

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;  
and 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 Michigan  
Attorney General; ALEX AZAR, in  
his official capacity as Secretary of  
Health and Human Services;  
UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN  
SERVICES,

*Defendants.*

No. 1:19-cv-00286

HON. ROBERT J. JONKER

**Oral Argument Requested**

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(a) and W.D. Mich. L. Civ. R. 7.2, Plaintiffs move this Court for a preliminary injunction. In support of that motion, Plaintiffs state:

1. Plaintiffs have demonstrated a likelihood of success on the merits of their claims under the Free Exercise Clause, Free Speech Clause, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb.

2. Absent injunctive relief, Plaintiffs will suffer irreparable harm in the form of deprivation of constitutional and statutory rights, the loss of contracts and licenses which allow them to engage in the religious exercise of serving children in Michigan's child welfare system, loss of the ability to care for additional foster and adoptive children, the loss of critical support that foster families rely on, and potential closure of the agency's foster and adoption programs.

3. The injunction is in the public interest. Michigan has a chronic need for more foster and adoptive homes and has recognized that its interests are best served by having a diversity of child-placing agencies able to serve children. It is in the public interest to serve children in the child welfare system and to continue a status quo that has existed for many years.

4. The balance of the equities favors Plaintiffs. Plaintiffs provide crucial services to children and families, and the loss of those services would strain an already overstressed child welfare system. Michigan has not previously taken adverse action against Plaintiffs in its many years of contracting with St. Vincent, so cannot claim to be harmed by maintaining the status quo.

5. Pursuant to Local Civil Rule 7(d), Plaintiffs contacted the named defendants via email seeking concurrence. Oral argument is requested on this motion because of the complex legal issues involved in this case.

Therefore, Plaintiffs respectfully request that the Court enter an order:

1. Enjoining Defendants Gordon, McCall, and Nessel, their agents, employees, and those acting in concert with them not to terminate or suspend performance of their contracts with St. Vincent Catholic Charities, decline to renew those contracts, nor take any other adverse action against St. Vincent Catholic Charities for engaging in protected speech and religious exercise, including continuing to refer couples to other agencies when St. Vincent cannot assist those couples due to its religious beliefs.

2. Enjoining Defendant Azar from taking any enforcement action under 45 CFR 75.300(c) based upon St. Vincent's protected speech and religious exercise or upon Michigan's actions to accommodate such protected speech and religious exercise.

Dated: April 16, 2019

Respectfully submitted,

/s/ Lori Windham

Lori Windham

Mark Rienzi\*

Nicholas Reaves\*

The Becket Fund for Religious Liberty  
1200 New Hampshire Ave. NW, Suite  
700

Washington, DC 20036

Telephone: (202) 955-0095

Facsimile: (202) 955-0090

William R. Bloomfield (P68515)

Catholic Diocese of Lansing

Lansing, Michigan 48933-1122

(517) 342-2522

wbloomfield@dioceseoflansing.org

*Counsel for Plaintiffs*

*\*Admission pending*

## CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System. I also certify that I sent true and correct copies of the forgoing motion and related documents by overnight commercial carrier to be retrieved by the carrier on April 17, 2019 to the following:

Mr. Robert Gordon  
Director  
Michigan Department of Health & Human Services  
333 S. Grand Ave  
P.O. Box 30195  
Lansing, Michigan 48909

Mr. Herman McCall  
Executive Director, Michigan Children's Servs. Agency  
Michigan Department of Health & Human Services  
333 S. Grand Ave  
P.O. Box 30195  
Lansing, Michigan 48909

Ms. Dana Nessel  
Michigan Attorney General  
G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, MI 48909

Mr. Alex M. Azar II  
Secretary  
(separate copies sent to Defendant Azar and Defendant  
Department itself)  
U.S. Department of Health and Human Services

200 Independence Avenue, S.W.  
Washington, D.C. 20201

/s/ Lori Windham

Lori H. Windham

Mark L. Rienzi\*

Nicholas R. Reaves\*

Counsel for Intervenor-Defendants

The Becket Fund for Religious Liberty

1200 New Hampshire Ave. NW, Suite

700 Washington, DC, 20036

Tel.: (202) 955-0095

Fax: (202) 955-0090

mrienzi@becketlaw.org

*Counsel for Plaintiffs*

*\*Admission pending*

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UNITED STATES DEPARTMENT  
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No. 1:19-cv-00286

HON. ROBERT J. JONKER

**Oral Argument Requested**

**ORDER GRANTING PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(a), this Court makes the following findings:

1. Plaintiffs have demonstrated a likelihood of success on the merits of their claims under the Free Exercise Clause, Free Speech Clause, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb.

2. Absent injunctive relief, Plaintiffs will suffer irreparable harm in the form of deprivation of constitutional and statutory rights, the loss of contracts and licenses which allow them to engage in the religious exercise of serving children in Michigan's child welfare system, loss of the ability to care for additional foster and adoptive children, the loss of critical support that foster families rely on, and potential closure of the agency's foster and adoption programs.

3. The injunction is in the public interest. Michigan has a chronic need for more foster and adoptive homes and has recognized that its interests are best served by having a diversity of child-placing agencies able to serve children. It is in the public interest to serve children in the child welfare system and to continue a status quo that has existed for many years.

4. The balance of the equities favors Plaintiffs. Plaintiffs provide crucial services to children and families, and the loss of those services would strain an already overstressed child welfare system. Michigan has not previously taken adverse action against Plaintiffs in its many years of contracting with St. Vincent, so cannot claim to be harmed by maintaining the status quo.

Therefore, this Court orders as follows:

1. Defendants Gordon, McCall, and Nessel, their agents, employees, and those acting in concert with them are **ORDERED** not to terminate or suspend performance of their contracts with St. Vincent Catholic Charities, decline to renew those contracts, nor take any other adverse action against St. Vincent Catholic Charities for engaging in protected speech and religious exercise, including continuing to refer couples to other agencies when St. Vincent cannot assist those couples due to its religious beliefs.
2. Defendant Azar is **ORDERED** not to take any enforcement action under 45 CFR 75.300(c) based upon St. Vincent's protected speech and religious exercise or upon Michigan's actions to accommodate such protected speech and religious exercise.

IT IS SO ORDERED.

Dated: April \_\_\_\_, 2019

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HON. ROBERT J. JONKER  
United States District Judge