

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KRISTY DUMONT; DANA  
DUMONT; ERIN BUSK-SUTTON;  
REBECCA BUSK-SUTTON; and  
JENNIFER LUDOLPH,

Plaintiffs,

v.

NICK LYON, in his official capacity  
as the Director of the Michigan  
Department of Health and Human  
Services; and HERMAN MCCALL,  
in his official capacity as the  
Executive Director of the Michigan  
Children's Services Agency,

Defendants.

No. 17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A.  
STAFFORD

**DEFENDANTS NICK LYON'S  
AND HERMAN MCCALL'S  
ANSWER AND  
AFFIRMATIVE DEFENSES**

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**DEFENDANTS NICK LYON'S AND HERMAN MCCALL'S**  
**ANSWER AND AFFIRMATIVE DEFENSES**

Now come Defendants Nick Lyon and Dr. Herman McCall, Ed.D.  
(State Defendants), by and through their undersigned counsel,  
answering Plaintiffs' Complaint as follows:

1. The Michigan Department of Health and Human Services (Department) admits that this lawsuit involves the Department's implementation of 2015 PA 53, codified at Mich. Comp. Laws § 722.124e and Mich. Comp. Laws § 722.124f. In PA 53, the Legislature found that “[w]hen it is necessary for a child in this state to be placed with an adoptive or foster family, placing the child in a safe, loving, and supportive home is a paramount goal of this state.” Mich. Comp. Laws § 722.124e(1)(a). Accordingly, “[h]aving as many possible qualified adoption and foster parent agencies in this state is a substantial benefit to the children of this state who are in need of these placement services and to all of the citizens of this state because the more qualified agencies taking part in this process, the greater the likelihood that permanent child placement can be achieved.” Mich. Comp. Laws § 722.124e(1)(c). Further, “[p]rivate child placing agencies, including faith-based child placing agencies, have the right to free exercise of religion under both the state and federal constitutions. Under well-settled principles of constitutional law, this right includes the freedom to abstain from conduct that conflicts with an agency's sincerely held religious beliefs.” Mich. Comp. Laws § 722.124e(1)(e). The Legislature

specifically recognized that “[c]hildren and families benefit greatly from the adoption and foster care services provided by faith-based and non-faith-based child placing agencies. Ensuring that faith-based child placing agencies can continue to provide adoption and foster care services will benefit the children and families who receive publicly funded services.” Mich. Comp. Laws § 722.124e(1)(g). The Legislature sought to ensure the “well-established contracting practices of the department [by which] a private child placing agency does not receive public funding with respect to a particular child or particular individuals referred by the department unless that agency affirmatively accepts the referral.” Mich. Comp. Laws § 722.124e(1)(h). And the Legislature clarified that “a private child placing agency does not engage in state action relative to a referral for services under a contract with the department before the agency accepts the referral.” Mich. Comp. Laws § 722.124e(1)(i). *Accord, e.g., Rendell-Baker v. Kohn*, 457 U.S. 830 (1982). So, “[t]o the fullest extent permitted by state and federal law,” the Legislature directed the Department to “not take an adverse action against a child placing agency on the basis that the child placing agency has declined or will decline to provide any services that

conflict with, or provide any services under circumstances that conflict with, the child placing agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the child placing agency." Mich. Comp. Laws § 722.124e(3). And the Legislature specified protocols to ensure that these mandates were followed. Mich. Comp. Laws § 722.124f.

The Department admits that both it and state-contracted child placing agencies are required to follow PA 53 . In further answer, the Department denies that its practices relating to licensing and contracting child placing agencies in accordance with the law harms vulnerable children. The Department denies that its practices deny children access to families or violate the Establishment Clause and Equal Protection Clause of the U.S. Constitution. And the Department denies the remaining factual allegations in paragraph 1 as untrue. Paragraph 1 states legal conclusions and/or arguments and characterizes the Complaint and, therefore, no response is necessary. To the extent that these allegations require an answer, the allegations characterizing the Complaint are neither admitted nor denied on grounds that State Defendants are without knowledge or information

sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. And, except as set forth herein, the legal conclusions are denied as untrue. The State Defendants deny any wrongdoing as alleged in the Complaint.

2. Admitted that the Department is responsible for children who are state wards or committed to the Department for care, supervision, and placement with foster families or adoptive homes. Some children come into care after being removed from their homes as a result of abuse or neglect. As of the date of this Answer, there are approximately 13,670 in Michigan's foster care system as of September 5, 2018. The Department is responsible for finding foster and adoptive families for the children under its care and supervision, and contracts with child placing agencies to provide these services in accordance with the law. The remaining allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

3. Admitted that the Department contracts with public and private child placing agencies to provide adoption and foster care

services for children under the Department's care and supervision.

Admitted that the Department pays child care placing agencies with public funds to provide adoption and foster care services for children under the Department's care and supervision, but that such funds relate to a particular child placement and are paid only after an agency accepts a referral. Admitted that some faith-based child placing agencies may have declined to work with prospective families and/or referrals and referred or should have referred prospective families to other child placing agencies based on sincerely held religious beliefs, as PA 53 allows. The remaining allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

4. Admitted that the State is responsible for children under the care and supervision of the Department. Admitted that state-contracted child placing agencies must follow the law, including PA 53. Admitted that the Department does not refuse to place children with a prospective parent based on his or her sexual orientation or faith. This paragraph's reference to statute and legal obligations state legal

conclusions and/or arguments to which no response is necessary. To the extent that these allegations require an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

5. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. State Defendants note that since Kristy and Dana Dumont and Erin and Rebecca Busk-Sutton are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

6. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. In further answer, pursuant to the Court's September

14, 2018 Opinion and Order, the claims of Plaintiff Ludolph were dismissed for lack of standing. (Doc. 49, Pg. ID 93.)

7. Neither admitted nor denied on grounds that State Defendant are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

8. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent that this paragraph asserts factual allegations requiring an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

9. State Defendants incorporate by reference their answer to paragraph nos. 1 and 4 of the Complaint. In further answer, this paragraph states hypothetical facts and legal conclusions and/or arguments to which no response is necessary. To the extent that this paragraph asserts factual allegations requiring an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a

belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

10. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent that this paragraph asserts factual allegations requiring an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

11. As to Plaintiffs' allegations that the Department's practice of contracting with faith-based agencies that comply with PA 53 impose burdens on children or reduce placement options for children, State Defendants deny as untrue. As to Plaintiffs' allegations that the Department's practice of contracting with faith-based agencies that comply with PA 53 result in children being placed with families that are less well-suited to meet their needs, that some children may be separated from siblings, or that children may age out of foster care without ever becoming part of a family, State Defendants deny as untrue. The remaining factual allegations in this paragraph are denied as untrue. State Defendants incorporate by reference their

answer as set forth in paragraph nos. 1 and 4 above. In further answer, this paragraph also states legal conclusions and/or arguments to which no response is necessary. To the extent an answer is required, the conclusions and allegations are denied as untrue.

12. State Defendants deny that they are discriminating on the basis of sexual orientation through instrumentalities of the State.

13. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent that this paragraph asserts factual allegations requiring an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

14. This paragraph states legal conclusions and/or arguments to which no response is necessary. To the extent that this paragraph asserts factual allegations requiring an answer, the allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

15. Denied. This Court does not have subject-matter jurisdiction because there is no case or controversy and Plaintiffs do not have standing to pursue the claims they have alleged.

16. Admitted.

17. Denied. This Court does not have jurisdiction to render the declaratory relief requested because Plaintiffs do not have standing to pursue the claims they have alleged.

18. Denied. Venue is only proper in this district if there is a case or controversy and Plaintiffs have standing to pursue the claims they have alleged. Neither is true.

19. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. State Defendants note that since Kristy and Dana Dumont are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

20. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. State Defendants note that since Erin and Rebecca Busk-Sutton are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

21. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. In further answer, pursuant to the Court's September 14, 2018 Opinion and Order, the claims of Plaintiff Ludolph were dismissed for lack of standing. (Doc. 49, Pg. ID 93.)

22. Admitted.

23. Admitted.

24. State Defendants admit the allegations contained in the first sentence. Although each child's case is unique rather than typical, State Defendants further admit that, in some instances, children come

into care with DHHS after Children's Protective Services initiates removal proceedings and a court orders removal of the child. Although each child's case is unique rather than typical, State Defendants admit the allegations in third sentence. State Defendants admit the allegations contained in the fourth sentence.

25. Admitted.

26. Admitted.

27. Admitted that a child-placing agency begins receiving compensation from DHHS for services rendered after the agency accepts a referral from DHHS, as set forth in PA 53. Further admitted to the extent that, after a child-placing agency accepts an adoption referral from the Department, the child-placing agency may decide to bill for per diem payments from the department. Further admitted to the extent that the agency may receive per diem payments of \$20.00 for each day of adoptive services from acceptance of the case to either the date the court accepts the adoption petition or for 150 days, whichever comes first. Further admitted to the extent that the total of all per diem payments are deducted from the applicable placement rate paid to the Contractor for the adoption case. Admitted that these payments

cease after a certain amount of time or when the child is permanently placed.

28. Admitted that the Michigan Legislature generally appropriates money for DHHS, and that the Department uses some of those monies for, among other things, to pay private child placing agencies under contract with the to provide foster care and adoptive services. To the extent this paragraph alleges that the Legislature makes specific appropriations for this work or for particular agencies, it is denied.

29. Admitted.

30. Admitted that some of the child-placing agencies with which the Department contracts are faith-based providers. In all other respects, denied.

31. The allegations in this paragraph refer to “contracts” generally without providing any specific contracts. Admitted that contracts between the Department and child-placing agencies sometimes include the language quoted or substantially similar language. Furthermore, the language of the relevant contracts speak for themselves.

32. The allegations in this paragraph refer to “contracts” generally without providing any specific contracts. Admitted that some contracts between the Department and child-placing agencies include the language quoted or substantially similar language. Furthermore, the language of the relevant contracts speak for themselves.

33. Admitted that an application is a necessary pre-requisite for fostering or adopting a child out of the foster care system. Denied that the application is the sole requirement or consideration for determining foster-family or adoptive placement.

34. Admitted.

35. The allegation in the first sentence is admitted insofar as the Department has issued an Adoption Program Statement known as Publication 255 that contains eligibility requirements, but denied insofar as detailed eligibility requirements for prospective adoptive families may be contained in statute, Department policy, and other publications and/or legal authority. Furthermore, Publication 255 speaks for itself. The allegation in the second sentence is admitted insofar as it appears to contain an accurate quotation from Publication

255. The allegation in the third sentence is denied because the quoted language does not appear in Publication 255.

36. The allegations in this paragraph refer to “contracts” generally without providing any specific contracts. Admitted that contracts between the Department and child-placing agencies sometimes include the language quoted or substantially similar language. Furthermore, the language of the relevant contracts speak for themselves.

37. Regarding the claim that the Department “is aware of certain child placing agencies’ refusal to accept same-sex couples,” the Department admits that some child-placing agencies have a sincerely held religious belief that prevents them from licensing or adopting to same-sex couples, which is protected by PA 53. Denied that the Department has never taken any remedial action under its contracts against any private child placing agency for failure to comply with the DHHS non-discrimination statement, DHHS Publication 255, or the United States Constitution. Furthermore, this paragraph states legal conclusions and/or arguments to which no response is necessary and

Publication 255, the relevant contracts and the law speak for themselves.

38. Admitted that for many years some private child-placing agencies that provide foster care and adoption services under contract with the State operate in accord with their religious beliefs, a practice now permitted expressly in law by PA 53.

39. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

40. Admitted that, in 2013, the Michigan House of Representatives' Families, Children and Seniors Committee considered House Bills 4927, 4928 and 4991. Moreover, House Bills 4927, 4928, and 4991 speak for themselves and, therefore, no response is necessary. Further, this paragraph states legal conclusions and/or arguments regarding the meaning of Michigan House Bills from 2013 and, therefore, no response is necessary.

41. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a

belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

42. Admitted that Michigan House Bills 4188, 4189 and 4990 were introduced in 2015. The remaining allegations are neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. Moreover, this paragraph states legal conclusions and/or arguments regarding the meaning of Michigan House Bills from 2015, rather than making allegations of fact, therefore no response is necessary.

43. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

44. Admitted.

45. On information and belief, admitted that the President of Bethany Christian Services sent a letter to Michigan Governor Rick Snyder stating that if Bethany was forced to violate its religious beliefs, it would no longer be able to assist with placing children with adoptive

and foster families. In further answer, the President's letter speaks for itself.

46. On information and belief, admitted that the President and CEO of the Michigan Catholic Conference sent a letter to Michigan Governor Rick Snyder stating that if Catholic agencies were forced to violate their religious beliefs, they would no longer be able to assist with placing children with adoptive and foster families. In further answer, the President's letter speaks for itself.

47. Admitted.

48. Admitted insofar as the allegations in this paragraph accurately quote selected portions of Mich. Comp. Laws §§ 722.124e(2), (3) and (7)(b). Denied that these are the only "relevant" parts of the statutes.

49. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

50. Admitted that some of the attorneys who now serve as legal counsel for Plaintiffs sent a letter to third-party Michigan Department

of Attorney General, which serves as legal counsel for State Defendants. The letter speaks for itself and, therefore, no response is required. To the extent a response is required, State Defendants neither admit nor deny Plaintiffs' summary of the letter and leave Plaintiffs to their proofs. Similarly, the Attorney General's office's response speaks for itself and, therefore, no response is required. To the extent a response is required, State Defendants deny the allegations as stated as untrue.

51. Admitted insofar as the Department is always looking for foster and adoptive families to best serve Michigan's children.

52. Admitted.

53. Denied as untrue.

54. Admitted that some organizations affirmatively state that gay and lesbian parents are as likely as heterosexual parents to provide supportive and healthy environments for their children and oppose discrimination based on sexual orientation in matters of adoption and foster care. Regarding whether the specific organizations listed in this paragraph have issued the alleged statements, the allegations are neither admitted nor denied because State Defendants are without

knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs

55. The implication that PA 53 and the Department's implementation of it results in fewer qualified families available for adoption and foster care is denied. Also denied to the extent that this paragraph alleges that the number of foster providers is the sole impact upon the length of time a child remains in foster care. The remaining allegations are admitted

56. Denied that the Department excludes any families from participating in the foster and adoption systems for religious reasons. State Defendants admit the allegations contained in the second and third sentences of this paragraph.

57. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

58. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a

belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

59. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that since Kristy and Dana Dumont are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

60. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that if Kristy and Dana Dumont "hope to adopt a child in foster care who may have difficulty finding a family," PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

61. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that since Kristy and Dana Dumont are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

62. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that since Kristy and Dana Dumont are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

63. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to

their proofs. State Defendants note that since Kristy and Dana Dumont are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

64. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

65. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

66. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

67. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a

belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that since Erin and Rebecca Busk-Sutton are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

68. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs. State Defendants note that since Erin and Rebecca Busk-Sutton are interested in adopting a child from the foster care system, PA 53 does not prevent them from doing so because there are numerous agencies that have been eagerly waiting to assist them, both before and after the filing of Plaintiffs' Complaint.

69. Neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

70. Jennifer Ludolph's claims were dismissed pursuant to Doc. 49, Pg. ID 93, therefore no response is necessary. To the extent that this Court requires an answer, neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

71. Jennifer Ludolph's claims were dismissed pursuant to Doc. 49, Pg. ID 93, therefore no response is necessary. To the extent that this Court requires an answer, neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

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74. Jennifer Ludolph's claims were dismissed pursuant to Doc. 49, Pg. ID 93, therefore no response is necessary. To the extent that this Court requires an answer, neither admitted nor denied on grounds that State Defendants are without knowledge or information sufficient to form a belief about the truth of this allegation and therefore leave Plaintiffs to their proofs.

75. State Defendants incorporate their previous answers to this Complaint.

76. Admitted that the Department contracts with child-placing agencies, some of which are faith-based organizations, and that those child-placing agencies assist the Department's provision of foster and adoption services in Michigan. Admitted that the tasks completed by child-placing agencies pursuant to contract include recruiting and

screening potential foster and adoptive parents, and placing children with foster families. Denied to the extent that courts must rule on petitions for adoption. Furthermore, whether and/or to what extent any of these services constitute a “public function” is a legal conclusion and/or argument to which no response is necessary.

77. Admitted that, pursuant to contracts, the Department pays child-placing agencies, some of which are faith-based organizations, with funds generally appropriated by the Legislature for the foster care and adoption work those child-placing agencies perform.

78. Admitted that the Department contracts with child-placing agencies, some of which are faith-based organizations, that the Department allows faith-based child-placing agencies to practice their faith without violating their sincerely held religious beliefs pursuant to PA 53, thereby providing the greatest variety and number of providers to serve Michigan’s foster children.

79. Denied as untrue.

80. Denied as untrue.

81. Denied as untrue.

82. State Defendants incorporate their previous answers to this Complaint.

83. Admitted that the Department contracts with child-placing agencies, some of which are faith-based organizations, that the Department allows faith-based child-placing agencies to practice their faith without violating their sincerely held religious beliefs pursuant to PA 53, thereby providing the greatest variety and number of providers to serve Michigan's foster children. Denied that gay and lesbian couples are categorically denied from applying for and being considered to be foster or adoptive parents.

84. Denied as untrue.

85. Denied as untrue.

86. Denied as untrue.

87. Denied as untrue.

88. Denied as untrue.

89. Denied as untrue.

WHEREFORE, State Defendants respectfully request that the Court enter judgment in their favor, dismiss Plaintiffs' Complaint, and award such other relief as this Court deems appropriate.

## AFFIRMATIVE DEFENSES

1. State Defendants' actions comply with PA 53.
2. Plaintiffs are not third-party beneficiaries of the contracts between the Department and child-placing agencies.
3. Plaintiffs fail to state claims upon which relief can be granted.
4. The court lacks jurisdiction because the Complaint does not present a case or controversy that is ripe for adjudication.
5. Plaintiffs lack standing to assert some or all of their claims.
6. Plaintiffs have not exhausted their administrative remedies.
7. The Court should exercise its discretion to abstain from adjudicating these claims.
8. The Eleventh Amendment bars some or all of Plaintiffs' claims against State Defendants.
9. State Defendants have sovereign immunity and qualified immunity.

10. State Defendants reserve the right to supplement, add to or amend these defenses as this case develops and during the course of discovery.

Respectfully submitted,

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Dated: September 28, 2018

**CERTIFICATE OF SERVICE (E-FILE)**

I hereby certify that on September 28, 2018, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Joshua S. Smith  
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