

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

No. 17-cv-13080-PDB-EAS

Plaintiffs,

HON. PAUL D. BORMAN

v.

MAG. ELIZABETH A.
STAFFORD

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,

**ANSWER AND AFFIRMATIVE
DEFENSES OF INTERVENOR-
DEFENDANTS**

Defendants

and

ST. VINCENT CATHOLIC CHARITIES,
SHAMBER FLORE, CHAD BUCK and
MELISSA BUCK

Intervenor Defendants.

INTERVENOR-DEFENDANTS' ANSWER
AND AFFIRMATIVE DEFENSES

Now come Intervenor-Defendants St. Vincent Catholic Charities, Shamber Flore, Chad Buck, and Melissa Buck (Intervenors), by and through their undersigned counsel, answering Plaintiffs' Complaint as follows:

1. As to the allegations in paragraph 1, admitted that state and federal law permit private faith-based agencies to operate consistent with their religious beliefs in certain contexts. Denied that allowing faith-based agencies to operate according to their religious beliefs harms children by denying them access to any families. This paragraph states legal conclusions, arguments, or characterizations of plaintiffs' complaint as to which no response is necessary. To the extent these allegations require additional response, the allegations are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

2. The allegations in paragraph 2 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. Paragraph 3 states legal conclusions as to which no response is required. Admitted that the Michigan Department of Health and Human Services (“DHHS”) contracts with agencies to provide certain adoption and foster care services and pays those agencies for some adoption care services. The remaining allegations are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 4 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 5 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

6. 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, the allegations in paragraph 6 are neither admitted nor denied on grounds that they contain factual allegations, and Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

7. The allegations in paragraph 7 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

8. The allegations in paragraph 8 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 9 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 10 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 11 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

12. The allegations in paragraph 12 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

13. The allegations in paragraph 13 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 14 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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. The allegations in paragraph 15 are 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. The allegations in paragraph 16 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

17. The allegations in paragraph 17 are 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. The allegations in paragraph 18 are 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. The allegations also state legal conclusions or

arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

19. The allegations in paragraph 19 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

20. The allegations in paragraph 20 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

21. 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, the allegations in paragraph 21 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

22. Admitted Nick Lyon is the Director of DHHS and that DHHS contracts

with private child placing agencies, including Catholic Charities. The remaining allegations in paragraph 22 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

23. The allegations in paragraph 23 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

24. The allegations in paragraph 24 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

25. Admitted that DHHS contracts with private agencies licensed by DHHS's Division of Child Welfare Licensing ("DCWL") as "child placing agencies." The remaining allegations in paragraph 25 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to

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

26. The allegations in paragraph 26 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

27. Admitted that a child-placing agency begins receiving compensation from DHHS after the agency accepts referral of a particular case from DHHS. Admitted that payments eventually cease and that in some instances lump-sum payments occur. As to the remaining allegations in paragraph 27, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

28. The allegations in paragraph 28 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

29. Admitted that DHHS enters into adoption and foster care contracts with private child placing agencies. As to the remaining allegations in paragraph 29,

Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

30. Admitted that the State contracts with some religiously affiliated agencies. The remaining allegations in paragraph 30 are neither admitted nor denied on grounds that they contain factual allegations, and Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

31. The allegations in paragraph 31 refer to “contracts” generally without providing any specific contracts. The allegations are neither admitted nor denied on grounds that they state legal conclusions or arguments, and the relevant contracts speak for themselves.

32. The allegations in paragraph 32 refer to “contracts” generally without providing any specific contracts. The allegations are neither admitted nor denied on grounds that they state legal conclusions or arguments, and the relevant contracts speak for themselves.

33. The allegations in paragraph 33 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

34. The allegations in paragraph 34 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

35. The allegations in paragraph 35 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. The document also speaks for itself.

36. The allegations in paragraph 36 refer to “contracts” generally without providing any specific contracts. The allegations are neither admitted nor denied on grounds that they state legal conclusions or arguments, and the relevant contracts speak for themselves.

37. The allegations in paragraph 37 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

38. Admitted that some private child-placing agencies that provide foster care

and adoption services under contract with the State operate in accordance with their religious beliefs. As to the remaining allegations of paragraph 38, they are neither admitted nor denied on the ground that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

39. The allegations in paragraph 39 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

40. The allegations in paragraph 40 are neither admitted nor denied on grounds that they state legal conclusions or arguments, that the House Bills speak for themselves, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

41. The allegations in paragraph 41 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave

Plaintiffs to their proofs.

42. The allegations in paragraph 42 are neither admitted nor denied on grounds that they state legal conclusions or arguments, that the House Bills speak for themselves, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

43. Admitted that the quoted language in paragraph 43 is a portion of a statement from the director of clinical services at St. Vincent Catholic Charities at a hearing on the date in question. Denied that St. Vincent's will not work with gay or lesbian prospective parents or that they are "religiously opposed" to particular individuals.

44. The allegations in paragraph 44 are neither admitted nor denied because the term "bills" is undefined.

45. The allegations in paragraph 45 are neither admitted nor denied on grounds that they state legal conclusions or arguments, that the letter speaks for itself, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. Furthermore, the letter speaks for itself.

46. The allegations in paragraph 46 are neither admitted nor denied on grounds that they state legal conclusions or arguments, that the letter speaks for itself, and to the

extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. Furthermore, the letter speaks for itself.

47. Admitted.

48. The allegations in paragraph 48 are neither admitted nor denied on grounds that they state legal conclusions or arguments, that the statute speaks for itself, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs. Furthermore, the letter speaks for itself.

49. Denied that the activities in the allegation are all taxpayer-funded. The remaining allegations in paragraph 49 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

50. The allegations in paragraph 50 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

51. Admitted.

52. Admitted that some children may reach the age of majority without ever being placed with a permanent family and may continue to have multiple temporary placements or be separated from their siblings or be placed in group homes because of a shortage of families. The remaining allegations in paragraph 52 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

53. The allegations in paragraph 53 are denied as untrue.

54. The allegations in paragraph 54 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-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 allegations in paragraph 55 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

56. Denied that there is a religious-based exclusion of capable families from the foster care system. The remaining allegations in paragraph 56 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

57. The allegations in paragraph 57 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

58. The allegations in paragraph 58 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

59. The allegations in paragraph 59 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

60. The allegations in paragraph 60 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

61. The allegations in paragraph 61 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

62. The allegations in paragraph 62 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

63. The allegations in paragraph 63 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

64. The allegations in paragraph 64 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

65. The allegations in paragraph 65 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

66. The allegations in paragraph 66 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

67. The allegations in paragraph 67 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

68. The allegations in paragraph 68 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

69. The allegations in paragraph 69 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations 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, the allegations in paragraph 70 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations 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, the allegations in paragraph 71 are neither admitted nor denied on grounds that Intervenor-

Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

72. 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, the allegations in paragraph 72 are neither admitted nor denied on grounds that Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

73. 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, the allegations in paragraph 73 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

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, the allegations in paragraph 74 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

75. In response to the allegations in paragraph 75, Intervenor-Defendants incorporate their previous answers to this Complaint.

76. The allegations in paragraph 76 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

77. Defendant-Intervenors admit that they receive some funds from DHHS for some aspects of their adoption and foster care work, but Defendant-Intervenors deny that they receive public funds for all the adoption and foster care work they perform. The remaining allegations in paragraph 77 are neither admitted nor denied because they contain legal conclusions, because “these religious organizations” is undefined, and to the extent they contain factual allegations, Defendant-Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

78. Intervenor-Defendants admit that state and federal law require that private faith-based agencies be permitted to operate consistent with their religious beliefs in certain contexts. The remaining allegations in paragraph 78 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or

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

79. The allegations in paragraph 79 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

80. The allegations in paragraph 80 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

81. The allegations in paragraph 81 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

82. In response to the allegations in paragraph 82, Defendant-Intervenors incorporate their previous answers to this Complaint.

83. The allegations in paragraph 83 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

84. The allegations in paragraph 84 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

85. The allegations in paragraph 85 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

86. The allegations in paragraph 86 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

87. The allegations in paragraph 87 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

88. The allegations in paragraph 88 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

89. The allegations in paragraph 89 are neither admitted nor denied on grounds that they state legal conclusions or arguments, and to the extent they contain factual allegations, Intervenor-Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations and, therefore, leave Plaintiffs to their proofs.

WHEREFORE, Defendant-Intervenors 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. Relief the Plaintiffs seek would require the State to discriminate against faith-based agencies by engaging in explicit targeting, prohibited under the Free Exercise and Establishment Clauses of the First Amendment.
2. Relief the Plaintiffs seek would require the State to discriminate against faith-based agencies by engaging in selective enforcement, prohibited under the Free Exercise and Establishment Clauses of the First Amendment.
3. Relief the Plaintiffs seek would require the State to discriminate against faith-based agencies by excluding religious groups from public programs based on their religious beliefs, prohibited under the Free Exercise and Establishment Clauses of the First Amendment.
4. Relief the Plaintiffs seek would require the State to discriminate against faith-based agencies, which is prohibited by the Equal Protection Clause.
5. Relief the Plaintiffs seek would require the State to unconstitutionally compel faith-based agencies to engage in content-based speech that violates their religious beliefs.
6. Plaintiffs are not third-party beneficiaries of the contracts between DHHS and child-placing agencies.
7. Plaintiffs fail to state claims upon which relief can be granted.
8. The court lacks jurisdiction because the Complaint does not present a case

or controversy that is ripe for adjudication.

9. Plaintiffs lack standing to assert some or all of their claims.
10. Plaintiffs have not exhausted their administrative remedies.
11. Plaintiffs have not challenged state action.
12. Plaintiffs cannot hold the state liable for private conduct, or for mere knowledge of such private conduct.
13. The Court should exercise its discretion to abstain from adjudicating these claims.
14. Intervenor-Defendants reserve the right to supplement, add to or amend these defenses as this case develops and during the course of discovery.

Respectfully submitted,

Mark Rienzi
Counsel for
Defendant-
Intervenors

/s/ Mark L. Rienzi
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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/ Mark L. Rienzi

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