

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; HERMAN
MCCALL, in his official capacity
as the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Attorney
General of Michigan; ALEX
AZAR, in his official capacity as
the Secretary of the United States
Department of Health and
Human Services; UNITED
STATES DEPARTMENT OF
HEALTH AND HUMAN
SERVICES,

Defendants.

Civil No. _____

COMPLAINT

INTRODUCTION

1. St. Vincent Catholic Charities (St. Vincent) is one of the oldest and most effective foster care and adoption agencies in Michigan. St. Vincent exists to serve those in need, and it wants to continue serving foster and adoptive children in Michigan through its public adoption and foster care programs. But despite a clear need for *more* foster and adoptive homes, the State of Michigan has decided to force St. Vincent and numerous other faith-based agencies like it—serving hundreds of children across the State—to choose between following their faith and closing down a vital ministry.

2. St. Vincent provides training, supervision, and on-going support to each foster care and adoptive family with which it partners. For adoptive parents like Chad and Melissa Buck, who have worked with St. Vincent to foster and then adopt five children with challenging medical needs and trauma from past abuse, St. Vincent has been a God-send. To this day, St. Vincent continues to be a crucial source of support for the Bucks. St. Vincent is also the only agency with institutional knowledge of the Buck's family situation, the challenges faced by their special-needs children, and the difficult dynamics with their birth

parents. The Bucks give back to St. Vincent by helping to recruit, serve, and support other foster and adoptive parents. Without St. Vincent, the Bucks are likely to miss out on the opportunity to foster and adopt a sibling of their five adopted children were he or she to enter the State's care.

3. St. Vincent helped Shamber Flore find a home and a loving family after escaping a past filled with trauma and abuse. St. Vincent has continued to help and support Shamber and her adoptive parents, and now Shamber serves St. Vincent and its families by providing mentoring and support for children and families recovering from past trauma.

4. Despite St. Vincent's demonstrated record of excellent service to the community, the Michigan Department of Health and Human Services (MDHHS) and the Michigan Attorney General have threatened to take action against St. Vincent solely because the agency abides by its Catholic beliefs regarding marriage. The State has made clear that it will no longer permit adoption and foster agencies to operate in accord with their religious beliefs (as they have done successfully for decades), and will penalize them if they refuse to provide written evaluations that conflict with their religious beliefs. If the State ends these relationships,

St. Vincent and many other religious child welfare agencies will be unable to continue providing foster care and adoption services in Michigan. This means that adoptive parents will have fewer choices and foster children will face longer waits to find permanent homes.

5. The State's actions violate the First and the Fourteenth Amendments to the United States Constitution. Enforcement of federal regulations supporting the State's actions likewise violates the Constitution and federal law. For this reason, the Court should issue a judgment declaring these actions unlawful and enjoining the State and the federal government from violating Plaintiffs' First and Fourteenth Amendment rights.

IDENTIFICATION OF PARTIES

6. Plaintiff St. Vincent Catholic Charities is a Michigan nonprofit corporation with charitable and religious purposes; St. Vincent is party to foster and adoptive services contracts with MDHHS.

7. St. Vincent was originally incorporated by the Roman Catholic Bishop of Lansing and remains affiliated with the Catholic Diocese of Lansing and subject to the authority of the Bishop of Lansing, who maintains certain reserved powers over St. Vincent. Because of its

affiliation to the Catholic Diocese of Lansing, St. Vincent is listed in the Official Catholic Directory under the Catholic Diocese of Lansing.

8. St. Vincent Catholic Charities' vision is to have "faith in God and love for all," as it "aspire[s] to create a healthier community." St. Vincent is dedicated to serving others in a spirit of humility and shares a genuine concern for the well-being of its neighbors, affirming the God-given dignity and worth of every human person. The mission of St. Vincent Catholic Charities is the work of the Catholic Church, to share the love of Christ by performing the corporal and spiritual works of mercy. In this way, those served by the Church and her members (including her charitable agencies) encounter Christ, and the Church encounters Christ in those served:

Then the King will say to those at his right hand, "Come, O blessed of my Father, inherit the kingdom prepared for you from the foundation of the world; for I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me. . . Truly, I say to you, as you did it to one of the least of these my brethren, you did it to me."

Matthew 25:40. St. Vincent exercises its faith and carries out this religious mission to "the least of these" through its foster care and adoption ministries. Care for needy children and the provision of these

services is an integral, fundamental, and central part of St. Vincent's religious exercise. Providing these services in a manner consistent with Catholic teaching is part of its religious character and affiliation.

9. Many of the children in St. Vincent's care are minority children (African American, Hispanic, or Native American), and St. Vincent excels in providing extra support for families with special needs children.

10. Chad and Melissa Buck are adoptive parents and former foster parents currently living in Holt, Michigan. The Bucks adopted five special-needs children through St. Vincent. The Bucks see foster care and adoption as a religious calling, and as a part of their sincere religious exercise they serve and support other foster and adoptive parents.

11. The Bucks would struggle to provide the extensive care that their children require without the support they receive from St. Vincent. St. Vincent has provided the Bucks with training, resources, support, and professional guidance as to how to best care for their children with special needs. The Bucks have been able to call social workers at any hour and receive an answer from someone they know and trust. These social workers have become like family and have shown great love and care for their children. The Bucks continue to rely on St. Vincent for support,

including through attending St. Vincent's support group and maintaining relationships with the agency workers who know their family and their children. The Bucks also have a religious mission to serve other foster families, and they do so by working with St. Vincent to support foster and adoptive parents, including through a foster parent support group that St. Vincent facilitates, which also enables them to help support and recruit more foster parents. This group is the only foster parent support group offered in the tri-county area and it is open to all foster families, including same-sex couples.

12. Plaintiff Shamber Flore is a former foster child whose family fostered and adopted her through St. Vincent. Ms. Flore exercises her faith by encouraging and mentoring foster children and sharing her own story of overcoming hardship and abuse to find love and joy. She relies upon the relationships and trust she has built with St. Vincent to serve other families working with St. Vincent.

13. Defendant Robert Gordon is the Director of MDHHS, the state agency responsible for foster care and adoption services for children in state custody. MDHHS contracts with private child placing agencies,

including St. Vincent Catholic Charities, to provide public foster care and adoption services. Defendant Gordon is sued in his official capacity only.

14. Defendant Dr. Herman McCall is Executive Director of the Children's Services Agency (CSA), a sub-agency of MDHHS that, in addition to having oversight over the work of all private child placing agencies, is mandated by law to "[r]eview, investigate, evaluate, and assess all programs within [MDHHS] related to services and programs for children," including by advising on policy related to "children's services and programs including, but not limited to, services for foster children, juvenile justice, and homeless youth." Mich. Comp. Laws § 400.227 (2015). Defendant McCall is sued in his official capacity only.

15. Defendant Dana Nessel, the Attorney General of the State of Michigan, is charged with representing state agencies and enforcing state law. Defendant Nessel has been instrumental in framing MDHHS's current policy regarding the enforcement of MDHHS contracts and state law governing religious child welfare providers. Attorney General Nessel is sued in her official capacity only.

16. Defendant Alex M. Azar is the Secretary of the United States Department of Health and Human Services (HHS). In this capacity, he

has responsibility for the operation and management of HHS and is the appointed official responsible for issuing and enforcing the challenged federal regulations. Secretary Azar is sued in his official capacity only.

17. Defendant United States Department of Health and Human Services is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the challenged federal regulations.

JURISDICTION AND VENUE

18. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1361. This action arises under the Constitution and laws of the United States.

19. This Court has personal jurisdiction over Defendants because all Defendants are located, domiciled, or otherwise are present and conducting a continuous and systematic part of their general business within the State.

20. The Court has authority to issue the declaratory and injunctive relief sought under 28 U.S.C. §§ 2201 and 2202.

21. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). All Plaintiffs reside in this district, as do Defendants Gordon, McCall, and Nessel (“State Defendants”). Additionally, a substantial part of the events or omissions giving rise to the claims occurred in this district. Plaintiff St. Vincent Catholic Charities is headquartered and operates in this district, and Plaintiffs Shamber Flore, Chad Buck, and Melissa Buck live in this district and all would be harmed both by the State’s actions and by application of the HHS regulations to its religious ministry. The State Defendants reside in the state capital, also in this District.

FACTUAL ALLEGATIONS

Michigan’s Foster Care System

The State contracts with private child placing agencies

22. Over 12,000 children are currently in Michigan’s foster care system, and the need for new foster parents far outstrips the number of families seeking to care for these children. Indeed, approximately 3,000 Michigan foster children are available for adoption at any given time. Of those children, nearly 300 do not have an identified adoptive family.¹

¹ Michigan Department of Health and Human Services, *Adoption* (2019) https://www.michigan.gov/mdhhs/0,5885,7-339-73971_7116---,00.html

Because there are not enough families, more than 600 of these children “age out” of foster care every year.² They exit the foster system at age 18 without any permanent family, and many lack the resources and skills to successfully transition into adulthood.³ These children are much less likely to graduate high school, let alone college, and far more likely to end up in poverty.⁴ Furthermore, Michigan therefore relies upon state-licensed foster care and adoption agencies (“child placing agencies”) to recruit, train, certify, and supervise foster families that will care for children in the State’s custody.

23. The State therefore has contracts with over 90 different private child placing agencies that operate throughout the State. By contracting with the State, these agencies agree to provide foster and adoptive services to children in need.

² Child Trends, *Transition-Age Youth in Foster Care in Michigan*, https://www.childtrends.org/wp-content/uploads/2017/09/Transition-Age-Youth_Michigan.pdf; Kristi Tanner, *More than 900 Michigan foster care youth age out*, Detroit Free Press (Jan. 31, 2015), <https://www.freep.com/story/opinion/contributors/raw-data/2015/01/31/michigan-foster-care-youth/22621127/>.

³ Children’s Rights, *Aging Out*, <http://www.childrensrights.org/newsroom/fact-sheets/aging-out/>.

⁴ Mark E. Courtney, Amy Dworsky, Adam Brown, Colleen Cary, Kara Love & Vanessa Vorhies, *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 26* (2011); Erick Eckholm, *Offering Help for Former Foster Care Youths*, The New York Times (Jan. 27, 2007) <http://www.nytimes.com/2007/01/27/us/27foster.html>.

24. The State encourages potential foster and adoptive parents to reach out to multiple agencies and to find an agency that will be a good fit for them, telling prospective parents that it is “important that you feel comfortable sharing personal and private information” with the agency you choose.⁵ The State has also created numerous support services by which prospective foster or adoptive parents can meet with experienced “Navigators” who will help guide them through the process of finding an agency that is a good fit.⁶

25. The State benefits from, and permits, private child placing agencies to develop specializations and to focus on serving certain populations—like children with disabilities or children with a specific ethnic background. And agencies will often seek to specifically recruit foster parents that can serve those unique needs.⁷ When a child placing agency is unable to work with a prospective foster or adoptive family, that agency will refer the prospective family to another agency that might

⁵ Ex. A, page 3.

⁶ Michigan Adoption Resource Exchange, *Adoption Navigators*, <https://mare.org/Families/Adoption-Navigators>.

⁷ The Wayne Center, a state contracted child placing agency, advertises that it is specifically seeking “foster parents with previous experience with persons who have a developmental disability and/or expertise in related areas, e.g., medical, educational, social work, psychological, etc.” Wayne Center, *Written Needs Statement*, <http://www.waynecenter.org/services/foster-care>.

better suit their needs. This happens routinely for numerous reasons. For example, agencies can refer applicants elsewhere if a family lives too far away from the agency, making home visits impractical, if the agency has a wait list, if the family has not been satisfied with the agency's services, or if the family is looking for a specific type of child not currently in the agency's care, just to name a few.

26. As Steve Yager, Executive Direct of the Children's Services Agency within MDHHS, previously stated: "[W]e work with agencies based on a contract, not on their belief system, stated or otherwise. We do not compel agencies to accept referrals—never have; rather, we create through contracts a vast array of providers to meet the very diverse needs of the children and families we serve."⁸

27. In Michigan, foster care placements and public adoptions can only be performed by agencies that contract with MDHHS to perform these services. St. Vincent would not be able to provide its foster care or adoption ministry without a license and contract from the State, as the State is the sole source of public foster care and adoption referrals. Without new referrals, St. Vincent would quickly lose the ability to

⁸ Ex. B.

continue providing foster care and adoptive services and would have to shut down both programs.

The Home Studies and Certification Process

28. There is no shortage of opportunities for same-sex couples to foster or adopt in Michigan.

29. DHHS welcomes and encourages same-sex couples to foster and adopt, and no same-sex couple has been prevented from fostering or adopting a child by St. Vincent.

30. If St. Vincent is unable to work with a couple due to its religious beliefs, it provides the couple with a list of other area agencies who do not share St. Vincent's religious beliefs and could assist them in becoming foster or adoptive parents.

31. In fact, through the Michigan Adoption Resource Exchange (M.A.R.E) (the State's central adoption portal), any foster family, including a same-sex or unmarried couple, can be connected to a private child placing agency, become a certified pre-adoptive home, and then adopt a child that is currently placed in a foster home serviced by a different agency, including St. Vincent.

32. In other words, parents interested in adopting a child in St. Vincent's care need not work directly with St. Vincent to adopt that child, but may work with another agency.

33. In this way, LGBTQ individuals have been able to adopt a child in St. Vincent's care.

34. As part of the certification process, a prospective foster or adoptive parent must work with either MDHHS or a private agency to complete a "home study" before they can be approved by the State to adopt or foster a child.

35. As part of the home study, a social worker will visit the applicant's home in person and meet with all of the individuals living in that home.

36. This in-person meeting is a necessary component of the home study because it allows the social worker to assess both the home and the individuals living in it.

37. During this in person meeting, the social worker will ask the applicant very specific, personal, and difficult questions to gauge whether it would be appropriate to place a foster child in need in their home.

38. These questions are necessary to allow the agency to assess whether the applicant's home is appropriate and suitable for the placement of foster or adoptive children.

39. Often, these children have been subject to past abuse or other traumatic events, so careful evaluation of the family's living situation is necessary to avoid unnecessary and potentially harmful conflicts.

40. In addition, MDHHS's foster/adoption home evaluation form specifically requires agencies to assess the "[s]trengths and weaknesses" of the parents and the "[s]trengths of the relationship" between the couple, including "level of satisfaction" and "stability" of the relationship.

41. Regarding home studies for LGBTQ individuals, the Human Rights Campaign (HRC) has recognized that a social worker may ask "all kinds of questions about [the applicant's] childhood and upbringing, including questions about puberty, sex and sexuality."⁹ HRC stated that the "homestudy serves as an evaluation tool that allows you to determine if a prospective resource parent has that capability to provide a child with

⁹ Perry, J.R., *Promising Practices for Serving Transgender & Non-Binary Foster and Adoptive Parents*, Human Rights Campaign Foundation 41-42 (2017), https://assets2.hrc.org/files/assets/resources/HRC_ACAF_Promising_Practices_Serving_Transgender_Non-Binary_Parents.pdf

a safe and nurturing home” and should be based on a “thorough evaluation.”¹⁰ A home study also requires an agency to ask very personal questions regarding an LGBT individual’s past and sensitive questions about their relationships, family, and love life.¹¹ In short, a home study is not a mere box to be checked.

42. Home studies are very invasive, thorough, and in-depth investigations that take into account every aspect of an applicant’s family life and are part of the process by which an agency and the applicant determine if they are the right fit for each other. As Michigan recognizes, it is crucial that applicants “trust [their] instincts” and “[c]hoose an agency [they] are compatible with.”¹²

¹⁰ *Id.* at 44.

¹¹ HRC created a list of sample questions for social workers to ask during an LGBT home study. This sample list includes numerous questions that are deeply personal and even intimate: “In the past, have you ever been “outed” by someone? How did you handle it?”; “What has been the attitude of your extended family to your partner?”; “How have homo/bi/transphobia and/or heterosexism or cissexism affected your life and how have you dealt with this?”; and “Where are you in the process of grieving any feelings of loss you may have around not having biological children?” *Sample LGBTQ Affirming Homestudy Questions & Rationale*, Human Rights Campaign Foundation, https://assets2.hrc.org/files/assets/resources/HRC_ACAF_LGBTQ_Affirming_Homestudy_Questions_And_Rationale.pdf.

¹² *Foster Care Agency Checklist*, Department of Human Services, https://www.michigan.gov/documents/dhs/FosterCareAgencyChecklist_Comm4-12_381389_7.pdf.

43. Only after a home study and assessment by a social worker is complete will the agency refer the application to the State with a recommendation that the State provide final approval and licensing.

44. As part of this licensing recommendation, an agency must prepare a report and licensing recommendation for MDHHS. That report analyzes the relationships in the home and provides a recommendation regarding placing children in that home. That report is—and St. Vincent understands that report to be—a written approval of the relationships in the home and confirmation that the agency has determined the home is suitable for the placement of children.

45. HRC and other LGBTQ-advocacy organizations believe that agencies should not place children with families that would not be affirming of LGBTQ children, including for religious reasons.¹³ HRC

¹³ HRC, *All Children All Families and Non-Affirming Potential Foster Families* (Oct. 3, 2018), <https://register.gotowebinar.com/register/4180979117481006082> (free registration required to view) (describing a foster family’s reaction to a child’s identification as a member of the LGBTQ community as the “all-important discussion” that if not handled correctly can “harm” the child). HRC also describes New York City’s approach as a “best practice.” New York City policies state, “If the parent displays negative attitudes about LGBTQ people, even when deeply rooted in religious beliefs and cultural values, and the alleged abused and/or maltreatment are related to the youth’s perceived or actual sexual orientation, gender identity, or gender expression, the staff must determine whether those attitudes are impacting the youth’s immediate safety as well as whether those attitudes may put the youth at risk for future physical or emotional harm.” New York City Government,

provides a “Seal of Recognition” to agencies that are leaders in serving LGBTQ foster families and children.¹⁴ In Michigan, the following agencies have received the Seal of Recognition: Fostering Futures, Hands Across the Water, and Judson Center - Foster Care & Adoption.

46. Upon information and belief, the State does not take the position that it would be a violation of state law or policy for an agency to refuse to place a child with a religious foster family if the agency determined that the family would not be affirming of LGBTQ children.

47. Upon information and belief, the State does not take the position that it would be a violation of state law or policy for an agency to refuse to recommend for certification a foster family if the agency determined that the family would not be affirming of LGBTQ children.

48. Upon information and belief, the State has never investigated or penalized an agency for refusing to recommend for certification a foster

Respectfully Asking Sexual Orientation and Gender Identity (SOGI) Questions, <https://www1.nyc.gov/assets/acs/pdf/lgbtq/Respectfully Asking SOGI Questions.pdf>; see also Child Welfare League of America & Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care*, 25-26 (2012), http://www.lambdalegal.org/sites/default/files/gdtb_2013_complete.pdf (“If these personal religious beliefs might prevent offering nonjudgmental care to an LGBTQ young person, the practitioner or foster parent should seek outside support and make alternative care arrangements. They must put the needs of young people above their own personal beliefs.”).

¹⁴ *All Children - All Families: Tiers of Recognition*, HRC, <https://www.hrc.org/resources/all-children-all-families-tiers-of-recognition>.

family if the agency determined that the family would not be affirming of LGBTQ children.

49. Upon information and belief, the State has never investigated or penalized the Sault Tribe Binogii Placement Agency, a State-licensed child placing agency, for only placing children with Native American foster or adoptive parents.

50. Upon information and belief, the State has never investigated or penalized the Wayne Center, a State-licensed child placing agency, for seeking only parents with prior experience caring for developmentally disabled children.

51. Upon information and belief, the State has never investigated or penalized Homes for Black Children, a former State-licensed child placing agency, for specializing in providing care for Black children.

Placing a child in a certified foster or adoptive home

52. When a child must be removed from their home and placed in a foster home, DHHS's goal is to place that child in a home within 24 hours. In order to do this, the State will reach out to one or more of the child placing agencies with which it has contracted to see if that agency has a family ready and willing to take in that child. The child placing agency

will then be given one hour by MDHHS to contact one or more families and see if it can find a placement for that child. If the first agency MDHHS contacts cannot find an available family, MDHHS contacts additional agencies. Sometimes, MDHHS will contact multiple agencies at the same time when the situation is urgent.

53. Once a certified family is “matched” with the child in need, MDHHS will transfer that child into the foster family and the private child placing agency with whom that family was certified will oversee the placement, providing ongoing support and training to the foster family.

54. As discussed above, families certified through one foster agencies may still adopt children under the supervision of a different agency through M.A.R.E.

55. Michigan relies upon state and federal funds, including federal Temporary Assistance to Needy Families (TANF) block grants, to administer its foster care and adoption programs. As a condition of receiving these funds, the Department of Health and Human Services is required by 45 CFR § 75.300(a) to “communicate to the non-Federal entity [here, MDHHS] all relevant public policy requirements . . . and incorporate them either directly or by reference in the terms and

conditions of the Federal award.” *Id.* One such public policy requirement imposed by these same regulation is that “no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation.” 45 CFR § 75.300(c). Through contracts with private child placing agencies, Michigan provides foster parents and the agencies that supervise them per diem payments from a combination of federal and state funds. That funding is provided to child placing agencies only after an agency has accepted the referral of a child and is supervising that placement with a certified foster family.

56. Through contracts with private child placing agencies, Michigan also provides specified funding to adoptive parents and the agencies that supervise them from a combination of federal and state funds.

57. Upon information and belief, MDHHS and Attorney General Nessel have interpreted 45 CFR § 75.300(a) to apply to St. Vincent Catholic Charities and operate to require the State to force St. Vincent to

violate its sincere religious beliefs by providing home studies for same-sex relationships.

58. Were St. Vincent to fail to comply with this regulation, MDHHS will cut St. Vincent's funding and refuse to continue contracting with the agency.

State law protects the religious exercise of child placing agencies

59. State law expressly protects the ability of child placing agencies to decline to perform a home study or make a licensing recommendation. *See Mich. Comp. Laws 722.124e(h) (2015)*. This law, passed in 2015, prohibits the State from declining to contract, declining to renew a contract, or taking any other adverse action against a child placing agency based on its decision to refer same-sex or unmarried couples to other agencies for religious reasons. *Id.*

60. When this law was passed, Michigan explained that “[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.” *Mich. Comp. Laws 722.124e(c) (2015)*. Michigan also found that it crucial to “ensur[e] that faith-based child placing agencies can continue to provide adoption and foster care

services” because their work “benefit[s] the children and families who receive publicly funded services.” Mich. Comp. Laws 722.124e(g) (2015). Accordingly, Michigan chose to protect faith-based agencies by permitting them to refer prospective applicants to another agency if serving that applicant would conflict with the agency’s sincerely held religious beliefs. Michigan concluded that this was in the public interest and in the interest of serving the most families and children in need. *Id.*

61. Soon after the law was passed, MDHHS interpreted the statute to mean that it could not penalize or terminate contracts with religious child welfare agencies if those agencies declined to perform home studies for same-sex or unmarried couples.

62. MDHHS determined that the state law might not apply in some cases involving child-specific adoption contracts, but even in those cases, MDHHS granted case-by-case exemptions which permitted child welfare agencies to continue operating according to their religious beliefs.

63. In response to this new law, MDHHS also updated its individual child adoption forms and contracts.

St. Vincent's Adoption and Foster Care Program

64. St. Vincent shares Michigan's goal of working to fill the shortage of safe foster homes for these vulnerable kids. St. Vincent is able to recruit prospective families who would not otherwise feel able to foster or adopt children based on its religious character and mission.

65. St. Vincent provides public foster care and adoption services. It performs home studies and makes licensing recommendations to the state, oversees foster and adoptive placements, and also provides ongoing training and support for the foster or adoptive family and works with case workers to coordinate services to the foster family, birth family and child in order to achieve a positive outcome.

66. St. Vincent serves and places children regardless of their race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, source of income, familial status, genetic information, or sexual violence victim status.

67. St. Vincent shares the religious beliefs and teachings of the Catholic Church regarding same-sex marriage. But St. Vincent would never stop a family who wants to foster or adopt from having the opportunity to complete the application and home study process. If

St. Vincent were ever unable to perform in-depth home assessments and make reports and written certifications to the State for any reason, including based on St. Vincent's own religious beliefs, then it would refer the applicants to another agency that could better serve their needs.

68. According to M.A.R.E., there are 16 other agencies that also serve Ingham County, which is where St. Vincent is located.¹⁵

69. For over 50 years, St. Vincent has provided foster care and adoption services in Michigan pursuant to regularly renewed contracts. In reliance upon these contracts, St. Vincent currently employs 18 staff members who work exclusively on these contracts, has budgeted and raised funds designed to supplement state funding on that contract, and has taken other concrete steps in expectation that it will continue to receive referrals and be able to perform its duties under these contracts.

70. St. Vincent provides training, supervision, and on-going support to each foster care and adoptive family with which it partners. For adoptive parents like Chad and Melissa Buck, who have worked with St. Vincent to foster and then adopt five children with challenging

¹⁵ Michigan Adoption Resource Exchange, Agency Map, <https://mare.org/Agency-Map> (under "Filter by County" select "Ingham" for map and list of all 17 agencies).

medical needs and trauma from past abuse, St. Vincent has been a God-send. To this day, St. Vincent continues to be a crucial source of support for the Bucks, and they in turn provide support and assistance to other families fostering and adopting through St. Vincent. For the Bucks, serving as adoptive parents and serving other adoptive parents is a religious calling. St. Vincent facilitates ongoing services to families that have adopted, like a monthly support group—the only such group open to any foster or adoptive parents in the region.

71. St. Vincent helped Shamber Flore to find a home and a loving family after past filled with trauma and abuse. St. Vincent has continued to help and support Shamber and her adoptive parents, and now Shamber serves St. Vincent and its families by providing mentoring and support for children and families recovering from past trauma.

72. In the foster care context, the home study assessment process allows St. Vincent to prepare families to accept a child into their home; only after a child is placed in the certified family's home do St. Vincent and the family begin to receive funding from the State.

73. In some exceptional cases, the State might use a different payment structure pursuant to a separate, child-specific contract to

directly pay for home study services for foster children being placed with relatives. St. Vincent has never been a party to such a contract for the provision of home study services for an LGBTQ couple.

74. Unless the State specifically contracts for a home study assessment in this exceptional circumstance, home studies are not paid for with state funds under St. Vincent's ordinary foster care or adoption contracts with the State.

75. Outside of this exceptional circumstance for placement with relatives, foster care and adoption home studies are not specifically listed as a "service" under St. Vincent's contracts with the State.

76. Outside of this exceptional circumstance, St. Vincent pays for home studies, assessments, and its general recruitment with private funds in a cost center that is kept separate from the funding provided by the State for other child welfare activities.

77. St. Vincent offers a significant subsidy to Michigan by recruiting new foster parents using its own private funds and supplementing State funds with private donations and volunteer hours to cover costs that state funding cannot.

78. For example, last fiscal year both St. Vincent's foster program and adoption programs operated at a significant loss based on the state funding alone, and these programs would not have been able to operate without St. Vincent's private subsidies.

79. Michigan has been aware of St. Vincent's religious beliefs for years.

MDHHS Targets St. Vincent

The ACLU's Lawsuit

80. On September 20, 2017, the ACLU filed a lawsuit against MDHHS on behalf of two LGBT couples. The lawsuit alleged that these couples had approached Bethany Christian Services and St. Vincent Catholic Charities seeking to adopt a child, but were referred to another agency based on their sexual orientation. The ACLU claimed that the state's decision to continue contracting with these private agencies violated the Establishment and Equal Protection Clauses. Complaint at ¶¶ 75-81, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Sept. 20, 2017), ECF No. 1.

81. Plaintiffs St. Vincent Catholic Charities, Melissa Buck, Chad Buck, and Shamber Flore moved to intervene in the lawsuit filed by the ACLU, arguing that the State's decision to contract with St. Vincent and

other faith-based agencies did not violate the Constitution and was protected under state and federal law. Motion to Intervene at 19-21, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Dec. 18, 2017), ECF No. 18.

82. On October 1, 2017, and in light of the ACLU's lawsuit filed against the State of Michigan, Stacie Bladen, the Deputy Director of the Children's Services Agency within MDHHS, submitted three official "contract compliance complaints" with MDHHS licensing staff against St. Vincent Catholic Charities, Bethany of East Lansing, and Bethany of Madison Heights for allegedly referring a same-sex couple to another child placing agency.¹⁶ Ms. Bladen claimed that the actions of these agencies violated their contracts by referring same-sex couples to other adoption agencies based on their sincerely held religious beliefs.

83. Soon after Ms. Bladen lodged her complaint, MDHHS opened investigations into all three of these agencies solely because they exercised their rights under state law and the First Amendment.¹⁷

84. These investigations were inconsistent with MDHHS's prior statements and policies regarding compliance with state law.

¹⁶ Ex. C.

¹⁷ State Defendant's Response to Intervenor Defendant's Amended First Set of Interrogatories at 6-7, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Dec. 28, 2018), Ex. D.

85. As Stacie Bladen, speaking on behalf of MDHHS, stated earlier on September 23, 2016, “[i]f the child placing agency declines to accept a referral, whether for foster care case management or adoption services, based on sincerely held religious beliefs, the Department cannot take ‘adverse action’ (as defined in the act) against the agency.”¹⁸

86. Bladen’s earlier position was also consistent with MDHHS guidance outlined in a policy document regarding “foster and adoptive parent recruitment, licensing, and retention.”¹⁹

87. In this document, the agency made clear that faith-based agencies could continue contracting with the State and making referrals in accord with their religious beliefs: “[b]efore accepting a referral, the child-placing agency has the sole discretion to decide whether to engage in activities and perform services related to *that* referral.”²⁰

88. The document further notes that “[i]f MDHHS makes a referral to a child-placing agency for foster care case management or adoption services *pursuant to a contract*, the child-placing agency must accept or decline the referral.”²¹

¹⁸ Ex. E.

¹⁹ Ex. F.

²⁰ *Id.* at 8 (emphasis added).

²¹ *Id.* at 9 (emphasis added).

89. Then, after months of discovery—and just days before depositions were set to begin—the State of Michigan and the ACLU announced on January 23, 2019 that they had entered into settlement talks, giving intervening defendants one hour’s notice to determine whether they would agree to or oppose a stay and refusing to share any details of the settlement discussions. On March 22, 2019, the State and the ACLU then announced that they had entered into a settlement and agreed to the dismissal of the ACLU’s claims.

90. The intervenors did not join that settlement. The settlement was not shown to them prior to filing. In its motion to dismiss the case, the ACLU and State Defendants jointly moved for a stipulated dismissal of the case, noting that “Intervenor Defendants, who have asserted no claims and against whom no claims have been asserted, are not party to the Settlement Agreement.” Stipulation of Voluntary Dismissal with Prejudice at 3–4, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF No. 82. The District Court granted the motion to dismiss the case, but declining to address or incorporate the terms of the settlement in its order.

91. In a statement accompanying the settlement, Defendant Nessel announced that after reviewing the ACLU's claims, she "determined that MDHHS may be subject to liability on Plaintiffs' claims," and thus directed MDHHS to change its internal policy regarding permitting private child placing agencies to refer couples to other agencies.²² Nessel claimed that this new policy was actually "consistent with the law and existing agency contracts," and would now be enforced against agencies like St. Vincent.

92. In prior public statements, Defendant Nessel has explained to the press that she believes "there's 'no viable defense' to the 2015 law," and that the law's "only purpose is discriminatory animus."²³

93. Defendant Nessel had previously made similar disparaging statements regarding those who share St. Vincent's religious beliefs, and had publicly stated that she would not enforce the state law protecting religious child welfare agencies.

²² State Settles Same-Sex Adoption Case, Department of Attorney General, <https://www.michigan.gov/ag/0,4534,7-359-82927-492743--,00.html>; Summary of Settlement, https://www.michigan.gov/documents/ag/03.22.19_FINAL_Dumont_settlement_summary_650097_7.pdf.

²³ Ed White, *Dem AG candidate: Adoption law discriminates against gays*, Associated Press News (Sept. 27, 2018) <https://apnews.com/a1fc021e8e2e4b3b829586ba56ads9c07>.

94. In justifying this decision, Nessel relied on both State policies and federal regulations which she interpreted to require the State to deny agencies like St. Vincent religious exemptions from allegedly applicable anti-discrimination laws.

95. As Nessel explained, Michigan receives “a significant portion” of its funding under Title IV-E of the Social Security Act, a child welfare grant program administered through the HHS.

96. In fact, MDHHS alone receives over 3.8 billion dollars annually from the federal government through Title IV-E, TANF, and other similar programs.²⁴

97. According to Nessel, “[a]s a condition of receiving these federal funds, the United States Department of Health and Human Services requires that states’ Title IV-E-funded programs prohibit discrimination on the basis of sexual orientation or gender identity.”

98. The State is also bound by other federal regulations, which require it to respect the religious character of social service providers who receive federal funds. *See, e.g.*, 45 C.F.R. § 87.3(a) (“Neither the HHS

²⁴ Budget Briefing: HHS Human Services, House Fiscal Agency, https://www.house.mi.gov/hfa/PDF/Briefings/HHS_HS_BudgetBriefing_fy18-19.pdf (last visited Apr. 15, 2019).

awarding agency, nor any State or local government and other pass-through entity receiving funds under any HHS awarding agency program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation.”).

99. Nessel therefore directed MDHHS to, “[i]n compliance with this federal requirement,” prevent faith-based agencies from, among other things:

- a. “[R]eferring to another contracted agency an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the agency for contracted services,” and
- b. “[R]efusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services.”²⁵

100. Per the Attorney General's statement and the terms of the settlement, any private agency which refuses to comply with these requirements “within a reasonable time after notification by the

²⁵ Summary of Settlement, https://www.michigan.gov/documents/ag/03.22.19_FINAL_Dumont_settlement_summary_650097_7.pdf (last visited Apr. 15, 2019).

Department of a Contract Violation” will have its contracts “terminate[d].”²⁶

101. MDHHS also stated it will “initiate an investigation when made of aware of an alleged Contract Violation,” and will terminate the agency’s contracts if it “fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan.”²⁷

102. The State has already begun taking steps to enforce this policy, including requiring that child welfare agencies complete training on this new policy.

103. Upon information and belief, the State has also communicated to state employees that they must desist a prior practice of sending referrals of same-sex couples to other agencies instead of agencies like St. Vincent.

104. St. Vincent continues to provide services to foster and adoptive families under its state contracts.

²⁶ Settlement Agreement, *Dumont et al. v. Gordon et al.*, USDC EDMI Case No. 2:17-cv-13080-PDB-EAS, https://www.michigan.gov/documents/ag/Settlement_Agreement_with_Sig_Pages_-_FINAL_650100_7.pdf.

²⁷ *Id.*

105. St. Vincent's adoption contract is up for renewal in October 2019, and St. Vincent reasonably fears that the State will refuse to renew the contract on the basis of St. Vincent's religious beliefs and practices. Based upon the newly announced policy that would prohibit St. Vincent from providing adoption services consistent with its religious beliefs, St. Vincent believes that adverse action from the State Defendants is certainly impending.

Referrals to accommodate sincere religious beliefs denied

106. Michigan has also treated St. Vincent's request for referrals based on its sincere religious beliefs differently from referrals for other reason. The State has admitted that "child placing agencies may refer a prospective foster or adoptive family to another child placing agency" under certain circumstances, but they have decided to deny St. Vincent the ability to make referrals for religious reasons.

107. The State has admitted that child placing agencies in Michigan are allowed to refer families to other agencies for geographic reasons, if they have a long wait list, or if they are unable to accommodate the families' preferences.²⁸ State law also permits, and indeed requires,

²⁸ Ex. G, page 7.

agencies to decline to work with parents for various reasons, including Native American ancestry.

108. And agencies can still seek to specifically recruit foster parents that can serve specific needs of children, including children with disabilities or mental health issues.²⁹

109. Under the State's new policy, however, the *only* justification for a referral that is now impermissible is a religious objection to same-sex marriage.

110. On information and belief, MDHHS also treated St. Vincent differently from other religious foster care agencies in 2017 and 2018.

111. Following two prior incidents in which a private child placing agency had to transfer a case for religious reasons, MDHHS told another faith-based foster care agency that child placing agencies are permitted to decline to accept a referral for foster care case management or adoption services based on sincerely held religious beliefs, and that MDHHS cannot take adverse action against the agency based on this decision.

²⁹ The Wayne Center, a state contracted child placing agency, advertises that it is specifically seeking "foster parents with previous experience with persons who have a developmental disability and/or expertise in related areas, e.g., medical, educational, social work, psychological, etc." Wayne Center, Written Needs Statement, <http://www.waynecenter.org/services/foster-care> (last visited Apr. 15, 2019).

112. On information and belief, MDHHS has taken positions contrary to its current position that once an agency accepts a child for case from MDHHS it is no longer protected by state law. This is inconsistent with prior interpretations by the State in which it explained that the law permitted faith-based child placing agencies to accept or decline a DHHS referral at any time based on their sincerely held religious beliefs.

113. MDHHS has changed its position on this issue solely to target agencies like St. Vincent Catholic Charities for their religious beliefs that do not allow them to endorse same-sex relationships.

Michigan's Unlawful Actions Harm St. Vincent and the Children of Michigan

114. Michigan's unlawful actions harm St. Vincent and the children and families it serves. If St. Vincent is unable to receive referrals from or contract with the State, it will be forced to close its foster care and adoption programs, ending a decades-old religious ministry and reducing the number of agencies available to serve families and children in need.

115. Across Michigan, the State's actions affect untold thousands of families and children in need, and would force numerous agencies—

and all of the Catholic Charities agencies across the State—to close their foster and adoption programs. This would impact hundreds of children statewide, as these agencies are some of the most successful in the State at finding loving homes for children in need.

116. If the State refuses to work with St. Vincent, then the families currently licensed by St. Vincent would face the difficult choice of either trying to find a new agency that will work with and endorse them as foster parents—and having to start back at square one with a new agency that doesn't know anything about the specific needs of their families or the kids they are serving—or choosing to stop providing foster care services. Upon information and belief, many of St. Vincent's licensed foster parents would stop providing foster care if forced into that choice.

117. If the State refuses to work with St. Vincent, then the families currently in the home study process, or awaiting adoption placements, would be forced to either begin the process anew with a different agency or go through the process of transferring their licenses to a new agency, losing the relationships they have built in the process. This change would lead to delays in the adoption process for both the parents and for

children might be matched with them and are currently awaiting loving homes.

118. If the State refuses to work with St. Vincent, the Bucks will lose the relationships and support they have depended upon to serve their children and their ongoing needs. The Bucks would also be restricted and burdened in their religious exercise of providing support to other foster and adoptive parents. Should another biological sibling of their adopted children enter the child welfare system, the Bucks would likely miss the opportunity to foster and adopt that child and keep the siblings together.

119. If the State refuses to work with St. Vincent, Ms. Flore would be unable to volunteer at the agency to support and mentor foster and adoptive children, and would be restricted and burdened in her religious exercise of serving children who share the same struggles she experienced.

120. The State's actions substantially burden, denigrate, and discriminate against St. Vincent, the Bucks, Shamber Flore, and others who share their religious beliefs.

121. St. Vincent remains willing and able to continue its ministry serving children in Michigan. It wants to help alleviate the foster care crisis in Michigan, and it has not and will not prevent any qualified family from becoming a foster parent, be it through St. Vincent or a referral to another agency. But because of Michigan's actions, St. Vincent's over 70-year-old ministry to at-risk children is in jeopardy.

CLAIMS

Count I

42 U.S.C. § 1983

Violation of the First Amendment to the U.S. Constitution

Free Exercise Clause

Not Neutral

122. Plaintiffs incorporate by reference all preceding paragraphs.

123. “[A] law targeting religious beliefs as such is never permissible.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 n.4 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993)).

124. By adopting a policy requiring the State to discriminate against child placing agencies with religious objections to same-sex marriage, Defendants have targeted St. Vincent's religious beliefs and practices.

125. The statements of Defendants and their officials demonstrate that hostility toward Plaintiffs and their religious beliefs was a motivation for Defendants' actions.

126. Defendants' laws and policies have not been evenly enforced, demonstrating that the current attempt at enforcement is designed to target particular religious beliefs and practices.

127. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

128. Absent injunctive and declaratory relief against Defendants, Plaintiffs will suffer imminent and irreparable harm.

Count II
42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise Clause
Not Generally Applicable

129. Plaintiffs incorporate by reference all preceding paragraphs.

130. “[L]aws burdening religious practice must be of general applicability.” *Lukumi*, 508 U.S. at 542.

131. Defendants' laws and policies have not been evenly enforced, demonstrating that the current attempt at enforcement is designed to target particular religious beliefs and practices.

132. Defendants have never enforced their laws, policies, and contract provisions in the manner they are currently being enforced against Plaintiffs.

133. The public statements of Defendants and their officials demonstrate that hostility toward Plaintiffs and their religious beliefs was a motivation for Defendants' actions.

134. Defendants have made exceptions to their policies in some instances.

135. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

136. Absent injunctive and declaratory relief against Defendants, Plaintiffs will be irreparably harmed.

Count III
42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise Clause
System of Individualized Exemptions

137. Plaintiffs incorporate by reference all preceding paragraphs.

138. An “exception-ridden policy,” or one that permits discretionary “individualized exemptions” is “the antithesis of a neutral and generally applicable policy” and therefore “must run the gauntlet of strict scrutiny.” *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012).

139. Michigan engages in the individualized assessment of alleged contract violations by agencies and exercised a great deal of discretion in creating corrective action plans and permitting exceptions. Defendants are therefore engaging in individualized, discretionary assessments of St. Vincent’s conduct.

140. State law and MDHHS contracts permits individualized exemptions from child placing agency requirements.

141. Pursuant to the referral provisions of the foster care and adoption contracts entered into between St. Vincent Catholic Charities and MDHHS, MDHHS is permitted to grant individualized exemptions

from its policy of prohibiting contractors from transferring cases back to MDHHS.

142. The Defendants' actions against Plaintiffs are the product of a system of individualized exemptions and burden Plaintiffs' religious exercise.

143. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

144. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

Count IV
42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Speech Clause
Compelled Speech

145. Plaintiffs incorporate by reference all preceding paragraphs.

146. Defendants are seeking to compel St. Vincent to make affirmative statements that contradict St. Vincent's religious beliefs.

147. Michigan is conditioning St. Vincent's license, its contracts with MDHHS, and the ongoing ability to engage in the religious exercise

of helping children in need, on Plaintiffs' willingness to make such statements.

148. Such compulsion amounts to compelled speech in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

149. Absent injunctive and declaratory relief against Defendants, St. Vincent is and will continue to be irreparably harmed.

Count V
42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise and Free Speech Clauses
Retaliation for Protected Speech and Religious Exercise

150. Plaintiffs incorporate by reference all preceding paragraphs.

151. Statements made by and on behalf of Plaintiffs about their religious beliefs and practices are both religious exercise and protected speech.

152. Defendants' contract investigation and impending termination, and their threats of additional adverse action, would be sufficient to deter a person of ordinary firmness from exercising his or her constitutional rights.

153. A causal link exists between Plaintiffs' religious exercise and protected speech and Defendants' adverse actions against Plaintiffs.

154. Such actions are retaliation for religious exercise and protected speech in violation of the First Amendment to the United States Constitution.

155. Absent injunctive and declaratory relief against defendants, Plaintiffs are and will continue to be irreparably harmed.

Count VI
42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise and Establishment Clauses
Denominational Preference and Discrimination

156. Plaintiffs incorporate by reference all preceding paragraphs.

157. The Free Exercise and Establishment Clauses prohibit government from officially preferring one denomination over another or discriminating against a religious group for its religious beliefs and practices. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”).

158. Defendants are applying their laws in a manner which penalizes St. Vincent for its religious beliefs. Defendants' actions also

alienate, communicate disapproval to, and impose concrete harms on foster families such as the Bucks and volunteers such as Ms. Flore, who share St. Vincent's Christian religious beliefs.

159. Defendants have not penalized other religious groups for their religious beliefs.

160. Defendants' preference for some religious beliefs and practices and discrimination against Plaintiffs' beliefs and practices violates the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution.

161. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

162. Absent injunctive and declaratory relief against Defendants, Plaintiffs have been and will continue to be irreparably harmed.

Count VII
42 U.S.C. § 1983
Violation of the Fourteenth Amendment to the U.S. Constitution
Equal Protection

163. Plaintiffs incorporate by reference all preceding paragraphs.

164. The Equal Protection Clause prohibits discrimination on the basis of religion.

165. Defendants' likely impending contract termination and other adverse actions penalizes Plaintiffs because of their religious beliefs.

166. Contractors that espouse religious beliefs contrary to those espoused by Plaintiffs are allowed to maintain their contractual relationships with the State.

167. Defendants' preference for one set of religious beliefs and against Plaintiffs' religious beliefs violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

168. Absent injunctive and declaratory relief, Plaintiffs have been and will continue to be irreparably harmed.

Count VII
42 U.S.C. § 2000bb
Religious Freedom Restoration Act (RFRA)

169. Plaintiffs incorporate by reference all preceding paragraphs.

170. RFRA prohibits the enforcement of federal law when such enforcement substantially burdens religious exercise.

171. The State Defendants have claimed that enforcement of federal law will require them to take adverse action against St. Vincent.

172. Terminating the States' contracts with St. Vincent or taking other adverse action against St. Vincent would impose a substantial burden on Plaintiffs' sincere religious exercise.

173. That burden would not be justified by any compelling government interest, and contract termination or adverse action against St. Vincent would not be the least restrictive means of furthering such interests.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

a. Declare that the First and Fourteenth Amendments to the United States Constitution require Defendants to cease discriminating against Plaintiffs and to cease their ongoing investigation and impending adverse actions on the basis of Plaintiffs' religious beliefs, speech, and practices;

b. Declare that the Religious Freedom Restoration Act prohibits Defendants from using federal regulations or the enforcement of federal law to substantially burden Plaintiffs' religious exercise;

c. Order Defendants to continue performance of the Contract;

d. Issue preliminary and permanent injunctions prohibiting Defendants from taking retaliatory action against Plaintiffs, including

cancellation or non-renewal of the foster care and/or adoption contracts, or from otherwise penalizing Plaintiffs for their religious belief, speech, and practices regarding marriage;

e. Award Plaintiffs nominal damages for the loss of their rights as protected by law;

g. Award Plaintiffs the costs of this action and reasonable attorney's fees; and

h. Award such other and further relief as the Court deems equitable and just.

Dated: April 15, 2019

Respectfully submitted,

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Counsel for Plaintiff
**Admission pending*

Exhibit A

HOMES

FOR CHILDREN IN FOSTER CARE

How Do I Get Started?

The Michigan Adoption Resource Exchange strives to be as resourceful as possible for families in all stages of their adoption journey. Adoption Navigators and our social work staff are here to answer any questions you may have during the process. Our services are free and voluntary for any family hoping to adopt through foster care.

Contact MARE at: 800.589.6273 to be connected to an Adoption Navigator and learn more about foster care adoption. You can visit our website at www.mare.org for online resources and links to other websites and agencies.



The Michigan Adoption Resource Exchange is an information and referral service for prospective adoption parents interested in adopting children with special needs and for adoption workers looking for homes for these children.

For more information please contact the Michigan Adoption Resource Exchange at:

800.589.6273
3840 Packard Rd.,
Suite 170
Ann Arbor, MI 48108
www.mare.org



The Michigan Adoption Resource Exchange is a program of Judson Center and is funded by the Michigan Department of Human Services.

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The DeLisle Family

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Children Who Are Waiting



Adoption Navigators



FAMILY REGISTRY

Children in foster care have been separated from their family of origin for a variety of reasons. When they are unable to return home, they need nurturing and support that an adoptive family can provide. These children deserve an opportunity to grow up feeling secure and loved. Adopting a child from foster care is about finding families for children.

We encourage families who are interested in foster care adoption to be willing to consider at least two of the following characteristics:

- Children over the age of five; Caucasian children over the age of nine.
- Children who are part of a sibling group and must be placed in the same home.
- Children of a minority background.
- Children who have physical, emotional, developmental and/or learning needs.

Adoption Navigators offer guidance and personal knowledge to potential adoptive families. They have many years of parenting experience, have adopted children themselves and have knowledge of foster care, infant & older, and domestic & international adoption procedures.

Families who contact MARE for initial adoption information will be given the option to work with a Navigator to help guide them through the entire adoption process. Having an Adoption Navigator is a free service and families are not required to have a Navigator to contact MARE for any questions they have throughout the process.

If you would like to have a MARE Adoption Navigator help you along your adoption journey, please contact the Michigan Adoption Resource Exchange at 1.800.589.6273

What families are saying about MARE's Adoption Navigators:

"Thanks for all the awesome info you have shared today! You're doing a great job of not only helping us parents match with our future children, but also prepare for them. Thank you so much!"

"Thank you again for sharing encouragement and a wealth of experience."

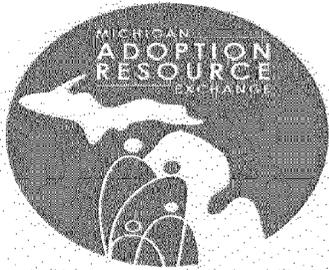
If you have a complete and approved adoption homestudy, consider becoming a part of the MARE Family Registry, a secure, password protected family based photolisting section of the MARE website. This website contains no identifying information about your family. You provide a story describing your family, community, interests & hobbies and an optional family photo.

The Family Registry can only be accessed by Michigan adoption workers. If a worker would like more information about your family, they will be directed to contact your adoption worker directly.

Benefits for Registered Families:

- E-mail notification of photolisted children who match your family's approval criteria.
- Suggested Monthly Match e-mail sent to you, your worker and the child's worker indicating potential matches of children your family has yet to inquire about.
- Online profile, including family narrative, photos (optional) and characteristics of children your family would like to adopt, spotlighting your family to workers across the state.

Registration is easy and can be completed online, by you or your adoption worker, once the adoption homestudy is complete.



A QUICK START GUIDE TO ADOPTION OF MICHIGAN'S WAITING CHILDREN



Thank you for contacting the Michigan Adoption Resource Exchange (MARE). Adoptions have increased 15% since 1990. Each year, more and more families are opening up their hearts and homes to embrace the addition of a waiting child, or children. MARE is here to help you achieve your family's adoption goals.

The Adoption Navigators are adoptive parents who can share their personal experiences, provide you with resources and help advocate for your family's adoption goals. To talk with an Adoption Navigator or to have one assigned to your family, please call 800-859-MARE.

Sincerely,

Kim Wolowski, Adoption Navigator Supervisor
Michigan Adoption Resource Exchange (MARE)

START YOUR JOURNEY HERE

Every adoption is unique, but all adoptions share a common process. The following, is our 7 Step Quick Start Guide.

Step One: Determine Your Family's Adoption Goals

An adoption is a process that permanently moves a child from one family to another. The adoptive parents assume all parental rights and responsibilities, the same as parents whose children were born to them. Similarly, children who have been adopted have all of the emotional, social, legal and familial benefits of biological children.

There are 4 different types of adoption

- Public adoption of children in the foster care system
- Private infant adoptions when birth parents volunteer to make an adoption plan for their child
- International adoptions
- Step Parent adoption

This guide is written for families who are pursuing a public adoption of a child in the foster care system. Most children waiting in foster care are over the age of 8; however, children in foster care vary in age, from infants to young adults. These children may, or may not, be part of a sibling group, have medical or emotional conditions or display behaviors that require specific parenting training or experience. Regardless, each of them deserves to be fully integrated into a family that can provide them with nurturing and guidance to reach their fullest potential.

Step Two: Identify An Agency To Work With

The State of Michigan Department of Health and Human Services (MDHHS) works with private agencies to place children from foster care into adoptive homes and to approve families for adoption. The next several pages list these agencies, by county. Try to choose an agency within a 50 - 60 minute drive of your home (It is not necessary to work with an agency located in the same county as your home). If you have trouble identifying an agency to work with, please call the Adoption Navigators (800-859-MARE) for assistance.

We recommend that you call at least 2 agencies before deciding which agency to work with. You will be working closely with them during the approval process. It is important that you feel comfortable sharing personal and private information. Additionally, after all the paperwork is completed and you are approved, they will be charged with identifying your future son(s) and/or daughter(s).

WWW.MARE.ORG

800-859-MARE

Alpena County

Child and Family Services of Northeast Michigan, Inc.

Alpena

(989)356-4567

Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care

www.cfsnemi.org

Bay County

Catholic Family Services of the Diocese of Saginaw

Bay City

(989)892-2504

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Post Adoption Services

www.cfssite.org

Lutheran Adoption Service

Bay City

(989)686-3170

Special Needs Adoption, Relative Adoption, Interstate Adoption

www.lasadoption.org

Calhoun County

Family & Children Services - Battle Creek

Battle Creek

(269)965-3247

Special Needs Adoption, Foster Care

www.fcsource.org

Youth Guidance Foster Care and Adoption Center

Battle Creek

(269)969-9438

Foster Care, Post Adoption Services

www.citylinec.org

Charlevoix County

Heaven Sent Adoption Services, Inc.

Charlevoix

(231)237-9880

Special Needs Adoption, Adoption Training

www.HeavenSentAdopt.com

Up-front fee of \$0-\$2,000.

Chippewa County

Sault Tribe Binogii Placement Agency

Sault Ste. Marie

(906)632-5250

Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care, Post Adoption Services

www.saulttribe.com/membership-services/acfs

WWW.MARE.ORG

800-859-MARE

Clare County

Lutheran Adoption Services

Clare

(989)386-2101

Special Needs Adoption, Relative Adoption, Post Adoption Services

www.lasadoption.org

Delta County

Catholic Social Services of the UP

Escanaba

(906)786-7212

Special Needs Adoption, Foster Care

www.cssup.org

Dickinson County

Catholic Social Services of the UP

Iron Mountain

(906)774-3323

Special Needs Adoption, Foster Care

www.cssup.org

Emmet County

Child & Family Services of Northwest Michigan

Harbor Springs

(231)347-4463

Special Needs Adoption, Relative Adoption, Adoption Training, Foster Care

www.cfsnwmi.org

Genesee County

Alternatives for Children & Families, Inc.

Burton

(810)250-3800

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post Adoption Services

www.acfinc.org

Catholic Charities Shiawassee & Genesee Counties

Flint

(810)232-3418

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group, Post Adoption Services

www.catholiccharitiesSG.org

Ennis Center for Children, Inc.

Flint

(810)233-4031

Special Needs Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

www.enniscenter.org

WWW.MARE.ORG

800-859-MARE

Future Families

Flint

(810)294-0116

Special Needs Adoption, Relative Adoption

www.futurefam.org

Lutheran Adoption Service

Flint

(810)234-9324

Relative Adoption, Interstate Adoption, Post Adoption Services

www.lasadoption.org

Wolverine Human Services

Flint

(810)234-0489

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.wolverinehs.org

Language accommodations: Spanish

Grand Traverse County

Bethany Christian Services - Traverse City

Traverse City

(231)995-0870

Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care, Post Adoption Services

www.bethany.org

Child and Family Services of Northwest Michigan

Traverse City

(231)946-8975

Special Needs Adoption, Relative Adoption, Adoption Training, Foster Care,

www.cfsawmi.org

Houghton County

U.P. Kids

Houghton

(906)487-9832

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.upkids.com

Ingham County

Bethany Christian Services - E Lansing

East Lansing

(517)336-0191

Special Needs Adoption, Interstate Adoption, Foster Care, Pregnancy Counseling, Post Adoption Services

www.bethany.org/eastlansing

WWW.MARE.ORG

800-859-MARE

Child & Family Charities

Lansing

(517)882-4000

Special Needs Adoption, Foster Care

www.childandfamily.org

Lutheran Adoption Service

Lansing

(517)827-5184

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group, Post Adoption Services

www.lasadoption.org

Up-front fee of \$150-\$300. Provides home studies to families interested in foster care adoption.

St. Vincent Catholic Charities

Lansing

(517)323-4734

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.stvcc.org

Jackson County

Catholic Social Services of Washtenaw County

Jackson

(517)782-2754

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Post Adoption Services

www.csswashtenaw.org

Family Service & Children's Aid

Jackson

(517)787-7920

Relative Adoption, Interstate Adoption, Foster Care,

www.strong-families.org

Lutheran Adoption Service

Jackson

(517)789-6444

Special Needs Adoption, Relative Adoption, Interstate Adoption, Post Adoption Services

www.lasadoption.org

Kalamazoo County

Bethany Christian Services-Southwest Michigan

Kalamazoo

(269)372-8800

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.bethany.org/kalamazoo

Language accommodation: Spanish.

WWW.MARE.ORG

800-859-MARE

Family & Children Services

Kalamazoo
(269)344-0202

Special Needs Adoption, Foster Care
www.fcsource.org

Lutheran Adoption Services

Kalamazoo
(269)345-5776

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group, Post Adoption Services
www.lasadoption.org

Kent County

Bethany Christian Services

Grand Rapids
(616)224-7550

Special Needs Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services
www.Bethany.org

Catholic Charities West Michigan

Grand Rapids
(616)456-1443

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care
www.ccwestmi.org

D.A. Blodgett - St. John's

Grand Rapids
(616)451-2021

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services
www.dabsj.org

Language Accommodations: Spanish, Arabic

Greater Hopes Family Services

Grand Rapids
(616)451-0245

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services
www.greaterhopes.org

Lutheran Adoption Service

Grand Rapids
(616)356-1934

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post Adoption Services
www.lasadoption.org/adoption

WWW.MARE.ORG

800-859-MARE

**Lapeer County
Adoption and Foster Care Specialists, Inc.**

Lapeer
(810)660-7590

Special Needs Adoption, Relative Adoption, Adoption Training, Foster Care, Parent Support Group
www.adoption-specialists.org

**Lenawee County
Catholic Charities of Jackson, Lenawee and Hillsdale Counties**

Adrian
(517)263-2191

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post
Adoption Services
www.CatholicCharitiesJLHC.org

Fostering Solutions

Adrian
(517)263-0020

Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care
www.fosteringolutions.org

**Livingston County
Family Adoption Consultants**

Howell
(586)726-2988

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post
Adoption
www.facadopt.org

Livingston County Catholic Charities

Howell
(517)545-5944

Special Needs Adoption, Foster Care
www.livginstoncatholiccharities.org

**Macomb County
Family Adoption Consultants**

Sterling Heights
(586)726-2988

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post
Adoption Services
www.facadopt.org

Wolverine Human Services

Warren
(586)751-2819

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care
www.wolverinehs.org

Language accommodations: Spanish

WWW.MARE.ORG

800-859-MARE

**Marquette County
Catholic Social Services of the UP**

Marquette
(906)228-8630
Special Needs Adoption, Foster Care
www.cssup.org

Child & Family Services of the U.P. Inc.

Marquette
(906)228-4050
Special Needs Adoption, Relative Adoption, Foster Care
www.cfsup.org

Lutheran Social Services of Wisconsin & Upper Michigan, Inc.

Marquette
(906)226-2160 ext.14
Special Needs Adoption, Infant Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Post
Adoption Services
www.lsswis.org

Teaching Family Homes of Upper Michigan

Marquette
(906)273-0423
Relative Adoption, Foster Care
www.teachingfamilyhomes.org

Upper Peninsula Family Solutions

Marquette
(906)273-1095
Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group
www.upfs.org

Midland County

Adoption Option Inc.

Midland
(989)839-0534
Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care, Family Preservation Services
www.adoptionoptioninc.org

Monroe County

Family Adoption Consultants

Monroe
(734)344-6606

Foster Care/Adoption Special Needs - contact (734) 344-6606

International, Infant, and Pregnancy Counseling - contact Amy Zauel (586) 726-2988 ext. 104, Sterling Heights

Howell location contact (517) 615-1275

Relative Adoption, Interstate Adoption, Adoption Training, Adoption Search Services, Post Adoption Services

WWW.MARE.ORG

800-859-MARE

Will provide independent home studies.

No upfront or transfer fees.

www.facadopt.org

Muskegon County

Bethany Christian Services

Muskegon

(231)733-1618

Relative Adoption, Foster Care, Parent Support Group, Pregnancy Counseling, Post Adoption Services

www.bethany.org

Catholic Charities West Michigan

Muskegon

(231)726-4735

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.cewestmi.org

Pathways, MI

Muskegon

(616)396-2301

Special Needs Adoption, Foster Care

www.pathwaysmi.org

Newaygo County

Bethany Christian Services

Fremont

(231)924-3390

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.bethany.org

Language accommodation: Spanish

Oakland County

Bethany Christian Services

Madison Heights

(248)414-4080

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Pregnancy Counseling, Post Adoption Services, General Counseling

www.bethany.org/madisonheights

Forever Families

Novi

(248)344-9606

Special Needs Adoption

www.forever-families.org

Language accommodations: Spanish

Ennis Center for Children

Pontiac

(248)334-2715

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

WWW.MARE.ORG

800-859-MARE

www.enniscenter.org

Oakland Family Services

Pontiac

(248)858-7766 ext.315

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

www.oaklandfamilyservices.org

Wolverine Human Services

Pontiac

(888)625-8669

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.wolverinehs.org

Language accommodations: Spanish

Child Safe Michigan

Royal Oak

(248)353-0921

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

www.childsafemichigan.org

Catholic Charities of Southeast Michigan

Southfield

(248)552-0750

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.ccsem.org

Orchards Children's Services

Southfield

(248)258-0440

Special Needs Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.orchards.org

Spaulding for Children

Southfield

(248)443-0300

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

www.spaulding.org

Spectrum Human Services

Southfield

(248)552-8020

Special Needs Adoption, Adoption Training, Foster Care, treatment foster care, families together building solutions, foster parent licensing

www.spectrumhuman.org

Lutheran Adoption Service

Troy

(248)423-2770

Special Needs Adoption, Post Adoption Services

www.lasadoption.org

WWW.MARE.ORG

800-859-MARE

Osceola County

Eagle Village

Hersey

(231)832-7270

Special Needs Adoption, Foster Care

www.eaglevillage.org

Otsego County

Lutheran Adoption Services

Gaylord

(989)732-1040

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group

www.lasadoption.org

Ottawa County

Bethany Christian Services

Holland

(616)396-0623

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post Adoption Services

www.bethany.org/holland

Language accommodations: Spanish

Catholic Charities West Michigan

Holland

(616)796-9595

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.cwestmi.org

Pathways, MI

Holland

(616)396-2301

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.pathwaysmi.org

Saginaw County

Lutheran Adoption Services

Saginaw

(810)275-1934

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group

www.lasadoption.org

St. Clair County

Ennis Center for Children, Inc.

Port Huron

(810)990-1424

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.enniscenter.org

Schoolcraft County

Sault Tribe Binogii Placement Agency

Sault Ste. Marie

WWW.MARE.ORG

800-859-MARE

(906)632-5250

Special Needs Adoption, Relative Adoption, Interstate Adoption, Foster Care, Post Adoption Services
www.saulttribe.com/membership-services/acfs

Shiawassee County

Catholic Charities of Shiawassee & Genesee

Owosso

(810)232-3418

Special Needs Adoption, Relative Adoption, Adoption Training, Foster Care, Post Adoption Services
www.catholiccharitiessg.org

Tuscola County

New Light Child & Family Institute

Millington

(989)871-6695

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group
www.newlightonline.net

Washtenaw County

Catholic Social Services of Washtenaw County

Ann Arbor

(734)971-9781

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Post Adoption Services
www.csswashtenaw.org

Hands Across the Water

Ann Arbor

(734)477-0135

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services, Parenting Education and Behavioral Health
www.hatw.org

Lutheran Adoption Services

Ann Arbor

(734)971-1944

Special Needs Adoption, Relative Adoption, Foster Care, Parent Support Group, Post Adoption Services
www.lasadoption.org

Fostering Futures

Ypsilanti

(734)481-8999

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services
www.ffkids.org

Wayne County

Vista Maria

Dearborn Heights

(313)271-3050

Foster Care, foster to adopt
www.vistamaria.org

WWW.MARE.ORG

800-859-MARE

Community Social Services of Wayne County

Detroit

(313)883-2100

Special Needs Adoption, Foster Care

www.esswayne.org

Ennis Center for Children Inc.

Detroit

(313)342-2699

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.enniscenter.org

Homes for Black Children

Detroit

(313)961-4777

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Post Adoption Services

www.homes4blackchildren.org

The Children's Center of Wayne County

Detroit

(313)831-5535

Special Needs Adoption, Foster Care, Parent Support Group

www.thechildrenscenter.com

Forever Families

Livonia

(734)762-0909

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.forever-families.org

Judson Center

Redford

(313)794-5653

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group, Post Adoption Services

www.judsoncenter.org

Methodist Children's Home Society

Redford

(313)531-4060

Special Needs Adoption, Relative Adoption, Interstate Adoption, Adoption Training, Foster Care, Parent Support Group

www.mchsmi.org

Wolverine Human Services

Taylor

(734)284-6264

Relative Adoption, Interstate Adoption, Adoption Training, Foster Care

www.wolverinehs.org

Language accommodations: Spanish

Step Three: Attend An Adoption Orientation Meeting

After you have identified an agency to work with, you will want to contact them to sign up for their next Adoption Orientation meeting. This one-time meeting will provide you with an overview of the agency's adoption approval and foster home licensing requirements. This is also your opportunity to learn about the children who are available, to gain insight into the challenges and rewards of adoptive parenting and to ask any questions that can help you determine if adoption is the right choice for you. We suggest that you attend at least 2 Adoption Orientation meetings so that you can make comparisons. Following are some suggested questions to ask:

- How long will the home study and/or foster care licensing process take?
- What kind of training is provided for parents?
- If I identify a child in another state, will the agency help me to pursue the child's adoption?
- How many children has the agency placed in the last 2 years? How many of those children are in my family adoption criteria (age, race, impairment levels, etc)?
- What are the agency's policies on working with families who don't want to foster a child or get a foster care license?
- What services are provided to me once my home study is complete?

Step Four: Turn In Agency Adoption Application

The agency Adoption Application will be available at the Adoption Orientation meeting. The application has several objectives including:

- Understanding your family background
- Determining your parenting strengths
- Ensuring your financial ability to provide for the costs of raising and nurturing a child
- Assessing your moral character
- Gaining insight into your personal feelings about adoption



What are the benefits of adopting

siblings? "When we enter foster care we lose everything...our moms, our dads, where we lived. Everything is just so unfamiliar. To have your sibling there is what you need in order to move on, or to move forward in life, in foster care." ~ Noy, who first entered foster care at age 3, speaking in the Epic Ohana video *Brothers and Sisters: Keeping Siblings in Foster Care Connected*

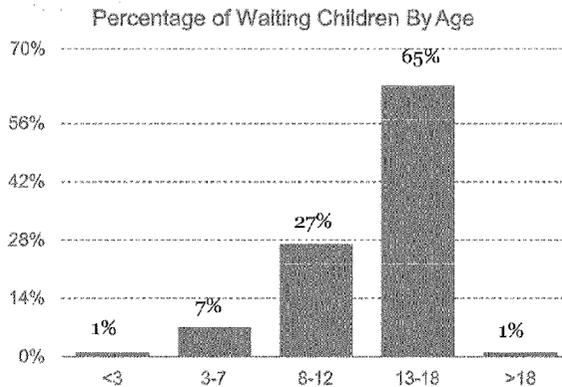
Step Five: Complete Home Study Requirements And Pride Training

In addition to paperwork (and there will be lots of paperwork to complete!), the agency will assign a caseworker to assess your family's adoption goals and identify your adoption criteria. This is called a Home Study or Family Assessment. During this process, your caseworker will educate you about adoption and assess your ability to parent a child whose experiences, expectations and history will be different from your own. At times, the caseworker may ask you questions that seem intrusive. That's because they're doing their job! He or she will be charged with the task of making sure that when they place a child in your care, you will be able to provide an environment where that child will flourish, thrive and be loved.

All prospective adoptive and/or foster care parents are required to take PRIDE Classes. PRIDE stands for Parent Resources for Information, Development, and Education. It is a program used to prepare and educate families that are interested in providing foster care or in adopting children from the foster care system. The PRIDE curriculum is based on five competencies that promote the need to not only understand how to best help children that have been abused and neglected, but to also strengthen all families (birth, foster, or adoptive).

Step Six: Build Your Adoption Toolkit

Children who have spent time in foster care often have unique needs that require a parenting strategy. Parents generally do better when they understand their child's (and their own) realities and needs. Building an Adoption Toolkit is a great way to gain knowledge, make connections and roadmap a future toward success. Your "toolkit" should contain parenting strategies, resources and training, as well as personal characteristics such as flexibility, patience, commitment and a sense of humor. Last, but not least, every "toolkit" should have the name and contact information for MARE's Adoption Navigators.



Step Seven: Inquire on Waiting Children

In 2011, 49,866 youth in foster care were adopted. Of those youth, 54% were adopted by their foster parent(s) and 31% were adopted by a relative. Children who are photo listed on mare.org and adoptuskids.org represent the 15% of waiting children.

Waiting children do not have an identified family. Achieving permanency for these children is one of the primary objectives of MARE. To place an adoption inquiry on a child that is photo listed on the MARE website, you will first need to click the "Register" button on the top right hand corner of the home page and complete your family profile. For assistance, please contact MARE.



It takes a long time for the older adoptive child to make you his parents, your home his home. And it takes time, too, for you to make him "your" child. Love isn't instantaneous between man and woman, mother and newborn baby, parents and adoptive child. It grows. It has its ups and downs. There will be moments when you will wonder how you got into this, and moments when you will wonder why you waited so long. And in between there will be challenges, victories, a few losses, and lots of satisfaction.

by Candace Wheeler, MSW

Reprinted courtesy of Oregon Department of Human Resources: Children's Services Division, Adoption Department

Exhibit B

From: Wheaton, Bob (DHS)
Sent: Wednesday, September 9, 2015 7:01 AM
To: Yager, Steve (DHS);Bladen, Stacie (DHS);Hoover, Catherine (DHS)
Cc: Rostoni, Nancy (DHS)
Subject: RE: religious freedom bill - the atlantic

Thanks, Steve.

I think I'm going to use the following description of the process that was developed back in June. It focuses primarily on the child and not on the agency and then perhaps refer the reporter to the policy cited in Cathe's email:

Deliberative Process

From: Yager, Steve (DHS)
Sent: Wednesday, September 09, 2015 6:58 AM
To: Bladen, Stacie (DHS); Wheaton, Bob (DHS); Hoover, Catherine (DHS)
Cc: Rostoni, Nancy (DHS)
Subject: RE: religious freedom bill - the atlantic

Deliberative Process

Deliberative Process

Not sure this helps Bob, but wanted you to be aware. Correct me if I am wrong
Cathe. I agree with Cathe and Stacie's comments. Lastly, I would emphasize that we work with agencies based on a contract, not on their belief system, stated or otherwise. We do not compel agencies to accept referrals—never have; rather, we create through contracts a vast array of providers to meet the very diverse needs of the children and families we serve.

From: Bladen, Stacie (DHS)
Sent: Tuesday, September 8, 2015 7:23 PM
To: Wheaton, Bob (DHS) <WheatonB@michigan.gov>; Hoover, Catherine (DHS) <HooverC3@michigan.gov>
Cc: Yager, Steve (DHS) <YagerS@michigan.gov>; Rostoni, Nancy (DHS) <RostoniN@michigan.gov>
Subject: Re: religious freedom bill - the atlantic

Deliberative Process

Stacie Bladen
Deputy Director, Children's Services Agency
Michigan Department of Health and Human Services
517 373-6264 desk
517 303-4674 cell
bladens@michigan.gov

From: Wheaton, Bob (DHS)
Sent: Tuesday, September 8, 2015 5:52 PM
To: Hoover, Catherine (DHS)
Cc: Yager, Steve (DHS); Bladen, Stacie (DHS); Rostoni, Nancy (DHS)
Subject: RE: religious freedom bill - the atlantic

Thanks, Cathe.

You make reference to: **Deliberative Process**

Deliberative Process

So I can say that: **Deliberative Process**

Deliberative Process

In other words, is it accurate to say: **Deliberative Process**

Deliberative Process

Thanks,

Bob

From: Hoover, Catherine (DHS)
Sent: Tuesday, September 08, 2015 5:06 PM
To: Wheaton, Bob (DHS)
Cc: Yager, Steve (DHS); Bladen, Stacie (DHS); Rostoni, Nancy (DHS)
Subject: RE: religious freedom bill - the atlantic

Responses in red. I made them real short so, please let me know if I need to elaborate.

From: Wheaton, Bob (DHS)
Sent: Tuesday, September 08, 2015 1:57 PM
To: Hoover, Catherine (DHS)
Cc: Yager, Steve (DHS); Bladen, Stacie (DHS)
Subject: FW: religious freedom bill - the atlantic

Hi Cathe,

Can you see the email string below regarding questions that a national publication (The Atlantic) has regarding the faith-based adoption legislation and how Michigan's public/private system works? I'm wondering if you can assist me in answering the questions by providing me with some information.

The reporter is asking us to meet a tight deadline (noon Wednesday). However, since the initial request went to the Governor's Office and this is a high-profile national publication, I think the expectation is that we accommodate that deadline.

Below, highlighted in yellow, are the specific questions the report is asking, followed by my notes in blue text:

... explain how the state and faith-based (or other) adoption agencies work together to provide services to children who are wards of the state. How do you determine which adoption or foster agency is responsible for certain children and what percentage of state services are provided by faith-based agencies? **Deliberative Process**

Deliberative Process

I'm most curious about how adoption/fostering works in the state in regard to faith-based agencies, and how children are processed/make their way through the system to forever homes. **Deliberative Process**

Deliberative Process

Thanks,

Bob Wheaton
Manager of Communications/Public Information Officer
Michigan Department of Health & Human Services
235 S. Grand Ave. Suite 1510
P.O. Box 30037
Lansing, MI 48909
Phone: 517-373-4287
Cell: 517-281-1701
WheatonB@michigan.gov

www.michigan.gov

Confidential Client Information

Sent: Tuesday, September 08, 2015 1:44 PM
To: Wheaton, Bob (DHS)
Cc: Murray, David (GOV); Wurfel, Sara (GOV)
Subject: Re: religious freedom bill - the atlantic

Sure, thanks Sara. Deadline is tomorrow noon. I'm most curious about how adoption/fostering works in the state in regard to faith-based agencies, and how children are processed/make their way through the system to forever homes. If it's easiest to go over on phone, let me know. Thanks!

Confidential Client Information

On Sep 8, 2015, at 1:27 PM, Wheaton, Bob (DHS) <WheatonB@michigan.gov> wrote:

Confidential Client Info

As Sara Wurfel said in her email, I'll be happy to assist you with information on how adoption services are provided by state and private agencies in Michigan.

Can you tell me your deadline?

Thanks,

Bob Wheaton
Manager of Communications/Public Information Officer
Michigan Department of Health & Human Services
235 S. Grand Ave. Suite 1510
P.O. Box 30037
Lansing, MI 48909
Phone: 517-373-4287
Cell: 517-281-1701
WheatonB@michigan.gov
www.michigan.gov

Confidential Client Information

Confidential Client Information Wheaton, Bob (DHS)
Subject: RE: religious freedom bill - the atlantic

Hi there **Confidential Client Information** –

Happy to help you out. Looping in Bob Wheaton here from our Dept of Health & Human Services (DHHS) who can help address some of your technical and specific process-related Qs noted below.

And just to be clear and follow-up, the bills that were signed into law earlier this year do **not** stop anyone from adopting children needing families in Michigan. Both faith and non-faith based providers play a critical role in the adoption system in Michigan. We have made great progress over the last few years increasing the rates (now at 85%) and timeliness of adoptions in Michigan for our foster youth who need and deserve forever families. This legislations simply codified current practices that faith-based agencies have already been operating under, which haven't resulted in adoption delays or complaints.

Beyond that, it's important to note that the legislation requires any agency that declines to provide service to promptly refer families to providers that can and will serve them.

Gov. Snyder and our administration's overarching goal and priority remains to get as many kids adopted in Michigan as possible with their forever family – regardless of the family's makeup, whether heterosexual or LGBT.

We believe this adoption issue is an entirely separate one from traditional religious freedom type legislation. Hopefully you know or may have heard/seen that the governor has been crystal clear on that front and issue. Which is that he would plain out veto any RFRA legislation that comes to him as standalone bill ... he believes any such legislation needs to be paired with expansion of our state's civil rights act (what's known here as Elliott Larsen). It's about ensuring freedom of religion but also equality – both basic founding principles of our country.

Please just let me know if there's anything further we can help out on. And I know Bob will be in touch too.

Thanks and best,

Confidential Client Information

[Redacted signature block]

Confidential Client Information

Confidential Client Information

Sent: Tuesday, September 08, 2015 11:42 AM

Confidential Client Information

Subject: religious freedom bill - the atlantic

I'm a reporter with The Atlantic working on a story about the state's religious freedom bill allowing faith-based agencies to decline to provide referral services to same-sex couples who want to adopt. Wanted to see if you could put me in touch with someone at the state who can explain how the state and faith-based (or other) adoption agencies work together to provide services to children who are wards of the state. How do you determine which adoption or foster agency is responsible for certain children and what percentage of state services are provided by faith-based agencies?

Thanks much,

Confidential client information

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

■

Exhibit C

From: Rehagen, Christine (DHHS)
Sent: Sunday, October 1, 2017 3:54 PM
To: Neitman, Patricia (DHHS);Tansil, Linda (DHHS);Triestram, Claudia (DHHS);Maltby, Kelly (DHHS)
Cc: Manion, Kristine (DHHS)
Subject: FW: Contract Compliance Complaints filed 9/29/17
Attachments: Dumont et al v Lyon (ACLU Lawsuit (002).pdf

Importance: High

Hi all! Attached is the complaint information which we will discuss during the conference call scheduled for 9:00 a.m. As you can see by Stacie's email, this complaint involves Bethany – Lansing and Bethany – Madison Heights; I made an error in my previous email. Kristine: Please update the 9:00 appointment with a conference line...Patty will host and I will call in. We will discuss any questions you may have during the call.

Thanks,
Chris

From: Bladen, Stacie (DHHS)
Sent: Friday, September 29, 2017 11:16 AM
To: Rehagen, Christine (DHHS) <RehagenC@michigan.gov>; Neitman, Patricia (DHHS) <NeitmanP@michigan.gov>
Cc: Goad, Sarah (DHHS) <GoadS@michigan.gov>; Hoover, Catherine (DHHS) <HooverC3@michigan.gov>
Subject: Contract Compliance Complaints filed 9/29/17

Hello: This morning I filed 3 electronic complaints of alleged contract noncompliance using the electronic complaint system. Please inform me if you have not received these or have questions. My complaints were about:

St. Vincent Catholic Charities Lansing
Bethany Christian Services Lansing
Bethany Christian Services Madison Heights

Attached is the document that led to these complaints and provides greater detail. At the appropriate time, will you please keep me informed of the findings?

Thank you for your prompt attention,
Sincerely,
Stacie

Stacie Bladen, Deputy Director
Children's Services Agency
Michigan Department of Health and Human Services
(517) 373-6264
(517) 303-4674
bladens@michigan.gov

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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,

and

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

Defendants-Intervenors.

No. 17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**STATE DEFENDANTS' OBJECTIONS AND RESPONSES TO
INTERVENOR-DEFENDANTS' AMENDED FIRST SET OF
INTERROGATORIES**

GENERAL OBJECTIONS

Defendants Nick Lyon and Herman McCall (State Defendants) object to Instruction No. 2 of Intervening Defendants' First Set of Interrogatories to Defendants Nick Lyon and Herman McCall, defining the term "person" as "any natural person, association, corporation, partnership, government (or government agency, bureau, or department), quasi-public entities, proprietorship, joint venture, trust, estate, and all other forms of legal entity and division of legal entities." This definition is overly broad and unduly burdensome, going beyond any reasonable definition or understanding of the term "person."

State Defendants object to Instruction No. 3, defining the term "identify" as:

"[A]ll information pertaining to the origin, nature, or definitive characteristics of that person or item referenced in that particular interrogatory. When used in reference to a person, these terms shall mean to state his/her/its full name, whether the person is an individual, corporation, partnership, or other organization, present address, present telephone number, present employment position and business affiliation, and past employment positions and business affiliations that are relevant to the facts and issues of this case. Once any person has been identified properly it shall be sufficient thereafter when identifying that same person to state his or her name only. For former employees of the state of Michigan, or any city or subdivisions thereof,

or employees or for current employees on indefinite sick leave, provide the current or last known home address and current or last known business address.”

This definition is overly broad and unduly burdensome, going beyond any reasonable definition or understanding of the term “identify,” seeking multiple items of additional information, e.g., past employment positions and business affiliations, etc., along with the identity.

State Defendants object to Instruction No. 9, defining “State Defendants” as including “any other employee within” the Michigan Department of Human Services or the Children’s Services Agency. In the first place, DHHS has approximately 14,000 employees, making this definition overly broad and unduly burdensome. In addition, the Children’s Services Agency is an office within DHHS, such that any employees of the Children’s Services Agency are also DHHS employees, rendering this definition unreasonably duplicative.

State Defendants object to Instruction No. 13 defining the “Relevant Period” as “the period from June 11, 2015 through the present” as overly broad and not proportional to the needs of the Action. In responding to these Interrogatories, State Defendants will use the

period of June 11, 2015 to the date on which this suit was filed, which is September 20, 2017.

State Defendants object to Instruction No. 15 regarding documents not in their possession and control to the extent it requests them to state the “name and address of the person now having possession, custody, or control of the document or any copy thereof.” Such information may be outside the scope of State Defendants’ knowledge.

Furthermore, as to all interrogatories, State Defendants object to the extent they request information within the ambit of the attorney/client privilege, work product privilege and/or deliberative process privilege and/or privileges.

State Defendants also object to individual interrogatories, as further set forth in their responses contained below.

INTERROGATORIES

1. Describe any DHHS policies concerning whether a private child placing agency may refer a family to another private child placing agency for any reason.

RESPONSE:

State Defendants object to the use of the term and/or phrase “any” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to its meaning. State Defendants further object to the term and/or phrase “any” because it renders this request overly broad and unduly burdensome.

State Defendants further object because this Interrogatory requests the same or substantially similar information as Plaintiffs’ Amended Interrogatory to State Defendants No. 9 and Plaintiffs’ First Request for Production to State Defendants No. 6. It is therefore unreasonably cumulative or duplicative and State Defendants refer Intervening Defendants to State Defendants’ responses to the aforementioned requests.

Without waiving these objections, State Defendants respond as follows: Michigan Department of Health and Human Services’ (MDHHS) policy does not specifically address an agency referring a family to another agency. DHHS foster care policy is available to the public on the internet at <http://www.mfia.state.mi.us/OLMWeb/ex/FO/Public/FOM/000.pdf#pagemode=bookmarks>.

2. Describe every instance in which a child placing agency was investigated for referring a family to another child placing agency for any reason.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “every” and “any” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning. State Defendants further object to the terms and/or phrases “every” and “any” because they render this request overly broad and unduly burdensome.

State Defendants further object because this request is overly broad and unduly burdensome, asking for a description of “every instance” of certain types of investigations and/or penalties over a 42-month period. During this period, the Department has conducted numerous investigations of child placing agencies for a variety of alleged violations, including those under statute, administrative rule, Department policy and contract. It is therefore unduly burdensome to search all of these investigations for the vaguely stated type of investigation requested by Intervening Defendants.

State Defendants further object because this Request goes beyond the scope of this lawsuit, which involves allegations regarding aspects of Michigan’s foster and adoption systems, which Plaintiffs have described as a “challenge Defendants’ practice of permitting state-contracted and taxpayer-funded child placing agencies to use religious criteria to screen prospective foster and adoptive parents for children in the foster care system and to turn away qualified families on the basis of sexual orientation.” (Cplt., ¶ 1, Doc. 1, Pg. ID 1.) These allegations do not include or reasonably encompass investigations and/or penalties assess for “referring a family to another child placing agency for any reason.” This request thus seeks information that is not relevant to any of Intervening Defendants’ defenses and is not proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). In addition, the benefit of providing such broad information grossly exceeds any likely benefit that information may have to any defense raised by Intervening Defendants.

Without waiving these objections, State Defendants respond as follows: The Department does not track instances when a child placing agency was investigated and/or penalized for referring a family to another child placing agency. Below are instances that are related to PA 53; three special investigation reports are currently pending approval. Approved finalized reports are available on MDHHS’ public website at <https://w2.lara.state.mi.us/CWL-Search>.

- Catholic charities of West Michigan (CB610201023), Investigation #: 2017C0208001.

- Catholic Charities of West Michigan (CB410245705), Investigation #: 2018C0223029.
- St. Vincent Catholic Charities – Child Welfare (CB330201019), Investigation #: 2018C0208005. Pending approval.
- Bethany Christian Services – East Lansing (CB330314400), Investigation #: 2018C0208004. Pending approval.
- Bethany Christian Services – Madison Heights (CB630200978), Investigation #: 2018C0219007. Pending approval.

3. Describe all steps State Defendants have taken to ensure there is a broad array of foster and adoptive parents ready to care for children in need.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “all” and “children in need” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning. State Defendants further object to the term and/or phrase “all” because it renders this request overly broad and unduly burdensome.

In addition, State Defendants object because this request contains two subparts regarding: (1) foster . . . parents,” and (2) “adoptive parents.”

State Defendants further object because it requests the same substantially similar information as Plaintiffs’ Amended Interrogatory to State Defendants No. 9 and Plaintiffs’ First Request for Production to State Defendants No. 6. It is therefore unreasonably cumulative or duplicative and State Defendants refer Intervening Defendants to State Defendants’ responses to the aforementioned requests.

Without waiving these objections, State Defendants respond as follows: MDHHS implements the following steps to recruit and retain foster and adoptive parents:

- All counties complete annual Adoptive and Foster Parent Recruitment and Retention (AFPRR) plans
 - MDHHS county offices and PAFCs collaborate to identify non-relative licensing goals and strategies to recruit homes for the targeted populations.
 - Collaboration, discussion and planning between the MDHHS county office (as the lead agency), private agencies, federally recognized tribes, faith communities, and key foster/adoptive/kinship parents is necessary to determine the county's overall recruitment needs and goals, and the action steps needed to achieve those goals.
 - The plans outline licensing goals and recruitment and retention activities to increase the number of homes available for children in care, including adolescents, sibling groups and children with disabilities.
 - Non-relative licensing goals are established based on:
 - The Foster Home Estimator, a foster home needs assessment tool.
 - Data on child characteristics and trends.
- MDHHS conducts an annual marketing campaign to recruit new foster and adoptive families.
 - Calls generated from the marketing campaign are answered by a Foster Care Navigator or an Adoption Navigator.
 - The Foster Care Navigator Program is comprised of current or former foster parents.
 - Foster Care Navigators are experienced foster parents who help prospective foster families navigate the licensing process, locate resources, understand the licensing rules and needs of children in foster care, and assist families in choosing the licensing agency that's the best fit for their family.

- The Adoption Navigators are part of the Michigan Adoption Resource Exchange.
 - Adoption Navigators are experienced adoptive parents who offer guidance and support to prospective adoptive families through their adoption journey. They assist families in choosing the adoption agency that's the best fit for their family.
4. Describe any and all benefits to having a diverse array of child placing agencies in the State of Michigan.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “any and all” and “diverse array” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning. State Defendants further object to the term and/or phrase “any and all” because it renders this request overly broad and unduly burdensome.

Without waiving these objections, State Defendants respond as follows: MDHHS benefits when contracted child placing agencies comply with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve all children and families in need of foster care or adoptive services in Michigan. Foster care and adoption staff employed at each child placing agency, undergo the same core training and are required to follow the same state policies and contract(s). The diversity of the agency is not material to the child placing agency's responsibility to achieve performance requirements or assure the safety, permanency, or wellbeing of children and families. Michigan benefits when an agency delivers effective services to meet the diverse and specific needs of children and families.

5. Describe how the closure of St. Vincent Catholic Charities will

impact the number of LGBT individuals seeking to care for children in need.

RESPONSE:

State Defendants object to the use of the term and/or phrase “children in need” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to its meaning.

Without waiving these objections, State Defendants respond as follows: State Defendants are unable to speculate on the impact, if any, caused by the closure of St. Vincent on the number of LGBT individuals seeking to become foster or adoptive parents. State Defendants are without knowledge regarding whether the closure of St. Vincent or any other child placing agency would have any impact on the number of the number of LGBT individuals seeking to become foster or adoptive parents. Only the individuals themselves would have knowledge of the reasons they seek to become a foster or adoptive parent, including the impact, if any, of the closure of St. Vincent or any other child placing agency.

Furthermore, MDHHS has no authority to close a non-profit agency. MDHHS may revoke a child placing agency’s license under Act 116 or terminate a foster care or adoption contract. Likewise, an agency may decide not to accept or renew a foster care or adoption contract with MDHHS. As a non-profit agency, St. Vincent Catholic Charities delivers many services and programs, including foster care and adoption, in addition to immigration, refugee services, crisis and clinical services, among other programs. If the agency discontinued providing foster care or adoption services, it is unknown whether or how that decision would impact an adult individual’s decision about participation in foster care or adoption.

6. Describe, in the ordinary course, whether DHHS provides specific funding to private child placing agencies for performing

home studies for prospective parents. If exceptional circumstances involve specific payment for those services, please describe how such payment works.

RESPONSE:

State Defendants object of the terms and/or phrases “ordinary course” and “exceptional circumstances” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning.

State Defendants further object because this request contains two subparts: (1) “in the ordinary course, whether DHHS provides specific funding to private child placing agencies for performing home studies,” and (2) for “exceptional circumstances involv[ing] specific payment for those services.”

Without waiving these objections, State Defendants respond as follows: When children are placed in the home and following a referral, relative licensing incentive payments are provided to private child placing agencies for assessing relatives for licensure by completing a foster home assessment.

7. Describe whether any child placing agencies that contract with DHHS work exclusively or primarily with prospective foster or adoptive parents from a particular segment of the population.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “any” and “particular segment of the population” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning. State Defendants further object to the term and/or

phrase “any” because it renders this request overly broad and unduly burdensome.

State Defendants further object because this request contains four subparts. The first subpart asks “whether any child placing agencies that contract with DHHS work exclusively . . . with prospective foster . . . parents from a particular segment of the population.” The second subpart asks, “whether any child placing agencies that contract with DHHS work exclusively . . . with prospective . . . adoptive parents from a particular segment of the population.” Subpart three asks “whether any child placing agencies that contract with DHHS work . . . primarily with prospective foster . . . parents from a particular segment of the population.” Subpart four asks “whether any child placing agencies that contract with DHHS work . . . primarily with prospective . . . adoptive parents from a particular segment of the population.”

State Defendants further object because this Interrogatory requests the same or substantially similar information as Plaintiffs’ Amended Interrogatory to State Defendants No. 2 and No. 3. It is therefore unreasonably cumulative or duplicative and State Defendants refer Intervening Defendants to State Defendants’ responses to the aforementioned requests.

Without waiving these objections, State Defendants respond as follows: Child placing agencies that have contracted with MDHHS must work with all prospective foster or adoptive parents who need or seek such services rather than working exclusively or primarily with prospective foster or adoptive parents from a particular segment of the population.

8. Describe whether any child placing agencies that contract with

DHHS work exclusively or primarily with children from a

particular segment of the population.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “any” and “particular segment of the population” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to their meaning. State Defendants further object to the term and/or phrase “any” because it renders this request overly broad and unduly burdensome.

State Defendants further object because this request contains two subparts. The first subpart asks “whether any child placing agencies that contract with DHHS work exclusively . . . with children from a particular segment of the population.” The second subpart asks, “whether any child placing agencies that contract with DHHS work . . . primarily with children from a particular segment of the population.”

State Defendants further object because this Interrogatory requests the same or substantially similar information as Plaintiffs’ Amended Interrogatory to State Defendants No. 2 and No. 3. It is therefore unreasonably cumulative or duplicative and State Defendants refer Intervening Defendants to State Defendants’ responses to the aforementioned requests.

Without waiving these objections, State Defendants respond as follows: Child placing agencies that have contracted with MDHHS must work with all prospective children who need such services rather than working exclusively or primarily with children from a particular segment of the population.

9. Describe how DHHS has either investigated or encouraged any and all child welfare agencies that seek to provide child welfare services to a particular segment of the population.

RESPONSE:

State Defendants object to the use of the terms and/or phrases “any and all” and “particular segment of the population” as vague, ambiguous, confusing and calling for speculation, leaving State

Defendants to guess as to their meaning. State Defendants further object to the term and/or phrase “any and all” because it renders this request overly broad and unduly burdensome.

State Defendants further object because this request contains 2 subparts: (1) “how DHSS has investigated” and (2) “how DHSS has . . . encouraged” child welfare agencies.

Without waiving these objections, State Defendants respond as follows: MDHHS investigates any alleged complaints pertaining to violations of applicable statute, licensing rules, administrative rules and contract violations. Mich. Admin. Code R. 400.12304 requires that a child placing agency “shall have an ongoing foster home recruitment program to ensure an adequate number of suitable and qualified homes to meet the needs of children served by the agency.” Administrative rules regarding child placing agencies may be found at http://dmbinternet.state.mi.us/DMB/ORRDocs/AdminCode/1548_2015-045HS_AdminCode.pdf.

10. Describe any negative impact(s) caused by the closure of a child placing agency on those served by the agency.

RESPONSE:

State Defendants object to the use of the term and/or phrase “any negative impact” as vague, ambiguous, confusing and calling for speculation, leaving State Defendants to guess as to its meaning. State Defendants further object to the term and/or phrase “any” because it renders this request overly broad and unduly burdensome.

State Defendants further object because this Interrogatory requests the same or substantially similar information as Plaintiffs’ First Request for Production to State Defendants No. 28 and Plaintiffs’ Second Request for Production to State Defendants No. 6. It is therefore unreasonably cumulative or duplicative and State Defendants

refer Intervening Defendants to State Defendants' responses to the aforementioned requests.

Without waiving these objections, State Defendants respond as follows: When child placing agencies close, all foster care and adoption cases must be transferred to another child placing agency. In addition, all licensed foster parents must have their licenses transferred to another child placing agency. The transfer of all cases and licenses requires coordination between local MDHHS offices, the Division of Child Welfare Licensing and the child placing agencies involved. In these circumstances, efforts are made to maintain the stability of children in their foster homes and the continuity of their relationships.

Furthermore, State Defendants are unable to speculate on the impact, if any, caused by the closure of a child placing agency on those individuals served by the agency. State Defendants are without knowledge regarding whether the closure of a child placing agency would have a negative impact on those served by that child placing agency. Only the affected individuals themselves would have knowledge regarding any impact, if any, upon them caused by closure a child placing agency.

11. For each private child placing agency in Michigan, provide the dates of operation for that agency.

RESPONSE:

State Defendants further object because this request is overly broad and unduly burdensome, asking for information regarding "each child placing agency in Michigan," of which there are over 100.

Without waiving these objections, State Defendants respond as follows: The information sought in this request is available to the public via the internet at the website addresses below and therefore Plaintiffs may locate this information as easily as State Defendants. Licensing information on all child placing agencies are available to the public at

<https://w2.lara.state.mi.us/CWL-Search>, which is maintained by the Michigan Licensing and Regulatory Affairs (LARA).

12. Describe the purpose of the Michigan Laws.

RESPONSE:

State Defendants object because this request contains three subparts, one for each of the Michigan Laws enumerated in Instruction 10. Without waiving any objections, State Defendants respond as follows:

The purpose of the Michigan Laws is stated in the text of the relevant public acts and resulting statutes, in addition to the legislative history. This information is available to the public via the internet at the website addresses below and therefore Plaintiffs may find this information as easily as State Defendants. The relevant public acts, statutes and legislative history may be found on the Michigan Legislature's website at:

[http://www.legislature.mi.gov/\(S\(4dcrjwhktjn0swnh3hux4u2c\)\)/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(4dcrjwhktjn0swnh3hux4u2c))/mileg.aspx?page=home).

13. Describe how DHHS considers one or more protected characteristics when deciding where to place a prospective foster or adoptive child.

RESPONSE:

State Defendants object because this request contains 14 subparts. You request information regarding (1) foster and (2) adoptive placements for "one or more protected characteristics." Your Instruction 7 defines "protected characteristics" as including seven separate items.

Without waiving these objections, State Defendants respond as follows: MDHHS policy regarding the placement of children may be found at <http://www.mfia.state.mi.us/olmweb/ex/html/>. Relevant policies include ADM 0520, ADM 0620 and SRM 403.

All children must be placed in accordance with their individual needs, including any special physical, emotional and educational needs; the need to place siblings together; placement with relatives and maintaining continuity of current relationships.

Preference in placement practices by race, ethnicity or religion is prohibited. Race and/or ethnicity and/or religion may not be the basis for a delay or denial in the placement of a child. Race and/or ethnicity may be appropriate considerations in evaluating the best interest of an individual child to be matched with a particular family; see ADM 0620.

AS TO OBJECTIONS ONLY:

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Joshua S. Smith
Joshua S. Smith (P63349)
Jonathan S. Ludwig (P64919)
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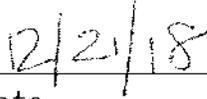
Dated: December 28, 2018

VERIFICATION

I hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that my foregoing responses to Intervenor-Defendants' Amended First Set of Interrogatories to State Defendants are true and correct to the best of my knowledge.



Stacie Bladen



Date

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018, a copy of State Defendants' Objections and Responses to Intervenor-Defendants' Amended First Set of Interrogatories was served upon counsel of record by electronic mail.

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Exhibit E



STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

September 23, 2016

Terrence L. Walsh, Jr.
President/CEO
Catholic Charities West Michigan
360 Division Avenue South, Suite 3A
Grand Rapids, MI 49503-4501

RE: Adoption Case Transfer

Dear Terry,

I am responding to your September 16, 2016 letter directed to my attention, relating to the transfer of adoption cases involving three children back to the Michigan Department of Health and Human Services (MDHHS or the Department).

MDHHS considers Catholic Charities West Michigan's (CCWM's) interpretation and application of 2015 PA 53 to be in error. In its September 16, 2016 letter, CCWM asserts that its request for transfer of the adoption case in issue is based on the "exercise [of] its religious freedom rights to request transfer of a case in conflict with our agency's sincerely held religious beliefs[.]" Certainly, 2015 PA 53 permits a child placing agency to decline to provide foster care case management or adoption services, but only under specific circumstances plainly expressed in the act:

If the department *makes a referral* to a child placing agency for foster care case management *or* adoption services under a contract with the child placing agency, the child placing *agency may decide not to accept the referral* if the services would 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. *Before accepting a referral* for services under a contract with the department, the child placing agency has the sole discretion to decide whether to engage in activities and perform services related to that referral. The department shall not control the child placing agency's decision whether to engage in those activities or perform those services. For purposes of this subsection, a child placing agency *accepts a referral* by doing *either* of the following:

- (a) Submitting to the department a written agreement to perform the services related to the particular child or particular individuals that the department referred to the child placing agency.

September 23, 2016
Page Two

- (b) Engaging in any other activity that results in the department being obligated to pay the child placing agency for the services related to the particular child or particular individuals that the department referred to the child placing agency. [MCL 722.124f(1). (Emphasis added.)]

If the child placing agency declines to *accept* a referral, whether for foster care case management or adoption services, based on sincerely held religious beliefs, the Department cannot take "adverse action" (as defined in the act) against the agency. MCL 722.124f(2), (5). However, contrary to what you stated or implied in your September 16, 2016 letter, once a child placing agency *accepts* a referral from MDHHS for the above services, the agency may not assert a religious objection and decline to provide services under its contract with the Department; in accordance with 2015 PA 53, adverse action would not be precluded.

A child placing agency cannot invoke its faith-based protection at *any* time – rather, the agency can only avail itself to such protection *prior to* acceptance of a referral from MDHHS. See subsection 124f(1). Moreover, the contractual language permitting transfer of a case back to the Department – "upon the written approval of the County Director, the Children's Service Agency [CSA] Director, or the Deputy Director" – is not intended to be an avenue for use by a child placing agency to circumvent the unambiguous provisions of 2015 PA 53.

In the very near future, MDHHS will be requesting a meeting with CCWM to further address this matter.

Respectfully,



Stacie Bladen, Deputy Director
Children's Services Agency

cc: Steve Yager, Executive Director, Children's Services Agency
Mary Rossman, Superintendent, Michigan Children's Institute
Mark Meyer, Director, Children's Services Legal Division

Exhibit F

FOSTER AND ADOPTIVE PARENT RECRUITMENT, LICENSING AND RETENTION

Children in need of foster and adoptive homes include infants, children, youth and young adults from various ethnic and cultural backgrounds. Michigan's demographic and cultural diversity ranges from northern and rural, to urban southeastern Michigan, and the foster care population is similarly varied. Maintaining an adequate array of adoptive and foster home placements that reflect the ethnic and racial diversity of children in care continues to be a top priority. Licensing relatives for foster care and adoptive placements is a strength, and the state-administered structure ensures a smooth process for placement of children across jurisdictions.

Collaboration in Recruitment, Licensing and Retention

MDHHS utilizes the SOFAC Recruitment and Retention sub-team to provide input on the annual adoptive and foster parent recruitment and retention plans. This sub-team develops strategies for recruiting and retaining foster homes, implementing recruitment and retention plans and compliance in the licensing of foster homes. The Placement sub-team monitors the implementation plans for placement of children in unlicensed homes and addresses practice in foster parent and relative licensing and placement exceptions.

Foster and Adoptive Home Recruitment, Licensing and Retention – Assessment of Performance - Progress in 2015

The table below outlines the progress in 2015 on licensing non-relative foster homes and homes for special populations.

Statewide	Goal for non-relative foster homes to be licensed	Number of non-relative foster homes licensed	Goal for non-relative foster homes to be licensed for adolescents	Number of non-relative foster homes licensed for adolescents	Goal for non-relative foster homes to be licensed for siblings	Number of non-relative foster homes licensed for siblings	Goal for non-relative foster homes to be licensed for children with disabilities	Number of non-relative foster homes licensed for children with disabilities
Statewide Totals	1050	1069	383	201	452	596	148	570

Data Source: MDHHS Child Welfare Licensing.

From Oct. 1, 2014 to Sept. 30, 2015, MDHHS and private child placing agencies licensed:

- Over one hundred percent of the non-relative foster home goal.
- Fifty-two percent of the non-relative foster home goal for adolescents.
- Over one hundred percent of the non-relative foster home goal for sibling groups.
- Over one hundred percent of the non-relative goal for children with disabilities.

The following recruitment and licensing activities were carried out locally in Michigan to ensure foster and adoptive homes met the needs of children and families in their area:

- Outlined strategies to recruit and retain foster, adoptive and kinship families.
- Produced specialized scorecards that monitored the number of licensed homes.
- Provided tools and guidelines for assessing and analyzing demographic data for recruiting, licensing and retaining foster, adoptive and kinship parents.

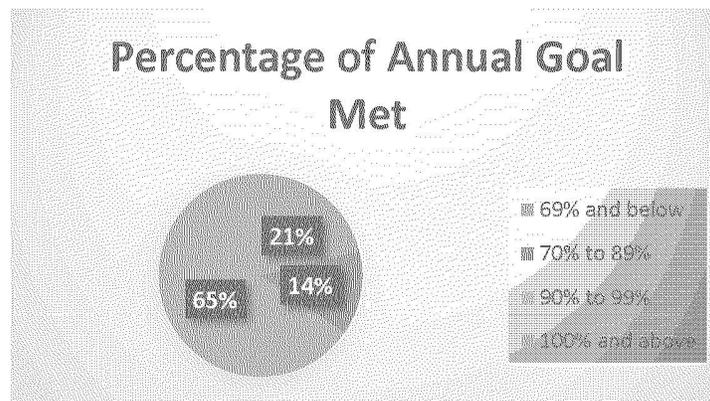
Each local MDHHS office was expected to:

- Assist private agency partners, local tribes, faith communities, service organizations and foster/adoptive/kinship parents in completing annual recruitment and retention plans.
- Provide specific strategies for reaching out to all parts of the community.
- Assure all prospective foster/adoptive/kinship parents have access to child-placing agencies that provide foster home certification.
- Increase public awareness of the need for adoptive and foster homes through general, targeted and child-specific recruitment activities within the counties.
- Provide strategies for dealing with linguistic barriers.

Counties determined goals and action steps based on:

- Historical trends and data provided by the Office of Child Welfare Policy and Programs.
 - Characteristics of children in care (i.e. age, gender, race and living arrangement).
 - Characteristics of children entering and exiting foster care.
 - Total number of homes licensed by the county at a point in time.
 - Number of foster homes licensed by the county during specified periods.
 - Foster home closure reasons.
 - Demographic data on barriers to placements.

The graph below shows the percentage of county recruitment and licensing goals met in 2015:



Sixty-five percent of Michigan counties met 90 percent of their annual recruitment and licensing goals and 21 percent met 70 percent of their recruitment and licensing goals.

Progress in 2016

The table below outlines the goals and progress from Oct. 1, 2015 through Feb. 29, 2016 for licensing non-relative foster homes and homes for special populations.

Statewide	Goal for non-relative foster homes to be licensed	Number of non-relative foster homes licensed	Goal for non-relative foster homes to be licensed for adolescents	Number of non-relative foster homes licensed for adolescents	Goal for non-relative foster homes to be licensed for siblings	Number of non-relative foster homes licensed for siblings	Goal for non-relative foster homes to be licensed for children with disabilities	Number of non-relative foster homes licensed for children with disabilities
Statewide Totals	1003	320	274	80	460	182	223	221

From Oct. 1, 2015 to Feb. 29, 2016, MDHHS licensed:

- Thirty-two percent of the non-relative foster home goal.
- Twenty-nine percent of the non-relative foster home goal for adolescents.
- Forty percent of the non-relative foster home goal for sibling groups.
- Ninety-nine percent of the non-relative goal for children with disabilities.

MDHHS county offices and private agencies continue to collaborate on a local level to recruit, retain and train foster, adoptive and relative families, as outlined in each county Adoptive and Foster Parent Recruitment and Retention Plan. Targeted recruitment activities include:

- Back to school events.
- Community festivals, fairs and events.
- Flyers and presentations at local schools.
- Presentations at local hospitals and doctor offices.
- Foster care awareness and appreciation events.
- Adoption Day events.
- Presentations at congregations on the need for foster and adoptive parents and collaboration with community and faith-based partners.
- Foster parent support groups.
- Flyers at sporting events.
- Local community presentations.
- Visiting library displays.
- Movie trailer ads.
- Billboards, mobile billboards and mall billboards.

In Michigan, the following activities have ensured that every foster and adoptive parent has a criminal history and central registry screening completed prior to licensure or home study approval:

- Every foster and adoptive parent applicant is required to undergo fingerprinting, allowing accurate state and FBI criminal history clearance.
- Every foster and adoptive parent applicant has a sexual offender registry clearance completed prior to licensure or home study approval.
- Every foster and adoptive parent has a central registry clearance completed prior to licensure or home study approval.
- Criminal history, sexual offender and central registry clearances are completed on every adult household member in foster and adoptive homes prior to licensure.

Foster and Adoptive Parent Recruitment, Licensing and Retention – Plan for Improvement

Goal G.1: MDHHS will implement an annual adoptive/foster parent recruitment and retention plan to ensure there are foster and adoptive homes that meet the diverse needs of the children and youth that require out-of-home placement.

- **Objective G.1.1:** MDHHS will ensure that state standards are applied to all licensed or approved foster family homes or child-caring institutions receiving Title IV-B or IV-E funds by:
 - Tracking demographic data of children in foster care.
 - Screening all applicants for foster and adoptive home licensing to meet minimum standards.
 - Developing a youth seclusion and corporal punishment protocol.
 - Developing a continuous quality improvement process for institutions.

Measure: Child Welfare Licensing data and other sources.

Benchmarks 2015 – 2019: Local licensing agencies will collaborate with Child Welfare Licensing to ensure all standards are applied equally.

- **Objective G.1.2:** MDHHS will ensure that the state complies with federal requirements for criminal background clearances for licensing foster and adoptive homes and has provisions for ensuring the safety of foster and adoptive placements.

Measure: Criminal history and central registry screening of foster or adoptive applicants.

Benchmarks 2015 – 2019: Collaboration between the Child Welfare Licensing Division and local licensing agencies to ensure each foster and adoptive home is screened and approved before children are placed.

- **Objective G.1.3:** MDHHS will recruit and license an adequate and sufficient array of foster and adoptive homes to reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.

Measure: Percentage of annual recruitment, licensing and adoption plans that meet 90 percent of their goal, or better.

Baseline: Each county's 2015 licensing goal.

Benchmarks: 2016 – 2019: Eighty percent or more of annual plans will meet 90 percent of their goal.

- **Objective G.1.4:** MDHHS will support safe and timely placement across jurisdictions when such placement is in the best interest of the children.
Measure: Interstate Compact data on percentage of out-of-state placements in Michigan with completed home studies within 60 days of the state's request.
Baseline - 2013: Sixty-two percent of home studies were completed with 60 days.
Benchmarks 2015 – 2019: Demonstrate improvement each year.
 - 2015 Performance: Sixty-six percent of home studies were completed in 60 days.

Goal 2: The Office of Child Welfare Policy and Programs and the Recruitment and Retention sub-team will ensure that best practices for recruitment and retention are used and barriers addressed as needed.

- **Objective G.2.1:** MDHHS will ensure timely search for prospective parents for children needing adoptive placements, including the use of exchanges and other interagency efforts, if such procedures ensure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.
Measure: Number of youths available for adoption without an identified family that are registered with the Michigan Adoption Resource Exchange within required timeframes.
Baseline - 2014:
 - Eighty percent of youths available for adoption without an identified family are registered with the Michigan Adoption Resource Exchange within required timeframes.
 - Eighty percent of youths available for adoption without an identified family one year after termination of parental rights are referred to an Adoption Resource Consultant.**Benchmarks 2015 – 2019:** Demonstrate improvement each year.
2015 Performance:
 - In 2015, there were nineteen youths registered within the required timeframes; twenty-two percent compliance.
 - From Oct. 1, 2015 through Feb. 28, 2016, there were nine youths registered within the required timeframes; thirty-six percent compliance.
 - In 2015, there were 92 youths referred to the Adoption Resource Consultant Program.
 - From Oct. 1, 2015 through Feb. 28, 2016, there were 34 youths referred to the Adoption Resource Consultant Program.

Planned Activities for 2017

- Child-specific recruitment is the most effective strategy to find an appropriate adoptive family for a child. If an adoptive family is not been identified at the time of referral:
 - A written, child-specific recruitment plan must be developed within 30 calendar days of the date of acceptance of the case transfer.

- The child must be registered for photo listing on the Michigan Adoption Resource Exchange within 30 calendar days of termination of parental rights or the date of acceptance of the case transfer, whichever is later.
- An adoption case will be referred to an Adoption Resource Consultant if an adoptive home has not been identified for the child within one year of the child being legally free with a goal of adoption, or the month the child no longer has an identified family, if it has been more than a year since the child became legally free.
 - Adoption Resource Consultants will provide services until permanency is achieved through adoption or one of the other four federal permanency goals.
- Eight regional Post Adoption Resource Centers will continue to provide services to support families who have finalized adoptions of children from the Michigan child welfare system or children who were adopted in Michigan through an international or a direct consent/direct placement adoption or children who have a Michigan subsidized guardianship agreement.
- The Adoption Oversight Committee will continue to meet bi-monthly.
- Adoption Navigators will continue to provide support and assistance to families pursuing adoption of children from Michigan's child welfare system.
- The Michigan Adoption Resource Exchange will continue to produce recruitment brochures and newsletters, maintain an informational website, host "meet and greet" events and maintain the Michigan Heart Gallery, a traveling exhibit introducing children available for adoption.
- The Match Support Program will provide statewide service for families who have been matched with a child from the MARE website and are moving forward with adoption. The Match Support Program will provide up to 90 days of informational and referral services to families.

Adoption Incentive Payments

Michigan did not receive Adoption Incentive Funds in 2015. If Michigan is allocated Adoption Incentive Funds between 2016 and 2019, MDHHS will ensure the funds are used for allowed activities and spent in a timely manner.

Adoption Savings Calculation

MDHHS utilized adoption savings to provide post-adoption services through eight regional Post-Adoption Resource Centers located throughout the state.

- Family participation is voluntary and free of charge.
- The Post Adoption Resource Centers are designed to support families who have:
 - Finalized adoptions of children from the Michigan child welfare system.
 - Children who were adopted in Michigan through an international or a direct consent/direct placement adoption.
 - Children who have a Michigan subsidized guardianship agreement.

The Post Adoption Resource Centers offer the following services:

- Case management, including short-term and emergency in-home intervention:

- Coordination of community services.
- Information dissemination.
- Education.
- Training.
- Advocacy.
- Family recreational activities and support.
- A website and newsletter on topics relevant to adoptive families, a listing of community resources and a calendar with events and trainings.

Adoption Resource Consultant Services throughout the state:

- Provide services to youths who have a permanency goal of adoption and have been legally free for adoption for one year or more without an identified family.
- Utilize a solution-focused model.
- Develop, review and amend the Individualized Adoption Plan with specific recruitment steps to place a child in an adoptive or pre-adoptive home.
- Assist with problem solving to eliminate barriers and enhance the specificity of each Individualized Adoption Plan.

Recruitment of Foster and Adoptive Parents for Diverse Youth

At any given time, Michigan has approximately 13,000 children in foster care and relies on private child placing agencies to help find temporary and permanent homes for these children. Michigan has over 90 contracts with child placing agencies for foster care case management and 64 contracts for adoption services.

In June 2015, three public acts were signed into law in Michigan and went into effect September 9, 2015:

- 2015 PA 53 amended the Child Care Organizations Act, MCL722.111 et seq., which addresses foster care, by adding two new sections (MCL 722.124e and MCL 722.124f).
- 2015 PA 54 amended the Adoption Code, 710.1 et seq., by adding one new section (710.23g).
- 2015 PA 55 amended the Social Welfare Act, MCL 400.1 et seq., by adding one new section (MCL 400.5a).
- The new sections provide in part:
 - To the fullest extent permitted by state and federal law, a child-placing agency shall not be required to provide any services if those services 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. (MCL 722.124e (2)).
 - To the fullest extent permitted by state and federal law, the state or local unit of government shall 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 (MCL 722.124e (3)).

If the department makes a referral to a child-placing agency for foster care case management or adoption services under a contract with the child-placing agency:

- The child-placing agency may decide not to accept the referral if the services would 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 agency.
- The child-placing agency may decide to accept the referral.
 - Before accepting a referral, the child-placing agency has the sole discretion to decide whether to engage in activities and perform services related to that referral.
 - For purposes of this subsection, a child-placing agency accepts a referral by doing either of the following:
 - Submitting to the department a written agreement to perform the services related to a particular child or particular individuals that the department referred to the child-placing agency.
 - Engaging in any other activity that results in the department being obligated to pay the child-placing agency for services related to the particular child or particular individuals that the department referred to the child-placing agency.

As a result of the amendments:

- MDHHS cannot take any adverse action against a child-placing agency if the agency refuses to accept a referral from the department for foster care case management or adoption services.
 - Adverse action is not precluded if a child-placing agency accepts the referral to provide foster care case management or adoption services to a particular child, and then fails to perform the required services under its contract with the department.
 - Once the referral is accepted, the agency may not assert a religious objection and fail to provide the required services.
- The department amended its master foster care and adoption services contracts to clarify the department's expectations when a child-placing agency accepts a referral from the department. The amended contracts make clear that:
 - The Contractor may not refuse to provide services for any case(s) in which the child-placing agency has accepted the referral from the department under its foster care case management or adoption services contract.
 - The Contractor shall comply with the departments' non-discrimination statement:
 - MDHHS will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital

status, gender identity or expression, sexual orientation, political beliefs, or disability.

- This statement applies to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.
- If MDHHS makes a referral to a child-placing agency for foster care case management or adoption services pursuant to a contract, the child-placing agency must accept or decline the referral.
- After acceptance of a foster care referral, the contractor may not transfer the case to another agency and may not refer the case back to the department except for the reasons outlined in the Children's Foster Care Manual or upon the written approval of the county director, the Children's Services Agency director, or the deputy director.
- After acceptance of an adoption referral, the contractor may not transfer the case back to MDHHS, except upon the written approval of the county director, the Children's Services Agency director or the deputy director.

The Contractor may not delegate any of its obligations or subcontract for services required without the prior written approval of MDHHS.

Exhibit G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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,

and

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

Defendants-Intervenors.

No. 17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**DEFENDANTS NICK LYON AND HERMAN MCCALL'S
OBJECTIONS AND RESPONSES TO INTERVENOR-
DEFENDANTS' FIRST REQUESTS FOR ADMISSION
TO THE STATE DEFENDANTS**

State Defendants, by and through its attorneys, and pursuant Federal Rule of Civil Procedure 36 and the Local Rules of this Court, responds and objects to Intervenor-Defendants' First Requests for Admission as follows:

PRELIMINARY STATEMENT

1. These responses and objections are made without prejudice to, and are not a waiver of, State Defendants' right to rely on other facts or documents at trial.

2. State Defendants Nick Lyon and Herman McCall respond to these requests for admission solely in their respective official capacities as the Director of the Michigan Department of Health and Human Services and the Executive Director of the Michigan Children's Services Agency.

3. State Defendants do not waive, and hereby expressly reserve, their right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, State Defendants make the responses and objections herein without in any

way implying that it considers the requests for admission, and responses to the requests for admission, to be relevant or material to the subject matter of this action.

4. State Defendants expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

5. State Defendants' responses are based on their understanding and interpretation of each term in, and the context of, the request for admission. State Defendants expressly reserve the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s), upon clarification of the request for admission by one or more Intervenor-Defendants.

GENERAL OBJECTIONS

1. State Defendants object to each instruction, definition, and request for admission to the extent that it purports to impose any requirement or discovery obligation greater than or different from those

under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

2. State Defendants object to each instruction, definition, and request for admission the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by State Defendants occur, it is inadvertent and shall not constitute a waiver of any privilege.

**STATE DEFENDANTS' OBJECTIONS AND RESPONSES TO
INTERVENOR-DEFENDANTS' FIRST REQUESTS FOR
ADMISSION**

1. Admit that the Michigan Department of Health and Human Services ("DHHS") benefits from having a diverse array of private child placing agencies throughout the State that work to serve all children in need of loving homes.

ANSWER:

State Defendants deny Request No. 1 as untrue in the form stated. In further answer, State Defendants admit that DHHS benefits when contracted child placing agencies comply with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve children and families in need of foster care or adoptive services in Michigan.

2. Admit that DHHS values and benefits from its on-going contractual relationship with St. Vincent Catholic Charities' foster care and adoption programs (collectively, "St. Vincent") because these programs support children in need and serve an important role in helping to find loving foster and adoptive parents.

ANSWER:

State Defendants deny Request No. 2 as untrue in the form stated. In further answer, State Defendants admit that DHHS benefits from its contractual relationship with St. Vincent when St. Vincent

provides contracted foster care and adoption services in compliance with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve children and families in need of foster care or adoptive services.

3. Admit that foster care and adoption certifications, home studies, and licenses provided by child placing agencies operate as an endorsement of the relationship(s) between or among the prospective foster or adoptive parent(s) and any other adults living in their home.

ANSWER:

State Defendants deny Request No. 3 as untrue.

4. Admit that DHHS does not view St. Vincent as a state actor.

ANSWER:

State Defendants object to the phrase “state actor” to the extent it implies a legal conclusion. Subject to and without waiving their objections, State Defendants admit Request No. 4.

5. Admit that DHHS does not view St. Vincent’s actions as directly attributable to DHHS or the State of Michigan.

ANSWER:

State Defendants object to the term “directly attributable” to the extent it implies a legal conclusion. Subject to and without waiving their objections, State Defendants admit Request No. 5.

6. Admit that private child placing agencies may refer prospective foster or adoptive families to other such agencies for a variety of reasons, including but not limited to geography, capacity, language proficiency, preferences for particular families or children, fit with an agency, and Native American ancestry.

ANSWER:

State Defendants deny Request No. 6 as untrue in the form stated. In further answer, State Defendants admit that child placing agencies may refer a prospective foster or adoptive family to another child placing agency so long as the referral complies with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies.

7. Admit that the *per diem* a child placing agency receives when a foster child is placed in a family supported by that agency does not compensate that agency for the costs associated with evaluating, certifying, and/or licensing prospective foster families.

ANSWER:

State Defendants deny Request No. 7 as untrue in the form stated. In further answer, State Defendants admit that the *per diem* paid by DHHS to contracted child placing agencies includes payment for contractual duties associated with evaluating, certifying, and licensing prospective foster and adoptive families.

8. Admit that when a private child placing agency certifies or licenses a prospective foster or adoptive family that approaches the child placing agency directly, DHHS does not compensate the agency for providing a license or certification to that family.

ANSWER:

State Defendants deny Request No. 8 as untrue in the form stated. In further answer, State Defendants admit that administrative case rates paid to contracted child placing agencies include payment for contractual duties relating to recruitment and licensing activities.

9. Admit that it is DHHS' understanding that sexual orientation and gender identity are not characteristics protected under any state law that prohibits discrimination on the basis of "sex," simply because the state law uses the term "sex."

ANSWER:

State Defendants deny Request No. 9 as untrue in the form stated. In further answer, State Defendants state that it is DHHS's understanding that the Michigan Civil Rights Commission has determined that, under the Elliott-Larsen Civil Rights Act, discrimination on the basis of sex includes protection against discrimination on the basis of gender identity and sexual orientation.

10. Admit that DHHS is not currently and has no plans to investigate Homes for Black Children, the Wayne Center for the

Developmentally Disabled, the Sault Tribe Binogii Placement Agency, or any other child placing agencies that focus on serving a particular segment of the population to determine whether those agencies might refer a prospective foster or adoptive family to another agency.

ANSWER:

State Defendants object to Request No. 10 to the extent it seeks confidential information relating to pending investigations of any contracted child placing agency. Subject to and without waiving their objections, State Defendants deny Request No. 10 as untrue in the form stated. In further answer, State Defendants admit that DHHS audits and investigates complaints relating to child placing agencies' compliance with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies relevant to providing contracted foster and adoptive services.

11. Admit that DHHS is not currently and has no plans to investigate the Ruth Ellis Center, the Ruth Ellis House, or any other DHHS contractor that may exclusively serve a particular segment of the population, including but not limited to the LGBTQ community.

ANSWER:

State Defendants object to Request No. 11 to the extent it seeks confidential information relating to pending investigations of any DHHS contractor. Subject to and without waiving their objections, State Defendants deny Request No. 11 as untrue in the form stated. In further answer, State Defendants admit that DHHS audits and investigates complaints relating to contractors' compliance with the terms of the agreement entered into with DHHS, as well as all

applicable laws, rules, regulations, and policies relevant to providing contracted goods and services.

12. Admit that Plaintiffs and other prospective foster or adoptive parents are not restricted to fostering or adopting children in the care of the child placing agency that certified or licensed them; instead, they could be matched with children in the care of any child placing agency in the State of Michigan.

ANSWER:

State Defendants deny Request No. 12 as untrue in the form stated. In further answer, State Defendants admit that prospective foster or adoptive parents are not prohibited from fostering or adopting children whose cases are assigned to a particular DHHS-contracted child placing agency. State Defendants further admit that children whose cases are assigned to a child placing agency may be matched with prospective foster or adoptive parents working with another child placing agency in the State of Michigan.

13. Admit that closing St. Vincent could harm both the children and the foster and adoptive parents that work with and rely on St. Vincent for care, guidance, and vital support.

ANSWER:

State Defendants object to Request No. 13 on grounds that it is overly broad and calls for speculation. Subject to and without waiving their objections, State Defendants deny Request No. 13 as untrue in the form stated. In further answer, State Defendants admit that to the

extent that any contracted child placing agency ceases to provide foster care and adoption services under contract with DHHS, children whose cases were assigned to that child placing agency will be assigned to another contracted child placing agency, and foster and adoptive parents may choose to work with the assigned child placing agency or any other contracted child placing agency in the State of Michigan for foster care and adoptive services.

14. Admit that if St. Vincent closed, some of the foster families it certified and/or licensed could stop providing foster care to children in need and may not transfer their license to another agency.

ANSWER:

State Defendants object to Request No. 14 on grounds that it is overly broad and calls for speculation. Subject to and without waiving their objections, State Defendants deny Request No. 14 as untrue in the form stated. In further answer, State Defendants admit that to the extent that any contracted child placing agency ceases to provide foster care and adoption services under contract with DHHS, foster families may or may not continue providing foster care to children in their care, may or may not ask DHHS to place such foster children with another foster family, and may or may not relinquish their foster license. State Defendants further admit that DHHS's experience has been that foster families caring for foster children generally continue providing foster care and have not relinquished a foster care license based on the status of the child placing agency issuing their license. State Defendants further admit that prospective foster or adoptive parents are not prohibited from fostering or adopting children whose cases are assigned to a particular DHHS-contracted child placing agency, and that children whose cases are assigned to a child placing agency that ceases to provide contracted foster care and adoption services would be assigned to another contracted child placing agency, and foster and adoptive parents may choose to work with the assigned child placing agency or any other contracted child placing agency in the State of Michigan for foster care and adoptive services.

15. Admit that the highest priority in foster care is providing temporary homes to children pending family reunification and not the rights or interests of individuals seeking to adopt or foster.

ANSWER:

State Defendants deny Request No. 15 as untrue in the form stated. In further answer, State Defendants admit that DHHS's highest priorities for foster care are to assure the safety, permanency and wellbeing of children under the care and supervision of DHHS. State Defendants further admit that these priorities are achieved when child placing agencies make decisions based on a child's needs and best interest, in compliance with the terms of any agreement with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve children and families in need of foster care or adoptive services.

16. Admit that DHHS contracts with a wide-range of child placing agencies such that its decision to contract with any particular agency does not favor or endorse one particular agency's religious beliefs.

ANSWER:

State Defendants deny Request No. 16 as untrue in the form stated. In further answer, State Defendants admit that all child placing agencies under contract with DHHS to provide foster care and adoption services agree to the same master contract terms and must meet the same requirements, including compliance with the terms of the agreement with DHHS, as well as all applicable laws, rules,

regulations, and policies. State Defendants further admit that a child placing agency's religious beliefs, if any, have no bearing on DHHS's decision to contract with that agency, and DHHS's contract with any agency does not "favor or endorse," encourage, or in any like way advocate, nor does it denounce, criticize, or in any like way condemn, any religious belief or absence of religious belief.

17. Admit that closing St. Vincent would not make it easier for Plaintiffs to participate in the foster-care or adoption process.

ANSWER:

State Defendants object to Request No. 17 on grounds that it is overly broad and calls for speculation. Subject to and without waiving their objections, State Defendants deny Request No. 17 as untrue in the form stated. In further answer, State Defendants admit that whether any contracted child placing agency ceases to provide foster care and adoption services under contract with DHHS has no impact on whether a family or individual meets the licensing requirements to provide foster care or meets the certification requirements to adopt a foster child. State Defendants lack sufficient knowledge or information to admit or deny other factors that may or may not "make it easier for Plaintiffs to participate in the foster-care or adoption process." State Defendants have made reasonable inquiry of Plaintiffs through the discovery process, and the information State Defendants know or can readily obtain is insufficient to enable them to admit or deny other factors that may or may not "make it easier for Plaintiffs to participate in the foster-care or adoption process."

18. Admit that decreasing the number of private child placing agencies in Michigan could potentially reduce the number of prospective foster and adoptive homes for children and families.

ANSWER:

State Defendants deny Request No. 18 as untrue in the form stated. In further answer, State Defendants admit that to the extent that any contracted child placing agency ceases to provide foster care and adoption services under contract with DHHS, foster families may or may not continue providing foster care to children in their care, may or may not ask DHHS to place such foster children with another foster family, may or may not relinquish their foster license, and may or may not decide to adopt a foster child. State Defendants deny that DHHS has experienced a reduction of foster and adoptive homes when a child placing agency closes because foster families generally continue their foster and adoptive services through another child placing agency.

19. Admit that DHHS has no basis in fact to believe that, if faith-based and/or religiously affiliated child placing agencies cease to provide foster and adoptive services to DHHS, new child placing agencies will form in their place.

ANSWER:

State Defendants deny Request No. 19 as untrue.

20. Admit that private adoption and foster care agencies, including faith-based child placing agencies, have a long tradition of both providing foster care and adoption services in the State of Michigan and entering into contracts and/or other arrangements with state and local governments to facilitate these services.

ANSWER:

State Defendants deny Request No. 20 as untrue in the form stated. In further answer, State Defendants admit that private adoption and foster care agencies have a long tradition of providing foster care and adoption services in the State of Michigan and entering into contracts with the appropriate State of Michigan department to facilitate these services. State Defendants deny that they distinguish child placing agencies as “faith-based.”

21. Admit that prospective same-sex foster and adoptive parents can adopt or foster a child in the State of Michigan with numerous child placing agencies ready and willing to work with them.

ANSWER:

State Defendants deny Request No. 21 as untrue in the form stated. In further answer, State Defendants admit that all child placing agencies under contract with DHHS to provide foster care and adoption services must provide such services in compliance with the terms of the agreement with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve all prospective and qualified foster and adoptive parents, including same-sex couples and individuals, and to ensure the needs of children needing temporary and permanent homes are timely met.

22. Admit that St. Vincent is not a public accommodation under any state or federal law for purposes of providing foster care and

adoption certifications, home studies, or licenses.

ANSWER:

State Defendants object to Request No. 22 on grounds that the term “public accommodation” to the extent it implies a legal conclusion. Subject to and without waiving their objections, State Defendants deny Request No. 22 as untrue.

23. Admit that DHHS has been subject to a consent decree because of inadequate services provided to foster children in DHHS’s care, including mental health and dental services.

ANSWER:

State Defendants object to Request No. 23 on grounds that it seeks information protected by the attorney-client privilege and work product, and further seeks information that is not relevant to any pending claims or defenses and is not reasonably calculated to lead to the discovery of admissible evidence under Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving their objections, State Defendants deny Request No. 23 as untrue in the form stated. In further answer, State Defendants deny that DHHS’s agreement to enter into the Implementation, Sustainability, and Exit Plan constitutes an admission of any liability.

24. Admit that DHHS has been subject to a consent decree because of inadequate visitation between social workers and parents of foster children in DHHS’s care.

ANSWER:

State Defendants object to Request No. 24 on grounds that it seeks information protected by the attorney-client privilege and work product, and further seeks information that is not relevant to any pending claims or defenses and is not reasonably calculated to lead to the discovery of admissible evidence under Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving their objections, State Defendants deny Request No. 24 as untrue in the form stated. In further answer, State Defendants deny that DHHS's agreement to enter into the Implementation, Sustainability, and Exit Plan constitutes an admission of any liability.

25. Admit that DHHS has been subject to a consent decree because of problems in the past where DHHS took too long to place foster children in homes.

ANSWER:

State Defendants object to Request No. 25 on grounds that it seeks information protected by the attorney-client privilege and work product, and further seeks information that is not relevant to any pending claims or defenses and is not reasonably calculated to lead to the discovery of admissible evidence under Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving their objections, State Defendants deny Request No. 25 as untrue in the form stated. In further answer, State Defendants deny that DHHS's agreement to enter into the Implementation, Sustainability, and Exit Plan constitutes an admission of any liability.

26. Admit there is a shortage of certified foster and adoptive

families ready to accept children into their care.

ANSWER:

State Defendants deny Request No. 26 as untrue in the form stated. In further answer, State Defendants admit that, unfortunately, despite the efforts of contracted child placing agencies throughout the State of Michigan, including St. Vincent, there are children who need foster or adoptive services and who await placement.

27. Admit that DHHS is actively looking to increase the number of certified foster and adoptive families ready to accept children into their care.

ANSWER:

State Defendants admit Request No. 27 as true.

28. Admit DHHS believes it is beneficial to work with a large and diverse group of child placing agencies as this maximizes the pool of prospective foster and adoptive families for children in need.

ANSWER:

State Defendants deny Request No. 28 as untrue in the form stated. In further answer, State Defendants admit that DHHS, child placing agencies, families and children benefit when contracted child placing agencies comply with the terms of the agreement entered into with DHHS, as well as all applicable laws, rules, regulations, and policies, to serve children and families in need of foster care or adoptive

services in Michigan.

As to objections,
Respectfully submitted,

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Dated: December 28, 2018

VERIFICATION

I hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the foregoing responses to Intervenor-Defendants' First Requests for Admissions to the State Defendants are true and correct to the best of my knowledge.

Stacie Bladen
Stacie Bladen

12/20/18
Date

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018, a copy of Defendants Nick Lyon and Herman McCall's Objections and Answers to Intervenor-Defendants' First Requests for Admission to the State Defendants was served upon counsel of record by electronic mail.

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