen Lewis and Davis,

Thank you for the opportunity to provide a written statement in response to your July 11, 2019 letter of inquiry as part of your investigation into the waivers granted or currently being considered by the Department of Health and Human Services ("HHS") regarding child state welfare systems.

We appreciate this opportunity as we are gravely concerned about the impact these waivers will have on children, including but not limited to lesbian, gay, bisexual, transgender, and queer ("LGBTQ") foster children and foster children of a faith different than a foster care agency or child welfare worker working with them. We are also deeply concerned about the discriminatory impact of these waivers on LGBTQ foster and adoptive parents, LGBTQ families of origin touched by child welfare agencies operating under such waivers, and, similarly, prospective and current parents and families who are secular or of a faith other than that of an agency's or child welfare worker's.

Family Equality connects, supports, and represents the three million LGBTQ parents and their six million children in the United States. We are a community of parents and children, grandparents and grandchildren that reaches across this country. For forty years we have raised our voices toward fairness for all families. Family Equality also supports LGBTQ youth, including foster youth, seeking family formation.

Family Equality convenes and cochairs the Every Child Deserves a Family Campaign in partnership with the Child Welfare League of America, FosterClub, Lambda Legal, PFLAG National, and Voice for Adoption. This Campaign is composed of over 500 faith, child welfare, civil rights, LGBTQ and allied organizations, and individuals who subscribe to the following beliefs and strive to improve the child welfare system by advocating for their implementation:

1. All child welfare decisions should be made in the best interests of the child.

2. All children and youth deserve a stable, loving, forever family.
3. Taxpayer-funded adoption and foster care service providers should not discriminate against youth, including LGBTQ youth in need of homes, or qualified LGBTQ potential parents or guardians.
4. Marginalized youth in the child welfare system, including LGBTQ youth and youth of color, deserve culturally competent, safe, and supportive care.
5. Discriminatory adoption and foster care bills must be stopped and repealed, at both the state and federal level.

Below are our responses to the questions you sent us in your letter dated July 11, 2019.

1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?

Under this question, we discuss best practices for recruiting foster and adoptive parents and making good matches for the over one in five foster youth who identify as LGBTQ.

Over 20% of foster youth identify as LGBTQ.¹ In a large-scale study of youth in foster care in Los Angeles, LGBTQ foster youth report twice the rate of poor treatment while in care, are 2.5 times more likely to report living in a group home rather than a family setting and report a greater number of placements than non-LGBTQ foster youth, with LGBTQ youth of color reporting the highest rates of group home residence and placement instability.² A 2017 survey of over 2,500 foster youth showed that LGBTQ foster youth of color were 65% more likely to report over ten placements than their white, non-LGBTQ counterparts.³

LGBTQ foster youth also report a rate of being hospitalized for emotional reasons three times greater than non-LGBTQ youth,⁴ indicating both higher rates of mental health concerns as well as another source of placement instability for these youth.

¹ See Laura Baams, Bianca D.M. Wilson & Stephen T. Russell, *LGBTQ Youth in Unstable Housing and Foster Care*, 143(3): e20174211 PEDIATRICS (2019), available at:

<https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>;

Megan Martin, Leann Down, & Rosalynd Erney, *Out of the Shadows: Supporting LGBTQ youth in Child Welfare Through Cross-System Collaboration*, CENTER FOR THE STUDY OF SOCIAL POLICY (2016), available at: <https://cssp.org/resource/out-of-the-shadows/>.

² Bianca D.M. Wilson, Khush Cooper, Angeliki Kastanis & Sheila Nezhad, *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, THE WILLIAMS INSTITUTE: UCLA SCHOOL OF LAW (2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_ExecutiveSummary_Aug_2014.pdf.

³ Jeffrey M. Poirier, Sandra Wilkie, Kristin Sepulveda, & Tania Uruchima, *Jim Casey Youth Opportunities Initiative: Experiences and Outcomes of Youth who are LGBTQ*. 96 CHILD WELFARE 1 (2018).

⁴ Wilson, *supra* n.2.

Placement instability is associated with the worst outcomes of foster care: poor physical development, brain development and mental health, poorer education outcomes,⁵ homelessness,⁶ substance abuse,⁷ early parenthood,⁸ and involvement in the criminal justice system.⁹ Placement instability leads to lower rates of attachment to adults, which strongly correlates with these poor outcomes.¹⁰ LGBTQ foster youth report lower rates of both family and non-family adult support than their non-LGBTQ counterparts.¹¹

Because of the detrimental impacts and societal costs of long stays in residential care and placement instability, it is urgent that states, tribes and agencies seek to improve the quantity, quality, and stability of matches between LGBTQ foster youth and foster and adoptive homes. Lesbian, gay, and bisexual foster youth are more than twice as likely than heterosexual foster youth to be moved from their first placement at the request of their caregiver or foster family.¹² This indicates a grave failing in securing appropriate and affirming placements.

Given the data detailed above, improving placement stability and quality for the over 20% of foster youth who identify as LGBTQ is critical for meeting Congressionally mandated goals of foster care. These statutory goals include safety, well-being, and permanency for foster youth¹³ as well as ensuring that children in foster care are placed in the least restrictive and most family-like settings.¹⁴

Best practices for ensuring affirming, successful placements and reducing placement instability for LGBTQ foster youth include the following:

⁵ Carolien Konijn, Sabine Admiraal, Josefiene Baart, Floor van Rooij, Geert-Jan Stams, Cristina Colonnaesi, Ramon Lindauer, & Mark Assink, *Foster Care Placement Instability: A Meta-Analytic Review*, 96 CHILD YOUTH SERV REV 483, 499 (2019), available at: <https://www.sciencedirect.com/science/article/pii/S019074091830731X>.

⁶ Amy Dworsky, Laura Napolitano, & Mark Courtney, *Homelessness During the Transition From Foster Care to Adulthood*, 103 AM J PUBLIC HEALTH 318 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3969135/>.

⁷ Tonia Scott, *Placement Instability and Risky Behaviors of Youth Aging Out of Foster Care*. 29 CHILD ADOLESC SOCIAL WORK J. 61, 83 (2012), available at: https://www.researchgate.net/publication/257543808_Placement_Instability_and_Risky_Behaviors_of_Youth_Aging_Out_of_Foster_Care.

⁸ Bryan King, Andrea Lane Eastman, Elizabeth Aparicio, Rhoda Smith, & Claudette Grinnell-Davis, *Pregnancy During Foster Care: Placement Trajectories Among Foster Youth Who Give Birth as Adolescents*, Abstract Presented at SOCIETY FOR SOCIAL WORK AND RESEARCH 23d Annual Conference (2019), available at: <https://sswr.confex.com/sswr/2019/webprogram/Paper34437.html>.

⁹ Joseph P. Ryan & Mark F. Testa, *Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability*. 26 CHILD YOUTH SERV REV 227, 249 (2005), available at: <https://www.sciencedirect.com/science/article/pii/S0190740904002026>.

¹⁰ Konijn, *supra* n. 5.

¹¹ Poirier, *supra* n.3.

¹² Megan Martin, Leann Down, & Rosalyn Erney, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration*, CENTER FOR THE STUDY OF SOCIAL POLICY (2016), available at: <https://cssp.org/resource/out-of-the-shadows/>.

¹³ The Adoption and Safe Families Act, Pub. L. No. 105-89, H.R. 867, 105th Cong. (1997), available at: <https://www.congress.gov/bill/105th-congress/house-bill/867/text?q=%7B%22search%22%3A%22H.R.+867%22%7D&r=10&s=6>.

¹⁴ Family First Prevention Services Act of 2018, passed as Title VII of the Bipartisan Budget Act, Pub. L. No. 115-123, H.R. 1892, 115th Cong. (2018), available at: <https://www.congress.gov/bill/115th-congress/house-bill/1892/text>.

- Ensure that taxpayer-funded foster care and child placement agencies do not discriminate and are willing to meet the needs of all children including LGBTQ children. See more information under questions 2-5 below about how discrimination harms and non-discrimination measures improve services to foster youth including LGBTQ foster youth.

Child placing agencies that turn away qualified LGBTQ adults who apply to be foster and adoptive parents because of their sexual orientation and gender identity are less likely to be affirming of LGBTQ foster youth. Some of these agencies have written anti-LGBTQ policies such as opposition to same-sex marriage or denying the existence of transgender children.¹⁵ Research has shown that anti-LGBTQ policies negatively impact LGBTQ health and that, conversely, children served by institutions with LGBTQ non-discrimination policies have improved health behaviors and outcomes.¹⁶

- Ensure that all foster care agency staff, volunteers, and foster and adoptive parents are trained and coached on affirming every aspect of a child’s identity, including their LGBTQ identity. All staff, volunteers, and prospective parents should be prepared to serve, welcome, and affirm LGBTQ youth in their care. LGBTQ youth in care may not be out to staff, volunteers, and foster parents – so prospective parents should be trained to provide affirming care to LGBTQ youth whether or not a child they are serving or fostering has reported being LGBTQ.
- Ensure that supportive services including but not limited to educational, health, mentoring, housing, and career services provided to foster youth are affirming of their identities including sexual orientation and gender identity.
- Ensure that accountability mechanisms are in place to measure whether children are affirmed in their identities.

¹⁵ For example, Miracle Hill Ministries, a federally funded foster care agency in South Carolina, turns away non-born again Protestant Christians and same-sex couples applying to be foster parents. It also requires all parent applicants to state agreement with a doctrinal statement holding that marriage is between a man and a woman and that “God creates each person as either male or female.” Parent application and doctrinal statement available at <https://miraclehill.org/foster-care-inquiry-form/>.

¹⁶ See E.M. Saewyc, C. Konishi, H.A Rose & Y. Homma. *School-Based Strategies to Reduce Suicidal Ideation, Suicide Attempts, and Discrimination Among Sexual Minority and Heterosexual Adolescents in Western Canada*, 5 INT J CHILD YOUTH FAMILY STUD 89,112 (2014); M.L. Hatzenbuehler & K.M. Keyes, *Inclusive Anti-Bullying Policies Reduce Suicide Attempts in Lesbian and Gay Youth*, 53 ADOLESC HEALTH 21, 26 (2013); M.L. Hatzenbuehler, M. Birkett, Van Wagenen A, I.H. Meyer, *Protective School Climates and Reduced Risk for Suicide Ideation in Sexual Minority Youth*, 104 AM J PUB HEALTH 279, 286 (2014); Mark L. Hatzenbuehler et al, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 HHS PUBLIC ACCESS 48, 56 (2015); Hatzenbuehler et al, *State-Level Policies and Psychiatric Morbidity In Lesbian, Gay, and Bisexual Populations*, 99 AM J PUBLIC HEALTH 2275, 2281 (2009).

- Collect data on LGBTQ foster youth, including number and length of placements, placement rates in residential care versus with families, and adoption rates to ensure that successful placement matches are made for these children, that best practices for LGBTQ foster youth placements can be identified and replicated, and to identify opportunities to improve care and outcomes for LGBTQ youth.
- 2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?**

The answer to this question was written by the seven members of the LGBTQIA+¹⁷ & Two-Spirit Foster Alumni & Advocate Team (“Team”). The Team is a project in partnership with Family Equality and FosterClub.

About the LGBTQIA+ & Two-Spirit Foster Alumni & Advocate Team

The Team convenes to promote diversity, inclusion, and affirmation of young people in foster care. The Team currently consists of seven members geographically distributed across the country, reflecting a range of diversity encompassing, but not limited to: ethnicity, location of residency, religion, sexual orientation, gender identity, and child welfare experiences. The Team engages by contributing to, advising and supporting the national Every Child Deserves a Family Campaign, educating and engaging policymakers, and building public awareness and creating recommendations for best foster care practices at both the federal and state levels.

Current Team Members:

Schylar Baber, Washington, DC, formerly of Montana
Daryle Conquering Bear Crow, Colorado, formerly of South Dakota, member, Oglala Sioux Tribe
Shantell House, Maryland, formerly of California
Lucina Kayee, Minnesota
Ernesto Olivares, Jr., Texas
Kristopher Sharp, New York, formerly of Texas
Tristan Torres, Nevada

Overview

There are over 442,000 children and youth in the United States foster care system.¹⁸ Due to a lack of data collection within HHS Adoption and Foster Care Analysis and Reporting System (AFCARS) it is impossible to definitively ascertain the number of LGBTQ and Two-Spirit youth in the system.

¹⁷ lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual

¹⁸ According to the U.S Department of Health and Human Services, Administration on Children, Youth, and Families, and the Children’s Bureau there were 442,995 children in foster care in the United States in FY2017. The median age for these children was 7.7 years old. *The AFCARS Report*, US DEPARTMENT OF HEALTH AND HUMAN SERVICES (2018), available at: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

Nonetheless, recent studies show that over 20% of foster youth identify as LGBTQ and/or Two-Spirit (over twice their representation in the general youth population),¹⁹ and these youth report twice the rate of poor treatment while in care, as well as greater rates of placement in group homes, multiple placements, hospitalization for emotional reasons, involvement in the criminal justice system, and homelessness than do their non-LGBTQ counterparts.²⁰

Too few foster care facilities have policies prohibiting discrimination on the basis of sexual orientation or gender identity or provide training for staff on how to create safe and welcoming environments for LGBTQ and Two-Spirit youth. Many LGBTQ and Two-Spirit youth in the foster care system experience verbal harassment and/or physical or sexual abuse because of their sexual orientation or gender identity. In one of the only studies of its kind, 100% of LGBTQ youth in New York City group foster homes reported that they were verbally harassed while at their group home and 70% reported physical violence due to their sexual orientation or gender identity. This abuse was perpetrated not only by youth peers, but also by facility staff and social workers. When the abuse was between peers, it either was condoned by facility staff or went unchallenged.²¹

One study found that 78% of LGBTQ and Two-Spirit youth were removed or ran away from their foster placements as a result of hostility toward their sexual orientation or gender identity.²² 56% of LGBTQ youth interviewed in a New York City study of LGBTQ youth in foster care spent time living on the streets because they felt "safer" there than they did living in their group or foster home.²³ When LGBTQ youth are harassed or discriminated against, foster care facilities sometimes respond by moving the LGBTQ youth to another — often more restrictive — facility or isolating them rather than addressing the underlying homophobia or transphobia.

Collectively, members of the LGBTQIA+ & Two-Spirit Foster Alumni & Advocate Team bring over 55 years of both personal and professional experience living in and working to improve the United States foster care system. Respectfully, we submit the following recommendations on how to best remedy some of the most critical challenges for America's LGBTQ+ and Two-Spirit foster youth along with recommendations on successfully supporting these young people.

This Team submits three overarching considerations in supporting LGBTQIA+ and Two-Spirit youth who experience foster care:

- 1. Fully support our identities as LGBTQIA+ and Two-Spirit young people and provide access to normalcy and permanency.** This Team recognizes the harm caused to young people when their full identities are not supported, and even worse, when they face discrimination within a

¹⁹ Baams and Martin, *supra* n.1.

²⁰ Wilson, *supra* n.2.

²¹ AL DESETTA, IN THE SYSTEM AND IN THE LIFE: A GUIDE FOR TEENS AND STAFF TO THE GAY EXPERIENCE IN FOSTER CARE 46-47 (Youth Communications 2003).

²² Randi Feinstein, Andrea Greenblatt, Lauren Hass, Sally Kohn, & Julianne Rana, *Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System*, URBAN JUSTICE CENTER, (2001), available at: <https://www.hivlawandpolicy.org/sites/default/files/justiceforallreport.pdf>.

²³ GERALD P. MALLON, *WE DON'T EXACTLY GET THE WELCOME WAGON* (Columbia University Press 1998).

system that is supposed to center their best interests, safety and well-being. Agencies and individuals need to receive culturally inclusive and affirming training; policies, procedures, and practices need to reflect culturally inclusive care; and communities need to be supported in connecting and engaging young people in healthy, normal child and adolescent activities. LGBTQIA+ and Two-Spirit youth should be fully supported in securing permanency and life-long connections.

- 2. Engage foster youth and alumni in developing and implementing policy and practice changes.** Many Team members have been involved in our communities, states, and on the national level in supporting training, capacity-building, and improving policies within the child welfare system. Team members have also supported peers directly by advocating for and educating on youth rights. Youth and alumni engagement in these meaningful child welfare efforts led to better outcomes for children and youth served by the system. We urge Congress and HHS to encourage and support states and jurisdictions in developing and implementing a youth engagement plan as they address better supporting LGBTQIA+ and Two-Spirit youth in care, ranging from analysis of current policies and procedures, development of new policies and training, resolution of grievances, and evaluation of outcomes.
- 3. Increase research and data collection on LGBTQIA+ and Two-Spirit youth within the child welfare system.** While some data is available about the experiences of LGBTQIA+ and Two-Spirit youth and their experiences in foster care, there is a need for increased knowledge. It is imperative that data about youth who are currently in care is collected, examined, and acted upon to ensure equitable and safe care for LGBTQIA+ and Two-Spirit youth. Some of the areas this data should encompass include but are not limited to the following: placement in congregate care, permanency outcomes, discrimination encountered, safety in disclosing identity, and access to inclusive health care and education. Research should also incorporate open feedback from young people, directly.

The Team has outlined specific recommendations for each of our overarching considerations and included, where appropriate, personal stories to further illustrate the needs and experiences of LGBTQIA+ & Two-Spirit foster youth.

- Ensure culturally inclusive, trauma-informed & affirming care.

States, tribes, jurisdictions, and agencies receiving federal funding should be required to incorporate culturally inclusive and affirming training which is youth-informed and trauma-informed to ensure all employees and individuals involved in a youth's case (including but not limited to caseworkers, supervisors, therapists, court staff, lawyers, judges, foster parents, facility staff, and visitation supervisors) understand the specialized needs of this demographic. Culturally inclusive care should include specific support directed toward transgender youth, particularly related to housing, facilities, and the ability for the young person to live in accordance with their gender identity rather than their sex assigned at birth.

“When I went into foster care, everything was ripped away. My tribal customs, my native ceremonies... I was placed in a home where I told them that... I liked boys. The next day I was removed. I wondered why.” - Daryle, Colorado

“[In] a system that makes it optional to give marginalized youth their dignity, in my experience, my mom and her boyfriend rejected me after I came out, which provoked my entrance into the foster care system, and even in foster care my caregivers used the words ‘freak’ and ‘transvestite’ to refer to me while I packed my belongings in garbage bags.

“I had to take the initiative and work to pass a law in my state that prevented this kind of treatment for anyone following after me. AB99 had bipartisan support and was signed into law by Republican Governor Sandoval in April of 2017, enacting protections for LGBTQ foster youth, and with this bill's passage, Nevada is now a leader in best practices for LGBTQ out-of-home youth.” - Tristan, Nevada

- Ensure LGBTQIA+ and Two-Spirit youth find permanency and lifelong connections.

Young people who identify as LGBTQIA+ and Two-Spirit experience a higher-than-average number of placements and are more likely to live in a group home setting.²⁴ These factors often contribute to LGBTQIA+ and Two-Spirit youth not having an equal opportunity to secure permanency and build life-long connections.

“I was told after I was removed from my second foster family placement that unless I manned up, I'd likely never find a forever family. People just don't want gay kids. My caseworker told me that as she was driving me to the first facility I would be placed in.” – Kristopher, Texas

Independent living programming should be created specifically for LGBTQIA+ and Two-Spirit youth who are preparing to age out of the system.

- Remove barriers for foster and adoptive parents.

States, tribes, jurisdictions, and agencies receiving federal funding should be required to eliminate discriminatory barriers that prevent qualified LGBTQIA+ and Two-Spirit adults from becoming foster or adoptive parents. There should be no so-called “religious exemptions” allowing such discrimination for any agency receiving federal funds. Expanding the pool of foster parents can also create more opportunities for LGBTQIA+ and Two-Spirit youth to be placed with families.

²⁴ Wilson, *supra* n.2.

“We need more families. We have more children in care and not enough homes to place them in. We have people that are being hurt and traumatized by a system that is intended to protect them. It's wrong. When you accept children and you take them into your custody, you have a duty. Foster care should be the short-term safe haven. It's intended to triage. It's not intended to house them permanently. I come from a generation known as the children who wait. For we take kids out of their homes and place them in the system without ever intending to find them permanency.” – Schylar, Montana

- Inform youth of our rights and ensure access to an independent youth-friendly grievance process.

Young people of all ages should be regularly informed of their rights within care. Young people age 14 or older should be aware that they are entitled to a list of their rights, per federal law.²⁵ States, tribes, and jurisdictions should, in reviewing and updating that list of rights, include protections for young people that prohibit discrimination based on sexual orientation or gender identity or expression and ensure that young people are aware of and have access to an independent, youth-friendly grievance process, where they can report abuse or violations, no matter their placement. It is critical that such a grievance process include explicit protections against retaliation for reporting by caseworkers, foster parents, facility staff, and others. Young people should be involved in the review and updating of state Foster Youth Bills of Rights.

“Because of the nature of ...placements where doors are locked by powerful magnetic strips, children are typically home schooled, or they attend school on campus. Staff tell you when to eat, when to take your meds, when to go to bed. Phones are kept behind locked doors. There was no way for me to even report what was happening to me.” – Kristopher, Texas

“I was forced into conversion therapy. Every day after school, I would have to go to an elder at my church and hear how I have a demon possessing my soul, how that demon has infected me and if I don't cast it out, I'm going to go to hell. And how I'm going to burn in hell for the rest of my life or afterlife. And that anybody who supports me, anybody who tells me I'm okay, anybody who loves me and chooses to accept that demon, is also going to go to hell with me. And so I was taught that I was wrong and for the person I loved or the people I would come to love that, that person was not okay. And that was a lot of doubt and it was a lot of fear. There was a lot of anger and it caused a lot of confusion.” – Schylar, Montana

²⁵ Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. 113-183. 128 STAT. 1929, H.R. 4980, 113th Cong. (2014), available at <https://www.congress.gov/bill/113th-congress/house-bill/4980/text>.

"You're gay. Homo, faggot were words used by my peers in my home, by the twelve other boys that I lived with. My foster parents used that to describe kids when they were acting up." – Ernesto, Texas

- Don't use group care as punishment.

Anecdotally, we hear that group care is often used as a threat or punishment for young people who identify as LGBTQIA+ and Two-Spirit. New requirements under the Family First Prevention Services Act place priority on ensuring appropriate placement and reducing inappropriate use of congregate care - including accreditation requirements, trauma-informed treatment models, additional oversight at agency, judicial and state levels, documented assessment of a youth's needs, and prevention of inappropriate diagnoses that would prevent a young person from being placed in a foster family home.²⁶ These requirements should be put in place for all group homes and residential facilities, not only those that fall under the "Qualified Residential Treatment Program" designation.

"I grew up around openly LBGTQ and Two-Spirit black foster children, and I saw first-hand how they were treated. I was fearful of becoming one of those forced into treatment facilities just for being open about who I was, so I lied about my identity." – Lucina, Minnesota

"I lived in a home where I feel my foster parents had great intentions but didn't know how to handle my situation. They didn't know how to approach me and tell me that I was safe, that it was okay to be who I was, and in that sense, I didn't feel safe. I didn't feel comfortable to talk about who I was or even come out. I was afraid that if I came out, I would be sent to a home where they sent other gay kids, with kids who had special needs, who had mental and emotional issues, that actually needed the help. That's where they sent gay kids that they didn't know what to do with, and I didn't want to end up there. It'd be monumental if we could start educating the country, these parents, these agencies, on how to talk to young adults, how to talk to youth, how to talk to kids, and make them feel safe in their home. -Ernesto, Texas

²⁶ Family First Prevention Services Act of 2018, passed as Title VII of the Bipartisan Budget Act, Pub. L. No. 115-123, H.R. 1892, 115th Cong. (2018), available at: <https://www.congress.gov/bill/115th-congress/house-bill/1892/text>.

- Ensure equal access to placement with siblings and maintaining sibling relationships.

Young LGBTQIA+ and Two-Spirit foster youth often report being separated from their siblings or experiencing severed connections while in care. Anecdotally, we hear that this risk increases for young people who identify as LGBTQIA+ and Two-Spirit. Agencies and jurisdictions should support placement with siblings whenever possible, for all youth but particularly for LGBTQIA+ and Two-Spirit youth who experience greater placement instability than their non-LGBTQIA+ and Two-Spirit counterparts, and should ensure support of sibling relationships regardless of placement.

“I was afraid that if I came out, I would be sent to a home where they sent other gay kids, with kids who had special needs, who had mental and emotional issues, that actually needed the help. I loved my brother, loved my sisters too much to live the life that I wanted because I was afraid to be who I was. I was afraid that I would never have these memories with my brother or with my sisters growing up, and I am so grateful that it happened that way because I did lose my brother back in 2013, and he was my best friend. He was everything. I could tell him everything, and he accepted me the moment I came out to him. So I'm grateful that I stayed in the closet, but I'm not grateful that foster children in Texas and all over this country have to stay in the closet, that they have to keep quiet to protect themselves or to protect the sibling relationships that they have.” – Ernesto, Texas

- Provide young people with access to support, both with peers and in their communities.

In order for young people to be supported in their full identities, they must have opportunities to engage with their community members and peers, inclusive of individuals who reflect their own identities and have shared experiences. This Team recommends creating opportunities for young people to come together with peers with similar experiences - particularly around layered intersections of identities such as but not limited to refugee, immigrant, and queer - in learning and community-building gatherings. At times, communities may require training before being fully supportive to LGBTQIA+ and Two-Spirit young people. It’s imperative that communities of origin who may not have a history of acceptance receive training and support to build space for re-connecting and engaging LGBTQIA+ and Two-Spirit youth to their families and communities.

- Provide inclusive sexual health education and access.

All federally funded child welfare agencies should be required to provide fully inclusive sex education. Across the nation, the sexual health education that foster youth may receive varies. Often, it is focused on pregnancy prevention and heterosexual sexual health, education and safety. However, LGBTQIA+ and Two-Spirit youth often face barriers to receiving comprehensive sexual health education and, in particular, lack access to vital preventative care including PrEP access and knowledge.

3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state’s ability to make a placement in the best interest of the child, including respecting the child’s religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?

Allowing foster care providers to discriminate against qualified prospective foster and adoptive parents on the basis of religion or sexual orientation causes great harm to prospective parents and children in the child welfare system. As illustrated through real life stories of discrimination in our *amicus curiae* brief in the U.S. Court of Appeals for the Third Circuit in *Fulton v. City of Philadelphia*,²⁷ discrimination against prospective foster and adoptive parents or couples prevents, deters, and delays them from providing a home to a child – whether a temporary foster home or a forever family. Being turned away by a state funded child welfare provider simply because of who they are or what they believe can have a chilling effect on applicants’ willingness to move forward as a foster or adoptive parent. While some prospective parents abandon their efforts altogether, even those who persevere may be delayed for significant periods of time.

Whether done with or without federal dollars, turning away qualified prospective foster and adoptive parents decreases the overall pool of available homes, which harms *all* children in care. This is particularly concerning given, as outlined above, that there are more than 442,000 children in the child welfare system throughout the United States, with over 123,000 of them waiting to be adopted.²⁸ Far too many of these children grow up in group homes and other out-of-home settings (see question 2 above), and 20,000 youth “age out” of care each year without a forever home and with limited support and resources.²⁹ While the reasons why so many children are in the child welfare system are complicated, the reason so many grow up in group homes and ultimately “age out” of care without a forever home is quite simple – there are not enough qualified and willing foster and adoptive homes. As such, it is difficult to understand why any state would allow a child welfare provider to turn away qualified foster and adoptive families. Yet, that is exactly what ten states, including South Carolina, are doing - allowing faith-based child welfare agencies to turn away qualified foster and adoptive parents who don’t meet the agency’s religious litmus test. In at least eight of these states, even agencies that receive taxpayer dollars to do the state’s child welfare work are permitted to discriminate on the basis of an agency’s religious beliefs.³⁰

²⁷ Brief for Family Equality Council & COLAGE as Amicus Curiae, *Ful v. Cit of PHL*, No. 18-2572 (3rd Cir. Oct. 4, 2018), available at: <https://www.aclu.org/legal-document/fulton-v-city-philadelphia-family-equality-council-amicus-brief>.

²⁸ US Department of Health and Human Services, *Trends in Foster Care and Adoption*, THE AFCARS REPORT (2018), available at: https://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption_08thru17.pdf.

²⁹ See US Department of Health and Human Services, *Preliminary FY 2017 estimates as of June 2018*, THE AFCARS REPORT (2018), available at: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>; US Department of Health and Human Services, *Preliminary FY 2016 estimates as of October 2017*, THE AFCARS REPORT (2017), available at: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf>

³⁰ These eight states are KS, MS, ND, OK, SC, SD, TX and VA. In Kansas, the law expressly excludes entities that have a contract with the Kansas Department of Children and Families as a case management contractor. Alabama and Michigan have passed similar laws, but Alabama’s law excludes entities funded by the state, and Michigan now requires all state-contracted child welfare agencies to comply with its non-discrimination requirements and accept all qualified families, including same-sex couples, as stipulated in the March 2019 settlement of *Dumont vs. Gordon*, a case brought by two

In the ten states with such laws and policies, in FY2017 there were over 84,000 children in the child welfare system, 36% of whom were eligible for adoption; less than half of the number of children eligible for adoption were adopted within a year.³¹ These policies are contrary to accepted child welfare standards, which also are generally reflected in state law, which require that the primary consideration must be the best interest of the child, not of the agency. When discrimination takes place in programs funded by federal and state tax dollars, such actions contravene HHS’ federal nondiscrimination regulations banning discrimination based on religion, sexual orientation and gender identity,³² and the 44 state laws and policies that bar discrimination in child welfare based on religion.³³

In addition to reducing the overall number of available homes, allowing faith-based providers to turn prospective parents away based on the agency’s religious beliefs means that an agency can refuse to place a child with an individual or couple who shares the child’s faith tradition. If an agency refuses all couples who do not meet the agency’s specific religious criteria, the pool of available families likely will be limited to the agency’s religion and faith tradition. When a Christian foster care agency such as Miracle Hill Ministries in South Carolina turns away people of other faiths who wish to be foster or adoptive parents, then the agency eliminates the possibility of a Jewish, Muslim, or other non-Christian child being placed with a family of her faith.³⁴

Thus, rejecting qualified foster parents based on their religion limits opportunities for placement of children in homes which affirm the religious beliefs of the child and the child’s family of origin. This is problematic for multiple reasons. First, a family that does not share the child’s religious beliefs and faith traditions may not support the child in his religious practices and traditions. As noted above, HHS regulations bar religious discrimination against children and families,³⁵ further, HHS guidance specifies that foster children have the right to “[p]lacement in a setting ...where their religious customs can be maintained;”³⁶ and Child Welfare League of America’s Standards of Excellence for Family Foster Care Services specify that “[p]arents of children in family foster care have the right to...[m]ake certain decisions regarding their child which include...designation of the child’s religion.”³⁷ Secondly, three in five foster children return to their families of origin,³⁸ so support for the faith

same-sex couples who were turned away from state-contracted agencies because those agencies had religious objections to working with these families. Family Equality, *State Foster Care and Adoption Resources*, EVERY CHILD DESERVES A FAMILY (2019), available at: <https://everychilddeservesafamily.com/state-resources>; See *Dumont v. Gordon*, No. 2:17-cv-13080-PDB-EAS, U.S. (E. Mich. 2017), available at: <https://www.aclu.org/cases/dumont-v-gordon>.

³¹ US Department of Health and Human Services, *supra* n.28.

³² 45 CFR § 75.300 (Dec. 12, 2016), available at <https://www.law.cornell.edu/cfr/text/45/75.300>.

³³ Lambda Legal, *State-by-State Analysis of Child Welfare System*, LAMBDA LEGAL, available at: <https://www.lambdalegal.org/child-welfare-analysis>.

³⁴ For example: Miracle Hill Ministries, *Foster Care Inquiry Form: Agreement with Doctrinal Statement*, MIRACLE HILL (2019), available at <https://miraclehill.org/foster-care-inquiry-form/>.

³⁵ 45 CFR § 75.300 (Dec. 12, 2016), available at: <https://www.law.cornell.edu/cfr/text/45/75.300>.

³⁶ Child Welfare Information Gateway, *Reunification: Bringing Your Children Home From Foster Care*, U.S. D.H.H.S. CHILDREN’S BUREAU, (2016), available at <https://www.childwelfare.gov/pubPDFs/reunification.pdf>.

³⁷ Child Welfare League of America, *Standards of Excellence for Family Foster Care Services*, CWLA (1995).

³⁸ Child Welfare Information Gateway, *supra* n.36.

traditions (as well as other aspects of the culture of) a child's family of origin helps ensure a smooth reintegration of a foster child with her family. Finally, turning away foster parents of a child's faith may lead an agency to reject placement with a child's extended family member of the same faith. A summary of research on kinship care by ChildFocus shows that "children experience better outcomes with kin across three major domains: improved placement stability, higher levels of permanency, and decreased behavior problems."³⁹ Thus, refusing placements with kin based on their religious beliefs (or any other non-merit related reason) goes against the statutory requirement of an agency to act in the best interest of the child.

Similarly, when qualified prospective foster and adoptive families are turned away based on an agency's religious beliefs because they are LGBTQ or a same-sex couple, the diversity of the pool of available families is significantly diminished. Not only is the agency eliminating an entire group of prospective parents who are seven times more likely to foster or adopt,⁴⁰ they are decreasing the likelihood that LGBTQ children in the child welfare system will be placed with an affirming family (see question 2 above).

If an LGBTQ person or same-sex couple is turned away because they do not meet an agency's religious litmus test, it is reasonable to assume that the foster and adoptive families who meet the agency's criteria are unlikely to affirm an LGBTQ foster youth's sexual orientation or gender identity and may even denounce or try to change it. As detailed in question 2 above, like religion, sexual orientation, and gender identity are core to one's identity and being placed in a temporary or permanent home where it will be questioned or denounced risks additional traumatization of the more than one in five foster children who identify as LGBTQ.

Further, under such discriminatory laws and policies, faith-based providers even would even be free to refuse to place a child with a family member or close family friend who does not meet a provider's religious test, because they are LGBTQ. Similarly to the rejection of co-religious kin described above, a faith-based provider could turn away a lesbian grandparent, bisexual uncle, or transgender cousin who are qualified and wish to provide the child with a temporary or permanent home.

Finally, allowing faith-based providers to discriminate based on non-merit factors risks allowing the agencies to turn away the best possible placement for a child. To be sure, if an agency is allowed to turn away a foster or adoptive family based solely on religion or sexual orientation, then children will miss out not only on a loving home but also potentially miss out on the home best suited for their educational and health care needs. For example, these discriminatory laws and policies would allow an agency to turn away a physician or trauma nurse because they are LGBTQ, belong to a minority religious faith, or otherwise do not meet the agency's religious criteria, even where the agency has children to place who have significant medical needs. Or a teacher could be turned away, despite

³⁹ Child Focus, *Children in Kinship Care Experience Improved Placement Stability, Higher Levels of Permanency, and Decreased Behavioral Problems: Findings from the Literature*, CHILD FOCUS, available at:

http://grandfamilies.org/Portals/0/4-%20Kinship%20Outcomes%20Review%20Handout_1.pdf.

⁴⁰ Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex Couples in the US are Raising Children?*, WILLIAMS INSTITUTE UCLA SCHOOL OF LAW (2018), available at: <https://williamsinstitute.law.ucla.edu/research/parenting/how-many-same-sex-parents-in-us/>.

there being several children in care who have significant educational and developmental needs. Turning away qualified and needed families, even those with unique skill sets that could help children in care, does not serve the best interest of the child.

Child welfare standards and statutes call for maximizing the number of children placed in individual, loving homes; in 2018 Congress passed and the President signed into law the Family First Prevention Services Act, requiring that states prioritize placing children in family settings rather than residential facilities.⁴¹ If discriminatory child welfare laws and policies are expanded, we can expect to further limit the pool of available homes and appropriate placements for children in care. This means more children growing up in group homes and “aging out” of foster care, only to face adulthood with the odds stacked against them. While the foremost concern to faith-based providers may be their religious beliefs, we know from young people who were formerly in foster care that many of them simply want a safe, affirming home.⁴² In a child welfare system that already is facing a nationwide shortage of foster and adoptive families,⁴³ allowing more foster care providers to discriminate against qualified prospective parents on the basis of religion, sexual orientation, gender identity, or other non-merit factors due to the provider’s religious beliefs makes it less likely that young people in foster care will find the temporary or permanent home they wish for and deserve.

4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?

Laws prohibiting discrimination against qualified potential parents are essential to a state’s ability to make placements in the best interest of a child. Providing child welfare services are among a state’s most crucial duties. Caring for and supporting vulnerable children who have been removed from their homes – all too often because of abuse and trauma – necessitates prioritizing the health and safety of the children and limiting further trauma, above all other considerations. States are legally bound to place children in the most family-like setting available,⁴⁴ yet there is a nationwide shortage of qualified potential parents able and willing to open their hearts and homes to these children in need. As a result, children languish in group care for too long⁴⁵ or age out of care without a family to come home to during the holidays, to call for advice, or to celebrate accomplishments. For these children, their states have failed in fulfilling their duty of care.

⁴¹ Family First Prevention Services Act of 2018, passed as Title VII of the Bipartisan Budget Act, Pub. L. No. 115-123, H.R. 1892, 115th Cong. (2018), available at: <https://www.congress.gov/bill/115th-congress/house-bill/1892/text>.

⁴² Brief for Family Equality Council & COLAGE as Amicus Curiae, *Ful v. Cit of PHL*, No. 18-2572 (3rd Cir. Oct. 4, 2018), available at: <https://www.aclu.org/legal-document/fulton-v-city-philadelphia-family-equality-council-amicus-brief>.

⁴³ John Kelly, D. Heimpel, J. Loudonback, C. Renick, K. Phagen-Hansel, E. Green, . . . M. Zarate, *Foster Care Housing Crisis*, THE CHRONICLE OF SOCIAL CHANGE (2017), available at: <https://chronicleofsocialchange.org/wp-content/uploads/2017/10/The-Foster-Care-Housing-Crisis-10-31.pdf>.

⁴⁴ Family First Prevention Services Act of 2018, passed as Title VII of the Bipartisan Budget Act, Pub. L. No. 115-123, H.R. 1892, 115th Cong. (2018), available at: <https://www.congress.gov/bill/115th-congress/house-bill/1892/text>.

⁴⁵ US Department of Health and Human Services, *A National Look at the Use of Congregate Care in Child Welfare*, Children’s Bureau (2015), available at: https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf.

Non-discrimination laws protecting potential placements ensure that prospective and qualified parents are not needlessly excluded from opening their homes to children in state custody who so desperately need a safe, supportive, and affirming environment. Such laws give children the best chance of finding the placement that nurtures a child's best interests, which is the placement that the state is legally required to provide for them. When determining whether a placement for a child will satisfy a child's best interests, the state takes a variety of factors into account, including financial stability, emotional and physical health, geographical proximity to family and school, and the prospective parents' ability to provide care for particular medical needs. With a broad and diverse pool of children in the system, a broad and diverse pool of parents is necessary to provide appropriate homes for every child.

Turning away a parent for reasons unrelated to their parenting ability – such as for their sexual orientation, gender identity, or religion – means that an appropriate foster or adoptive family might not be available to a child when a child needs it. LGBTQ parents in particular are seven times more likely to foster and adopt than non-LGBTQ parents,⁴⁶ and children with same-sex parents have the same advantages and expectations for health, social, and psychological expectations as children with parents whose parents are different-sex.⁴⁷ Further, a 2018 study shows that there will be a dramatic increase in the number of LGBTQ-headed families in coming years.⁴⁸ Thus, the LGBTQ community will continue to be an important and valuable resource for child welfare placements. Non-discrimination laws prevent unnecessarily excluding this potential pool of qualified parents and, to the contrary, cultivate an inclusive and welcoming environment for LGBTQ parents to submit their applications to serve as foster and adoptive parents.

Further, non-discrimination laws that support the diversity of the pool of prospective parents promote and affirm the diversity found among foster youth. The requirement for children to be placed in accordance with their best interests requires considering all attributes of a child – including their sexual orientation, gender identity, and religion. LGBTQ youth are overrepresented in the child welfare system by at least a factor of two⁴⁹ and, unfortunately, too often enter the system because their birth or original family has abused, neglected, or abandoned them due to their LGBTQ identity.⁵⁰ Once in the child welfare system, LGBTQ youth suffer higher rates of discrimination and abuse than their non-LGBTQ peers.⁵¹ Thus, a pool of LGBTQ-affirming placements, including families headed by LGBTQ individuals and same-sex couples, is essential to ensuring a placement that is in the best interests for many of these youth. Non-discrimination laws encourage this diverse pool of parents by

⁴⁶ Goldberg, *supra* n.40.

⁴⁷ Timothy J. Biblarz & Judith Stacey, *How Does the Gender of Parents Matter?*, 72 JOURNAL OF MARRIAGE AND FAMILY 3, 22 (2010), available at: <https://www.apa.org/pi/lgbt/resources/biblarz-stacey.pdf>; Stephanie Pappas, *Why Gay Parents May Be the Best Parents*, THE WILLIAMS INSTITUTE UCLA SCHOOL OF LAW (2012), available at:

<https://williamsinstitute.law.ucla.edu/press/in-the-news/why-gay-parents-may-be-the-best-parents/>

⁴⁸ Ed Harris, & Amanda Hopping-Winn, *LGBTQ Family Building Survey*, Family Equality (2019), available at:

<https://www.familyequality.org/resources/lgbtq-family-building-survey/>.

⁴⁹ Wilson, *supra* n.2.

⁵⁰ Child Welfare Information Gateway, *Supporting Your LGBTQ Youth: A Guide for Foster Parents*, U.S. D.H.H.S. Children's Bureau (2013), available at: <https://www.childwelfare.gov/pubPDFs/LGBTQyouth.pdf>;

Martin, *supra* n.12.

⁵¹ Martin, *supra* n.12.

encouraging LGBTQ parents to participate – parents who are uniquely suited to affirm and advocate on behalf of LGBTQ youth. But LGBTQ-headed families as placements do not just benefit LGBTQ foster youth. LGBTQ parents are also more likely to foster and adopt children with historically lower placement rates, including older children of color, large sibling sets, and children with special needs.⁵²

Non-discrimination laws are essential for states to carry out their duty to place children in their care in accordance with the child’s best interests. By protecting applicants from being turned away for reasons unrelated to parenting ability, a larger and more diverse pool of prospective parents will feel welcome to apply and participate, increasing placement options for all children in the system.

5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

Family Equality, along with the 500+ child welfare, faith, civil rights, and LGBTQ organization and individual members of the Every Child Deserves a Family Campaign support passage of the bipartisan, bicameral Every Child Deserves a Family Act (“Act”), HR 3114 / S. 1991. This critical piece of legislation will address the harms of discrimination in federally funded child welfare programs by barring such discrimination based on religion, sexual orientation, gender identity, sex, and marital status. By barring such discrimination, passage of the Act will overturn state laws and policies permitting discrimination, reverse HHS’ discriminatory waiver, and thus open more homes and families to foster children who urgently need them. Critically, passage of the Act will also address many of the problems outlined in questions 1-4 above by establishing program requirements, technical assistance, training of professionals and foster parents who serve foster youth, data collection, and other approaches to ensure that the over one in five youth in foster care who identify as LGBTQ receive affirming, supportive, and culturally competent care leading to improved safety, well-being and permanency outcomes. The Act establishes a National Resource Center on Safety, Well-being, Placement Stability, and Permanency for LGBTQ Children and Youth Involved with Child Welfare Services within HHS to identify best practices in serving LGBTQ foster youth and to provide technical assistance, resources, and support to states, tribes, and agencies. These resources will allow providers to more effectively address the crisis of poor outcomes including permanency outcomes for LGBTQ foster youth described under questions 1 and 2 above.

Further, the Act requires that all aspects of a foster child or family’s complex social identity be supported by child welfare agencies, including race, ethnicity, nationality, age, religion, spirituality, sex, gender identity, sexual orientation, socioeconomic status, physical or cognitive ability, language, beliefs, values, behavior patterns, and customs.

⁵² D.M. Brodzinski & Evan B. Donaldson Adoption Institute, *Expanding Resources for Children III: Research-Based Best Practices in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), available at: https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf.

Family Equality thanks the committee for this opportunity to respond to questions regarding the crucial role of nondiscrimination protections and affirming care in ensuring the best outcomes for children, families, and parents touched by the child welfare system.

Sincerely,



The Reverend Stan J. Sloan
Chief Executive Officer

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Celeste Bodner
Founder/Executive Director
Foster Club
718 7th Street NW
Washington, DC 20001

Dear Ms. Bodner,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

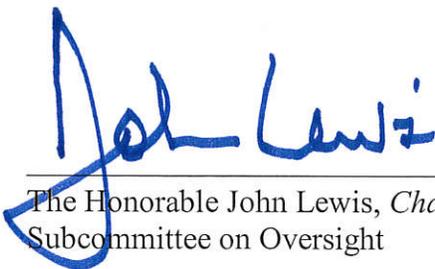
Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

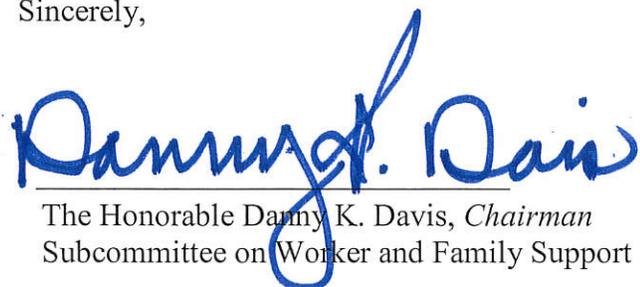
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



August 30, 2019

The Honorable John Lewis
Chairman
U.S. House Committee on Ways and Means
Subcommittee on Oversight

The Honorable Danny Davis
Chairman
U.S. House Committee on Ways and Means
Subcommittee on Worker and Family Support

Dear Chairmen Lewis and Davis:

FosterClub is the national network of youth in foster care. Our mission is to lead the efforts of young people in and from foster care to become connected, educated, inspired and represented so they can realize their personal potential and contribute to a better life for their peers.

FosterClub is responding to your July 11 letter requesting responses on best practices in recruitment of qualified foster and adoptive parents (including making good matches), supporting LGBTQ+ youth who are overrepresented in foster care, and the impact of faith-based foster care provider discrimination and non-discrimination laws.

Over the past several years, FosterClub Young Leaders have elevated the need for equal, safe and inclusive care for LGBTQ+ and Two-Spirit youth who experience the foster care system. Young Leaders have recommended best practices, led legislative change at the state level, trained foster parents, supported their peers, and educated federal stakeholders. This year, FosterClub opposed the waiver that the Department of Health and Human Services issued to the state of South Carolina and Miracle Hill and co-hosted two Congressional Briefings - featuring 6 young people - on how discrimination harms foster youth . Throughout this statement, we center the voices of LGBTQ+ and Two-Spirit young people who have experienced the foster care system, who have shared the discrimination they have faced, the support they received, and their recommendations to ensure every child is fully supported in all of their intersecting identities.

1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?

Ensure young people are equipped to fully participate in discussions and decisions around “matching” to foster parents.

It is extremely valuable to include young people, when age and developmentally appropriate, in the placement decision-making process. We hear from young people that they are frequently left out of the conversation entirely and kept in the dark about what’s available, what their options are and what their rights are in the process. We understand the importance of allowing young people to have some authority in their lives - and how that also supports current

knowledge of adolescent brain development. In our #FosterEquality survey¹ (May 2018), we saw that youth who identify as LGBTQ+ and Two Spirit indicated a high preference for having caregivers who share or similarly identify. Young people should be invited to express their interest in specific placement options with LGBTQ+ and Two-Spirit foster parents, regardless of their SOGIE²

Beyond being equipped to participate in decision making in their own cases, young people should be partners alongside the state and or agency in designing a youth-friendly process that can be used for engaging children and youth in decisions and conversations around “matching” to foster parents. These processes should be designed to engage children at a variety of ages - particularly school-age children.

Youth participation in the matching process, following a continuum from the individual case level to setting system processes, should be the standard across states, jurisdictions and agencies working in foster care and child welfare. We believe that full engagement of young people will result in more stability and greater permanency

Diversity, Equity, and Inclusion Statement

Another important piece for recruitment and matching foster parents is the creation of a Diversity, Equity, and Inclusion statement. This should be encouraged at every level within the child welfare system: agency (state, county, city and private contractors) and individual (caseworkers, agency staff and contractors should be able to affirm and discuss with young people, families, foster parents and potential foster parents). It should be a precedent that welcomes and encourages diversity. Support for diverse communities should be public and front facing - including in recruitment and outreach materials. Prospective LGBTQ+ and Two-Spirit foster and adoptive parents should not have to question if an agency or organization supports and welcomes diversity. Proactive communication of the agencies and individuals support for diversity, equity and inclusion can also signal support and affirmation for young people receiving care within those agencies or being supported by those individuals. Creation of this statement is a starting point for agencies in the work and should be followed by an ongoing review and evaluation of language, policies and practices. Professional development around diversity and inclusion should be embedded into organizational training opportunities. We know that young people respond better in families that share, understand and support their cultural identity.

¹ FosterClub and the Human Rights Campaign conducted a web survey in May of 2018, as part of their joint #FosterEquality campaign.

² Sexual orientation, gender identity and gender expression

Youth Perspective

“[Organizations should] actively encourage families from diverse backgrounds to foster and adopt. This would allow more youth in foster care to live with caregivers who may share and understand their unique cultural identities. According to a 2012 study³, children in foster care are less likely to develop certain behavioral disorders if they share cultural factors with their foster families.”

- Justin, South Carolina

Remove unnecessary barriers for foster and adoptive parents.

States should remove any non-merit based limitations (including but not limited to: religious beliefs, sex, sexual orientation, gender identity, and marital status that potential Foster and Adoptive parents may face. The recent religious exemption rules being passed are making it difficult in some states for prospective LGBTQ+ & Two-Spirit people who want to provide a supportive home to youth. When states deny people the ability to foster based on it may close doors to foster/adoptive parents not aligning with particular religious beliefs. Our young people suffer. They lose out on being in a placement that could be beneficial to their development and well-being.

Youth Perspective

“I can’t imagine where I would be right now if I hadn’t found them--my forever family with two dads and six siblings. It is because of them that I can be the person that I have always wanted to be. . . . I know my parents [will] always be there when I make mistakes. My family loves me for who I am - everything I’ve been through and the experiences I’ve overcome. I’ve been able to grow, now that I have security and stability.”

- Weston Charles-Gallo, Missouri

2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?

LGBTQ+ and Two-Spirit youth who have spent time in the foster care system have recommended several effective approaches to effectively supporting in care, based on their individual lived experiences, advocacy work they’ve done within their states, and through collective recommendations by groups such as the National Foster Care Youth & Alumni Policy Council⁴.

³ Anderson, M.; Linares, O. (2012). Child Youth Service Review 34(4): 597–601.

⁴ The National Foster Care Youth & Alumni convenes to provide federal stakeholders with relevant and timely information as policies and procedures are created that will affect children and families throughout

Requiring SOGIE-inclusive and affirming training for foster and adoptive parents.

FosterClub recognizes that the quality of parenting provided by a caregiver is the primary indicator of the quality of a child or youth's experience in foster care. Building the capacity of foster parents is the path to providing higher quality care. We believe the training standards should support the needs (including health, safety and well-being) of all children and youth in foster care - paying special attention to those who are overrepresented in care (LGBTQ+ and Two-Spirit youth, youth of color, youth with disabilities and youth with intersecting identities).

Although many states and agencies may ask foster parents about their willingness to care for LGBTQ+ and Two-Spirit youth, that question may not be followed with specific training that supports inclusive practices, parenting and support for those young people.

Youth Perspective

"The whole reason I was placed with these families is because they were asked one question - if they would take a transgender foster youth. And if they answered yes, they could take in a transgender foster youth. They didn't have to take any classes; there was no required training. They really weren't prepared to take me. Even though they thought they were."

- Tristan Torres, Nevada

Training for foster parents should include elements on how to support youth who disclose their SOGIE and guidelines/standards around normalcy - including dating and relationships.

FosterClub has heard consistently from young people that too often, disclosing their SOGIE to caseworkers, staff, foster parents and others is risky, and has resulted in placement changes, moving schools, restricted privileges, and, in the most extreme circumstances, forced conversion or reparative therapy. In the #FosterEquality survey, 43% of the respondents reported they did not feel safe to disclose their SOGIE while in foster care. Those who reported feeling safe disclosing shared elements that made them feel safe, including having supportive individuals (family members and caseworkers) and LGBTQ+ and Two-Spirit friendly agencies. Young people shared,

- "My social workers let me know that they were LGBTQ+ allies; that helped me trust them."
- "My local agency is very open minded and understanding. They told me it was ok, and I shouldn't feel bad or embarrassed for being who I am."
- "I had an accepting family (I was in a kinship placement)."

the country. The Council represents a collective viewpoint of youth and alumni who have experienced the child welfare system first-hand. More information available at nationalpolicycouncil.org.

Youth Perspective

In this system, I grew up around openly LGBTQ black foster children, and I saw first-hand how they were treated. I was fearful of becoming one of those forced into residential treatment facilities, just for being open about who I was. So I lied about my identity, and told everyone I was heterosexual and Christian. At 10 years old, I started to question my sexuality, but I refused to put myself in danger of being pushed into the juvenile justice system by making any waves while in foster care.

- Lucina Kayee, Minnesota

In the #FosterEquality survey, 36% of respondents stated that they experienced rules enforced differently because of their SOGIE. Young people shared how they experienced a different set of rules including: not being allowed to date, not being allowed to hang out with friends (outside the home for some, at home for others, or not being able to hang out with same-sex friends), being watched more closely, not being trusted, not allowed to attend prom, and having their romantic relationships not taken as seriously as their foster siblings (who were in opposite-sex relationships).

Training needs to include coaching on language caregivers use to ensure inclusivity. We know the language that foster parents and caregivers use can impact the comfort, safety and well-being of the young people within their home. In the #FosterEquality survey, 64% of respondents said they heard negative comments about LGBTQ people from caregivers while in care. Negative language can be incredibly harmful to a young person - particularly if they may have entered care due to rejection from their families of origin based on their SOGIE.

Youth Perspective

“I was placed in a foster home with my older sister. It was supposed to be a temporary placement. It was also supposed to be a safe place that provided care and love for me. My foster parents did not know how to be supportive, caring, and understanding. When they found out I was gay, they were angry. My foster dad said that I couldn’t be gay in his house. They did not speak to me.”

- Mark Casas, California

FosterClub affirms the recommendations provided by the National Foster Care Youth & Alumni Policy Council on Model Family Foster Home standards⁵, including: “The Council firmly believes

the system must do more - including holding caregivers accountable for protecting and nurturing their identity. This includes respect for the family of origin's culture and religion, along with the young person's individual identity formation. While foster youth and alumni respect all there is to learn and experience from the culture and identity of a foster family and the individuals who reside in the home, it is important for foster homes to recognize the power deficit a child enters a home with. In a system where it is all too easy for a child to lose themselves, it is critical that foster parents provide an assurance to support young people by affirming and supporting their identity, regardless of the foster parent's own personal beliefs." FosterClub recommends including the components outlined above on affirming and supporting a youth's full identity (including SOGIE) in foster parent training - both initial and ongoing.

This training should include perspectives from young people with lived experience as LGBTQ+ and Two-Spirit youth in foster care. Young people need to be meaningfully engaged in the development, delivery and evaluation of both the initial and ongoing training.

Ensure LGBTQ+ and Two-Spirit young people have equal access to families - rather than inappropriately relying on facilities, and receive safe, inclusive care if they do spend time in a facility or treatment center. Young people should be provided their rights and access to reporting violations.

We know that young people who identify as LGBTQ+ and Two-Spirit experience more placement changes and are more likely to experience a group home.⁶ We also know that that experience is frequently unsafe - where young people experience discrimination and abuse. This must change. Thirty-four young people who completed the #FosterEquality survey answered the question about whether they received "equal and inclusive treatment from staff [in congregate/group settings] in regards to their SOGIE." Out of those young people, 65% said they did not receive equal or inclusive treatment from staff. Their responses ranged from not having supportive staff and not feeling able to express how they felt to being told that they were confused by staff, being "outed" by residential staff without the youth's permission, encountering staff who use homophobic slurs and not being protected from bullying.

Youth Perspective

"As a gay foster child, Kristopher was forced to grow up in congregate care placements such as group homes and residential treatment centers (RTCs) often times moving every 5 or 6 months. He was told that foster families "didn't want a gay kid in their home."

At the age of 14, Kristopher was placed at a residential treatment center in Denton, TX where he lived for almost a year and a half. While there, he was routinely molested by one of his

⁶ Jacobs, J; Freundlich, M. (2006) Achieving Permanency for LGBTQ Youth. Child Welfare, 85(2), 299-316.

caregivers. Unfortunately, due to the restrictive nature of the facility he had been placed in, Kristopher was never afforded the opportunity to report the abuse—though having lived in a number of RTCs up until that point, he almost thought that what he was experiencing was normal.”

New requirements under the Family First Prevention Services Act changes the requirements for congregate care facilities receiving federal funds - limiting those funds to Quality Residential Treatment Programs, with some exceptions.

The new requirements for Quality Residential Treatment Programs include having a trauma-informed treatment model and accreditation. We recommend this trauma-informed treatment model be further outlined by Congress or the Children’s Bureau to include requirements around SOGIE-inclusive programming, policies and ongoing staff training. We also recommend that accreditation standards be reviewed for elements that require SOGIE-inclusive programming, policies and ongoing staff training - including requirements for young people to be able to report violations.

Requiring SOGIE-inclusive training for agency and contracting staff, including residential facility staff.

FosterClub fully supports the recommendations issued in April 2016 by the National Foster Youth and Alumni Policy Council entitled “Improving Policies and Services in Congregate Care Settings: Our Priorities”⁷ which highlight specific LGBTQ+ and Two-Spirit affirming policies and practices related to youth safety, well-being and permanency. These recommendations include:

Safety: Create safe environments in congregate care to support each other and learn about transphobia, homophobia, and other oppressions.

- Require expert stakeholders to be involved in training staff and resource families on the needs of LGBTQ youth, specific in trauma informed care and LGBTQ sensitivity and awareness
- Youth should be placed in settings that respect their gender identity and expression
- Congregate care facilities should be required to adopt and abide by anti-discrimination policies
- A youth bill of rights that is inclusive of LGBTQ rights should be adopted and posted

Well-being: Young people should have the right to live their lives with dignity and to express themselves without fear. Congregate care should work toward building a more just community in which everyone has an equal opportunity to live openly and honestly.

- Communicate affirmation through signage and other communication
- LGBTQ foster youth should never be required to participate in conversion or reparative therapy
- All youth should receive age-appropriate dating and sexuality education, regardless of SOGIE
- Congregate care youth and staff should be educated about bullying, homophobia, gender identity and sexual orientation issues.

Permanency: LGBTQ youth deserve love and support from families and lifelong connections, just as their non-LGBTQ peers.

- States should be required to diligently recruit LGBTQ-friendly resource families to increase placement options.
- Don't delay family placement of youth in foster care based on their SOGIE and allow youth to express their interest in specific placement options w/LGBTQ resource parents.

Youth Perspective

"I was sent to a congregate care setting. Staff at this facility were accepting of who I was and even encouraged me to be myself. This was definitely a weird feeling for me, because I had been shunned for so many years now that I didn't know what it was like to be myself. It was a new experience. I no longer had to hide who I was in order to feel safe."

- Timothy Dennis, Tennessee

Young people should be protected from conversion therapy.

We have heard from many young people about being threatened with or forced into conversion therapy during their time in foster care. In the #FosterEquality survey, 10% of respondents were forced to receive conversion therapy. Young people described the horrific experience in a number of different ways including:

- being told they were mentally ill,
- institutionalized and told they were "confused",
- forced to attend therapy in an attempt to alter their sexuality,
- told their SOGIE was a result of the abuse they had experienced,
- told that their "lifestyle" was a sin and forced to attend church, and
- encouraged to have sex with members of the opposite sex

Youth Perspective

They put me in a church program that included therapy that was against who I was. [They] tried to convince me it was a phase and due to my background.

It is imperative that protections are put in place through federal legislation or administrative policy that protects young people in foster care from conversion or reparative therapy and provides recourse to safe reporting for any violations.

Youth Perspective

He went to see a pastor at the local church for one-on-one counseling. He was taught that he has a “demon” in his soul and that’s what caused him to be gay. If he accepted the demon, then he would go to hell, and so would anyone who supported him or loved him. These sessions lasted a couple hours, three days a week.

“As I was going through conversion therapy, I didn’t realize how traumatic it was,” he said. “I was starting to hate myself because I knew that if I wanted to go to heaven, I had to listen to this guy.”

- Schylar, Montana

- 3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state’s ability to make a placement in the best interest of the child, including respecting the child’s religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?**

‘Religious Refusal’ policies and laws provide a license for discriminatory practices in the recruitment of foster and adoptive parents and may close doors to foster and adoptive parents not aligning with particular religious beliefs. This reduces the number of foster and adoptive families available locally to foster children and youth served by agencies with those practices. This is particularly critical as states, tribes and jurisdictions are implementing the Family First Prevention Services Act (P.L. 115-123) and reviewing how they will ensure the appropriate placements for children and young people in foster care, which includes a focus on family-based placements.

For many young people who have experienced abuse or neglect, foster families provide shelter and space to heal. However, young people also report the difficulties of fitting into a new family whose religious observances may be different, and sometimes even contrary to their own. Children and youth must be protected from being discriminated against while in care or being forced to confirm to a foster care agency or foster family’s views regarding religion, or subsequent views that may accompany religious beliefs.

Youth Perspective

“The truth is that we don’t need miracles. We need safe and loving families; families who understand that a child’s best interests may be different from theirs, even for religious reasons, and still strive to honor them. We need child placing agencies who are willing to do the same.”

- Justin Abbasi, South Carolina

Across the country, states, tribes and jurisdictions report significant gaps between the number of qualified, available foster families and the number of children and youth in foster care. In addition, approximately 20,000 young people are “aging out”⁸ of the foster care system without permanency. Reducing the number of qualified families will only contribute to further shortages and likely, an increase in the number of young people who leave foster care without permanency.

Youth Perspective

“Children who have experienced abuse and neglect first and foremost need safe and loving families, religious or not. I know that because I needed one too. I spent seven years in foster care before I transitioned without a permanent placement, as over 20,000 foster youth do every single year.”

- Justin, South Carolina

The full identities of children and young people, including religious, must be respected, valued and affirmed by child welfare agencies, providers and foster parents.

Under Family First Prevention Services Act, the Department of Health and Human Services (HHS) was directed to “identify reputable model licensing standards with respect to the licensing of foster family homes.”⁹ In the process of establishing those standards, HHS requested public comment. FosterClub, based on feedback from our network of young leaders, submitted public comments in September 2018 regarding considerations for the Model Family Foster Home Licensing Standard. We recommended inclusion of the following standard:

“Applicants will affirm and support the identity of children and youth placed in their home, including (age-appropriately) race, cultural and ethnic identity, religion, and sexual orientation, gender identity, and expression.”

⁸ The AFCARS Report: Preliminary FY 2017 Estimates as of August 10, 2018 - No. 25

⁹ ACYF-CB-IM-19-01, February 4, 2019.

Youth Perspective

“What foster care did, and what a failed Indian Child Welfare Act did, was take away my tribal culture. I knew I was two spirited before foster care. When I entered foster care, everything was ripped away.”

- Daryle Conquering Bear Crow, Oglala Sioux Tribe

FosterClub also believes every caregiver in America should provide an assurance they will protect and nurture the identity of *the child or youth*. This includes respect for the family of origin’s culture and religion, along with the young person’s individual identity formation.

Youth Perspective

He was asked to be removed from his home to ensure his safety as a queer black youth. After being removed, he was fortunate enough to find a home with two women who identify as lesbian and having a caseworker who was actively aware of the sensitivity of LGBTQ+ topics and didn’t bring it up until he was ready. This was exactly what he needed, adults who created a space of safety and comfort, allowing Christian to grow into his queerness and thrive in his identity.

- Christian Carter, Pennsylvania

In the #FosterEquality survey, 23% of respondents stated they were not free to follow their chosen faith or participate in the religious practices of their choosing. Although discrimination against potential foster and adoptive parents does not explicitly outline permission of discrimination against young people, we know that young people already experience discrimination around their religious practices or chosen faith. Permission for agencies and individuals to discriminate against qualified prospective parents on the basis of religion is likely to create an environment where young people increasingly experience discrimination. Creating an environment where young people feel safe from discrimination and affirmed in their identities is critical to their health, well-being and permanency.

Youth Perspective

“In my second to last placement in the system, I had supportive foster parents that noticed I was battling with my sexual identity. They were a straight couple who were very involved in church and allowed me to express how I felt without criticizing or belittling me. They invited me to church expressing I was able to be loved and accepted by their faith and religion. They assured that being gay was OK in their eyes and the eyes of god. They encouraged me to take time for myself to understand my feelings. They gave me affirmations that being gay wasn’t an evil act and introduced me to their friends and family by my name (treating me as if I was a part of their family) rather than the introduction as “the gay foster kid.” Their support

gave me confidence to come out and embrace my authentic self and empowering me to have faith in a higher power.”

- Isaiah Palomo, Idaho

- 4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?**

FosterClub has not had the opportunity to review the impact of state laws prohibiting discrimination against qualified potential parents, so will not be providing a response to this question at this time.

- 5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?**

Youth and alumni engagement in development, implementation, and evaluation of foster care policies and practices. Many of FosterClub’s Young Leaders have been involved in their communities, states and jurisdictions engaging in foster parent recruitment and training, supporting young people in foster care (particularly the most marginalized), advocating against discriminatory practices and policies and promoting changes that lead to more normalcy and permanency - and ultimately, better outcomes for their peers who are still experiencing foster care.

Allowing discrimination would directly contradict recommendations provided by those with first-hand experience living in the foster care system. Young Leaders from FosterClub - advocates who are youth and alumni from foster care - have worked for years to identify, create and recommend foster care and adoption policies and practices that will protect young people who experience the foster care system from discrimination or harm. Young Leaders know that even when discrimination isn’t enshrined in official policies - legislative or administrative - it happens all too often. LGBTQ+ and Two-Spirit youth of color face even further discrimination¹⁰ including: increased placement changes, homelessness, fewer connections to supportive adults, lack of affirmation and erasing of their identities, and increased discrimination and disparate treatment by staff and others.

¹⁰ Conron, K. J. & Wilson, B. D. M. (Eds.) (2019). A Research Agenda to Reduce System Involvement and Promote Positive Outcomes with LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems. Los Angeles, CA: The Williams Institute.

Over the past year, FosterClub Young Leaders have opposed state legislation which were considered in both Arkansas and Tennessee. Both pieces of legislation would have allowed (to varying degrees) discrimination to potential foster and adoptive parents. Young Leaders submitted letters to state legislators discussing the impact that would have on young people within the system.

Two key elements that came out of those letters:

Discrimination harms foster youth by reducing the number of foster parents available - increasing the likelihood of inappropriate group home placement.

Youth Perspective

I entered foster care at age 12 and experienced several congregate care facilities and foster homes. I know how important it is that a young person is provided full acceptance, support and care when they are in the foster care system or connect with an adoptive family. I know because I didn't experience that; I experienced discrimination with foster families and after being placed in a religious congregate care facility that is openly anti-LGBTQ. I self-harmed to hide the pain of the rejection and abuse and contemplated suicide. It was not until I finally found the support I needed, that I felt like I could be myself and begin to heal. Young people who are in foster care and being considered for adoption shouldn't experience discrimination; we need to ensure the policies and practices protect our young people and set them up for success.

- Timothy Dennis, Tennessee

Youth Perspective

When a child is taken into state custody and placed in the hands of an agency, a child may often feel intimidated by a new environment and fearful of rejection from the adults they are told to trust with their upbringing. This is why it's important to ensure properly-trained families are prepared to offer a child support, acceptance and space to heal; to ensure children are connected to supportive adults who they feel they can trust, wherever possible, rather than defaulting to placing a child in a facility - where it may be difficult to form long-lasting supportive relationships with rotating staff members.

- Eric Warner, Arkansas

Young people deserve families to continue supporting them after they have aged out.

Young people who experience unnecessary group care, especially for extended periods of time, often do not have access to family and community connections that support successful transition to adulthood.

Youth Perspective

I spent over 5 years in the Arkansas foster care system; I entered as a teenager and aged out when I turned 21 years old. During my time in care, I spent most of that time in facilities and group homes because there weren't families willing or able to step up and support a teenager in foster care.

I heard from my peers what I knew to be true for myself; too often, they were placed in a facility because there wasn't another place or they had been labeled as "bad" kids. When you're in foster care - and especially in a facility- and if you make a mistake, even one that's common for teenagers, the results can be catastrophic. You may be moved, lose "privileges" (such as visits with family) and more. Those types of consequences don't support healthy adolescent development. Living in a facility, unless there's a specific intervention the young person needs that is solely available there, doesn't set a young person up for success after they age out.

What sets young people up for success is ensuring each young person has someone on their side - someone who has committed to be there through hard times, recognize the trauma and challenges a young person may have experienced and be willing to support them regardless of their own identity.

- Sharanda Crews, Arkansas

The new provisions under the Family First Prevention Services Act present an opportunity to expand supports and inclusivity of LGBTQ+ and Two-Spirit youth. During development of the Family First Prevention Services Act, young people were consulted in drafting and review and many of those recommendations were included in the final version of legislation that was signed into law. Young people also shared their own experiences and those of their peers with staff and Members of Congress - highlighting critical areas where services and supports could be improved. Young people have been working across the country, alongside other individuals and groups with lived experience in foster care and child welfare (kinship and relative caregivers and birth parents), to support states, jurisdictions and tribes in the planning and implementation process. Young people have elevated the opportunity to expand inclusive supports under new Model Family Foster Home Licensing Standards, requirements for Quality Residential Treatment Programs, prevention services, support for special populations of young people and older youth in foster care - particularly around building connections with supportive adults.

Creation of Safe Spaces and Peer Support Networks:

LGBTQ+ and Two-Spirit foster parents and young people should feel comfortable and welcome. The creation of safe spaces and support groups can help prospective parents find the support they need. Being a foster/adoptive parent is not without its challenges. Connecting

foster/adoptive parents to each other for peer to peer connection can be an effective strategy to support foster/adoptive parents and families as a whole.

The same can be said for LGBTQ+ and Two-Spirit youth. Young people should be provided the opportunity to connect with peers with similar experiences, building connections and community. In these peer opportunities, young people who understand these experiences can serve as leaders and mentors to other youth who are still figuring it out. Recent guidance issued by the Children's Bureau recognizes and encourages the critical value of peer support and how it can increase understanding, while reducing stress and anxiety¹¹

Normalcy:

We know that young people who identify as LGBTQ+ and Two-Spirit deserve the ability to have the same experiences as other young people in foster care and the larger population. FosterClub fully supports the recommendations adopted by the National Foster Care Youth and Alumni Policy Council outlined in the April 2013 statement entitled "Improving Well-Being by Addressing Normalcy for Foster Youth"¹². These recommendations include: not creating unnecessary obstacles for young people that erase or reduce normal childhood experiences and milestones and clear communication to young people regarding their rights. This is especially critical for LGBTQ+ and Two-Spirit youth who are more likely to experience these barriers and not have access to their rights or reporting/appeal process.

Youth Perspective

"A common question in child welfare is "what does normalcy look like?" As it pertains to LGBTQ youth, there may not even be a stable household open enough for youth to have these conversations to help themselves figure their life out; or being forced to participate in a religion that admonishes individuals who identify as LGBTQ."

- Eric Warner, Arkansas

Support for Two-Spirit Youth:

Two-Spirit is a Native term used for a person "whose body simultaneously houses a masculine spirit and a feminine spirit."¹³ Young people who identify as Two-Spirit should receive access to safe and affirming placements within their tribal communities, in accordance with the standards set by the Indian Child Welfare Act of 1978. If for some reason a Two-Spirit youth has to be placed outside of the tribe, they should be supported in maintaining those tribal community

¹¹ ACYF-CB-IM-19-03 August 1st, 2019

¹² <http://nationalpolicycouncil.org/sites/default/files/docs/landingpage/Normalcy%20Priorities.pdf>

¹³ National Child Welfare Resource Center for Tribes and National Resource Center for Permanency and Family Connections. (August 2014). Sharing Our Lived Experiences: 22 Tips for Caring for Two-Spirit and Native LGBTQ Youth in the Child Welfare System.

connections and their foster/adoptive parents should be adequately trained and informed on how to support Two-Spirit youth.

Trauma-Informed Foster Parent Training:

Recognizing the impact of trauma and the role that plays in youth and adolescent development, it is important to put young people in environments that assist in alleviating trauma and healing. Increasing LGBTQ+ and Two-Spirit caregivers will expand the homes where they can begin to heal and embrace their true selves. Trauma-informed training should be provided to caregivers and other child welfare professionals if they are going to be working directly with youth. Young people should not experience discrimination or abuse for who they are.

Allocate Funds for Recruitment:

This issue can't just be addressed without the appropriate funding. It will cost to provide the appropriate outreach, recruitment training, and support for LGBTQ+ and Two-Spirit foster and adoptive parents, and support for LGBTQ+ and Two-Spirit youth. We recognize that along with recruiting both inclusive and LGBTQ+ and Two-Spirit foster and adoptive parents, it is critical to also be connecting young people to relatives and kinship placements- and providing support for those caregivers to also be affirming and inclusive. This can help ease the burden on recruitment and allows young people to maintain cultural and family identity.

Thank you for the opportunity to provide perspective on these critical issues. If FosterClub can be of any further assistance, please contact me at policy@fosterclub.com or 503.717.1552.

Sincerely,

A handwritten signature in black ink, appearing to read "Celeste Bodner". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Celeste Bodner
Executive Director

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Rabbi Jonah Dov Pesner
Director
Religious Action Center of Reform Judaism
2027 Massachusetts Avenue NW,
Washington, DC 20036

Dear Rabbi Pesner,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

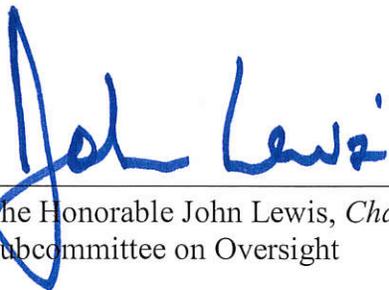
Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

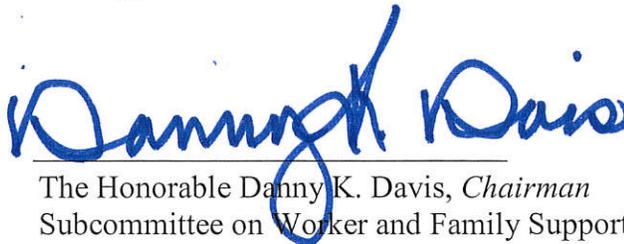
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support

August 26, 2019

The Honorable John Lewis and The Honorable Danny K. Davis
Ways and Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Lewis and Chairman Davis,

I am writing on behalf of the Union for Reform Judaism, whose more than 900 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis in response to your letter dated July 11, 2019, concerning the investigation into the state child welfare waivers granted or currently being considered by the Department of Health and Human Services (HHS). We welcome this investigation and thank you for the opportunity to share our perspective. The decision by HHS to grant a waiver to Miracle Hill Ministries is particularly relevant to the Jewish community, as South Carolina's waiver request came in part because Miracle Hill Ministries denied a Jewish woman named Beth Lesser the opportunity to serve as a foster mentor. Despite her successful foster record in Florida, Lesser was rejected simply because she was Jewish and would not sign a Protestant statement of faith. Miracle Hill also bars parents and volunteers from other (and no) faith traditions, including those who are Muslim, Catholic, Hindu, Sikh, and atheist.

Throughout our history, the Jewish people have time and again experienced religious persecution and discrimination. Of all people, we understand the devastating effects. We believe that it is our duty and obligation to prevent discrimination in all forms. Our tradition teaches us that "God said to Moses: Is there anyone whom I do not respect? Whether it be Israelite or Gentile, man or woman, slave or handmaid, whoever does a good deed, shall find the reward at its side" (Midrash Yalku Lekh Leka 76). As we seek to live our lives conscious of being created in God's image, we must work to ensure that no one is discriminated against based on their religious beliefs, sexual orientation, or marital status. As Reform Jews, we value religious freedom and also believe that religious liberty should never be pitted against civil rights.

In response to question five in your letter, allowing federally funded child welfare organizations to discriminate against individuals who do not share the organization's religious beliefs, as in

the case of Miracle Hill Ministries, violates the separation of church and state. Similarly, child welfare agencies receiving state funding should also not be allowed to discriminate. Unfortunately, ten states currently permit state-licensed child welfare agencies to refuse to place and provide services to LGBTQ people if doing so conflicts with the agency's religious beliefs.¹ As people of faith, we believe that faith-based agencies should be allowed to incorporate the tenets of their religious beliefs into their work. However, we oppose the ability of any agency to discriminate if they choose to receive government funding or support. Faith-based providers should never discriminate against prospective foster and adoptive parents using taxpayer money.

In response to question three regarding state laws prohibiting discrimination, allowing faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using non-federal dollars hinders the state's ability to make a placement in the best interest of the child. Rejecting qualified parents will exacerbate problems in an already overcrowded system and only serve to hurt the children most in need. There are over 437,000 youth in foster care nationwide, and states should not limit opportunities for foster youth to find stable homes.² Allowing faith-based providers to discriminate particularly harms LGBTQ youth, who are already over-represented in the foster care system. A recent study found that 30.4 percent of youth in foster care identify as LGBTQ compared to 11.2 percent outside of the foster care system.³ Should these policies be expanded, the likelihood of youth being placed in appropriate and affirming homes would likely decrease.

Jewish tradition teaches, "By the breath of children God sustains the world" (Talmud Bavli, Shabbat 119b). It is humanity's obligation to protect and nurture the divine spark in every child, enabling them to reach their fullest potential. At both the state and federal level, the government must act in the best interest of the child, focusing on providing foster youth with safe and loving homes, not on turning away qualified and loving parents in order to prioritize a narrow set of religious beliefs.

Thank you for the opportunity to share our movement's perspective regarding this critical issue. Should you have any questions, please do not hesitate to reach out.

Sincerely,
Rabbi Jonah Dov Pesner

¹ http://www.lgbtmap.org/equality-maps/foster_and_adoption_laws

² <https://www.childwelfare.gov/pubpdfs/foster.pdf>

³ <https://pediatrics.aappublications.org/content/143/3/e20174211.full>

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Schylar Baber
Executive Director
Voice for Adoption
1220 L Street NW, Suite 100-344
Washington, DC 20005

Dear Mr. Baber,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

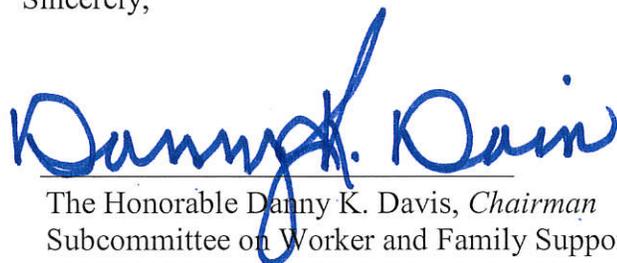
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

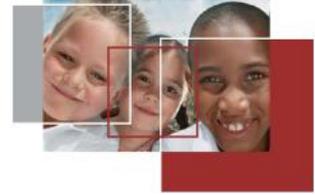
Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support



August 27, 2019

Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Subcommittees on Oversight and Worker and Family Support,

Voice for Adoption (VFA) thanks you for the opportunity to respond to the questions you are asking as part of the investigation into the waivers granted or currently being considered by the Department of Health and Human Services (HHS) regarding state child welfare systems. VFA exists to advocate for improved policy and legislation in the best interest of children in foster care waiting to be adopted and the families who adopt them. There are currently more than 400,000 children in the U.S. foster care system and around 123,000 of those children are waiting for a permanent family.

Please strongly consider VFA's responses to your questions. VFA has 15 board members representing adoption and foster care organizations, and the responses below reflect best practices and experiences from many of them, including the Adopt America Network, Adoption Exchange Association, Adoption Rhode Island, Children Awaiting Parents, Child Welfare League of America, Family Builder's Network, FosterAdopt Connect, Kinship Center Seneca Family Agencies, The National Adoption Center, the North American Council on Adoptable Children, New York Council on Adoptable Children, Sierra Forever Families, Northwest Resource Associates, Spaulding for Children, the Adoption Exchange, and Three Rivers Adoption Council. These organizations are on the frontlines every day serving one of America's most vulnerable populations. All answers are supported by their firsthand knowledge and experience. VFA urges you to hear our testimony and end legal discrimination in foster care. Our children need you to fight discrimination against prospective adoptive and foster parents.

1. What are the best practices in recruiting qualified foster and adoptive parents and making good matches between them and the children in need of temporary or permanent homes?



While a child is in the custody of the state and placed in foster care, it is the duty of the child welfare system to seek and find an appropriate placement in the least restrictive setting. That placement must be deemed to be in the child's best interests. Many states give legal preference for placement to family members or kin. There is the growing understanding, supported by federal law, that children are best served when their individual identities, relationships, culture, and heritage are respected and upheld by the system responsible for their care.

Across the country, virtually the entire foster care and adoption community has embraced the idea that trauma-informed care, and the understanding of the impact of the experience of trauma on the brain and development of the child, is essential to success for children. We know from mountains of data around the country and the world, including the Centers for Disease Control and Prevention (CDC), that trauma compounds over time and thus it is more likely adverse effects will continue to emerge over time as the child grows.

According to the Adverse Childhood Experiences (ACE) study by Kaiser Permanente, children exposed to high levels of trauma are likely to grow up and have to deal with the negative health outcomes that the experience of childhood adversity has caused. High levels of trauma lead many of our children to become adult addicts, suffer from preventable diseases such as obesity and diabetes, contract sexually transmitted diseases, suffer from mental disorders, or even early death.

For these children, recruiting and preparing families and making good matches is vital to remediating the negative impacts of trauma and for preventing further trauma caused by unnecessary moves in foster care. It is imperative that all services and education the family and child receive are trauma-informed, targeted and that they foster resilience and help the child avoid further adversity.

Recruitment

Systems across the country are experiencing significant foster parent shortages and more than 120,000 children are currently waiting for an adoptive family. It is often difficult to recruit foster and adoptive families who are able and willing to handle the behaviors that children manifest due to the trauma, separation, and loss they have experienced. Agencies have to find families who are willing to expand their parenting paradigm and be flexible and patient while also nurturing.

To effectively serve the children in the foster care system, we must cast a wide net; focus on families who have the commitment, skill, and capacity to care for children; and find and support parents who reflect the diversity of children in foster care.



Agencies typically use three types of recruitment: general, targeted, and child-specific (family finding). General recruitment includes ads, billboards, PSAs, and other announcements about the fact that there are children who need forever families. Targeted recruitment reaches out to specific communities or neighborhoods that reflect the children in care or who have a history of successful foster/adoptive parenting, including communities of color, faith-based communities, and LGBT individuals and couples. Child-specific recruitment means examining the child's own family and kinship network and should be the first step for any placement.

If relative/kinship placement is not an option, agencies then use general or targeted recruitment to identify new families who are suited to meet the child's needs. Agencies seek applicants who are broadly representative of the children we serve and/or who have the ability to parent children who have experienced trauma. These applicants must be diverse in terms of their race, ethnicity, age, marital status, sexual orientation, gender identity, and religious beliefs.

In addition to targeted and child-specific outreach, agencies must also set out an appropriate welcome mat for families of all backgrounds. To do so, they must assure that physical locations, online presence, and materials include photos, symbols, and phrases that communicate to members of the public that the agency is ready and willing to work with diverse families. Additionally, agencies should include comprehensive nondiscrimination statements in all materials.

Preparing Families

Given the lifelong impact of trauma noted earlier, effective preparation of recruited families is imperative. Agencies must provide the training and other supports that each potential foster and adoptive family will need for each child that joins their family, especially ensuring a trauma-informed model of practice.

In addition, agencies must assure that families representative of diverse populations are highlighted and discussed in pre-service training (including LGBTQ families, religiously diverse families, families of color, single parents, etc.).

During licensing, best practice is to share the perspective (backed by research) that prospective parents who are members of traditionally marginalized communities—including religious minorities and LGBTQ families—have often experienced adversity that has given them the ability to empathize with and understand the experiences of children in foster care.

Regardless of background, training and the licensing process is a great time to help families assess their own capacity to care for kids who come from diverse backgrounds, or who identify as part of the LGBTQ community. In doing this, agencies not only identify families who are



willing to care for these children, but also identify the additional training needs those families might have to feel adequately prepared for the unique needs their children may present.

Matching Children with Families

With regard to matching children and families, the following factors must be considered:

- the prospective parents have a commitment to the child's needs, not a consumer approach to their role;
- the prospective parents can make a mutual decision with the agency regarding how their strengths meet the safety, well-being, and permanence needs of the children who may join their family;

During the matching process for foster care and adoptions, agencies must ensure that families are trauma-informed and trained, and able to create safe and affirming homes for young people. It is dangerous to place a child in the care of a family that is not suited to handle the developmental trauma suffered during the youth's early years, or to place a child in the care of a family that is not supportive of the child's sexual orientation, gender identity, gender expression, or faith. This creates great potential for the placement to fail, the child to become homeless, and experience another traumatic loss of a family.

The best interest of the child must include the child's happiness, safety, well-being, security, and assistance with development into adulthood. The determination must be made by considering factors related to the specific child's needs and prospective parent's ability to meet the specific needs of the child. Additionally, the wishes of the child must be considered in matching. The pairing process is vital to the success of the placement and the well-being of the child.

Currently, many agencies across the nation report that they are not able to find enough homes to care for the children in the child welfare system. Without enough homes, placement agencies are not able to do any real matching. Instead they are forced to put children in any home that has an opening, which can result in increased placement instability and can certainly mean that a child is not in a family who can meet all of their needs.

Supporting Families

Of course, the foster care and adoption process doesn't end with matching. It is vital to support families to ensure the success of the placement and the retention of the parents for future placements. A major component of retention is to ensure foster and adoptive parents have the ability (knowledge and skills), resources (time, place, and finances), and willingness (motivation) in the following five domains:



- protecting and nurturing children;
- meeting children’s developmental needs and addressing developmental delays;
- supporting relationships between children and their birth families;
- connecting children with safe, nurturing, and enduring relationships (permanence); and
- working as a member of a trauma-informed child welfare team.

2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?

It is absolutely imperative to deliberately recruit and retain ample numbers of families who are educated about welcoming and parenting LGBTQ youth and their unique needs. Besides their over-representation in the system, LGBTQ youth enter care already having experienced higher levels of hostility and abuse along with higher suicide risk, making them extra vulnerable to being misunderstood, mistreated, and further traumatized. The most effective solution is to welcome all families who express the nurturing capacity to care for these youth, both short and long term. Targeted recruitment in the LGBTQ community is one way to seek families who are particularly interested in, and qualified for, parenting a child who is LGBTQ.

Even the most LGBTQ-inclusive agencies can struggle to find qualified foster parents who are ready and willing to welcome LGBTQ youth into their homes. Child welfare agencies must actively assess the readiness of current and prospective foster and adoptive parents to affirm LGBTQ youth and include LGBTQ issues in pre-service training.

Nationally, the Administration of Children and Families (ACF) should continue to offer federal financial participation under the Title IV-E program for high-quality LGBT cultural competency training and technical assistance. ACF and state agencies should assess local and state programs as potential models such as those in California, New York, Massachusetts, and Pennsylvania that have implemented LGBTQ nondiscrimination policies, adopted data collection on sexual orientation and gender identity, and mandated associated training or are in the process of doing so. ACF should issue separate guidance clarifying the obligations of state child welfare agencies that receive federal funds to implement policies prohibiting discrimination based on sexual orientation and gender identity.

At the state level, agencies should conduct comprehensive LGBTQ cultural competency training for all staff who work with youth and families in care. Further, agencies should implement explicit agency non-discrimination policies inclusive of sexual orientation and gender identity and expression.

Protecting LGBTQ youth—and youth from minority faiths—from discrimination in a child welfare system that is charged with their safety and well-being is vital. Every American,



regardless of age, has the right to be themselves and to follow their own faith. They also have the right to be free of discrimination, abuse, and neglect. The best practice is to always consider what is in the best interest of the child, and what needs to be done to protect the child from further harm, while at the same time trying to find a family for the child.

3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?

Most of the so-called religious freedom laws or policies enable agencies to discriminate against any individual or family to whom an agency has a religious objection. We know that there are agencies that refuse to accept families because they practice a different faith than the agencies' leaders, because they are single, or because they don't attend church. One of the groups hardest hit by this potential decision are LGBT families who are ready, willing, and able to parent children in foster care and adoption. In fact, studies show that same-sex couples are seven times more likely than different sex couples to raise children in foster care. When these discriminatory policies are in place, countless families of all identities, religions, and relationship statuses who fail agency leaders' religious test, would be lost, leaving more children without the love and support of a family.

Some claim that there is no harm because there are other agencies people can go to if an agency turns them away for religious reasons. That's not true. Discrimination is a deterrent to families opening their hearts and homes to a child. By now, our society understands the pain and humiliation of discrimination and that this harm is not erased by the fact that another restaurant, hotel, or child welfare agency will serve you. Even when there are other agencies that don't discriminate (and that's not always the case), when prospective families are rejected by an agency or two, they are often discouraged and give up on becoming parents to a child in need. For some families, knowing that discrimination against people like them is permitted deters them from ever coming forward. Becoming a foster or adoptive parent is an emotional, intimidating process and research has shown that prospective parents need to be encouraged—not presented with barriers like having to shop around for a non-discriminatory agency.

When there is a smaller pool of families who have been approved, it is more difficult to find the best placement for a particular child. Meeting children's best interests means looking at each case as an individual and determining which of the available families is best positioned to meet the child's social, emotional, behavioral, cognitive, and other needs. When qualified families are turned away or discouraged, a child's best interests may not be met. In addition, these laws and



policies may make it harder to meet the needs of children of different faiths or no faith because families who share the child's beliefs may struggle to be approved and receive a placement.

Allowing agencies to exclude families based on religious criteria does nothing but exacerbate the shortage of families and make it harder to find the families who are best positioned to meet a child's needs. In addition to a nationwide shortage of foster parents, there is a lack of highly skilled adoptive parents able and willing to parent the largest populations in care and most in need (teens, LGBTQ youth, children of color, large sibling groups, or children with significant behavioral or developmental needs). When there are not enough available skilled parents for these specific populations of children, it launches a devastating cycle of compounded trauma. It endangers these children and youth; results in unnecessary hotel stays, increased congregate care, and/or juvenile justice involvement; plus, it creates fallout from overcrowded foster homes, thus costing states hundreds of thousands of dollars.

It is clear that the best interest of a child is to match them with parents who can provide the love, care, and unconditional commitment that the child deserves. It is clear that many families—including LGBT families—fall into that category. Discrimination based on gender identity or sexual orientation has no place in foster care or adoption.

4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?

Laws that prohibit discrimination increase the pool of prospective parents and increase the odds of being able to make a successful match based on the specific needs of for children who need a foster or adoptive family. All states and agencies must have the ability to recruit, mobilize, and serve all qualified potential parents to ensure the best outcomes for vulnerable children in care.

For LGBTQ children and teens, prohibiting discrimination against others who are LGBT ensures that they see the system entrusted with their care as an entity that will support them—not something that will make them change or hide or be ashamed. This can be a critical piece of the healing journey for a child who has experienced abuse, neglect, or loss—particularly if those losses were due to their family's rejection of them due to their sexual orientation or gender identity.

5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?



Our country is in a crisis—we have more children in foster care than we have families available for them. We need every qualified family possible to ensure that children have caring families while they are in care and permanent families as soon as possible.

Each year 20,000 children age out of the foster care system without a family. Youth who age out without a family and connections have an increased risk of incarceration, substance abuse, mental health and behavioral health issues. It doesn't take a scientist to tell you that family is important, and being accepted by that family, loved by that family, and connected to that family are vital to the well-being and best interests of every child.

Turning away viable foster and adoptive families is not just morally wrong, but only makes the nation's foster care crisis bigger. Especially when taxpayer dollars are being used, we need to ensure that publicly funded programs look at a prospective parents' ability to help a child grow and thrive, not whether they meet an agency's religious litmus test.

Research has shown that children raised by lesbian or gay parents are as healthy and well-adjusted as children raised by heterosexual parents. Reducing or eliminating the pool of capable, caring, and willing LGBT families from adoption or foster care would have an enormously negative impact on individual children as well as the foster system as a whole. It would increase the number of children in our nations' over-burdened foster care system. It would increase the number of youth that age out of foster care and face additional barriers to health, safety, well-being and success. It would create unnecessary trauma, suffering, and grief in children.

Sincerely,



Schylar Baber, MPA
Executive Director



COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 11, 2019

Jocelyn F. Samuels
Executive Director
The Williams Institute
1060 Veteran Avenue, Suite 134
Los Angeles, CA 90095

Dear Ms. Samuels,

We write to you as part of our investigation into the waivers granted or currently being considered by the Department of Health and Human Services (“HHS”) regarding state child welfare systems.

In January 2019, HHS granted a waiver following a request from the state of South Carolina, which allowed Miracle Hill Ministries (“Miracle Hill”) to continue its practice of using federal funds to reject prospective foster parents whose religion, marital status, or sexual orientation did not fall in line with the religious beliefs expressed and held by Miracle Hill. This action is a departure from longstanding HHS policy and practice, as well as federal regulations. In December 2018, Texas Attorney General Ken Paxton requested that HHS revise its regulations to allow Texas foster care and adoption service providers to allow similar discrimination.

It appears that, in granting the waiver to Miracle Hill, HHS failed to take into account the needs of LGBTQ foster youth. While qualified LGBTQ adults are one potential group that could provide safe, loving, and affirming foster homes for LGBTQ youth, LGBTQ adults frequently face discrimination when interacting with foster care agencies. We fear that federal agency efforts to facilitate such exemptions for state agency certification of foster care providers will only exacerbate the current shortage of foster parents.

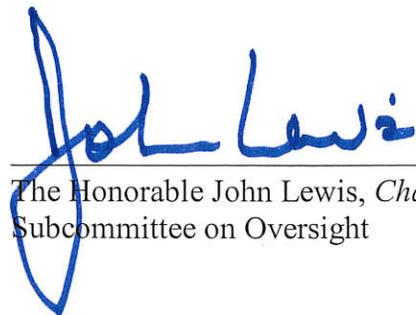
Federal policy decisions concerning foster care and adoption service providers must promote the best interests of children involved in the child welfare system. While it appears that HHS failed to consult with appropriate foster care specialists, experts, parents, and children prior to granting the waiver to Miracle Hill, your organization’s voice and experiences should not be ignored. We must all continue to do our part to ensure that every young person and parent is able to enjoy the dream of a loving, stable family.

We therefore request that you provide responses to any of the following questions that are within your area of expertise:

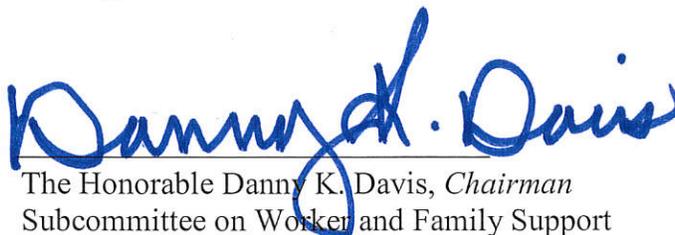
1. What are best practices in recruiting qualified foster and adoptive parents and making good matches between them and children in need of temporary or permanent homes?
2. LGBTQ youth are overrepresented in our foster care system and have a longer road to permanent homes. What are some of the most effective approaches to help these youth?
3. Some states currently allow faith-based foster care providers to discriminate against qualified prospective parents on the basis of religion or sexual orientation using their non-federal dollars. How does that affect the state's ability to make a placement in the best interest of the child, including respecting the child's religious beliefs? How would it affect the likelihood of appropriate foster care placements if these policies were expanded?
4. Other states have laws prohibiting discrimination against qualified potential parents, which apply to non-federally-funded placements. How do those laws affect the ability of those states to make placements in the best interest of the child?
5. What further information would your organization like to share with members of Congress and HHS in order to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interest of the child?

We request that you provide a response to this letter, including answers to any of the above questions in your area of expertise, and any other information that is pertinent and relevant to our investigation of this issue, no later than August 15, 2019. Thank you, in advance, for sharing your perspective regarding this critical matter.

Sincerely,



The Honorable John Lewis, *Chairman*
Subcommittee on Oversight



The Honorable Danny K. Davis, *Chairman*
Subcommittee on Worker and Family Support

August 30, 2019

The Honorable John Lewis
Chairman, Subcommittee on Oversight
The Honorable Danny K. Davis,
Chairman, Subcommittee on Worker and Family Support
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Lewis and Davis,

We are pleased to respond to your letter dated July 11, 2019, regarding your investigation into the waivers granted or currently being considered by the U.S. Department of Health and Human Services regarding state child welfare systems. We are scholars at the Williams Institute, a center at UCLA School of Law dedicated to conducting rigorous and independent academic research on sexual orientation and gender identity, including on LGBTQ youth in foster care and LGBT foster and adoptive parents. Lawmakers, courts, agencies, and the press frequently rely on research from the Williams Institute, such as the Every Child Deserves a Family Act introduced this year by Chairman Lewis and Representative Jenniffer González-Colón.

As you know, LGBTQ youth are overrepresented in foster care systems and face disparate treatment in those systems and a number of obstacles to finding safe, supportive, and permanent homes. Scientific research in this area establishes that LGBTQ (also known as sexual and gender minority) youth:

- are overrepresented in the system of child welfare, in that there are two times as many LGBTQ youth in foster care as in the general population (Dettlaff, Washburn, & Carr 2018; Fish et al. 2019; Wilson & Kastanis 2015; Wilson et al. 2014); and
- experience disparities and negative outcomes compared to non-LGBTQ youth, including:
 - higher rates of homelessness and movement among different placements (Baams, Wilson, & Russell 2019; Irvine & Canfield 2016; Mountz, Capous-Desyllas, & Pourciau 2018; Wilson & Kastanis 2015),
 - higher rates of psychological distress (Baams, Wilson, & Russell 2019; Dettlaff, Washburn, & Carr 2018; Wilson & Kastanis 2015),
 - higher likelihood of being victimized by their peers in school (Baams, Wilson, & Russell 2019), and
 - are treated less well in the child welfare system (Wilson & Kastanis 2015).

Your letter inquired “[w]hat are some of the most effective approaches to help these youth?” First, research must be funded to better understand why LGBTQ youth are so overrepresented in the foster system, in the juvenile justice system (Wilson et al. 2017), and among the homeless. Second, interventions must be researched, designed, and implemented to address the causes of these disproportionalities. Such causes are varied, but likely include anti-LGBTQ stigma manifested through, for example, school-based bullying and rejection by families of origin, as well as poverty in those families of origin. Thus, helping LGBTQ youth in foster care begins with addressing the underlying drivers to their becoming foster youth in the first place.

The studies cited above, as well as others, indicate that strategies to help LGBTQ youth in foster care should include a focus on the inner workings of child welfare agencies. The fact that LGBTQ youth report more placements, more homelessness, and poorer treatment indicates that individual agencies and broader systems must institute robust structures, policies, and plans specifically designed to meet the unique needs and vulnerabilities of LGBTQ youth and that ensure the dignity and equality of LGBTQ youth compared to other youth. For example, individual agencies should have clear processes to train and support caseworkers and others in working with and supporting LGBTQ youth, and to prevent, detect, and remedy any individual staff biases and their harmful effects. The Administration for Children and Families (ACF) has explained that because caseworkers are “an important link” between LGBTQ foster youth and “support and safety . . . [i]t is . . . critical that a young person’s caseworker has the capacity, understanding and willingness to support the child’s social and emotional development while in foster care” (Administration for Children and Families 2011). “It is the caseworker’s responsibility to assess and serve the needs of each child without bias and to ensure the safety of all children in foster care” (*id.*).

Despite the disproportionalities and disparities facing LGBTQ youth in foster care, we are aware of only a few states that expressly protect youth from discrimination based on sexual orientation, gender identity, and gender expression in child welfare services.¹ Such laws prohibit, among other things, discriminatory practices in out-of-home placement and the usage of derogatory terms based on that child’s sexual orientation or gender identity or expression by all adults certified to interact with children in the system (e.g., foster parents and group home workers). In places with applicable anti-discrimination laws that are inclusive of sexual orientation and gender identity, there is, at least, a legal basis for requiring agencies to reduce disparities facing LGBTQ youth and a legal mechanism for holding state and state-funded entities (e.g., foster care agencies) accountable. Therefore, at a minimum, we recommend that federal, state, and local law, as applicable, require child welfare agencies to not discriminate (whether disparate treatment or disparate effect) on the bases of real or perceived sexual

¹ *E.g.*, Cal. Welf. & Inst. Code § 16001.9(a)(23) (2019); Colo. Rev. Stat. § 19-7-101(1)(t) (2018); Nev. Rev. Stat. § 432.525(7)(e) (2019); R.I. Gen. Laws § 42-72-15(q) (2019); Or. Rev. Stat. § 418.648(10) (2019). *See generally* Martin, M., Down, L., & Erney, R. (2016). *Out of the Shadows: Supporting LGBTQ youth in child welfare through cross-system collaboration*. Washington, DC: Center for the Study of Social Policy. Retrieved from <https://cssp.org/wp-content/uploads/2018/08/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>

orientation, gender identity, and gender expression. Beyond that, ACF has funded or recognized a variety of best practices and other resources for child welfare agencies to better serve and protect LGBTQ foster youth (*id.*). ACF should ensure not only that these various resources are utilized and updated as necessary, but the goals that these resources express are achieved.

You also inquired about “further information . . . to guide further policy discussions about foster and adoptive parent selection and its role in ensuring that we act in the best interests of the child[.]” Finding safe, supportive, and permanent homes for LGBTQ foster youth, and all foster youth, requires finding sufficient numbers of qualified adults to provide that care. ACF has confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes” (Administration from Children and Families 2011). Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with different-sex parents (for a review, see Goldberg, Gartrell, & Gates 2014; see, e.g., Gartrell, Bos, & Koh 2018). Recruitment of LGBTQ families could provide a plentiful source of affirming and supportive homes for not only LGBTQ foster youth but all foster youth.

Indeed, federal data consistently show that many same-sex couples are fostering or have adopted children, in addition to those children who are biologically related to one of the parents. For example, data from the 2016 American Community Survey showed that one in five same-sex couples with children (21.4%) are raising adopted children compared to just 3% of different-sex parents, and 2.9% of same-sex couples with children have foster children compared to 0.4% of different-sex parents (Goldberg & Conron 2018). Similar findings were cited by the U.S. Supreme Court and other courts in support of their rulings extending marriage rights to same-sex couples (*Obergefell v. Hodges* 2015; *Baskin v. Bogan* 2014).

We recognize that religion has served as a powerful inspiration for many people to foster children or to work in child welfare services (Howell-Moroney 2014) and that many of those people are affirming of LGBTQ youth; however, religion is used, unfortunately, as a reason to treat LGBTQ foster youth worse (e.g., Rosenwald 2009). Permitting child welfare agencies to directly or indirectly discriminate on the basis of sexual orientation or gender identity, among other bases, not only undermines the ability of states to find safe, supportive, and permanent homes for all foster youth, but also risks increasing the vulnerabilities and disparities facing LGBTQ foster youth.

Respectfully submitted,

Bianca D.M. Wilson, Ph.D.
Adam P. Romero, J.D.
Luis A. Vasquez, J.D.

The Williams Institute

UCLA School of Law
1060 Veteran Ave., Suite 134
Box 957092
Los Angeles, CA 90095-7092
(310) 267-4382

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Feb 21, 2019

US Congressman Richard Neal, Chair
US House Ways and Means Committee
US House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Congressman Neal,

On January 23, the US Dept of Health and Human Services granted a waiver to a federally funded child-welfare agency, Miracle Hill Ministries, that allows them to discriminate against prospective foster and adoptive parents based on their religious beliefs and/or their sexual orientation.

HHS granted South Carolina's Governor Henry McMaster request that taxpayer-funded child welfare agencies contracted with the State be exempted from federal rules prohibiting discrimination. This allows them to work only with families who meet their restrictive religious criteria. To adopt from Miracle Hill Ministries, one doesn't just have to be Christian. One must be the "right" kind of Christian.

South Carolina has 4200 children in foster care, many of whom identify as Jewish, Catholic, or of other religious beliefs that aren't congruent with Miracle Hill's perspective. While our constitution states religious freedom is a fundamental right, it does not grant us the right to discriminate based on religious beliefs. Case in point: a Catholic mother in Simpsonville, SC, Aimee Maddonna, who was welcomed by Miracle Hill as a potential foster parent. However, right before her final interview in the fostering process, the agency notified her that they "only employ volunteers and mentors who are Protestant Christian." Miracle Hill receives \$600,000 in state and federal funding. (<https://www.greenvilleonline.com/story/news/2019/02/15/greenville-miracle-hills-ministries-foster-agency-lawsuit/2881913002/>)

The discrimination faced by Ms. Maddonna and other potential foster parents means that some foster children are being denied the right to live in a home appropriate for them. This makes little sense given our current shortage of foster homes. Foster children who identify as LGBTQ are especially vulnerable as a result of this ruling; they are at risk of placement in a home that stigmatizes or condemns them, affecting their self-esteem, self-worth, and mental health.

The decision by the Trump administration to issue this waiver violates the most basic principles of religious freedom by allowing agencies to prioritize their beliefs over the needs of children they are tasked to serve.

NASW-SC views this decision as discriminatory and ill-advised. Our state has a great need for quality, loving foster families to serve children of various religious beliefs and sexual orientations. The waiver granted to Miracle Hill, and the federal funding that results from it, sends the message that the needs of the agency outweigh the needs of vulnerable children. This is unacceptable.

Sincerely,

A handwritten signature in black ink that reads "Carla Damron". The signature is written in a cursive, flowing style.

Carla Damron, LISW-CP
Executive Director
NASW-SC