

19-1715

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff-Appellant,

v.

SHEILA J. POOLE, in her official capacity as Acting Commissioner for
the Office of Children and Family Services for the State of New York,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of New York
Civil Case No. 5:18-cv-1419
(Hon. Mae A. D'Agostino)

**JOINT APPENDIX: VOLUME I OF II
(PAGES JA1-JA165)**

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APPEAL,CLOSED,MAD-PILOT

U.S. District Court
Northern District of New York - Main Office (Syracuse) [NextGen CM/ECF Release 1.2
(Revision 1.2)] (Syracuse)
CIVIL DOCKET FOR CASE #: 5:18-cv-01419-MAD-TWD

New Hope Family Services, Inc. v. Poole
Assigned to: U.S. District Judge Mae A. D'Agostino
Referred to: Magistrate Judge Therese Wiley Dancks
Cause: 42:1983 Civil Rights Act

Date Filed: 12/06/2018
Date Terminated: 05/16/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

New Hope Family Services, Inc.

represented by **David A. Cortman**
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JA1

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V.

Defendant

Sheila J. Poole
*in her official capacity as Acting
 Commissioner for the Office of Children
 and Family Services for the State of New
 York*

represented by **Adrienne J. Kerwin**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/06/2018	1	COMPLAINT against Sheila J. Poole (Filing fee \$400 receipt number ANYNDC-4585142) filed by New Hope Family Services, Inc.. (Attachments: # 1 Exhibit(s) 1, # 2 Exhibit(s) 2, # 3 Exhibit(s) 3, # 4 Exhibit(s) 4, # 5 Exhibit(s) 5, # 6 Exhibit(s) 6, # 7 Exhibit(s) 7, # 8 Civil Cover Sheet)(mgh) (Entered: 12/07/2018)
12/06/2018	2	Notice of Intent to File Motion for Preliminary Injunction and Request for Telephonic

JA2

		Conference if necessary filed by New Hope Family Services, Inc. (mgh) (Entered: 12/07/2018)
12/07/2018	3	Summons Issued as to Sheila J. Poole. (mgh) (Entered: 12/07/2018)
12/07/2018	4	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 3/7/2019 09:30 AM before Magistrate Judge Therese Wiley Dancks. Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by the parties on or before 2/28/2019. All conferences are conducted by telephone. Plaintiff's attorney will initiate the call (unless the Court directs differently) and shall contact Judge Dancks' Chambers at 315-234-8618 (a dedicated line solely for telephone conferences) once all parties are on the line. Counsel may use a teleconferencing service for assistance initiating conference calls to the Court. For cases involving pro se parties, the Court will initiate the call for the Rule 16 Conference. Pro se parties are instructed to provide the Court with a telephone number where they may be reached for a conference call. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) (mgh) (Entered: 12/07/2018)
12/07/2018	5	NOTICE of Admission Requirement as to Party New Hope Family Services; Attorney Erik Stanley, Esq., Email address is estanley@ADFlegal.org. Admissions due by 12/21/2018. {Sent via email}.(mgh) (Entered: 12/07/2018)
12/07/2018	6	NOTICE of Admission Requirement as to Party New Hope Family Services, Inc.; Attorney Roger Brooks, Esq., Email address is rbrooks@adlegal.org. Admissions due by 12/21/2018. (mgh) {Sent via email}.. (Entered: 12/07/2018)
12/07/2018	7	NOTICE of Admission Requirement as to Party New Hope Family Services, Inc.; Attorney Jeremiah Galus, Esq., Email address is jgalus@ADFlegal.org. Admissions due by 12/21/2018. (mgh) {Sent via email}.. (Entered: 12/07/2018)
12/07/2018	8	NOTICE of Admission Requirement as to Party New Hope Family Services; Attorney Jenna Hallock, Esq., Email address is jhallock@ADFlegal.org. Admissions due by 12/21/2018. {Sent via email}(mgh) (Entered: 12/07/2018)
12/07/2018	9	TEXT-ONLY NOTICE REGARDING JUDGE D'AGOSTINO CASE DISPOSITION PILOT - Please refer to the Individual Rules and Practices of the Hon. Mae A. D'Agostino, U.S. District Judge, for guidance regarding the Case Disposition Pilot. http://www.nynd.uscourts.gov/sites/nynd/files/DAGostino_03142016.pdf . (mgh) (Entered: 12/07/2018)
12/07/2018	10	TEXT ORDER re 2 Notice (Other) filed by New Hope Family Services, Inc.: It is hereby ORDERED that the Plaintiff's request for leave to file a Motion for Preliminary Injunction is GRANTED. No Court conference is necessary. Signed by U.S. District Judge Mae A. D'Agostino on 12/7/2018. (ban) (Entered: 12/07/2018)
12/10/2018	11	MOTION for Limited Admission Pro Hac Vice of Erik Stanley Filing fee \$100, receipt number ANYNDC-4587344. filed by New Hope Family Services, Inc.. (Attachments: # 1 Exhibit(s) Declaration of Sponsor, # 2 Exhibit(s) New Attorney E-filing Registration and Oath, # 3 Exhibit(s) Petition for Admission, # 4 Exhibit(s) Certificate of Good Standing, # 5 Proposed Order/Judgment) Motions referred to Therese Wiley Dancks. (Scruggs, Jonathan) (Entered: 12/10/2018)
12/10/2018	12	MOTION for Limited Admission Pro Hac Vice of Jeremiah Galus Filing fee \$100, receipt number ANYNDC-4587408. filed by New Hope Family Services, Inc.. (Attachments: # 1 Exhibit(s) Declaration of Sponsor, # 2 Exhibit(s) New Attorney E-filing Registration and Oath, # 3 Exhibit(s) Petition for Admission, # 4 Exhibit(s) Certificate of Good Standing, # 5 Exhibit(s) Proposed Order) Motions referred to Therese Wiley Dancks. (Scruggs, Jonathan) (Entered: 12/10/2018)

12/10/2018	13	MOTION for Limited Admission Pro Hac Vice of Jeana Hallock Filing fee \$100, receipt number ANYNDC-4587439. filed by New Hope Family Services, Inc.. (Attachments: # 1 Exhibit(s) Declaration of Sponsor, # 2 Exhibit(s) New Attorney E-filing Registration and Oath, # 3 Exhibit(s) Petition for Admission, # 4 Exhibit(s) Certificate of Good Standing, # 5 Proposed Order/Judgment) Motions referred to Therese Wiley Dancks. (Scruggs, Jonathan) (Entered: 12/10/2018)
12/10/2018	14	AFFIDAVIT of Service for Verified Complaint & Exhibits; Notice of Intent to File MPI; Summons; G.O.25 filing order served on Sheila J. Poole on 12-10-2018, filed by New Hope Family Services, Inc.. (Scruggs, Jonathan) (Entered: 12/10/2018)
12/12/2018	15	MOTION for Preliminary Injunction filed by New Hope Family Services, Inc.. (Attachments: # 1 Memorandum of Law, # 2 Affidavit of Judith A. Geyer, # 3 Affidavit of Charity Loscombe, # 4 Affidavit of Ellie Stultz, # 5 Affidavit of Elaine Bleuer, # 6 Affidavit of Jeremy Johnston, # 7 Affidavit of Justin Bleuer) (Scruggs, Jonathan) (Entered: 12/12/2018)
12/13/2018	16	TEXT ORDER SETTING ORAL ARGUMENTS re 15 MOTION for Preliminary Injunction : Oral Arguments are set for 1/16/2019 at 9:00 a.m. in Albany before U.S. District Judge Mae A. D'Agostino; Plaintiff's counsel is directed to serve a copy of the Summons, Complaint, General Order, Motion for Preliminary Injunction, and this text order upon the defendant on or before 12/21/18. Plaintiff's counsel must file an affidavit of service with the court once the defendant has been served. Defendant's response to 15 Motion for Preliminary Injunction, shall be filed on or before 1/4/19; Plaintiff's Reply shall be filed on or before 1/9/19. Signed by U.S. District Judge Mae A. D'Agostino on 12/13/2018.(ban) (Entered: 12/13/2018)
12/13/2018	17	TEXT ORDER granting 11 Motion for Limited Admission Pro Hac Vice of Erik Stanley, Esq. for New Hope Family Services, Inc. IMMEDIATE ATTENTION REQUIRED: Counsel is hereby advised that as of January 16, 2018, the NYND has converted to NextGen. Due to this conversion, you must now register for Pro Hac Vice access through your PACER account. This is the only notice you will receive concerning this requirement. You will not have access to electronically file in this case until your Pro Hac Vice request has been processed through the PACER system. Step-by-step instructions on how to complete this process are available at http://www.nynd.uscourts.gov/attorney-admissions-nextgen . SO ORDERED by Magistrate Judge Therese Wiley Dancks on 12/13/2018. (sg) (Entered: 12/13/2018)
12/13/2018	18	TEXT ORDER granting 12 Motion for Limited Admission Pro Hac Vice of Jeremiah Galus, Esq. for New Hope Family Services, Inc. IMMEDIATE ATTENTION REQUIRED: Counsel is hereby advised that as of January 16, 2018, the NYND has converted to NextGen. Due to this conversion, you must now register for Pro Hac Vice access through your PACER account. This is the only notice you will receive concerning this requirement. You will not have access to electronically file in this case until your Pro Hac Vice request has been processed through the PACER system. Step-by-step instructions on how to complete this process are available at http://www.nynd.uscourts.gov/attorney-admissions-nextgen . SO ORDERED by Magistrate Judge Therese Wiley Dancks on 12/13/2018. (sg) (Entered: 12/13/2018)
12/13/2018	19	TEXT ORDER granting 13 Motion for Limited Admission Pro Hac Vice of Jeana Hallock, Esq. for New Hope Family Services, Inc. IMMEDIATE ACTION REQUIRED: Counsel is hereby advised that as of January 16, 2018, the NYND has converted to NextGen. Due to this conversion, you must now register for Pro Hac Vice access through your PACER account. This is the only notice you will receive concerning this requirement. You will not have access to electronically file in this case until your Pro Hac Vice request has been processed through the PACER system. Step-by-step instructions on how to

		complete this process are available at http://www.nynd.uscourts.gov/attorney-admissions-nextgen . SO ORDERED by Magistrate Judge Therese Wiley Dancks on 12/13/2018. (sg) (Entered: 12/13/2018)
12/17/2018	20	AFFIDAVIT of Service for Notice of Motion and Motion for Preliminary Injunction; Motions for PHV for Erik Stanley, Jeremiah Galus, and Jeana Hallock served on Sheila J. Poole on 12-13-2018, filed by New Hope Family Services, Inc.. (Scruggs, Jonathan) (Entered: 12/17/2018)
12/17/2018	21	AFFIDAVIT of Service for Order setting oral arguments re Motion for Preliminary Injunction; and Orders granting PHV Admission for Erik Stanley, Jeremiah Galus, and Jeana Hallock served on Sheila J. Poole on 12-17-2018, filed by New Hope Family Services, Inc.. (Scruggs, Jonathan) (Entered: 12/17/2018)
12/19/2018	22	NOTICE of Appearance by Jeremiah Galus on behalf of New Hope Family Services, Inc. (Galus, Jeremiah) (Entered: 12/19/2018)
12/19/2018	23	NOTICE of Appearance by Erik W. Stanley on behalf of New Hope Family Services, Inc. (Stanley, Erik) (Entered: 12/19/2018)
12/19/2018	24	NOTICE of Appearance by Jeana Hallock on behalf of New Hope Family Services, Inc. (Hallock, Jeana) (Entered: 12/19/2018)
12/20/2018	25	NOTICE of Appearance by Adrienne J. Kerwin on behalf of Sheila J. Poole (Kerwin, Adrienne) (Entered: 12/20/2018)
12/28/2018	26	Pre-Motion Letter by Sheila J. Poole requesting a pre-motion conference submitted to Judge D'Agostino. MAD Pre-Motion Response Deadline 12/31/2018 (Kerwin, Adrienne) (Entered: 12/28/2018)
01/02/2019	27	MOTION for Limited Admission Pro Hac Vice of Roger G. Brooks Filing fee \$100, receipt number ANYNDC-4605304. filed by New Hope Family Services, Inc.. (Attachments: # 1 Exhibit(s) Petition for Admission, # 2 Exhibit(s) New Attorney E-filing Registration and Oath, # 3 Exhibit(s) Certificate of Good Standing, # 4 Proposed Order/Judgment) Motions referred to Therese Wiley Dancks. (Stanley, Erik) (Entered: 01/02/2019)
01/02/2019		Notice of Filing Deficiency re: 27 Motion for Limited Admission Pro Hac Vice., Pursuant to LR 83.1(d), the sponsor and/or applicant MUST provide the following required documents: Declaration of Sponsor The corrected documents should be electronically filed with the Court by selecting the 'Supplemental Admission documents' event, which is found under the 'Other Documents' menu. Once all requirements under LR 83.1(d) have been met, the motion will be forwarded to the assigned Magistrate Judge for consideration. (tad,) (Entered: 01/02/2019)
01/02/2019	28	Supplemental Admission documents re: 27 Motion for Limited Admission Pro Hac Vice., (Scruggs, Jonathan) (Entered: 01/02/2019)
01/02/2019	29	Pre-Motion Response to 26 Pre-Motion Letter by Sheila J. Poole requesting a pre-motion conference submitted to Judge D'Agostino . (Stanley, Erik) (Entered: 01/02/2019)
01/03/2019	30	TEXT ORDER granting 27 Motion for Limited Admission Pro Hac Vice of Roger Brooks, Esq. for New Hope Famil Services, Inc. IMMEDIATE ACTION REQUIRED: Counsel is hereby advised that as of January 16, 2018, the NYND has converted to NextGen. Due to this conversion, you must now register for Pro Hac Vice access through your PACER account. This is the only notice you will receive concerning this requirement. You will not have access to electronically file in this case until your Pro Hac Vice request has been processed through the PACER system. Step-by-step instructions on how to complete this process are available at http://www.nynd.uscourts.gov/attorney-admissions-

JA5

		nextgen. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 1/3/2019. (sg) (Entered: 01/03/2019)
01/04/2019	31	NOTICE of Appearance by Roger Greenwood Brooks on behalf of New Hope Family Services, Inc. (Brooks, Roger) (Entered: 01/04/2019)
01/04/2019	32	AFFIDAVIT in Opposition re 15 MOTION for Preliminary Injunction <i>and Memorandum of Law</i> filed by Sheila J. Poole. (Attachments: # 1 Memorandum of Law)(Kerwin, Adrienne) (Entered: 01/04/2019)
01/08/2019		TEXT Minute Entry for Telephone Pre-Motion Conference held on 1/8/2019 before U.S. District Judge Mae A. D'Agostino: Appearances by Roger Brooks, Esq. and Jeana Hallock, Esq. for the Plaintiff; Adrienne Kerwin, AAG for the defendants; Judge D'Agostino addresses counsel regarding the defendants pre-motion request for leave to file a motion to dismiss; The motion to dismiss may be filed on or before 1/14/19; Judge D'Agostino will address the previously filed motion for preliminary injunction and the motion to dismiss at the same hearing; ORAL ARGUMENTS on both motions is set for February 19, 2019 at 11:00 a.m. in Albany before Judge D'Agostino; Counsel should report to Courtroom No. 5 for this hearing; Response papers shall be filed on or before 2/4/19; Reply papers shall be filed on or before 2/8/19. Both motions will be addressed on an expedited schedule.(Court Reporter Jacqueline Stroffolino, CRD Britney Norton [Time 11:00 a.m. - 11:05 a.m.]) (ban) (Entered: 01/08/2019)
01/08/2019		TEXT NOTICE of Hearing on Motion 15 MOTION for Preliminary Injunction : ORAL ARGUMENTS are set for 2/19/2019 at 11:00 AM in Albany before U.S. District Judge Mae A. D'Agostino. (ban) (Entered: 01/08/2019)
01/09/2019	33	REPLY to Response to Motion re 15 MOTION for Preliminary Injunction filed by New Hope Family Services, Inc.. (Brooks, Roger) (Entered: 01/09/2019)
01/14/2019	34	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 2/19/2019 11:00 AM in Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 2/4/2019 Reply to Response to Motion due by 2/8/2019. filed by Sheila J. Poole. (Attachments: # 1 Memorandum of Law) (Kerwin, Adrienne) (Entered: 01/14/2019)
01/16/2019	35	TEXT ORDER: In light of the pending motions at Dkt. Nos. 15 and 34 , the Rule 16 Initial Conference set for 3/7/2019 and the associated deadlines are adjourned without new date at this time and will be rescheduled, if necessary, after the pending motions are decided by the District Court. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 1/16/2019. (sg) (Entered: 01/16/2019)
02/04/2019	36	RESPONSE in Opposition re 34 MOTION to Dismiss for Failure to State a Claim filed by New Hope Family Services, Inc.. (Brooks, Roger) (Entered: 02/04/2019)
02/08/2019	37	REPLY to Response to Motion re 34 MOTION to Dismiss for Failure to State a Claim filed by Sheila J. Poole. (Kerwin, Adrienne) (Main Document 37 replaced on 2/11/2019) (mgh,). (Entered: 02/08/2019)
02/11/2019		CLERK'S CORRECTION OF DOCKET ENTRY re 37 Reply to Response to Motion. The pdf image was inadvertently scanned with two additional pages not intended for filing on the docket. The document has been corrected and replaced. (mgh) (Entered: 02/11/2019)
02/19/2019		TEXT Minute Entry for Oral Arguments held on 2/19/2019 re 34 MOTION to Dismiss for Failure to State a Claim filed by Sheila J. Poole, 15 MOTION for Preliminary Injunction filed by New Hope Family Services, Inc.before U.S. District Judge Mae A. D'Agostino: Appearances by Roger Greenwood Brooks, Esq., David Cortman, and Jeana Hallock, Esq. for the Plaintiff; Adrienne Kerwin, AAG for the defendant; Counsel for the Plaintiff and Counsel for the defendant address the Court. Arguments are heard from both sides and the

		Court inquires of counsel; A written decision on the motions will be entered by the Court. (Court Reporter Jacqueline Stroffolino, CRD Britney Norton [Time 10:54 a.m. - 12:04 a.m.]) (ban) (Entered: 02/19/2019)
05/16/2019	38	MEMORANDUM-DECISION AND ORDER denying 15 Motion for Preliminary Injunction; granting 34 Motion to Dismiss for Failure to State a Claim: The Court hereby ORDERS that OCFS's motion to dismiss (Dkt. No. 34) is GRANTED; and the Court further ORDERS that New Hope's motion for a preliminary injunction is DENIED; and the Court further ORDERS that the Clerk of the Court shall enter judgment in OCFS's favor and close this case; and the Court further ORDERS that the Clerk of the Court shall serve a copy of this Memorandum-Decision and Order in accordance with the Local Rules. Signed by U.S. District Judge Mae A. D'Agostino on 5/16/2019. (ban) (Entered: 05/16/2019)
05/16/2019	39	JUDGMENT in favor of Sheila J. Poole against New Hope Family Services, Inc.. (Attachments: # 1 Appeal Notice) (ban) (Entered: 05/16/2019)
06/10/2019	40	NOTICE OF APPEAL as to 38 Order on Motion for Preliminary Injunction,, Order on Motion to Dismiss for Failure to State a Claim,, 39 Judgment by New Hope Family Services, Inc.. Filing fee \$ 505, receipt number ANYNDC-4765158. (Hallock, Jeana) Modified on 6/10/2019 - Pursuant to phone call from the filer, the document was inadvertently filed under co-counsel's filing account and not Mr. Brooks. (rep). (Entered: 06/10/2019)
06/11/2019	41	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re 40 Notice of Appeal. (mgh) (Entered: 06/11/2019)
06/14/2019	42	TRANSCRIPT REQUEST by New Hope Family Services, Inc. for proceedings held on 02/19/2019 before Judge Mae A. D'Agostino.. (Attachments: # 1 Exhibit(s) Transcript Order Form AO435)(Hallock, Jeana) (Entered: 06/14/2019)
06/28/2019	43	TRANSCRIPT of Proceedings: Oral Argument held on 2/19/2019 before Judge Mae A. D'Agostino, Court Reporter: Jacqueline Stroffolino, Telephone number: (518) 257-1894. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: In order to remove personal identifier data from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within 5 business days of this date. The policy governing the redaction of personal information is located on the court website at www.nynd.uscourts.gov . <u>Read this policy carefully.</u> If no Notice of Intent to Redact is filed within 5 business days of this date, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available on the web 90 days from today's date. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2019. Redacted Transcript Deadline set for 7/29/2019. Release of Transcript Restriction set for 9/26/2019. Notice of Intent to Redact due by 7/3/2019 (jxs,) (Entered: 06/28/2019)

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Description:	Docket Report	Search Criteria:	5:18-cv-01419-MAD-TWD

Billable Pages:	7	Cost:	0.70
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

Defendant.

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

5:18-cv-1419 (MAD/TWD)

INTRODUCTION

1. This is a federal civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of the New York Office of Children and Family Services' new interpretation and application of New York Codes, Rules, and Regulations, Title 18 § 421.3(d). A copy of the regulation, which became effective on November 6, 2013, is attached as Exhibit 1.

2. In the first century, the Apostle James exhorted Christians that "Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress," and across the centuries the church has led the way in caring for orphans and abandoned children. One of the first orphanages in America was founded in pre-revolutionary times by the famous preacher George Whitfield, while shortly after the revolution the first orphanage in New York was financed by churches throughout the city.

3. In 1958, pastor Clinton H. Tasker followed in that long tradition by founding what became New Hope Family Services as an explicitly Christian

ministry to care for and find adoptive homes for children whose birthmothers or parents could not care for them.

4. Since its founding, New Hope has provided loving service to birthparents, infants, and adoptive parents in a manner consistent with its religious convictions about the created nature of women, men, and families, and about the home environment that is best for children.

5. New Hope Family Services has placed over 1,000 children into loving adoptive homes throughout the State of New York.

6. New York law expressly permits birthparents to specify the religion of the adoptive family with which their child will be placed, and many birthmothers and adoptive parents choose to work with New Hope precisely because they share or value its religious nature and convictions.

7. Until recently, it was illegal for adoption providers in New York to place children for adoption with any couple except “an adult husband and his adult wife.” When the legislature first authorized unmarried and same-sex partners to adopt in 2010, the Governor noted in his approval statement that “the statute is permissive” rather than mandatory, and thus “would allow for such adoptions without compelling any agency to alter its present policies.”

8. New York State has never changed its adoption laws to make it mandatory for adoption providers to place children with couples other than “an adult husband and his adult wife.” Instead, unelected bureaucrats in the New York

Office of Children and Family Services have purported to do so through their adoption, interpretation, and enforcement of a new regulation.

9. This regulation was adopted for the purpose of targeting faith-based adoption ministries, and OCFS is now actively demanding that such ministries, including New Hope, violate their religious convictions and say things that they believe to be false—or shut their doors.

10. Following a review of New Hope’s policies and procedures, OCFS wrote a letter to New Hope, stating, “It was found that the agency’s policy pertaining to not placing ‘children with those who are living together without the benefit of marriage’ or ‘same sex couples’ violates Title 18 NYCRR § 421.3, and is discriminatory and impermissible.”

11. The letter provided an ultimatum that New Hope either “revise the present policy and continue the existing adoption program” or “fail to bring the policy into compliance with the regulation,” in which case “OCFS will be unable to approve continuation of [New Hope’s] current adoption program and [New Hope] will be required to submit a close-out plan for the adoption program.”

12. Because New Hope’s policy is an exercise of its religious faith, the OCFS ultimatum has placed it in the position of having to choose either to violate its faith or cease exercising its religion by closing its adoption ministry.

13. Because New Hope is on notice that it will be shut down if it does not violate its religious beliefs, New Hope has been unable to accept new birthparent

and adoptive-parent clients and has had to tell its current clients about the risk that it may be unable to serve them through the completion of their adoptions.

14. New Hope has placed three children with adoptive families whose adoptions are not yet finalized. If New Hope is unable to continue its service to these families, these adoptions will likely be delayed and these families may incur additional expense due to the transfer to another agency.

15. Because of its predicament, four of six new families who were scheduled to begin the homestudy program with New Hope have requested that their application fees be refunded.

16. Additionally, of the approximately thirteen families who were recommended to adopt through New Hope but had not yet received placements, three families asked for their money to be refunded. The others have agreed to wait in hopes that New Hope will be able to work with them.

17. And of the four expecting birthmothers who contacted New Hope desiring to place their children in adoptive homes, some have had to be referred elsewhere. But a few of those are anxiously hoping that New Hope will be able to work with them and find loving adoptive homes for their children.

18. The majority of adoptions that New Hope facilitates are open adoptions, meaning that there is a contact agreement in place that New Hope facilitates between the birthparents and the adoptive parents throughout the first eighteen years of the child's life.

19. New Hope has approximately 117 adoptions with active contact agreements that it is responsible for facilitating.

20. Because of the ultimatum, New Hope has been placed in the impossible situation of violating its religious beliefs or losing its ability to fulfill its obligations to the children, birthparents, and adoptive parents involved in open adoptions, with whom it has longstanding relationships of care and trust.

21. OCFS' actions threaten to destroy New Hope's ministry, deny its care to birthparents and adoptive parents who value and desire its services including its religious perspective, disrupt in-process adoptions, and most importantly slow or prevent the placement of infants into adoptive homes.

22. But core First Amendment protections—including New Hope's free exercise and free speech rights—prohibit this attempt by OCFS to either impose its agenda on faith-based adoption providers or shut them down.

23. OCFS' regulation and its actions threaten irreparable injury to New Hope. Accordingly, New Hope brings this lawsuit, seeking both preliminary and permanent injunctive relief.

JURISDICTION AND VENUE

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

25. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343; the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202; and costs and attorneys' fees under 42 U.S.C. § 1988.

26. Venue lies in the Federal District Court for the Northern District of New York pursuant to 28 U.S.C. § 1391(b). A substantial part of the actions or omissions giving rise to this case occurred within this District and at least one of the defendants resides within this District.

PARTIES

27. Plaintiff New Hope Family Services, Inc., is a religious not-for-profit corporation duly incorporated under the laws of New York, with its principal place of business at 3519 James Street, Syracuse, NY 13206.

28. Defendant Sheila J. Poole is the Acting Commissioner for OCFS for the State of New York and is sued in her official capacity. Her service address is Capital View Office Park, North Building, 52 Washington Street, Rensselaer, NY 12144.

FACTUAL BACKGROUND

Adoption and foster care crisis

29. There are over 440,000 children in foster care in the U.S.

30. Over 120,000 of those children are waiting to be adopted.

31. In federal fiscal year 2017, New York had 27,268 children served in foster care, with 19,213 in foster care on September 30, 2017.

32. Of those, over 4,400 New York children were waiting to be adopted.

33. During fiscal year 2017, throughout the state of New York, a total of only 1,729 children were adopted.

New Hope's formation and history

34. The care of orphans and infants whose parents cannot care for them has been a Christian mission since the beginning of the faith.

35. St. James instructed the earliest church that “Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress.” James 1:27.

36. Since America’s earliest days, people of Christian faith have carried out the religious mission of caring for orphans and women in distress.

37. One of the very first orphanages in America was founded in pre-revolutionary times by the famous preacher George Whitfield.

38. Shortly after the revolution, the first orphanage in New York was financed by churches throughout the city.

39. New Hope’s adoption ministry is one small part of America’s rich religious heritage of helping birthmothers and children through adoption.

40. In 1958, Clinton H. Tasker, a Christian minister serving in a rescue mission, strongly sensed the call of God to open a Christian adoption ministry in New York that would care for women facing unplanned pregnancies and for their children.

41. His vision was realized when New Hope Family Services’ incorporation was approved in 1965 by the State Board of Social Welfare under the name Evangelical Family Service, Inc. A copy of New Hope’s articles of incorporation as approved is attached as Exhibit 2 and a copy of New Hope’s amendment to perpetual duration is attached as Exhibit 3.

42. Its board was composed of ministers and Christian philanthropists.

43. In 1977, New Hope amended its name to Evangelical Adoption and Family Services, Inc. to better reflect all of its services.

44. In 1986, New Hope began operating a pregnancy resource center under its umbrella.

45. In the early 1990s, Evangelical Adoption and Family Services, Inc., amended its name to New Hope Family Services, Inc.

46. Over the years, OCFS has issued several letters to New Hope affirming that New Hope has the requisite corporate authority to place children for adoption and to perform adoption services. In those letters, OCFS has acknowledged that New Hope's authorization to perform adoption services is perpetual. A copy of one of those letters that was issued in 2008 is attached as Exhibit 4.

47. Though New Hope's name has changed several times, the mission and Christian character of the organization have remained the same.

48. Like its founding board, the current board of New Hope is composed of devout believers who are actively involved in their Christian churches, including one member who is actively pastoring a church.

49. New Hope's mission is "to be Christ's hands extended to offer hope and help to people with pregnancy, parenting, adoption, or post-abortion needs in the Syracuse area and throughout the State of New York."

50. Consistent with New Hope's mission, it operates as a pregnancy resource center and temporary-foster-placement and adoption provider.

51. In order to scrupulously ensure its autonomy to operate in accordance with its religious beliefs, New Hope accepts no government funding.

New Hope's religious character

52. New Hope's Christian faith and religious beliefs motivate and permeate its mission and all of its activities.

53. All of New Hope's paid staff, board members, and counseling volunteers must be in agreement with and sign New Hope's statement of faith, must be in agreement with and supportive of New Hope's religious mission, and must conduct themselves consistent with Christian faith and belief.

54. New Hope's board members pray at New Hope board meetings and all of New Hope's paid staff and counseling volunteers are expected to be willing to pray with any client who requests prayer or with other staff.

55. All of New Hope's paid staff and counseling volunteers are expected to counsel consistently with biblical truth.

56. New Hope believes that:

- God is sovereign over and involved in the creation of every human life and every human life is created in the image and likeness of God and is worthy of protection;
- Every person has inherent dignity and self-worth and should be treated with respect and love;
- The biblical model for the family as set out in the Bible—one man married to one woman for life for their mutual benefit and the benefit

of their children—is the ideal and healthiest family structure for mankind and specifically for the upbringing of children;

- God created two sexes—male and female. And each sex has a unique role and gifting that is intended to benefit the other and any children in the family;
- An individual’s sex as male or female is determined at the time of conception and cannot be changed;
- Caring for orphans is important to God and God desires believers to do so.

57. Through its adoption program, New Hope strives to save the lives of babies that God has created.

New Hope as a pregnancy resource center

58. New Hope operates as a pregnancy resource center that exists to lovingly serve women facing the fears and concerns of an unplanned pregnancy, and their children.

59. New Hope’s pregnancy resource center serves approximately 700 clients per year.

60. All of the services that New Hope provides as a pregnancy resource center are provided without consideration of the recipient’s marital status, sexual orientation, gender identity, or religious belief.

61. All of the services that New Hope provides its pregnancy resource center clients are provided free of charge, including pro-life information; education

and counseling about pregnancy, birth, parenting, and childcare; clothing and supplies for infants; counseling about available social services; referrals to physicians; and more.

62. New Hope provides its services to women in unplanned pregnancies pursuant to its pro-life viewpoint, desiring to empower the women it serves to choose life for their child by either choosing to parent or to create a loving adoption plan for their child, rather than choosing abortion.

63. As a pregnancy resource center, New Hope regularly serves unmarried couples and those who identify as lesbian, gay, bisexual or transgender.

64. When New Hope has a pregnancy-resource-center client who has a positive pregnancy test and is open to learning about adoption, New Hope provides the mother counseling about the adoption process. New Hope encourages her that adoption is a loving option, enabling the mother to give her baby life and to select the adoptive family with whom she feels comfortable entrusting her child.

65. New Hope never pressures a birthmother to make an adoption plan over parenting.

66. During the counseling process, New Hope shows the prospective birthmother profiles of some of the families with whom it has recently placed children as examples of the types of loving adoptive families that New Hope may be able to locate for her child.

67. New Hope holds over 1,500 counseling sessions per year as a pregnancy resource center.

68. New Hope's ability to serve its pregnancy-resource-center clients through its adoption program enhances its efficacy in encouraging women to choose life for their babies instead of abortion.

69. In addition, New Hope networks with other faith-based pregnancy resource centers throughout the State of New York, none of which are licensed adoption agencies. These centers refer clients to New Hope who are open to learning about adoption.

70. New Hope's ability to serve other pregnancy resource centers and the pregnant women those centers serve is enhanced by its ability to directly facilitate the creation of adoption plans and adoptive placements.

New Hope as adoption provider: birthparent services

71. New Hope operates as a New York voluntary adoption provider and is authorized to place children with New York state residents.

72. New Hope serves individuals from all over the state through its adoption program.

73. New Hope has been placing children in loving homes since 1965 and has placed over 1000 children.

74. In recent years, New Hope has placed between eight and twelve children in adoptive homes per year.

75. New Hope is unique in New York as an adoption provider because it also operates as a pregnancy resource center.

76. New Hope's primary focus is providing placements for newborns, infants, and toddlers up to two years of age. It is of the greatest urgency that these youngest children be placed into foster or adoptive homes as quickly as possible. OCFS' data indicates that "children less than one year of age are most likely to be involved in a report to the [Statewide Central Register of Abuse and Maltreatment], and the allegations within those reports are most likely to be substantiated."

77. New Hope is a relatively small adoption provider and takes a personal "arm-around-the-shoulder" approach to the services it provides to its adoption clients, walking birthparents through the journey of creating an adoption plan and providing guidance and counsel to prospective adoptive families through each step of the application, homestudy, placement, supervision, and finalization process.

78. Almost all of the adoptions New Hope handles are considered open adoptions, meaning that New Hope facilitates some degree of communication between the adoptive parents and birthparents about the child even after the adoptions are finalized.

79. New Hope allows birthparents and adoptive families to determine the level of openness they desire in the adoption, which includes issues such as (1) meeting the adoptive family before placement, (2) exchanging letters and photos with the adoptive family, (3) sending gifts to the child on holidays or birthdays, and/or (4) having one or two in-person visits per year with the child and adoptive family.

80. The chosen level of openness must be included in a Post Adoption Contact Agreement between the birthparents and adoptive parents, and is facilitated through New Hope until the child turns 18 years of age.

81. Even when birthparents and adoptive parents mutually agree to meet or communicate directly, New Hope remains available as a mediator should they develop a disagreement.

82. New Hope allows birthparents to choose a closed adoption if they prefer. In a closed adoption, there is no information sharing or communication from the adoptive parent to the birthparent regarding the child after the placement.

83. Many of New Hope's prospective birthmothers are referred to New Hope from other pregnancy resource centers throughout the state.

84. Many of New Hope's prospective birthparents contact New Hope directly because they have become aware of New Hope's adoption program and are interested in placing their unborn child for adoption through New Hope.

85. Many of New Hope's prospective birthparents are referred to New Hope by hospital social workers following the child's birth. Many of these clients are seeking immediate foster care placement for their child until an adoption can be arranged. New Hope provides this short-term foster care through its Tender Loving Care program.

86. Regardless of how a prospective birthparent is connected to New Hope, New Hope provides counseling concerning adoption and the adoption process to its prospective birthparents.

87. During the counseling process, New Hope discusses with birthparents their desires for the adoptive family with whom they would place their baby.

88. Consistent with state law and regulations, this includes discussing the birthparents' religious beliefs and whether they desire their baby to be placed in a home that practices those beliefs.

89. Consistent with state law and regulations, New Hope also discusses birthparents' race, ethnicity, and/or color and whether they desire the child to be placed with adoptive parents of similar race, ethnicity, or color.

90. During this process, birthmothers or birthfathers may also make statements to New Hope's birthparent caseworker about the age or sex of individuals with whom they would be willing to place their child.

91. During this process, birthmothers or birthfathers may also make statements about the family structure they would desire for their child's placement, such as a preference or aversion for the child to be placed in a home that already has other biological or adopted children, or a preference for the child to be placed in a home with a married mother and father.

92. During the process, birthmothers and birthfathers may also make statements about the type of community demographics or cultural characteristics they would desire for their child's upbringing.

93. During the process, birthmothers and birthfathers may also make statements about the educational or cultural backgrounds of individuals with whom they would be willing to place their child.

94. Based on the birthparent's desired characteristics for an adoptive family, New Hope reviews its list of prospective adoptive parents.

95. New Hope meets with birthparents, once a birthmother is approximately seven months along in her pregnancy, to show them actual parent profiles created by its current list of prospective adoptive parents.

96. If a birthmother has already given birth to the child, the child's actual characteristics are considered during these discussions.

97. New Hope typically shows five parent profiles to its prospective birthparents and ensures that the profiles match the birthparents' desires as well as the adoptive parents' willingness to adopt a child with the anticipated characteristics of the specific child.

98. New Hope generally has between 14 and 20 prospective adoptive families on its list that it has recommended for adoption.

99. All of the birthparents who have placed a child through New Hope have been able to find a family with whom they were comfortable placing their child for adoption from the profiles that New Hope provided during this process.

100. In some instances, a birthmother does not want to select the adoptive family with whom her child will be placed for personal reasons.

101. In those instances, New Hope considers the prospective adoptive parents on its list in light of the best interest of the child.

102. New Hope has never had a delay in placement because of consideration of these requirements.

New Hope as adoption provider: adoptive-family services

103. New Hope receives inquiries about its adoption program from prospective adoptive parents from all over the state of New York.

104. New Hope invites those parents to attend one of its periodic orientation sessions to learn about New Hope, its program, and the adoption process.

105. During the orientation presentation, New Hope makes its nature as a religious ministry clear, opening the meeting with prayer, and providing information about the organization's history and religious mission. New Hope also explains scripture passages and principles about children, including that Jesus loves children, that children are to be valued as gifts from God, and that Christians are told to have faith like a child.

106. New Hope also instructs prospective adoptive parents about its vision that adoption is intended to meet the needs of the child by providing a loving home, and that the role of a child should never be to meet the needs of the adoptive parent.

107. At the orientation meeting, prospective adoptive parents are given New Hope's application packet. Completion of this application puts an applicant on New Hope's waiting list to begin the homestudy process.

108. Usually within six months of receipt of the initial application, the applicant is mailed an invitation to begin the homestudy process and must resubmit an updated application to accept.

109. The first session of the homestudy process—Session One—is an all-day session that begins with prayer. The first portion is a group session with several other applicants. It is followed by individual meetings in the afternoon with an adoptive-parent caseworker.

110. In Session One, applicants receive a homestudy packet with various documents they need in order to complete the homestudy process.

111. At the end of Session One, New Hope provides prospective adoptive families a little booklet entitled “Steps to Peace with God.”

112. Session One includes, among other things, an exploration of applicants’ motivations to adopt, including discussion relating to infertility, grief, and loss, and how faith in God can help applicants through these issues.

113. Homestudy Session Two takes approximately two and a half hours and takes place on site at the applicant’s home.

114. Session Two includes an in-depth interview by the New Hope caseworker to explore the prospective adoptive parents’ experience with children, family support, parenting philosophy, ability to parent a child of a different race or culture, faith and religious practice, and family dynamics, including interviews of any children in the home.

115. Homestudy Session Three is perhaps the most intensive and takes approximately four hours at New Hope’s facility.

116. In Session Three, the caseworker further interviews the applicant or applicants. Married applicants are interviewed separately as well as together.

117. The purpose of Session Three is to explore the applicants' strengths and weaknesses in more detail, and to explore the following subjects: family of origin, family dynamics, thoughts on discipline and affection, work responsibilities, marital stability including sensitive topics like pornography use, mental-health history, financial stability, and parenting philosophy.

118. In the case of a married couple, New Hope is concerned about the importance of ensuring the intimacy and strength of the marriage for the benefit of any child placed with them.

119. New Hope views any discrepancies it discovers through these interviews to potentially be cause for concern regarding the marital relationship.

120. New Hope's primary concern during Session Three is ensuring that the home of the applicant(s) will be a safe, stable environment for the child.

121. Following Session Three, the caseworker and the Executive Director meet to review the entire contents of the case file. During this meeting the Executive Director and the caseworker consider all of the documentation submitted and make a determination to approve or disapprove the applicants as prospective adoptive parents. In making this determination, New Hope is always focused on the best interest of any child who may be placed in the home.

122. Only those who are recommended for placement will be invited to participate in Session Four.

123. Homestudy Session Four is a teaching session that is done in a group setting.

124. During Session Four, New Hope discusses how to talk to your child about adoption and other issues that are common to adopted children and families.

125. During Session Four, New Hope also shows examples of adoptive-parent profiles to prospective adoptive parents and instructs them about how to create their own profile, which will be the picture and message that connects them with the birthparent.

126. After Session Four, adoptive parents are given a month or so to make a profile. They first complete a draft profile, including pictures and wording, which they submit to New Hope for review.

127. New Hope's adoptive-parent caseworker and birthparent caseworker both review this draft, make suggested edits, and provide the adoptive parents with helpful feedback. Upon receiving that feedback, adoptive parents may collaborate further with New Hope on edits to their parent profile before finalizing them in a scrapbook format.

128. Once adoptive parents have finalized their profile, they are placed on the list for consideration by birthparents when a child is in need of an adoptive home.

129. Shortly after adoptive parents have submitted their profile, the New Hope caseworker discusses again in more detail the characteristics and legal risks of a child they are willing to adopt.

130. Consistent with state law and regulation, this discussion will include preferences for a child of a specific sex, race, color, or ethnicity.

131. New Hope will also discuss the adoptive parents' willingness to be involved in an open adoption.

132. Prior to making a placement with adoptive parents, New Hope educates them on sudden infant death syndrome, vaccinations, safe sleep environments for children, caring for premature infants, and the placement, supervision and finalization process.

133. The shortest length of time allowed by law for finalization after placement is three months, but the process usually takes between six months and one year to complete. During that time New Hope maintains legal custody of the child while the adoptive parents have physical guardianship.

134. After a child is placed, New Hope remains in close contact with the adoptive family to ensure that the child is receiving proper medical care and feeding, among other things.

135. New Hope places phone calls to the family and follows up with in-person visits at least two or three times during a period of about six months, and usually once every quarter thereafter if necessary.

136. These supervisory visits are intended to gather information about the child's growth, health, and development as well as to assess the degree of attachment developing between the adoptive parents and the child.

137. New Hope's caseworkers also assess how the level of openness agreed to in the Contact Agreement is playing out in actuality for the adoptive parents and how they are coping with it emotionally.

138. The caseworker's goal is to ensure the child's safety but also to help facilitate the adjustment of the adoptive parents to the child's placement in the home.

139. New Hope caseworkers are required to complete field reports reporting on their supervisory visits for inclusion in the case file and formal supervisory report.

140. In preparation for finalization, the homestudy report—which serves as New Hope's official recommendation of an adoptive family—must be notarized.

141. Before finalization, the homestudy update and supervisory reports are also prepared and notarized. These reports include information about the child's placement in the home and the child's adjustment to the family. These reports serve as New Hope's official recommendation of the adoptive family for the adoption of the specific child.

142. Following the finalization of an adoption, because of Contact Agreements, New Hope remains involved with the majority of its clients until the child turns 18 years of age.

143. New Hope facilitates letters, photos, and/or gifts being passed back and forth between the adoptive family and birthparents.

144. Depending on the level of openness, New Hope may also supervise and facilitate up to two in-person visits per year.

New Hope as foster placement provider: Tender Loving Care

145. Under certain circumstances, New Hope provides temporary foster placements.

146. New Hope calls its foster-care services Tender Loving Care homes.

147. In general these temporary placements occur when either (1) a birthmother working with New Hope has delivered in a hospital and has not decided between parenting or placement for adoption, or (2) a birthparent is referred to New Hope by a hospital social worker because she has not yet made an adoption plan and desires to do so.

148. New Hope recruits foster families that are willing to take in newborns on short notice.

149. For the same reasons previously set forth, New Hope typically seeks married husband and wife couples to serve as foster parents.

150. New Hope certifies its foster families for placements in accordance with the state regulatory process.

151. Similar to the adoption homestudy process, that process requires New Hope to interview and collect information on applicants in order to explore applicants' reasons for wanting to foster, their marital stability, family structure, religious affiliation, family background, and life history, among other things.

152. New Hope neither receives nor distributes any government funding in connection with its Tender Loving Care foster program.

New Hope's practices with respect to married and unmarried prospective adoptive parents

153. Because of New Hope's religious beliefs detailed above, New Hope will not recommend or place children with unmarried couples or same-sex couples as adoptive parents.

154. New Hope's "Special Circumstances" policy, formalizes this policy and practice and states in part:

If the person inquiring to adopt is single . . . The Executive Director will talk with them to discern if they are truly single or if they are living together without the benefit of marriage. . . . because New Hope is a Christian Ministry it will not place children with those who are living together without the benefit of marriage.

If the person inquiring to adopt is in a marriage with a same sex partner . . . (The Executive Director will . . . explain that because New Hope is a Christian Ministry, we do not place children with same sex couples).

155. New Hope has worked with unmarried individuals who are truly single in the past and remains willing to work with such individuals.

156. Because New Hope handles inquiries from unmarried couples and same-sex couples pursuant to the policy and practice described above, New Hope has never denied an unmarried couple or same-sex couple's application. Whenever a same-sex couple or unmarried couple is interested in a referral, New Hope refers them to the appropriate county social services office or another provider. On information and belief, no same-sex couple or unmarried couple who has inquired with New Hope about adoption has ever complained to OCFS about how New Hope handled their inquiry.

New York law concerning selection of adoptive parents and OCFS' lawless regulatory changes

157. Until recently, New York adoption law required that authorized agencies could *only* place children for adoption with “an adult unmarried person or an adult husband and his adult wife.” NY Dom. Rel. Law § 110 (2009).

158. In September 2010, New York amended its law to allow authorized agencies to place children for adoption with “an adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together.” NY Dom. Rel. Law § 110 (2011).

159. The Sponsor of the bill that amended the law, used permissive language throughout the Introducer’s Memorandum in Support, and throughout the memo, including in the purpose, summary, and justification sections the words “permit,” “may adopt” and “allow” were used to explain the need for the law. New York Bill Jacket, 2010 S.B. 1523, Ch. 509.

160. OCFS provided a letter in support of S.1523-A, in which it explained that “The bill . . . clarif[ies] that two unmarried adult intimate partners may adopt a child together even where neither person is the child’s biological parent.” The letter further stressed that “[t]his legislation permits . . . adoptions” by “two single persons . . . together where neither person is the biological parent of the child.” New York Bill Jacket, 2010 S.B. 1523, Ch. 509.

161. In signing the bill into law, the New York Governor emphasized the permissive nature of the law—“since the statute is permissive, it would allow for such adoptions without compelling any agency to alter its present policies.”

Approval Memorandum No. 25, Chapter 509. The Governor further stated the law “expands the rights of New Yorkers, without in any way treading on the views of any citizen or organization.” *Id.* A copy of the Governor’s Approval Memorandum is attached as Exhibit 5.

162. Shortly after this change, OCFS issued an informational letter explaining the new law in which it emphasized that the amendment “does not change or alter the standards currently in place for the approval of an individual as an adoptive parent or the eligibility requirements for adoption subsidies.” Office of Children & Family Services, Informational Letter, 11-OCFS-INF-01 (January 11, 2011).

163. New York has *never* amended its law to *require* authorized agencies to place children for adoption with “an adult unmarried person,” a same-sex “adult married couple together,” or “two unmarried adult intimate partners together.”

164. But OCFS is attempting to use regulations to require exactly that: on July 11, 2011, OFCS issued a second letter that purported to clarify, but in fact materially changed, the adoption regulations then found in 18 NYCRR 421.16 and subpart (h). In that letter, OCFS declared that “the intent of” subpart (h) “is to prohibit discrimination based on sexual orientation in the adoption study assessment process. In addition, OCFS cannot contemplate any case where the issue of sexual orientation would be a legitimate basis, whether in whole or in part, to deny the application of a person to be an adoptive parent.” Office of Children & Family Services, Informational Letter, 11-OCFS-INF-05 (July 11, 2011).

165. In 2013, OCFS amended the adoption regulations, declaring that authorized agencies,

providing adoption services shall ... (d) prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability....

N.Y. Comp. Codes R. & Regs. tit. 18, § 421.3 (2018).

166. During the rulemaking process that led to this change, OCFS issued various statements and comments on the rule change, including that, “[t]he proposed regulation is needed to allow OCFS to fully implement LGBTQ best practices in child welfare . . .” OCFS asserted that the amendments were needed to “eliminate *archaic* regulatory language, which implies that the sexual orientation of gay, lesbian and bisexual prospective adoptive parents . . . is relevant to evaluating their appropriateness as adoptive parents.” (emphasis added).

167. Following these 2013 changes, OCFS issued another informational letter in 2016 which stated:

[T]his policy directive requires the formalization of any existing nondiscrimination and harassment policies and procedures, and possibly the revision of such policies and procedures, by requiring that . . . [voluntary agencies] . . . not engage in or condone discrimination . . . on the basis of race, creed, color, national origin, sex, religion, sexual orientation, gender identity or expression, marital status or disability against . . . applicants for adoption services, . . . prospective foster parents, foster parents, or children in foster care.

168. OCFS promulgated these new regulations purporting to require adoption providers to place children with unmarried and same-sex couples in

complete disregard for the law, the scope of OCFS' authority, and the rights of adoption providers.

169. New York has never enacted any law requiring any adoption provider to facilitate or participate in any adoption by unmarried or same-sex couples, or indeed to participate in any adoption that the agency believes is not in the best interests of the child. Instead, New York law leaves all such matters to the judgment and beliefs of individual adoption providers.

170. New York Social Services Law § 373 required children to be placed “when practicable” with “an authorized agency under the control of persons of the same religious faith as that of the child.” Through its new regulations, OCFS is directly frustrating, rather than complying with, this statutory law. By shuttering religious adoption ministries that adhere to biblically based beliefs about marriage and family, OCFS is making it *impossible* to place children of birthparents who share this faith “with an authorized agency under the control of persons of the same faith as that of the child.”

171. New York adoption regulations repeatedly recognize the extensive, intimate, and important speech of the adoption provider that is involved in the adoption-placement process. *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 18, § 421.1 (“counseling”), N.Y. Comp. Codes R. & Regs. tit. 18, § 421.4 (“discussion”), N.Y. Comp. Codes R. & Regs. tit. 18, § 421.8 (“parent training”, “interviews”, “counseling”), N.Y. Comp. Codes R. & Regs. tit. 18, § 421.17 (“communication . . . agreement”).

172. New York regulations require authorized agencies to recruit based on “ethnic, racial, religious or cultural characteristics similar to those of the children identified annually by the department as composing the largest number of waiting children.” N.Y. Comp. Codes R. & Regs. tit. 18, § 421.10.

173. New York regulations require authorized agencies to use an application form “to elicit the following information from adoptive applicants: . . . (2) age, race, and religion of members of the household; . . . (4) characteristics of the child(ren) sought to be adopted.” N.Y. Comp. Codes R. & Regs. tit. 18, § 421.12.

174. New York regulations require authorized agencies to give priority processing to “applicants seeking children having” the “characteristics” of the “largest proportion of waiting children” including consideration of the children’s “age, race, handicap and other significant characteristics.” N.Y. Comp. Codes R. & Regs. tit. 18, § 421.13.

175. New York regulations permit authorized agencies to “consider[] . . . the age of the child and of the adoptive parent(s); . . . the cultural, ethnic, or racial background of the child and the capacity of the adoptive parent to meet the needs of the child with such background as one of a number of factors used to determine best interests. Race, color or national origin of the child or the adoptive parent may be considered only where it can be demonstrated to relate to the specific needs of an individual child.” N.Y. Comp. Codes R. & Regs. tit. 18, § 421.18.

176. New York regulations state that “a preference to adopt a child of a particular gender, where found necessary and appropriate, shall be carried out

openly.” N.Y. Comp. Codes R. & Regs. tit. 18, § 421.16.

177. New York Social Services Law § 373 requires courts to “when practicable . . . give custody through adoption, only to a person or persons of the same religious faith as that of the child.” It further dictates that those requirements “so far as consistent with the best interests of the child, and where practicable, be applied so as to give effect to the religious wishes of the birth mother and of the birth father . . .”

178. That section defines religious wishes as follows:

Religious wishes of a parent shall include wishes that the child be placed in the same religion as the birth parent or in a different religion from the birth parent or with indifference to religion or with religion a subordinate consideration. Expressed religious wishes of a birth parent shall mean those which have been set forth in a writing signed by the birth parent, except that, in a non-agency adoption, such writing shall be an affidavit of the birth parent. In the absence of expressed religious wishes, as defined in this subdivision, determination of the religious wishes, if any, of the birth parent, shall be made upon the other facts of the particular case, and, if there is no evidence to the contrary, it shall be presumed that the birth parent wishes the child to be reared in the religion of the birth parent.

N.Y. Soc. Serv. Law § 373 (McKinney).

179. New York state regulations require adoption agencies to “[m]ake an effort to place each child in a home as similar to and compatible with his or her religious background as possible . . .” N.Y. Comp. Codes R. & Regs. tit. 18 § 441.11.

180. New York regulations require that adoption agencies perform a rigorous assessment of prospective adoptive parents before placing children in their care.

181. Many individuals who may want to adopt may not be able to meet New York's requirements.

The Office of Children and Family Services targets New Hope and other faith-based adoption providers for threats and closure

182. In January or February of 2018, Suzanne Colligan of OCFS called New Hope's then Acting Executive Director, Judith A. Geyer. During the call, Ms. Colligan conveyed that, under a new policy implemented in 2018, OCFS would be conducting comprehensive on-site reviews of each private provider's procedures.

183. On July 18, Ms. Colligan sent an email to Ms. Geyer to schedule the adoption program review and included a list of things she needed to review, including New Hope's policies and procedures.

184. Based on Ms. Colligan's direction that she would need a copy of New Hope's policies and procedure manual, Ms. Geyer updated New Hope's formal policies and procedures on adoption into one consolidated manual.

185. On August 28, Ms. Geyer received an email from Ms. Colligan, stating in part:

I also thought that it might be helpful for you to see the application we use with agencies requiring reauthorization for corporate authority. Since you are authorized in perpetuity, your agency is **not** required to complete/submit this form. However, I will be asking many of the program questions on it, so you may find it helpful in preparing for my visit.

186. On September 6, 2018, Ms. Colligan met with Ms. Geyer and Kathy Decesare, New Hope's Center Director, and took a copy of New Hope's policy and procedure manual with her when she left.

187. On October 1, 2018, OCFS sent a letter to Ms. Geyer as an attachment to an email. The email and October 1, 2018 letter are attached as Exhibit 6. The letter praised a number of strengths in New Hope's program, thanked New Hope for its professionalism during the meeting, and suggested a follow-up meeting to discuss a few minor opportunities for improvement.

188. On or about October 9, 2018, Ms. Geyer received a call from Ms. Colligan. During the call, Ms. Colligan stated that she had been reading New Hope's policies and procedures manual and that New Hope's policy not to place children with those who are living together without the benefit of marriage or with same-sex couples violated Title 18 NYCCR § 421.3 and was impermissible.

189. Ms. Colligan told Ms. Geyer that New Hope would have to comply with § 421.3 by placing children with unmarried couples and same-sex couples.

190. Ms. Colligan said that if New Hope did not comply, New Hope would be "choosing to close."

191. Ms. Geyer responded that New Hope would be unwilling to violate its religious beliefs by placing children with unmarried or same-sex couples.

192. During the phone call, Ms. Colligan stated that "[s]ome Christian ministries have decided to compromise and stay open."

193. Ms. Geyer affirmed again that New Hope would be unwilling to violate its beliefs and stated that "[w]e will never choose to close. You will be forcing us to close." Ms. Geyer also stated that New Hope's religious freedom was being violated.

194. Ms. Colligan told Ms. Geyer that she would be getting a letter from OCFS mandating compliance by a specific date.

195. Ms. Colligan emailed Ms. Geyer on October 11, 2018, stating in part:

You will be receiving a letter from our office soon requesting a formal written response regarding your agency's position. When OCFS receives written notification of an agency's intention to close a program, OCFS will respond with written instructions to the agency with the steps they must take. These steps include the agency's responsibility to seek and obtain agreement with another NYS authorized agency to maintain and store their adoption records, of which includes the handling of activities outlined in the legally bound agreements with birth parents.

196. On October 12, 2018, Ms. Colligan sent an email to Ms. Geyer stating in part:

We will put Monday's follow up meeting [to discuss a few minor improvements identified during the visit] on hold for now. The purpose of the follow up meeting would be to work on the necessary changes to your agency policy manual. Based on our recent phone call, the follow up meeting for those purposes does not appear needed at this time.

197. On October 17, 2018, Ms. Colligan indicated in email to Ms. Geyer that she had mailed out a certified letter. That email stated in part:

Once the letter is returned providing us with written notice of your intent, we will send out a letter outlining our expectations around the handling of those that you are currently providing services and the adoption records.

198. On October 26, 2018, Ms. Geyer received an electronic copy of the letter to which Ms. Colligan had referred. The letter stated that New Hope's policy pertaining to "not placing 'children with those who are living together without the

benefit of marriage’ or ‘same-sex couples’ violates Title 18 NYCRR § 421.3.” The letter further stated:

OCFS hereby requests a formal written response from [New Hope] stating the agency’s position in regard to revising this policy to eliminate those portions that violate the above-cited regulation. Please respond within 15 days of receipt of this letter indicating specifically whether [New Hope] intends to revise the present policy and continue the existing adoption program, or that [New Hope] will not revise the policy so as to comply with the above-cited regulation.

Please be aware that should the agency fail to bring the policy into compliance with the regulation, OCFS will be unable to approve continuation of [New Hope’s] current adoption program and [New Hope] will be required to submit a close-out plan for the adoption program.

A copy of the letter is attached as Exhibit 7.

199. New Hope was given until November 30, 2018, to respond to OCFS’ ultimatum.

200. OCFS’ threat to prohibit New Hope from continuing to provide adoption services is not only entirely unjustified, it is lawless. New Hope was granted a perpetual authorization by the State of New York to act as an adoption agency. The New York Social Services Law section 388 preserves the authority of authorized agencies that is given in their charters. The New York Social Services Law section 385 permits OCFS to issue an order barring an authorized agency from providing adoption services only in enumerated circumstances—specifically, when “any disposition of a child under this title has been made for purposes of gain, or without due inquiry as to the character and reputation of the person with whom such child is placed, or in such manner that such child is subjected to cruel or

improper treatment or neglect or immoral surroundings, or in such manner that the religious faith of the child is not preserved and protected as provided by this title.”

201. OCFS has made no finding—and could not make a finding—that New Hope has engaged in any one of these prohibited practices.

202. On information and belief, several voluntary faith-based authorized agencies that were listed on OCFS’ website in January of 2018 as authorized to make adoption placements, including several Catholic providers, a Jewish provider, an LDS provider, and a Muslim provider, have been removed by OCFS from that posted list of authorized agencies as of the date of this Complaint.

203. On information and belief, several of those faith-based providers share similar beliefs to New Hope concerning life, marriage, the family, and human sexuality.

204. OCFS spokeswoman Monica Mahaffey was quoted in The Buffalo News as saying “New York State law is clear . . . Discrimination of any kind is illegal and in this case OCFS will vigorously enforce the laws designed to protect the rights of children and same sex couples. In New York State, we welcome all families who are ready to provide loving and nurturing homes to foster or adoptive children. There is no place for providers that choose not to follow the law.”

205. On information and belief, one of those religious adoption agencies that is no longer authorized by New York, had begun referring clients to New Hope before New Hope received the ultimatum from OCFS.

206. According to OCFS' website "In New York State, there are more than 130 adoption agencies. Each of New York's 58 social services districts has an adoption unit, and more than 70 authorized voluntary agencies statewide work with adopting families." The Adoption Process, N.Y. Office of Children & Family Servs., <https://ocfs.ny.gov/adopt/process.asp>.

207. The vast majority of New York's adoption agencies will place with unmarried and same-sex couples.

Irreparable injury suffered by New Hope and its clients

208. Without violating its religious beliefs, New Hope is unable to comply with the OCFS ultimatum to recommend unmarried couples and same-sex couples as foster and adoptive parents, to counsel unmarried and same-sex couples concerning adoptive parenthood and related relational issues, and to place children with unmarried couples and same-sex couples.

209. In fulfillment of its longstanding mission pursued in obedience to the faith of its staff and board, New Hope desires to continue taking on new adoptive parents, birthparents, foster parents, and children for placement in foster care and adoption, but the state now threatens to absolutely prevent New Hope from doing so by terminating New Hope's perpetual license and prohibiting it from serving in all of these ways.

210. At the time of the State's ultimatum, New Hope had approximately thirteen prospective adoptive families on its list that had completed the homestudy process and were waiting for a child to be placed with them.

211. New Hope had a homestudy Session One meeting scheduled for October 29, 2018, to begin the homestudy process with six more prospective adoptive families. Because it had been told that it would have to violate its beliefs or shut down, New Hope was forced to cancel the homestudy Session One meeting. New Hope advised those families of what the state was requiring. Four of the families requested a refund of their application fees.

212. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, four additional prospective adoptive families have contacted New Hope about beginning the adoption process. Because of OCFS' threats, New Hope was obliged to tell them that it may not be able to complete an adoption plan for their child and has had to refer some elsewhere.

213. New Hope desires to contact these prospective adoptive parents and work with them to place children in need of loving homes.

214. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, four expectant birthmothers contacted New Hope asking for help in placing their children for adoption. But New Hope was obliged to tell them that that it has suspended taking on new birthparents and children to work with towards adoption because of OCFS' threats.

215. New Hope desires to work with these prospective birthparents to help them find loving homes for their children.

216. New Hope has three active foster families that are willing to accept placements, but it has similarly had to advise them that its program is on hold due

to the uncertainty caused by the OCFS ultimatum.

217. New Hope had a training session concerning adoption scheduled for October 18, 2018, for center directors from several pregnancy resource centers from around the state. Because of OCFS' threat to terminate New Hope's authorization to provide adoption services, New Hope was forced to cancel the training.

218. If New Hope were to violate its religious beliefs and place children with unmarried couples and same-sex couples, the pregnancy resource centers that it currently serves through trainings and referrals would be less inclined to refer to New Hope, and may no longer refer to New Hope at all, because they are faith-based organizations that share New Hope's religious beliefs regarding the nature of marriage and family.

219. On information and belief, if New Hope were to violate its beliefs, it would lose some of its clients, including birthmothers, adoptive families, and foster families, who choose to work with New Hope because of their shared Christian faith.

220. If New Hope is unable to place children for adoption or in foster care, its ability to effectively minister to and help women who are facing unplanned pregnancies through its pregnancy resource center will be impaired.

221. New Hope currently retains legal custody of three children that it has placed with three separate adoptive families this year.

222. New Hope continues to actively supervise those placements but has advised those families of what the state is requiring and that it is unsure if it will

be able to continue to handle the finalization of their adoptions. If New Hope is unable to do so, finalization of these adoptions will be delayed because of being transferred to another provider.

223. Because the majority of New Hope's adoptions are open adoptions, if New Hope is unable to continue its adoption program, it will have to transfer 117 adoptive families and 117 birthparent families that it has worked with over the past 18 years, to another provider to facilitate those Contact Agreements.

224. If New Hope loses its authorization to place children, it will have to transfer all fifty-three years of its adoptive family and birthparent files to another provider.

225. If New Hope loses its authorization to place children in adoptive homes or foster care, it will likely have to terminate the employment of five of its employees.

226. At all times relevant to this Complaint, each and all of the acts alleged here are attributable to Defendant, who acted under color of a statute, regulation, custom, or usage of the State of New York.

227. New Hope currently suffers imminent and irreparable harm because of Defendant's regulation and ultimatum applying that regulation, which violate New Hope's constitutional rights.

228. New Hope has no adequate or speedy remedy at law for the loss of its constitutional rights.

229. Unless Defendant's conduct is enjoined, New Hope will continue to suffer irreparable injury.

FIRST CAUSE OF ACTION

First Amendment: Free Exercise of Religion

230. New Hope repeats and re-alleges each allegation contained in paragraphs 1–229 of this Complaint as if fully set forth here.

231. New Hope is a religious organization that can and does exercise religion in its provision of information and services, and in the way in which it chooses to speak and not speak during its provision of information and services.

232. The First Amendment to the United States Constitution protects New Hope's rights to speak about, publish, and freely exercise its religious beliefs.

233. The First Amendment prevents the government from excluding New Hope from a public benefit based solely on its religious beliefs.

234. The First Amendment prevents the government from interfering with New Hope's faith and mission.

235. The First Amendment protects New Hope from government hostility, targeting, and discrimination because of its religious beliefs and practices.

236. Defendant's interpretation and enforcement of § 421.3(d) targets, shows hostility toward, and discriminates against New Hope because of its religious beliefs and practices.

237. The First Amendment requires Defendant to act in a neutral and generally applicable manner toward New Hope and its religious beliefs and practices and bars even subtle departures from neutrality on matters of religion.

This First Amendment protection applies upon even slight suspicion that state actions stem from animosity to religion or distrust of its practices.

238. The First Amendment prevents the government from burdening religion with a law that is neither neutral nor generally applicable.

239. New Hope has sincerely held religious beliefs that motivate and require it to operate its ministry in accordance with biblical teachings.

240. New Hope has sincerely held religious beliefs that motivate and require it to care for orphans and other children whose parents cannot care for them.

241. New Hope has sincerely held religious beliefs that motivate and require it to care for women facing unplanned pregnancies and their unborn children.

242. OCFS has conditioned New Hope's perpetual authorization to perform adoption services on New Hope's willingness to renounce or violate its religious beliefs pertaining to marriage and family.

243. New Hope's existence as a religious organization is dependent on and inseparable from its ability to perform adoption services—that is the reason and purpose for which it was created.

244. Application of section 421.3(d) to New Hope interferes with New Hope's ability as a religious non-profit to carry out its religious doctrine, faith and mission.

245. Application of section 421.3(d) to New Hope imposes a substantial burden on New Hope's religious exercise and coerces it to change or violate its religious beliefs.

246. Forcing New Hope to revise its policies and place children with unmarried couples and/or same-sex couples substantially burdens New Hope's exercise of its religious beliefs as it is forced to choose between violating its beliefs and losing its perpetual authorization to perform adoption services.

247. Forcing New Hope to revise its policies and place children with unmarried couples and/or same-sex couples also substantially burdens New Hope's exercise of its religious beliefs because it undermines its religious message and its ability to save the lives of babies whose mothers are contemplating abortion.

248. Section 421.3(d) is not neutral or generally applicable as applied because it targets New Hope's disfavored religious beliefs for punishment, it imposes special disabilities on the basis of stating or exercising disfavored religious views, and the statutory and regulatory scheme provides exemptions for secular, nonreligious purposes.

249. Because state statutes and regulations allow adoption providers to consider protected characteristics when making placements consistent with the best interests of the child, and allows parents to consider such characteristics for any reason, the law also involves a system of individualized assessments.

250. In adopting section 421.3(d) OCFS removed section 421.16 (h)(2) which allowed consideration of sexual orientation as it related to the best interests of

adoptive children. The removal of that provision created an absolute bar against consideration of sexual orientation in the homestudy process. This categorically different treatment of this class as compared to the others without justification demonstrates OCFS' hostility toward New Hope's religious beliefs about marriage and the best family environment for children.

251. OCFS' adoption of section 421.3(d) contrary to law demonstrates OCFS' hostility towards New Hope's religious beliefs about marriage and the best family environment for children.

252. OCFS' enforcement of section 421.3(d) through threatening revocation of New Hope's authorization—something that OCFS is not empowered by law to do under the circumstances—demonstrates OCFS' hostility towards New Hope's religious beliefs about marriage and the best family environment for children.

253. The First Amendment prohibits the government from punishing the profession of a religious belief or imposing special disabilities on the basis of stating disfavored religious views.

254. Defendant issued the ultimatum because of New Hope's expression of its religious belief in its internal policy and procedures manual.

255. Defendant's ultimatum was targeted to exclude New Hope from participating as an adoption provider in the State of New York so long as New Hope maintained its disfavored religious views and expression.

256. Defendant's ultimatum and regulation impose special disabilities on New Hope due to New Hope's religious beliefs about marriage.

257. Defendant's ultimatum and regulation has chilled and continues to chill New Hope's religious exercise.

258. Applying section 421.3(d) to New Hope also violates the hybrid-rights doctrine by implicating free exercise rights in conjunction with other constitutional protections like the rights to free speech and equal protection.

259. Applying section 421.3(d) to New Hope does not serve any compelling, significant, legitimate, or even valid interest.

260. Forcing New Hope to place children with same-sex couples or unmarried couples, in violation of its religious beliefs, does not serve any interest in a narrowly tailored way.

261. Defendant has alternative, less restrictive means to achieve any legitimate interests rather than forcing New Hope to abandon its First Amendment rights.

262. Section 421.3(d) also is underinclusive because there are numerous exemptions to several forms of prohibited discrimination, including the bar on sexual orientation and marital status discrimination.

263. Accordingly, as applied to New Hope, Section 421.3(d) violates the First Amendment right to free exercise of religion.

SECOND CAUSE OF ACTION

First Amendment: Free Speech and Expressive Association

264. New Hope repeats and re-alleges each allegation contained in paragraphs 1–229 of this Complaint as if fully set forth here.

265. The First Amendment prevents the government from compelling

people to express, support, or promote a message not of their own choosing or to speak when they would rather remain silent.

266. The First Amendment protects the right of persons to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.

267. The First Amendment bars the government from compelling persons to expressively associate with others in the process of creating and disseminating speech.

268. The First Amendment protects New Hope's right to speak, to freely associate, to be free not to speak, and to not associate.

269. New Hope desires to recommend married opposite-sex couples and truly single individuals as adoptive parents.

270. New Hope conveys a system of values about life, marriage, family and sexuality to both birthparents and adoptive parents through its comprehensive evaluation, training, and placement programs.

271. Applying section 421.3(d) to New Hope requires New Hope to engage in speech and expression that it does not wish to convey—speech and expression that violates its core religious beliefs—by compelling it to recommend same-sex couples or unmarried couples as adoptive parents.

272. Applying section 421.3(d) to New Hope harms New Hope's ability to promote its beliefs and values about religion, marriage, sexuality, and family by

requiring it to associate with prospective-adoptive parents who promote a view of marriage and family that contradicts its own.

273. Including unmarried or same-sex couples in New Hope's comprehensive evaluation, training, and placement programs and adoptive-parent profiles would change New Hope's message and counseling to adoptive families and birthparents.

274. Applying section 421.3(d) to New Hope does not serve any compelling, significant, legitimate, or even valid interest.

275. Forcing New Hope to recommend and facilitate placement with same-sex couples or unmarried couples, in violation of its religious beliefs, does not serve any interest in a narrowly tailored way.

276. Defendant has alternative, less restrictive means to achieve any legitimate interests rather than forcing New Hope to abandon its First Amendment rights.

277. Section 421.3(d) also is underinclusive because there are numerous exemptions to several forms of prohibited discrimination, including the bar on sexual orientation and marital status discrimination.

278. Accordingly, as applied to New Hope, Section 421.3(d) violates the First Amendment right to free speech.

THIRD CAUSE OF ACTION

Fourteenth Amendment: Equal Protection

279. New Hope repeats and re-alleges each allegation contained in paragraphs 1–229 of this Complaint as if fully set forth here.

280. The Fourteenth Amendment to the United States Constitution guarantees equal protection of the laws.

281. Under the Equal Protection Clause, the government may not treat New Hope differently than similarly situated persons and organizations.

282. Section 421.3(d) treats New Hope's speech and exercise of its religious views differently from persons similarly situated to it because faith-based or secular adoption providers who hold different views on marriage, the family, and human sexuality are permitted to continue operating.

283. Section 421.3(d) treats New Hope's speech and exercise of its religious views differently from persons similarly situated to it because parents adopting children are permitted to take into account protected classes and characteristics but in facilitating the adoption New Hope is not.

284. Section 421.3(d) violates New Hope's fundamental rights, including its free exercise, free speech, and expressive-associational rights.

285. Applying section 421.3(d) to New Hope does not serve any compelling, significant, legitimate, or even valid interest.

286. Forcing New Hope to recommend and facilitate placement with same-sex couples or unmarried couples, in violation of its religious beliefs, does not serve any interest in a narrowly tailored way.

287. Defendant has alternative, less restrictive means to achieve any legitimate interests rather than forcing New Hope to abandon its First Amendment rights.

288. Section 421.3(d) also is underinclusive because there are numerous exemptions to several forms of prohibited discrimination, including the bar on sexual orientation and marital status discrimination.

289. In addition, there is no rational basis for requiring New Hope to violate its religious beliefs in order to continue performing adoption services.

290. Accordingly, as applied to New Hope, Section 421.3(d) violates its Fourteenth Amendment right to equal protection of the laws.

FOURTH CAUSE OF ACTION

Unconstitutional Conditions

291. New Hope repeats and re-alleges each allegation contained in paragraphs 1–229 of this Complaint as if fully set forth here.

292. The unconstitutional conditions doctrine prohibits the government from conditioning the receipt of a government benefit on the relinquishment of a constitutional right.

293. The government violates this unconstitutional conditions doctrine when it pressures a person to give up constitutional rights in order to obtain a public benefit.

294. The government also violates this doctrine when it denies a person a benefit because that person exercised his or her constitutional rights.

295. Defendant has violated the unconstitutional conditions doctrine by conditioning New Hope's perpetual authorization to provide adoption services on its willingness to relinquish its First Amendment rights.

PRAYER FOR RELIEF

New Hope respectfully requests that this Court enter judgment against Defendant and provide New Hope with the following relief:

- (A) Preliminary and permanent injunctive relief to stop Defendant and any person acting in concert with her from enforcing section 421.3(d) as applied to bar New Hope from engaging in its constitutionally protected practices;
- (B) A declaration that section 421.3(d) as applied to New Hope violates the First and Fourteenth Amendments to the United States Constitution and the unconstitutional conditions doctrine;
- (C) That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter in controversy here so that these declarations shall have the force and effect of a final judgment;
- (D) That this Court retain jurisdiction of this matter for the purpose of enforcing its orders;
- (E) That this Court award New Hope costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;
- (F) That this Court issue the requested injunctive relief without a condition of bond or other security being required of New Hope; and
- (G) That this Court grant any other relief that it deems equitable and just in the circumstances.

Respectfully submitted this 6th day of December, 2018.

s/Jon Scruggs

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5:18-cv-1419 (MAD/TWD)

EXHIBIT

1

18 CRR-NY 421.3

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 2. FAMILY AND CHILDREN'S SERVICES

PART 421. STANDARDS OF PRACTICE FOR ADOPTION SERVICES

Current through August 15, 2018

421.3 General requirements.

Authorized agencies providing adoption services shall:

(a) have written policies and procedures governing adoption services to:

- (1) biological parents and legal guardians;
- (2) children who are free for adoption, or who are not free but in need of adoptive planning;
- (3) prospective adoptive parents, adoptive applicants and adoptive parents; and
- (4) persons who have been adopted;

(b) make provisions for such written policies to be available to any interested party, and to be provided to biological parents, adoptive applicants, legal guardians and foster parents; and

(c) maintain appropriate records demonstrating compliance with agency policies and applicable department regulations; maintain a written record for each child and adoptive applicant containing information which documents decisions and plans of action;

(d) prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, *gender identity or expression* shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. *Gender identity* refers to a person's internal sense of self as male, female, no gender, or another gender, and *gender expression* refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

HISTORICAL NOTE

Sec. added by renum. 455.3, filed April 26, 1978; repealed, new filed Sept. 30, 1981; amd. filed Oct. 22, 2013 eff. Nov. 6, 2013. Added (d).

18 CRR-NY 421.3

End of Document

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5:18-cv-1419 (MAD/TWD)

EXHIBIT

2

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 14, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

Rev. 09/16

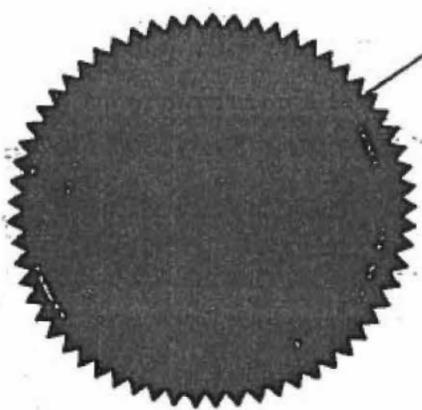


State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the sixteenth day of February, 1965, due inquiry and investigation having been made, the Board approved the proposed Certificate of Incorporation of EVANGELICAL FAMILY SERVICE, INC. pursuant to the Membership Corporation Law of the State of New York.



In witness whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this seventeenth day of February, in the year one thousand nine hundred and sixty-five.

Secretary.

WI-103 (Rev. 5/62)-1M
(1B1-472)

-----x
CERTIFICATE OF INCORPORATION
OF
EVANGELICAL FAMILY SERVICE, INC.
pursuant to the
MEMBERSHIP CORPORATION LAW
-----x

494171

We, the undersigned, for the purpose of forming a membership corporation pursuant to the Membership Corporation Law of the State of New York do hereby certify:

1. The name of the proposed corporation shall be Evangelical Family Service, Inc.
2. The purposes for which it is to be formed are to provide family counseling; to have authority to accept legal custody and guardianship of children; to provide protective service for children; to provide foster care service to child and unwed mother; to place children for adoption; and function in complete cooperation with all existing social welfare agencies.
3. The duration of the corporation shall be two years from the date of filing this certificate with the Secretary of State.
4. The territory in which its operations are to be principally conducted is the State of New York.
5. The city and county in which its office is to be located is Syracuse, Onondago County, New York.
6. The number of its directors shall be not less than twelve (12) nor more than thirty-six (36).
7. The names and residences of the directors until the first annual meeting are:
Burton B. Butman, M. D., 25 Woodgreen Lane, Roslyn Heights, N. Y.
Benjamin J. Fisher, Jr., Glen Crest Village, New Hartford, N. Y.

2

John W. Helfrich, Salem Drive, Stony Brook, New York
Adolph H. Huttar, 284 Reed Avenue, Syracuse, New York 13207
Rev. Gerald Jack, Frawley Drive, Baldwinsville, N. Y. 13027
Emily D. Markham, M. D., 175 Nob Hill, Rochester, N. Y. 14617
Ford S. Mason, Mason Manor, 11705 Main Rd., Akron, N.Y. 14001
Dr. Herbert S. Mekeel, 115 Union St., Schenectady, N. Y. 12305
Dr. Clyde W. Meredith, 315 W. 70th St., Apt. 18F, New York, N. Y.
Rev. Leon L. Miles, 154 W. Kennedy St., Syracuse, N. Y. 13205
Parker E. Olney, 302 Catherine St., North Syracuse, N. Y. 13212
Anthony J. Pagano, 25 Gifford Drive, Syracuse, N. Y. 13219
Miss Mildred Sheldon, 329 W. Seneca Street, Ithaca, N. Y. 14850
Mr. Donald Shetland, W. Lake Road, Oswego, New York
Charles K. Smith, D.O., 237 Church St., Breesport, N. Y. 14816
Rev. Carlton Spencer, Elim Bible College, Lima, N. Y. 14485
Rev. G. Thomas Spiker, 244 Belle Ave., Syracuse, N. Y. 13205
Oliver J. Steiner, M.D., 32 Treehaven Rd., Buffalo, New York 14215
Hollis Stevenson, D.D.S., 66A, Broad St., Plattsburg, N. Y. 12901
Clinton H. Tasker, Hillmount Apts. Apt. 507, 505 Cherry St. S.E.
Grand Rapids, Michigan
Rev. A. S. Taylor, 412 Rural Avenue, Williamsport, Penna.
Dr. Ellwood A. Voller, North Chili, N. Y. 14514
Charles D. Wallace, 118 Cole Rd., Orchard Park, N. Y.
Rev. Arnold T. Williamson, 11 Edmund St., Lynbrook, N. Y. 11563
Robert M. Easley, Box 905, Orleans, Massachusetts
Albert J. Page, 4424A Myrtlewood Drive, Huntsville, Alabama

8. All of the subscribers to the certificate are of full age, at least two-thirds of them are citizens of the United States, at least one of them is a resident of the State of New York and that of the persons named as directors, at least one is a citizen of the United States and a resident of the State of New York.

-X-
3

IN WITNESS WHEREOF, we have made, signed, and acknowledged
this certificate this 26th day of March, 1965.

Clyde W. Meredith
CLYDE W. MEREDITH

John W. Helfrich
JOHN W. HELFRICH

Adolph H. Huttar
ADOLPH H. HUTTAR

Leon L. Miles
LEON L. MILES

Oliver J. Steiner
OLIVER J. STEINER

Read
Huttar
JSC

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss

On this 2 day of April, 1965, before me came
Clyde W. Meredith, to me known and known to me to be the
individual described in, and who executed the foregoing
instrument, and acknowledged that he executed the same.

JAMES C. FAUST
NOTARY PUBLIC, State of New York
No. 52-1173725
Qualified in Suffolk County
Commission expires March 30, 1969

James C. Faust
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF NASSAU) ss

On this 26th day of March, 1965, before me came John W. Helfrich,
to me known and known to me to be the individual described in,
and who executed the foregoing instrument, and acknowledged that
he executed the same.

HARRY D. LOUISA
NOTARY PUBLIC, State of New York
No. 30-0332500
Qualified in Nassau County
Term Expires March 30, 1965

Harry D. Louisa
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF Ontario) ss

On this 30th day of March, 1965, before me came Adolph H. Huttar,
to me known and known to me to be the individual described in,
and who executed the foregoing instrument, and acknowledged that
he executed the same.

Raymond J. deSena
NOTARY PUBLIC

RAYMOND J. DESENA
NOTARY PUBLIC, State of New York
Qualified in Ontario County
My Commission Expires March 30, 1966

-X-
4

STATE OF NEW YORK)
COUNTY OF ~~Orange~~) ss

On this 30th day of ~~Mar.~~ March, 1965, before me came Leon L. Miles, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Raymond J. DeSilva, Jr.
NOTARY PUBLIC
Raymond J. DeSilva, Jr.
Notary Public in the State of N. Y.
Qualified in Onondaga Co. No. 34-083155
My Commission expires March 30, 1966

STATE OF NEW YORK)
COUNTY OF ERIE) ss

On this 2nd day of March, 1965, before me came Oliver J. Steiner, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Michael J. ...
NOTARY PUBLIC
My Comm. expires
March 30, 1967

*Read
with
J.S.C.*

I hereby approve of the foregoing Certificate of Incorporation of the Evangelical Family Service, Inc., and of the filing thereof.

*Signed at Albany
April 23, 1965*

George M. ...
Justice of the Supreme Court
of the State of New York

NOTICE WAIVED. NO OBJECTION
(This is not to be deemed an approval on behalf of any other State Department or agency, nor an authorization of activities otherwise limited by law.)

4/14/65 LOUIS J. LEFKOWITZ
Attorney General of
the State of New York

BY: *[Signature]*
Assistant Attorney General

-X-

5

54/26

CERTIFICATE OF INCORPORATION
494171 OF *L*
EVANGELICAL FAMILY SERVICE, INC.
pursuant to the
MEMBERSHIP CORPORATION LAW

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 26 1965

TAX \$ *none*
FILING FEE \$ *5.00*

John P. Lomax
Secretary of State
By *[Signature]*

7
JOHN W. HELFRICH
Attorney-at-law
330 FRONT STREET
HEMPSTEAD, NY
(516) 491-2929

5:18-cv-1419 (MAD/TWD)

EXHIBIT

3

CERTIFICATE OF REVIVAL OF EXISTENCE

of

EVANGELICAL FAMILY SERVICE INC.

pursuant to Section 49 of the General Corporation Law.

We, ADOLPH H. KUTNER and JOHN W. HEIBRICH, being the President and Secretary of EVANGELICAL FAMILY SERVICE INC. last elected to such offices of the corporation, do certify:

1. The name of this corporation is EVANGELICAL FAMILY SERVICE INC.
2. The certificate of incorporation of this corporation was filed in the office of the Secretary of State of the State of New York on the 26th day of April, 1965.
3. The date on which the term of existence specified in the certificate of incorporation of this corporation expired is the 26th day of April, 1967.
4. The existence of this corporation is to be hereby revived and the duration of this corporation shall be perpetual.

IN WITNESS WHEREOF we have executed this certificate this 17 day of _____ 1967.

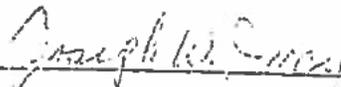
ADOLPH H. KUTNER

JOHN W. HEIBRICH

Case 19-1715, Document 63-1, 08/15/2019, 2633742, Page77 of 142

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

On this _____ day of _____ 1967, before me personally appeared ADOLPH H. RUTTEN, to me personally known, and known to me to be the person described in and who executed the above instrument, and he duly acknowledged to me that he executed the same.

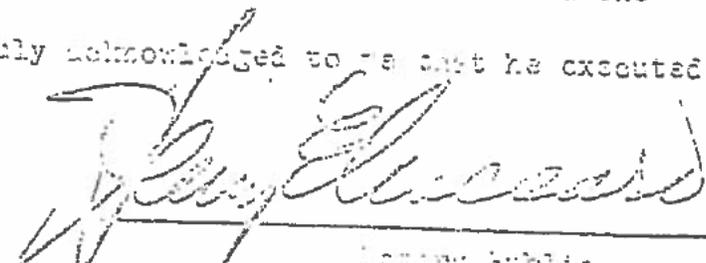


Notary Public

JOSEPH W. PERRY
Notary Public in and for the State of New York
My Commission Expires on 12/31/2019

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

On this _____ day of _____ 1967, before me personally appeared JOHN R. EDWARDS, to me personally known, and known to me to be the person described in and who executed the above instrument, and he duly acknowledged to me that he executed the same.



Notary Public

Case 19-1715, Document 63-1, 08/15/2019, 2633742, Page 78 of 142



State of New York — Department of Social Services

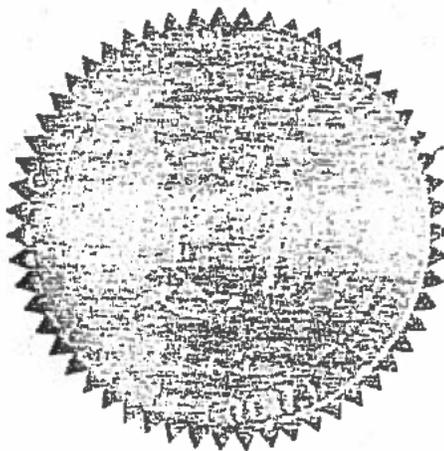
State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the nineteenth day of September, 1967, due inquiry and investigation having been made, the Board approved the proposed Certificate of Revival of Existence of EVANGELICAL FAMILY SERVICE, INC., pursuant to Section 35 of the Social Services Law of the State of New York.

In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of September, in the year one thousand nine hundred and sixty-seven.



George R. Wymann
Commissioner

Case 19-1715, Document 63-1, 08/15/2019, 2633742, Page 80 of 142

5:18-cv-1419 (MAD/TWD)

EXHIBIT

4



**New York State
Office of
Children &
Family
Services**
www.ocfs.state.ny.us

Eliot Spitzer
Governor

Gladys Carrión, Esq.
Commissioner

The Atrium
100 S. Salina St.
Syracuse, NY 13202



Equal Opportunity Employer

January 17, 2008

3519 James Street
Syracuse, New York 13206

Re: New Hope Family Services, Inc.

To Whom It May Concern:

This letter is to confirm that New Hope Family Services, Inc. is an authorized adoption agency in the State of New York. The State of New York does not issue "licenses" to corporations engaged in adoptions. A corporation obtains the authority to act as an adoption agency by filing with the New York State Department of State, upon the approval of this Office, of a certificate of incorporation or amendment to the certificate of incorporation or application for authority to do business in New York containing the appropriate corporate powers and authority. New Hope Family Services, Inc. is authorized to place out children in New York for adoption.

In the State of New York home studies (referred to as adoption studies in New York) must be conducted in conformity with New York State law. The adoption study must include but is not limited to criminal history background checks, sworn statements by the applicants whether they have ever been convicted of a crime and a clearance through the Statewide Central Register of Child Abuse and Maltreatment. Such an adoption summary must be prepared by an authorized adoption agency. In addition, the corporation has the authority to conduct post placement visits and reports.

According to the Office's records, on April 26, 1965, New Hope Family Services, Inc. filed with the Department of State a certificate of incorporation, under the name of Evangelical Family Service, Inc., which included as corporate powers the authority to accept legal custody and guardianship of children and to place children for adoption. On September 26, 1967, the corporation filed with the Department of State a certificate of amendment of the certificate of incorporation to extend the duration of the existence of the corporation from an initial duration of two years to a perpetual duration. On December 16, 1988, the corporation filed with the Department of State another certificate of amendment of the certificate of incorporation to change the name of the corporation from Evangelical Family Service, Inc. to Evangelical Adoption and Family Services, Inc. On March 26, 1993, the corporation filed with the Department of State another certificate of amendment of the certificate of incorporation to change the name of the corporation from Evangelical Adoption and Family Service, Inc. to New Hope Family Services, Inc. The written approval of the State Board of

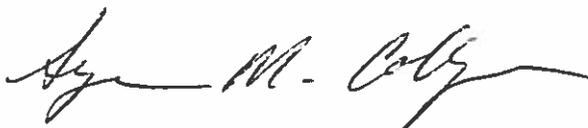
Case 19-1715, Document 63-1, 08/15/2019, 2633742, Page83 of 142

Social Welfare was obtained for the filing of the initial certificate of incorporation and the first certificate of amendment. The written approval of the State Department of Social Services was obtained for the filing of the second and third certificates of amendment. (The State Board of Social Welfare and the State Department of Social Services were the predecessor agencies to the State Office of Children and Family Services. Those agencies previously had the authority to approve certificates of incorporation and amendment of proposed adoption agencies that are currently the responsibility of this Office.) Therefore, New Hope Family Services, Inc. currently has the requisite corporate authority to place children for adoption and to perform other adoption services, including home studies. The agency's authority to conduct such activities in New York is perpetual.

You may provide this letter or copies thereof to demonstrate the current authority of the agency to place out children for adoption in New York.

Please call me at 315-423-3942 if you have any questions.

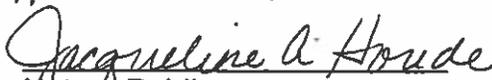
Very truly yours,



Suzanne M. Colligan
Adoption Specialist
Syracuse Regional Office

JACQUELINE A. HOUDE
Notary Public, State of New York
Reg. No. 01HO6144941
Qualified in Onondaga County
My Commission Expires May 1, 2010

Sworn to before me this
17th day of January, 2008


Notary Public

cc: Brenda Rivera

5:18-cv-1419 (MAD/TWD)

EXHIBIT

5



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

APPROVAL # 25
CHAPTER # 509

SEP 17 2010

MEMORANDUM filed with Senate Bill Number 1523-A, entitled:

“AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child”

A P P R O V E D

This bill would amend Domestic Relations Law § 110 to add to the delineated list of those who may adopt a child, an unmarried couple comprised of adult “intimate partners.” In adding this language, the bill would make absolutely clear a principle that has already been established by the courts, *see In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227 (4th Dep’t 2004) and that ensures fairness and equal treatment to families that are ready, willing and able to provide a child with a loving home. This includes same-sex couples, regardless of whether they are married. Moreover, since the statute is permissive, it would allow for such adoptions without compelling any agency to alter its present policies. It is a wise, just and compassionate measure that expands the rights of New Yorkers, without in any way treading on the views of any citizen or organization.

There are two aspects of this legislation that I believe warrant my comment, so as to make clear my understanding of this bill as I sign it into law. First, the term “intimate partners,” although at the heart of the bill, is not defined in it. That should not, however, create any confusion. The term is defined elsewhere in New York law, *see* CPL § 530.11(e), and I believe such definitions contained in other titles provide adequate specificity as to the term’s meaning, and would be looked to by agencies and courts in determining the appropriate construction of this law.

Second, I note that this amendment at least clarifies, and at most expands, existing law. It does not in any way limit or restrict it. Therefore, to the extent the law prior to this bill has been, or may be, read to permit any particular individual or individuals to adopt, including individuals who are neither married nor “intimate partners,” there is nothing in this bill that would disturb such a reading.

In sum, this bill will enhance the rights of New Yorkers longing to be parents. As such, it is a welcome addition to New York law.

The bill is approved.

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JA81'

5:18-cv-1419 (MAD/TWD)

EXHIBIT

6

From: **Colligan, Suzanne (OCFS)** <Suzanne.Colligan@ocfs.ny.gov>
Date: Mon, Oct 1, 2018 at 1:14 PM
Subject: Program Review 2018
To: Judy Geyer <jgeyer.newhope@gmail.com>

Judy – Please find attached our letter regarding your agency’s program review. I will be sending another email providing dates for a follow up meeting, as well as the template identifying the practice areas that need improvement at this point. Thank you

Suzanne M. Colligan

Permanency Specialist, Child Welfare and Community Services

NYS Office of Children and Family Services

100 South Salina Street – Suite 350

Syracuse, NY 13202

Phone: 315-423-3943 Fax: 315-423-3960 Email: Suzanne.Colligan@ocfs.ny.gov



Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA POOLE
Acting Commissioner

October 1, 2018

Judy Geyer, Interim Executive Director
New Hope Family Services, Inc.
3519 James Street
Syracuse, NY 13206

Dear Ms. Geyer:

On September 6, 2018 the New York State Office of Children and Family Services, Syracuse Regional Office, conducted a review of your agency's adoption program. The review included meeting with staff to discuss and review the current provision of adoption services, program structure, policies, and record storage. Additionally, we reviewed several adoptive applicant and free foster home records.

Our office found that your program has a number of strengths in providing adoption services within the community. One of which is the strong emphasis on assisting the birth parents in making an informed decision for their newborn, providing them time to make the decision, along with a supportive and detailed adoptive family selection process. During the site visit there were a few topic areas that warranted a follow up meeting to discuss and verify adjustments have been made to the current agency policies. The topics included:

- Immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process
- Request for non-identifying information and medical history by adoptive families, adoptee, or birth parent; including usage of the Adoption Information Registry through the Department of Health.
- The agency's role and limitations regarding the exchange of information related to conditions of a surrender.

This program review will be conducted at your agency every three years. Annual onsite visits will be conducted over the next two years. We would like to thank you for the courtesy and cooperation extended to us during the visit and look forward to working with you as you continue to provide adoption services. We will be contacting you shortly to schedule a follow up meeting. If you have any questions about this letter, please contact Suzanne Colligan at 315-423-3943.

Sincerely,

A handwritten signature in cursive script that reads "Sara J. Simon".

Sara J. Simon, Director

Child Welfare and Community Services, Syracuse Regional Office

5:18-cv-1419 (MAD/TWD)

EXHIBIT

7



Judy Geyer <jgeyer.newhope@gmail.com>

Letter for New Home Family Services

1 message

White, Catherine (OCFS) <Catherine.White@ocfs.ny.gov>

Fri, Oct 26, 2018 at 11:32 AM

To: "jgeyer.newhope@gmail.com" <jgeyer.newhope@gmail.com>

Cc: "Colligan, Suzanne (OCFS)" <Suzanne.Colligan@ocfs.ny.gov>, "Staley, Debra (OCFS)" <Debra.Staley@ocfs.ny.gov>, "McCarthy, Carol (OCFS)" <Carol.McCarthy@ocfs.ny.gov>, "Korona-Wilson, Alicia (OCFS)" <Alicia.Korona-Wilson@ocfs.ny.gov>, "Simon, Sara (OCFS)" <Sara.Simon@ocfs.ny.gov>, "Meyer, Sonia K (OCFS)" <Sonia.Meyer@ocfs.ny.gov>

Good mid-day Ms. Geyer;

Here is an electronic copy of the original certified letter mailed out to you all on Tuesday, October 26, 2018. I am resending another certified letter out to you today. When you receive it can you **acknowledge receipt of the letter and/or have an email receipt** that shows that it was delivered. Thanks again for your patience in this important matter.

Have a great day,

Catherine

*Catherine M. White**Secretary 1**Bureau Of Permanency Services**52 Washington Street North Bldg. Rm 332**Rensselaer, NY 12144**518-408-3628*

 New Hope Family Services.pdf
110K

JA86



**Office of Children
and Family Services**

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

October 16, 2018

SENT VIA CERTIFIED MAIL

Judy Geyer
Interim Executive Director
New Hope Family Services
3519 James Street
Syracuse, NY 13206

Dear Ms. Geyer,

The New York State Office of Children and Family Services (OCFS) is seeking clarification on the New Hope Family Services' (NHFS) position relating to the attached policy. On September 6, 2018, Suzanne Colligan, Permanency Specialist from the OCFS Syracuse Regional Office, met with you to conduct a site visit and program review of the agency's current adoption program. As part of the program review, Ms. Colligan was provided a copy of your agency's policy manual. It was found that the agency's policy pertaining to not placing "children with those who are living together without the benefit of marriage" or "same sex couples" violates Title 18 NYCRR §421.3, and is discriminatory and impermissible.

OCFS hereby requests a formal written response from NHFS stating the agency's position in regard to revising this policy to eliminate those portions that violate the above-cited regulation. Please respond within 15 days of receipt of this letter indicating specifically whether NHFS intends to revise the present policy and continue the existing adoption program, or that NHFS will not revise the policy so as to comply with the above-cited regulation.

Please be aware that should the agency fail to bring the policy into compliance with the regulation, OCFS will be unable to approve continuation of NHFS's current adoption program and NHFS will be required to submit a close-out plan for the adoption program.

Please return your response to the attention of Carol McCarthy, Director, Bureau of Permanency Services at:

NYS Office of Children and Family Services
Room 332N
52 Washington St.
Rensselaer, NY 12144

Thank you,

Laura M. Velez
Deputy Commissioner
Child Welfare and Community Services

Attachment

cc: Sara Simon, Director of Syracuse Regional Office

Case 19-1715, Document 63-1, 08/15/2019, 2633742, Page91 of 142

ADOPTION INQUIRIES: SPECIAL CIRCUMSTANCES

Because New Hope is a Christian Ministry, and we stand on the authority of the Word of God, there are special circumstances which would require a call from the Executive Director. These are:

If the person inquiring to adopt is single, please get all of their information and tell them that the Executive Director will call them within the next 5 business days. (The Executive Director will talk with them to discern if they are truly single or if they are living together without the benefit of marriage. (New Hope will place children with those who are truly single, but because New Hope is a Christian Ministry it will not place children with those who are living together without the benefit of marriage).

If the person inquiring to adopt is in a marriage with a same sex partner, please get all of their information and tell them that the Executive Director will call them within the next 5 business days. (The Executive Director will talk to them and explain that because New Hope is a Christian ministry, we do not place children with same sex couples).

In the above situations, please give the Executive Director the Purple Service Request. She will return the Purple Service Request to the Receptionist once the call has been made.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

Defendant.

No.: 5:18-cv-1419 (MAD/TWD)

**NEW HOPE'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY INJUNCTION**

Oral Argument Requested

Please take notice that as soon as the matter may be heard before the Honorable Judge Mae A. D'Agostino, in Courtroom 5 of the United States District Court for the Northern District of New York, located at 445 Broadway, Albany, New York 12207, Plaintiff New Hope Family Services will and hereby does move for a preliminary injunction. Specifically, New Hope requests that this Court preliminary enjoin Defendant, in her official capacity as Acting Commissioner for the New York Office of Children and Family Services, from applying N.Y. Comp. Codes R. & Regs. tit. 18, § 421.3(d) (the "Regulation") to New Hope, and prevent OCFS from revoking New Hope's perpetual authorization to place children for adoption during the pendency of this litigation.

New Hope is a Christian, faith-based adoption provider that operates consistently with its religious beliefs about marriage and family. It has done so for more than 50 years, placing over 1,000 children with adoptive families since its founding in 1965. But after OCFS recently confirmed that New Hope's beliefs prevent it from counseling and recommending unmarried and same-sex couples as

adoptive parents, OCFS claimed that New Hope was violating the Regulation. OCFS has now demanded that New Hope violate its religious beliefs or shut down its adoption services.

As explained in the accompanying Memorandum of Law, a preliminary injunction is warranted because OCFS' ultimatum violates New Hope's constitutional rights; New Hope will suffer irreparable harm in the absence of a preliminary injunction; the balance of hardships tips strongly in New Hope's favor; and protecting New Hope's constitutional rights is in the public interest. In support of this motion, New Hope relies on the accompanying Memorandum of Law in Support; the Affidavits of Judith Geyer, Charity Loscombe, Ellie Stultz, Elaine Bleuer, Jeremy Johnston, and Justin Bleuer; and New Hope's Verified Complaint.

New Hope requests that this matter be set for oral argument.

Dated: December 12, 2018

s/ Jonathan Scruggs

Robert Genant, Bar No. 105257

Genant Law Office

3306 Main Street, Ste. B

Mexico, NY 13114

(315) 963-7296

(315) 963-8274 (Fax)

bgenant@genantlaw.com

Local Counsel

Erik Stanley, AZ Bar No. 030931*

estanley@ADFlegal.org

Jonathan Scruggs, AZ Bar No. 030505

jscruggs@ADFlegal.org

Roger Brooks, NY Bar No. 2260537**

rbrooks@adflegal.org

Jeremiah Galus, AZ Bar No. 030469*

jgalus@ADFlegal.org

Jeana Hallock, AZ Bar No. 032678*
jhallock@ADFlegal.org
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 (Fax)
**Pro Hac Vice application pending*
***Pro Hac Vice application forthcoming*

David Cortman, Bar No. 502661
dcortman@ADFlegal.org
Alliance Defending Freedom
1000 Hurricane Shoals Road, N.E.
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 (Fax)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2018, I electronically filed the following documents with the Clerk of the District Court using the CM/ECF system.

- New Hope's Notice of Motion and Motion for Preliminary Injunction;
- New Hope's Memorandum of Law in Support of Motion for Preliminary Injunction;
- Affidavit of Judith Geyer in Support of New Hope's Motion for Preliminary Injunction;
- Affidavit of Charity Loscombe in Support of New Hope's Motion for Preliminary Injunction;
- Affidavit of Ellie Stultz in Support of New Hope's Motion for Preliminary Injunction;
- Affidavit of Elaine Bleuer in Support of New Hope's Motion for Preliminary Injunction;
- Affidavit of Jeremy Johnston in Support of New Hope's Motion for Preliminary Injunction; and
- Affidavit of Justin Bleuer in Support of New Hope's Motion for Preliminary Injunction.

I further certify that I will cause the above-referenced documents to be personally served by a process server on the following non-CM/ECF participants:

Sheila Poole
Acting Commissioner
Office of Children and Family Services for the State of New York
Capital View Office Park
North Building
52 Washington Street
Rensselaer, NY 12144

s/Jonathan Scruggs
Jonathan Scruggs
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

5:18-CV-1419 (MAD/TWD)

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

**AFFIDAVIT OF JUDITH A.
GEYER IN SUPPORT OF NEW
HOPE FAMILY SERVICES’
MOTION FOR PRELIMINARY
INJUNCTION**

Defendant.

1. My name is Judith A. Geyer.
2. I am above the age of 18, of sound mind, and with full authority to make this declaration.
3. I am currently the Interim Executive Director of New Hope Family Services, Inc. (hereafter “New Hope”), located at 3519 James Street, Syracuse, NY 13206.
4. I became an employee of New Hope in 1992.
5. I began my employment with New Hope as an adoptive parent caseworker.
6. I became Executive Director in 1996 and continued in that role until 2013 when I retired.
7. Even after retirement as Executive Director, I continued to work for New Hope Family Services as an adoption caseworker. When the woman who replaced me as Executive Director became ill, I stepped in as Acting Executive Director in August of 2017.

8. After she passed away in April of 2018, I was given the title of Interim Executive Director and I have continued to maintain that position until today.

9. Kathy Jarman, Director of Client Services, for our pregnancy center is anticipated to succeed me as Executive Director on or about April 1, 2019.

10. The care of orphans and infants whose parents cannot care for them has been a Christian mission since the beginning of the faith.

11. St. James instructed the earliest church that “Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress.” James 1:27.

12. New Hope’s adoption ministry is one small part of America’s rich religious heritage of helping birthmothers and children through adoption.

13. In 1958, Clinton H. Tasker, a Christian minister serving in a rescue mission, strongly sensed the call of God to open a Christian adoption ministry in New York that would care for women facing unplanned pregnancies and for their children.

14. He left the Mission and began traveling throughout the state speaking to churches, service organizations, and missionary committees to raise funds.

15. His vision was realized when New Hope Family Services’ incorporation was approved in 1965 by the State Board of Social Welfare under the name Evangelical Family Service, Inc.

16. Its board was composed of ministers and Christian philanthropists.

17. In 1977, New Hope amended its name to Evangelical Adoption and Family Services, Inc. to better reflect all of its services.

18. In 1986, New Hope began operating a pregnancy resource center under its umbrella.

19. In the early 1990s, Evangelical Adoption and Family Services, Inc., amended its name to New Hope Family Services, Inc.

20. Though New Hope's name has changed several times, the mission and Christian character of the organization have remained the same.

21. Like its founding board, the current board of New Hope is composed of devout believers who are actively involved in their Christian churches, including one member who is actively pastoring a church.

22. New Hope's mission is "to be Christ's hands extended to offer hope and help to people with pregnancy, parenting, adoption, or post-abortion needs in the Syracuse area and throughout the State of New York."

23. There are over 440,000 children in foster care in the U.S.

24. Over 120,000 of those children are waiting to be adopted.

25. In federal fiscal year 2017, New York had 27,268 children served in foster care, with 19,213 in foster care on September 30, 2017.

26. Of those, over 4,400 New York children were waiting to be adopted.

27. During fiscal year 2017, throughout the state of New York, a total of only 1,729 children were adopted.

28. Consistent with New Hope's mission, it operates as a pregnancy

resource center and temporary-foster-placement and adoption provider.

29. In order to scrupulously ensure its autonomy to operate in accordance with its religious beliefs, New Hope accepts no government funding.

30. New Hope's Christian faith and religious beliefs motivate and permeate its mission and all of its activities.

31. All of New Hope's paid staff, board members, and counseling volunteers must be in agreement with and sign New Hope's statement of faith, must be in agreement with and supportive of New Hope's religious mission, and must conduct themselves consistent with Christian faith and belief. Paid staff and counseling volunteers must also be willing and able to pray with and present the Gospel to New Hope's clients.

32. New Hope's board members pray at New Hope board meetings.

33. New Hope holds regular times of worship and prayer for its employees and volunteers.

34. All of New Hope's paid staff and counseling volunteers are expected to counsel consistently with biblical truth.

35. New Hope believes that the Bible is the inspired and authoritative word of God and strives to follow its commands.

36. New Hope believes that:

- God is sovereign over and involved in the creation of every human life and every human life is created in the image and likeness of God and is worthy of protection;

- Every person has inherent dignity and self-worth and should be treated with respect and love;
- The biblical model for the family as set out in the Bible—one man married to one woman for life for their mutual benefit and the benefit of their children—is the ideal and healthiest family structure for mankind and specifically for the upbringing of children;
- God created two sexes—male and female. And each sex has a unique role and gifting that is intended to benefit the other and any children in the family;
- An individual’s sex as male or female is determined at the time of conception and cannot be changed;
- Caring for orphans is important to God and God desires believers to do so.

37. Through its adoption program, New Hope strives to save the lives of babies that God has created.

38. New Hope operates as a pregnancy resource center that exists to lovingly serve women facing the fears and concerns of an unplanned pregnancy, and their children.

39. New Hope’s pregnancy resource center serves approximately 700 clients per year.

40. New Hope provides the following services to its pregnancy center clientele: free urine pregnancy tests; free supplies from its care corner that clients

can frequent once per month, including items like car seats, clothes, formula, diapers, and wipes for children ages 0-2 years; referral for free ultrasound if pregnancy test is positive; free unplanned pregnancy options counseling focused on parenting and/or adoption; free childbirth education courses taught by a registered nurse; free counseling on parenting issues/challenges; referrals for medical, community, and social services; free post-abortion counseling; and free counseling following miscarriage or infant loss.

41. All of the services that New Hope provides as a pregnancy resource center are provided without consideration of the recipient's marital status, sexual orientation, gender identity, or religious belief.

42. All of the services that New Hope provides its pregnancy resource center clients are provided free of charge.

43. New Hope provides its services to women in unplanned pregnancies pursuant to its pro-life viewpoint, desiring to empower the women it serves to choose life for their child by either choosing to parent or to create a loving adoption plan for their child, rather than choosing abortion.

44. As a pregnancy resource center, New Hope regularly serves unmarried couples and those who identify as lesbian, gay, bisexual or transgender.

45. When New Hope has a pregnancy-resource-center client who has a positive pregnancy test and is open to learning about adoption, New Hope provides the mother counseling about the adoption process. New Hope encourages her that adoption is a loving option, enabling the mother to give her baby life and to select

the adoptive family with whom she feels comfortable entrusting her child.

46. New Hope never pressures a birthmother to make an adoption plan over parenting.

47. During the counseling process, New Hope shows the prospective birthmother profiles of some of the families with whom it has recently placed children as examples of the types of loving adoptive families that New Hope may be able to provide for her child.

48. New Hope holds over 1,500 counseling sessions per year as a pregnancy resource center.

49. New Hope's ability to serve its pregnancy-resource-center clients through its adoption program enhances its efficacy in encouraging women to choose life for their babies instead of abortion.

50. In addition, New Hope networks with and acts as a resource to other faith-based pregnancy resource centers throughout the State of New York, none of which are licensed adoption agencies. New Hope offers education sessions to pregnancy resource centers about adoption and the New York adoption process, so that pregnancy resource centers will be familiar with New Hope's services and will be conversant on the subject. New Hope does this so that other pregnancy resource centers will be more effective in their ability to counsel their clients toward adoption over abortion. These centers refer clients to New Hope who are open to learning about adoption.

51. New Hope's ability to serve other pregnancy resource centers and the

pregnant women those centers serve is enhanced by its ability to directly facilitate the creation of adoption plans and adoptive placements.

52. New Hope also operates as a New York voluntary adoption provider and is authorized to place children with New York state residents.

53. New Hope serves individuals from all over the state through its adoption program.

54. New Hope has been placing children in loving homes since 1965 and has placed over 1,000 children.

55. In recent years, New Hope has placed between eight and twelve children in adoptive homes per year.

56. New Hope is unique in New York as an adoption provider because it also operates as a pregnancy resource center.

57. New Hope's primary focus is providing placements for newborns, infants, and toddlers up to two years of age. It is of the greatest urgency that these youngest children be placed into foster or adoptive homes as quickly as possible. OCFS' data indicates that "children less than one year of age are most likely to be involved in a report to the [Statewide Central Register of Abuse and Maltreatment], and the allegations within those reports are most likely to be substantiated."

58. New Hope is a relatively small adoption provider and takes a personal "arm-around-the-shoulder" approach to the services it provides to its adoption clients, walking birthparents through the journey of creating an adoption plan and providing guidance and counsel to prospective adoptive families through each step

of the application, homestudy placement, supervision, and finalization process.

59. Almost all of the adoptions New Hope handles are considered open adoptions, meaning that New Hope facilitates some degree of communication between the adoptive parents and birthparents about the child even after the adoptions are finalized.

60. New Hope allows birthparents and adoptive families to determine the level of openness they desire in the adoption, which includes issues such as (1) meeting the adoptive family before placement, (2) exchanging letters and photos with the adoptive family, (3) sending gifts to the child on holidays or birthdays, and/or (4) having one or two in-person visits per year with the child and adoptive family.

61. The chosen level of openness must be included in a Post Adoption Contact Agreement between the birthparents and adoptive parents, and is facilitated through New Hope until the child turns 18 years of age.

62. Even when birthparents and adoptive parents mutually agree to meet or communicate directly, New Hope remains available as a mediator should they develop a disagreement.

63. New Hope allows birthparents to choose a closed adoption if they prefer. In a closed adoption, there is no information sharing or communication from the adoptive parent to the birthparent regarding the child after the placement.

64. Many of New Hope's prospective birthmothers are referred to New Hope from other pregnancy resource centers throughout the state.

65. Many of New Hope's prospective birthparents contact New Hope directly because they have become aware of New Hope's adoption program and are interested in placing their unborn child for adoption through New Hope.

66. Many of New Hope's prospective birthparents are referred to New Hope by hospital social workers following the child's birth. Many of these clients are seeking immediate foster care placement for their child until an adoption can be arranged. New Hope provides this short-term foster care through its Tender Loving Care program.

67. Regardless of how a prospective birthparent is connected to New Hope, New Hope provides counseling concerning adoption and the adoption process to its prospective birthparents.

68. During the counseling process, New Hope discusses with birthparents their desires for the adoptive family with whom they would place their baby.

69. Consistent with state law and regulations, this includes discussing the birthparents' religious beliefs and whether they desire their baby to be placed in a home that practices those beliefs.

70. Consistent with state law and regulations, New Hope also discusses birthparents' race, ethnicity, and/or color and whether they desire the child to be placed with adoptive parents of similar race, ethnicity, or color.

71. During this process, birthmothers or birthfathers may also make statements to New Hope's birthparent caseworker about the age or sex of individuals with whom they would be willing to place their child.

72. During this process, birthmothers or birthfathers may also make statements about the family structure they would desire for their child's placement, such as a preference or aversion for the child to be placed in a home that already has other biological or adopted children, or a preference for the child to be placed in a home with a married mother and father.

73. During the process, birthmothers and birthfathers may also make statements about the type of community demographics or cultural characteristics they would desire for their child's upbringing.

74. During the process, birthmothers and birthfathers may also make statements about the educational or cultural backgrounds of individuals with whom they would be willing to place their child.

75. Based on the birthparent's desired characteristics for an adoptive family, New Hope reviews its list of prospective adoptive parents.

76. New Hope meets with birthparents, once a birthmother is approximately seven months along in her pregnancy, to show them actual parent profiles created by its current list of prospective adoptive parents.

77. If a birthmother has already given birth to the child, the child's actual characteristics are considered during these discussions.

78. New Hope typically shows five parent profiles to its prospective birthparents and ensures that the profiles match the birthparents' desires as well as the adoptive parents' willingness to adopt a child with the anticipated characteristics of the specific child.

79. New Hope generally has between 14 and 20 prospective adoptive families on its list that it has recommended for adoption.

80. All of the birthparents who have placed a child through New Hope have been able to find a family with whom they were comfortable placing their child for adoption from the profiles that New Hope provided during this process.

81. In some instances, a birthmother does not want to select the adoptive family with whom her child will be placed for personal reasons.

82. In those instances, New Hope considers the prospective adoptive parents on its list in light of the best interest of the child.

83. New Hope has never had a delay in placement because of consideration of these requirements.

84. New Hope receives inquiries about its adoption program from prospective adoptive parents from all over the state of New York.

85. New Hope invites those parents to attend one of its periodic orientation sessions to learn about New Hope, its program, and the adoption process.

86. During the orientation presentation, New Hope makes its nature as a religious ministry clear, opening the meeting with prayer, and providing information about the organization's history and religious mission. New Hope also explains scripture passages and principles about children, including that Jesus loves children, that children are to be valued as gifts from God, and that Christians are told to have faith like a child.

87. During the presentation, New Hope instructs prospective adoptive parents about its vision that adoption is intended to meet the needs of the child by providing a loving home, and that the role of a child should never be to meet the needs of the adoptive parent. New Hope also educates prospective adoptive parents about open adoption, the adoption triad (child, birth parents, adoptive parents), birthparents and their desires to select a good home for their child if they are unable to parent, the home-study process, legal surrenders, and agency fees, among other things.

88. At the orientation meeting, prospective adoptive parents are given New Hope's application packet. Completion of this application puts an applicant on New Hope's waiting list to begin the homestudy process.

89. Usually within six months of receipt of the initial application, the applicant is mailed an invitation to begin the homestudy process and must resubmit an updated application to accept.

90. The first session of the homestudy process—Session One—is an all-day session that begins with prayer. The first portion is a group session with several other applicants. It is followed by individual meetings in the afternoon with an adoptive-parent caseworker.

91. In Session One, applicants receive a homestudy packet with various documents they need in order to complete the homestudy process.

92. At the end of Session One, New Hope provides prospective adoptive families a little booklet entitled "Steps to Peace with God."

93. Session One includes, among other things, an overview of the home-study process, a review of application documents and requirements, a discussion of required reading on interracial adoption, an exploration of applicants' motivations to adopt, including discussion relating to infertility, grief, and loss, and how faith in God can help applicants through these issues. The session also includes education on bonding and attachment, with an emphasis on how different types of child care plans impact bonding and attachment for working parents.

94. Homestudy Session Two takes approximately two and a half hours and takes place on site at the applicant's home and begins with prayer.

95. Session Two includes an in-depth interview by the New Hope caseworker to survey the home for compliance with safety requirements, explore the prospective adoptive parents' experience with children, family support, parenting philosophy, ability to parent a child of a different race or culture, faith and religious practice, and family dynamics, including interviews of any children in the home.

96. Homestudy Session Three is perhaps the most intensive and takes approximately four hours at New Hope's facility.

97. In Session Three, the caseworker further interviews the applicant or applicants. Married applicants are interviewed separately as well as together.

98. The purpose of Session Three is to explore the applicants' strengths and weaknesses in more detail, and to explore the following subjects: family of origin, family dynamics, thoughts on discipline and affection, work responsibilities, marital stability including sensitive topics like pornography use, mental-health

history, financial stability, and parenting philosophy.

99. In the case of a married couple, New Hope is concerned about the importance of ensuring the intimacy and strength of the marriage for the benefit of any child placed with them.

100. New Hope views any discrepancies it discovers through these interviews to potentially be cause for concern regarding the marital relationship.

101. New Hope's primary concern during Session Three is ensuring that the home of the applicant(s) will be a safe, stable environment for the child.

102. After each session, the caseworker makes notes regarding the caseworker's findings and assessments.

103. Following Session Three, the caseworker and I meet to review the entire contents of the casefile. During this meeting the caseworker and I consider all of the documentation submitted and make a determination to approve or disapprove the applicants as prospective adoptive parents. In making this determination, New Hope is always focused on the best interest of any child who may be placed in the home.

104. Only those who are recommended for placement will be invited to participate in Session Four.

105. Homestudy Session Four is a teaching session that is done in a group setting that begins with prayer.

106. During Session Four, New Hope discusses how to talk to your child about adoption and other issues that are common to adopted children and families.

107. During Session Four, New Hope also shows examples of adoptive-parent profiles to prospective adoptive parents and instructs them about how to create their own profile, which will be the picture and message that connects them with the birthparent.

108. After Session Four, adoptive parents are given a month or so to make a profile. They first complete a draft profile, including pictures and wording, which they submit to New Hope for review.

109. New Hope's adoptive-parent caseworker and birthparent caseworker both review this draft, make suggested edits, and provide the adoptive parents with helpful feedback. Upon receiving that feedback, adoptive parents may collaborate further with New Hope on edits to their parent profile before finalizing them in a scrapbook format.

110. Once adoptive parents have finalized their profile, they are placed on the list for consideration by birthparents when a child is in need of an adoptive home.

111. Shortly after adoptive parents have submitted their profile, the New Hope caseworker discusses again in more detail the characteristics and legal risks of a child they are willing to adopt.

112. Consistent with state law and regulation, this discussion will include preferences for a child of a specific sex, race, color, or ethnicity.

113. New Hope will also discuss the adoptive parents' willingness to be involved in an open adoption including meeting the birthparent prior to placement,

exchanging letters and pictures, and meeting with the birthparent in person once or twice per year during a visit supervised by New Hope.

114. Prior to making a placement with adoptive parents, New Hope educates them on sudden infant death syndrome, vaccinations, safe sleep environments for children, caring for premature infants, and the placement, supervision, and finalization process.

115. Information relevant to New Hope's formal homestudy report for its adoptive parents must be assembled prior to making a placement.

116. That report includes the following language:

This report is the culmination of the Homestudy process conducted by New Hope Family Services, Inc. This homestudy process includes training on the following topics: Adoption as a life-changing process, the adoption triangle, the seven core issues of adoption, preparation for the homestudy process from the perspective of both agency and self-assessment, adoptedness as it relates to the developmental esteem in the adopted child, discussion on the uses adopted children usually face, discussion regarding birthparents' resolution of loss, profile preparation instructions and learning to wait. The homestudy process also includes a tour of the home, individual interviews with the husband and wife and joint interviews with the couple.

.....

New Hope Family Services, Inc. is authorized by the New York State Office of Children and Family Services as a child-placement and child care agency. The Agency certifies that it has completed a homestudy on the above mentioned family and that the family has met all the pre-adoption requirements established by the State of New York, including a search of the New York State Central Register on Child Abuse and Maltreatment.

117. The shortest length of time allowed by law for finalization after

placement is three months, but the process usually takes between six months and one year to complete. During that time New Hope maintains legal custody of the child while the adoptive parents have physical guardianship.

118. After a child is placed, New Hope remains in close contact with the adoptive family to ensure that the child is receiving proper medical care and feeding, among other things.

119. New Hope places phone calls to the family and follows up with in-person visits at least two or three times during a period of about six months, and usually once every quarter thereafter if necessary.

120. These supervisory visits are intended to gather information about the child's growth, health, and development as well as to assess the degree of attachment developing between the adoptive parents and the child.

121. New Hope's caseworkers also assess how the level of openness agreed to in the Contact Agreement is playing out in actuality for the adoptive parents and how they are coping with it emotionally.

122. The caseworker's goal is to ensure the child's safety but also to help facilitate the adjustment of the adoptive parents to the child's placement in the home.

123. New Hope caseworkers are required to complete field reports reporting on their supervisory visits for inclusion in the case file and formal supervisory report.

124. In preparation for finalization, the homestudy report—which serves as

New Hope's official recommendation of an adoptive family—must be notarized.

125. Before finalization, the homestudy update and supervisory reports are also prepared and notarized. These reports include information about the child's placement in the home and the child's adjustment to the family. These reports serve as New Hope's official recommendation of the adoptive family for the adoption of the specific child.

126. Following the finalization of an adoption, because of Contact Agreements, New Hope remains involved with the majority of its clients until the child turns 18 years of age.

127. New Hope facilitates letters, photos, and/or gifts being passed back and forth between the adoptive family and birthparents.

128. Depending on the level of openness, New Hope may also supervise and facilitate up to two in-person visits per year.

129. Under certain circumstances, New Hope provides temporary foster placements.

130. New Hope calls its foster-care services Tender Loving Care homes.

131. In general these temporary placements occur when either (1) a birthmother working with New Hope has delivered in a hospital and has not decided between parenting or placement for adoption, or (2) a birthparent is referred to New Hope by a hospital social worker because she has not yet made an adoption plan and desires to do so.

132. New Hope recruits foster families that are willing to take in newborns

on short notice.

133. For the same reasons previously set forth, New Hope typically seeks married husband and wife couples to serve as foster parents.

134. New Hope certifies its foster families for placements in accordance with the state regulatory process.

135. Similar to the adoption homestudy process, that process requires New Hope to interview and collect information on applicants in order to explore applicants' reasons for wanting to foster, their marital stability, family structure, religious affiliation, family background, and life history, among other things.

136. New Hope neither receives nor distributes any government funding in connection with its Tender Loving Care foster program.

137. Because of New Hope's religious beliefs, New Hope will not recommend or place children with unmarried couples or same-sex couples as adoptive parents.

138. New Hope's "Special Circumstances" policy, formalizes this policy and practice and states in part:

If the person inquiring to adopt is single . . . The Executive Director will talk with them to discern if they are truly single or if they are living together without the benefit of marriage. . . because New Hope is a Christian Ministry it will not place children with those who are living together without the benefit of marriage.

If the person inquiring to adopt is in a marriage with a same sex partner . . . (The Executive Director will . . . explain that because New Hope is a Christian Ministry, we do not place children with same sex couples).

139. New Hope has worked with unmarried individuals who are truly single in the past and remains willing to work with such individuals.

140. Because New Hope handles inquiries from unmarried couples and same-sex couples pursuant to the policy and practice described above, New Hope has never denied an unmarried couple or same-sex couple's application. Whenever a same-sex couple or unmarried couple is interested in a referral, New Hope refers them to the appropriate county social services office or another provider. On information and belief, no same-sex couple or unmarried couple who has inquired with New Hope about adoption has ever complained to OCFS about how New Hope handled their inquiry.

141. In January or February of 2018, Suzanne Colligan of OCFS called me. During the call, Ms. Colligan conveyed that, under a new policy implemented in 2018, OCFS would be conducting comprehensive on-site reviews of each private provider's procedures.

142. On July 18, Ms. Colligan sent me an email to schedule the adoption program review. That email stated in part:

For your information and in considering a date, below is a general outline of the topics to be covered when we meet. Additionally, I'll need to review adoption records; 1 closed record and if available 3 open pending adoptions. We can talk this through depending on the types of records you have in process.

The on-site review takes anywhere from 4-5 hours to complete, which depends on the record details and the length of discussion needed to cover the topics. Please let me know if you have any questions.

Adoption Model
Agency Goals & Objectives (Fiscal & Program)
Range of Services
Advertisements
Staffing

Waiting List
Maintenance of records

I will need a copy of the following:

Fee Schedule
Board of Directors
Policy and Procedural Manual
Forms
State licenses and/or Contracts
Fiscal Review

143. On July 20, Ms. Colligan confirmed by email that the adoption program review was scheduled for September 6, 2018 at 9:00 a.m.

144. Based on Ms. Colligan's direction that she would need a copy of New Hope's policies and procedure manual, I updated New Hope's formal policies and procedures on adoption into one consolidated manual.

145. On August 28, I received an email from Ms. Colligan, stating in part:

I also thought that it might be helpful for you to see the application we use with agencies requiring reauthorization for corporate authority. Since you are authorized in perpetuity, your agency is not required to complete/submit this form. However, I will be asking many of the program questions on it, so you may find it helpful in preparing for my visit.

146. A few days before the on-site review, Ms. Colligan and I had a call. During the call, Ms. Colligan advised me that she would be providing me with a form that she would be using as a guide for the format of her review. Ms. Colligan stressed that I did not need to complete the form or sign it because of New Hope's perpetual authorization status.

147. On September 6, 2018, Ms. Colligan met with myself and Kathy Decesare, New Hope's Center Director for approximately eight hours.

148. At that meeting, Ms. Colligan provided me with a new regulation that all agencies are required to implement.

149. Ms. Colligan also advised me about how New Hope had handled information that a specific birthparent had died, stating that even in such circumstances the agency could not share the information but could only direct inquiries to the New York State Adoption Registry.

150. Ms. Colligan identified these two topics as opportunities for improvement.

151. During the on-site review, Ms. Colligan never indicated that New Hope's authorization to handle adoption placements was in jeopardy as a result of these opportunities for improvement.

152. Ms. Colligan indicated that OCFS' review would be written up formally within one month, further stating that this timeframe was an OCFS requirement.

153. Ms. Colligan took a copy of New Hope's policy and procedure manual with her when she left.

154. On October 1, 2018, OCFS sent me a letter as an attachment to an email. The letter documented the on-site review and stated in part:

Our office found that your program has a number of strengths in providing adoption services within the community. one of which is the strong emphasis on assisting the birth parents in making an informed decision for their newborn, providing them time to make the decision, along with a supportive and detailed adoptive family selection process. During the site visit there were a few topic areas that warranted a follow up meeting to discuss and verify adjustments have been made to the current agency policies. The topics include:

- Immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process
- Request for non-identifying information and medical history by adoptive families, adoptee, or birth parent; including usage of the Adoption Information Registry through the Department of Health.
- The agency's role and limitations regarding the exchange of information related to conditions of a surrender.

This program review will be conducted at your agency every three years. Annual onsite visits will be conducted over the next two years. We would like to thank you for the courtesy and cooperation extended to us during the visit and look forward to working with you as you continue to provide adoption services.

155. On October 5, 2018, Ms. Colligan and I scheduled a follow up meeting for October 15, 2018 to address the items mentioned in the October 1 letter.

156. On or about October 9, 2018, I received a call from Ms. Colligan. During the call, Ms. Colligan stated that she had been reading New Hope's policies and procedures manual and that New Hope's policy not to place children with those who are living together without the benefit of marriage or with same-sex couples violated Title 18 NYCCR § 421.3 and was impermissible.

157. Ms. Colligan told me that New Hope would have to comply with § 421.3 by placing children with unmarried couples and same-sex couples.

158. Ms. Colligan said that if New Hope did not comply, New Hope would be "choosing to close."

159. I responded that New Hope would be unwilling to violate its religious beliefs by placing children with unmarried or same-sex couples.

160. During the phone call, Ms. Colligan stated that "[s]ome Christian

ministries have decided to compromise and stay open.”

161. I affirmed again that New Hope would be unwilling to violate its beliefs and stated that “[w]e will never choose to close. You will be forcing us to close.” I also stated that New Hope’s religious freedom was being violated.

162. Ms. Colligan told me that I would be getting a letter from OCFS mandating compliance by a specific date.

163. On October 11, 2018, I sent Ms. Colligan an email stating in part:

I just was thinking about the 18 years of correspondence contracts that our adoptive couples have and the visits—sometimes two per year between adoptive couples and birthparents. If you were to close down our agency, would another agency provide staff to handle all of this casework for the next 18 years?

164. Ms. Colligan replied on October 11, 2018, stating in part:

You will be receiving a letter from our office soon requesting a formal written response regarding your agency’s position. When OCFS receives written notification of an agency’s intention to close a program, OCFS will respond with written instructions to the agency with the steps they must take. These steps include the agency’s responsibility to seek and obtain agreement with another NYS authorized agency to maintain and store their adoption records, of which includes the handling of activities outlined in the legally bound agreements with birth parents.

165. On October 12, 2018, Ms. Colligan sent me an email stating in part:

We will put Monday’s follow up meeting [to discuss a few minor improvements identified during the visit] on hold for now. The purpose of the follow up meeting would be to work on the necessary changes to your agency policy manual. Based on our recent phone call, the follow up meeting for those purposes does not appear needed at this time.

166. On October 17, 2018, Ms. Colligan indicated in email to me that she

had mailed out a certified letter. That email stated in part:

Once the letter is returned providing us with written notice of your intent, we will send out a letter outlining our expectations around the handling of those that you are currently providing services and the adoption records.

167. I did not receive the certified letter, so I called several times to follow up with Ms. Colligan, but my voicemails were unreturned.

168. On October 26, because I was going to be having a meeting with the Board of New Hope and could not reach Ms. Colligan, I called and spoke to another OCFS staff member.

169. On October 26, 2018, I received an electronic copy of the letter to which Ms. Colligan had referred. The letter stated that New Hope's policy pertaining to "not placing 'children with those who are living together without the benefit of marriage' or 'same-sex couples' violates Title 18 NYCRR § 421.3." The letter further stated:

OCFS hereby requests a formal written response from [New Hope] stating the agency's position in regard to revising this policy to eliminate those portions that violate the above-cited regulation. Please respond within 15 days of receipt of this letter indicating specifically whether [New Hope] intends to revise the present policy and continue the existing adoption program, or that [New Hope] will not revise the policy so as to comply with the above-cited regulation.

Please be aware that should the agency fail to bring the policy into compliance with the regulation, OCFS will be unable to approve continuation of [New Hope's] current adoption program and [New Hope] will be required to submit a close-out plan for the adoption program.

170. New Hope was given until November 30, 2018, to respond to OCFS' ultimatum.

171. Without violating its religious beliefs, New Hope is unable to comply with the OCFS ultimatum to recommend unmarried couples and same-sex couples as foster and adoptive parents, to counsel unmarried and same-sex couples concerning adoptive parenthood and related relational issues, and to place children with unmarried couples and same-sex couples.

172. In fulfillment of its longstanding mission pursued in obedience to the faith of its staff and board, New Hope desires to continue taking on new adoptive parents, birthparents, foster parents, and children for placement in foster care and adoption, but the state now threatens to absolutely prevent New Hope from doing so by terminating New Hope's perpetual license and prohibiting it from serving in all of these ways.

173. At the time of the State's ultimatum, New Hope had approximately thirteen prospective adoptive families on its list that had completed the homestudy process and were waiting for a child to be placed with them.

174. New Hope had a homestudy Session One meeting scheduled for October 29, 2018, to begin the homestudy process with six more prospective adoptive families. Because it had been told that it would have to violate its beliefs or shut down, New Hope was forced to cancel the homestudy Session One meeting. New Hope advised those families of what the state was requiring. Four of the families requested a refund of their application fees.

175. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, nine additional prospective adoptive families have

contacted New Hope about beginning the adoption process. Because of OCFS' threats, New Hope was obliged to tell them that it may not be able to work with them at this time.

176. New Hope desires to contact these prospective adoptive parents and work with them to place children in need of loving homes.

177. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, at least five expectant birthmothers contacted New Hope asking for help in placing their children for adoption. But New Hope was obliged to tell them that it has suspended taking on new birthparents and children to work with towards adoption because of OCFS' threats.

178. New Hope desires to work with these prospective birthparents to help them find loving homes for their children.

179. New Hope has three active foster families that are willing to accept placements, but it has similarly had to advise them that its program is on hold due to the uncertainty caused by the OCFS ultimatum.

180. New Hope had a training session concerning adoption scheduled for October 18, 2018, for center directors from several pregnancy resource centers from around the state. Because of OCFS' threat to terminate New Hope's authorization to provide adoption services, New Hope was forced to cancel the training.

181. If New Hope were to violate its religious beliefs and place children with unmarried couples and same-sex couples, the pregnancy resource centers that it currently serves through trainings and referrals would be less inclined to refer to

New Hope, and may no longer refer to New Hope at all, because they are faith-based organizations that share New Hope's religious beliefs regarding the nature of marriage and family.

182. If New Hope were to violate its beliefs, it would lose some of its clients, including birthmothers, adoptive families, and foster families, who choose to work with New Hope because of their shared Christian faith.

183. If New Hope is unable to place children for adoption or in foster care, its ability to effectively minister to and help women who are facing unplanned pregnancies through its pregnancy resource center will be impaired.

184. New Hope currently retains legal custody of three children that it has placed with three separate adoptive families this year.

185. New Hope continues to actively supervise those placements but has advised those families of what the state is requiring and that it is unsure if it will be able to continue to handle the finalization of their adoptions. If New Hope is unable to do so, finalization of these adoptions will be delayed because of being transferred to another provider.

186. Because the majority of New Hope's adoptions are open adoptions, if New Hope is unable to continue its adoption program, it will have to transfer 117 adoptive families and 117 birthparent families that it has worked with over the past 18 years, to another provider to facilitate those Contact Agreements.

187. If New Hope loses its authorization to place children, it will have to transfer all fifty-three years of its adoptive family and birthparent files to another

provider.

188. If New Hope loses its authorization to place children in adoptive homes or foster care, it will likely have to terminate the employment of five of its employees.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Date: December 11th, 2018.

Judith A. Geyer
Judith A. Geyer

STATE OF NEW YORK)
) ss.:
COUNTY OF)
Onondaga

On the 11th day of December, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Judith A. Geyer, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Kathryn Decesare

Notary Public

KATHRYN DECESARE
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01-DE6065549
QUALIFIED IN ONONDAGA COUNTY
MY COMMISSION EXPIRES 10-22-20 21

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

5:18-CV-1419 (MAD/TWD)

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

**AFFIDAVIT OF CHARITY
LOSCOMBE IN SUPPORT OF
NEW HOPE FAMILY
SERVICES' MOTION FOR
PRELIMINARY INJUNCTION**

Defendant.

1. My name is Charity Loscombe.
2. I am above the age of 18, of sound mind, and I have personal knowledge of the facts explained in this document.
3. My husband, Todd, and I have four children of our own. We have also been a Tender Loving Care ("TLC") foster family through New Hope for a number of years.
4. For several years, I worked for New Hope as a birth mother case worker and as the TLC coordinator.
5. As a birth mother case worker, I was blessed to work closely with birth mothers. My desire was to walk through the difficult situations they faced with them and help them through the process of placing their child with an adopting family. I would meet regularly with each birth mom I worked with. Some of those meetings were scheduled, some were not. I made myself available to them as they needed me throughout their pregnancy. I would go with these moms to family meetings and later to court hearings. I would go to the hospital after the baby was

born and sometimes before or during labor. I would also talk with the moms regularly throughout the pregnancy. Sometimes I would even get calls in the middle of the night and I would comfort these moms.

6. I talked with these moms about a lot of things: their lives, their families, their plans for the future. We talked about the pregnancy, the adoption process, and how they were feeling about both. These moms often wanted to talk about God and about how they saw God in their lives and their babies' lives. We would talk about God's love for them and, when they wanted, I would pray with them. I always saw the great love of each birth mom in placing her baby in an adoptive home. I was always individually praying for the moms I worked with, and for their babies.

7. I would also talk regularly with the birth mom's family, especially the baby's grandparents and father, if he was present, to comfort and counsel them through the process.

8. The mothers I worked with would tell me that they came to New Hope because they wanted to work with a faith-based adoption agency. Most moms I worked with told me that they wanted to place their baby in a Christian home. Every mom I worked with wanted both a mom and a dad for their baby. At New Hope, I got to see that happen for the moms and babies I worked with.

9. After Todd and I married, we wanted to continue helping babies through New Hope. After our four kids were born, we decided to become a TLC family and foster. Todd's mom had provided TLC care while he was still living at

home so we were both very familiar with the program. We have fostered five babies so far and are still active with New Hope.

10. Each of the babies we fostered came to us when they were days old. We provided the initial care, took them to doctor's appointments, cared for them, prayed for them, and loved them until they could be placed with their adoptive family. The shortest we have fostered a baby was 4-5 weeks. The longest was four months, and most were close to that four months. We have fostered babies with special needs.

11. In some cases, we have been able to keep up with the babies we have fostered. We hear how they are doing and see how they grow. I love that.

12. To my knowledge, the TLC program is unique to New Hope. We have decided to foster babies because we believe in that unique program. If New Hope closes its doors, we would not continue fostering through any other agency or state program.

13. I have appreciated working with New Hope for so many years because I share their Christian beliefs about the value of human life and about the nature of the family. I hope they are able to continue the good work that they do for many years to come.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

5:18-CV- 1419 (MAD/TWD)

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

**AFFIDAVIT OF ELLIE STULTZ
IN SUPPORT OF NEW HOPE
FAMILY SERVICES' MOTION
FOR PRELIMINARY
INJUNCTION**

Defendant.

1. My name is Ellie Stultz.
2. I am above the age of 18, of sound mind, and I have personal knowledge of the facts explained in this document.
3. When I was a student at Houghton College, I became pregnant.
4. My pregnancy was not planned.
5. A counselor that I was seeing at Houghton College shared with me that she had previously been an employee of New Hope Family Services.
6. She told me that New Hope was a Christian adoption agency.
7. She was confident that New Hope would be able to help me find a family with whom I would be comfortable to place my baby. I loved the concept that I would be able to pick the family so that I wouldn't be just leaving my baby with whoever someone else picked.
8. I contacted New Hope and Diana Johnson was the adoption caseworker who helped me through the process.

9. She was phenomenal in helping me through all of the procedures involved in placing my child for adoption.

10. Diana had adopted children herself and had handled several adoptions, so she understood the process from both perspectives.

11. Everyone at New Hope made me feel loved. No one condemned me for getting pregnant without being married.

12. At several different points in the process, Diana prayed with me that I would know the will of God and have wisdom in the choices that I was making for my child.

13. The staff at New Hope did a good job of talking me through the pros and cons of my options to parent, abort, or to create an adoption plan.

14. They encouraged me about the blessing that adoption could be to me and to the family with whom I would place my child.

15. I have a strong Christian faith and I saw genuine faith in everyone I worked with at New Hope.

16. It was very important to me to find a married mother and father who would raise my child.

17. I also wanted to give my child to someone who was not able to have a child of their own.

18. The most important thing to me was that my child would be raised in a God-centered family by strong Christian parents.

19. When I was about seven months along, Diana came to my house and showed me profiles of different adoptive families that she felt fit what I had told her I was looking for in an adoptive family.

20. The profiles were photo books that shared details about each family.

21. She encouraged me to take my time in making a decision.

22. It was a very personal experience.

23. I told Diana that I would like to consider placing my child with a certain family.

24. Diana arranged for me to meet that couple at New Hope.

25. It was important to me that I was able to meet my child's adoptive parents before the birth. When we met, we were able to ask one another questions.

26. The father who adopted my child is a youth pastor and for a while I had wanted to become a youth pastor myself, so the thought of him sharing the gospel every single day to young children helped me to have peace that I was making the right choice.

27. After we met, I truly made my decision to go through with the adoption. I also decided to hand over the baby right after I gave birth.

28. I believe the adoptive parents came with Diana to the hospital about 24 hours after I gave birth and we signed the paperwork then.

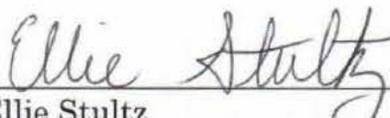
29. We agreed to exchange letters and pictures through the agency two times per year. I love that I am still able to keep in contact with my daughter and the family.

30. I still meet up with Diana periodically because I feel like she helped me with more than just the adoption process—she became a mentor and friend.

31. I understand that the state is trying to force New Hope to include unmarried couples and same-sex couples in its adoption program. As a birthmother, considering placing my child with New Hope, New Hope's Christian faith was important to me. If they had shown me parent profiles of unmarried couples or same-sex couples I strongly believe that I would not have gone through with placing my child through that agency. I would view New Hope recommending unmarried, cohabiting couples or same-sex couples for consideration as adoptive parents to my child as an indication that they had compromised their beliefs. It would cause me to question whether their faith was genuine and would have created doubt for me about proceeding with them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Date: November 29, 2018.

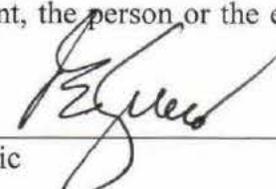


Ellie Stultz

STATE OF NEW YORK)

COUNTY OF ONONDAGA) ss.:

On the 29th day of November, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared ELLIE STULTZ, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.



Notary Public

ROBERT E. GENANT
Notary Public, State of New York
Qualified in Oswego Co. No. 4528066
Commission Expires April 30, 2022

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

Defendant.

No.: 5:18-cv-1419 (MAD/TWD)

**AFFIDAVIT OF ELAINE
BLEUER IN SUPPORT OF
NEW HOPE FAMILY
SERVICES' MOTION FOR
PRELIMINARY INJUNCTION**

1. My name is Elaine Bleuer.
2. I am above the age of 18, of sound mind, and I have personal knowledge of the facts explained in this document.
3. I am the mother of three biological children and eleven adopted children.
4. We adopted two of our children through New Hope Family Services. We applied to adopt through New Hope because we heard that fewer families were willing to adopt babies across racial lines or babies who had come from difficult situations. We were. We adopted in the United States and internationally. We have children from Korea, Sierra Leone, Liberia, Guatemala, and the United States.
5. When we applied to New Hope, my husband and I did not think a birth mother would choose our family. We were older at the time and had many children. Amazingly, it was those two things that drew our birth mothers to us. One chose us because we had been married for so many years, and our age and length of marriage represented stability to her. The other wanted many siblings for her baby and chose us because we had so many kids.

6. Through our eleven adoptions, I worked with many secular agencies. The experience with New Hope was completely different. New Hope's faith impacted everything it did. The atmosphere was kind and loving. The staff members were professional in everything they did from the first meeting to the last hearing. I never worried about the handling of our finances or our confidentiality. And I knew that New Hope staff were doing everything they could to care for our adoptive son and daughter and their birth mothers.

7. I saw in our first meetings how special the pre-adoption classes were at New Hope compared to classes I attended at other agencies. Families come to adoption for many reasons and I saw New Hope staff minister to families during the process. Some of the adoptive families we met were dealing with the pain of infertility or miscarriage. Many of the birth moms were facing tough family situations. At every step, New Hope staff members were accessible. They were gentle and they were kind. Staff members recognized the loneliness that can come with adoption for the child, for the birth mother, and even for the adopting family. And they approached all of the struggles with genuine care inspired by their Christian faith.

8. My husband and I are both Christians and we loved the opportunity to talk about our Christian views on family and life with an agency that shared those beliefs. We were grateful to be able to pray with staff members and to know that they were regularly praying for us. Our shared religious beliefs bonded us together. And I was comforted to know that New Hope staff members were constantly praying over every adoption, that the right decision would be made for that child.

9. I never saw New Hope concerned about pushing an adoption through. What I saw was New Hope staff members caring deeply for the children and families who came to them, personally walking through struggles with them, and genuinely loving each baby, mother, and adoptive family. Those actions were inspired by New Hope's religious beliefs. I saw that in our two adoptions, and again more recently, when my son Justin and his wife Annie adopted their baby girl through New Hope. New Hope staff still ask me about our adopted children even though my daughter is now 24 and my son 20.

10. New Hope's faith-based approach to adoption is why I have continued to stay in touch with staff there, and it is why my husband and I continue to support New Hope through regular donations. We believe in the good work New Hope is doing and we want to support it. Unfortunately, if New Hope were forced to change its religious beliefs about family, we would no longer be able to donate to New Hope. Such a compromising of their Christian beliefs would mean a significant change in New Hope's identity—in what makes it different from the other New York adoption agencies. We would move our donations to another organization.

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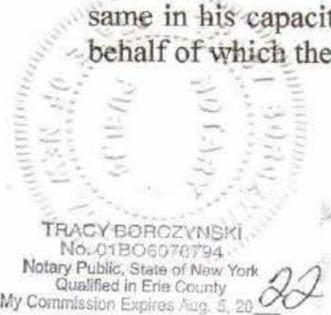
I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 7 day of December, 2018, at Williamsville New York.

Elaine Bleuer
Elaine Bleuer

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the 7th day of December, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Elaine J. Bleuer, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.



[Signature]
Notary Public

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

Defendant.

No.: 5:18-cv-1419 (MAD/TWD)

**AFFIDAVIT OF JEREMY
JOHNSTON IN SUPPORT OF
NEW HOPE FAMILY
SERVICES' MOTION FOR
PRELIMINARY INJUNCTION**

1. My name is Jeremy Johnston.
2. I am above the age of 18, of sound mind, and I have personal knowledge of the facts explained in this document.
3. My wife Tara and I knew when we got married that we would not be able to have children. We started looking at adoption in 2013. My sister-in-law worked with several adoption agencies. She told us about New Hope Family Services.
4. As soon as we looked into it, we knew we wanted to adopt through New Hope. We appreciated that New Hope was faith-based and we wanted to work with an agency that shared our Christian beliefs, particularly about family.
5. When we first contacted New Hope, they were not taking new families. My wife and I decided to wait until we could work with New Hope. Several months later, New Hope contacted us and we began working through the approval process to become an adoptive family.
6. As part of that process, we took part in seminars and meetings. That first seminar opened with prayer and we saw the clear Christian faith of New Hope

staff members play out in the ways that they interacted with us and other families. We talked about our Christian beliefs during the process and we even used our priest as a reference.

7. New Hope helped us put together a photobook to provide to birth moms, so they would get to know more about our family. New Hope staff gave us advice about what to include and how to put it together. They showed us samples. And they reviewed drafts of our book and gave us suggested edits. We incorporated New Hope's suggestions in creating and editing the content, lay-out, and appearance of our book. A true and correct copy of excerpts from our photobook are attached as Exhibit 1.

8. In 2015, a woman saw our book and chose us to adopt her baby. We were so excited. We met with her and the father before the birth. New Hope staff facilitated this meeting and attended it with us. We prepared to welcome this new baby. When our son was born, his mother had doubts about whether she could give up her baby to be adopted. New Hope arranged for our son to go to what they call a "Tender Loving Care Family."

9. Tender Loving Care Families are families that provide temporary foster care for New Hope. They provide care and a loving home for a baby when that baby cannot immediately be placed with the adoptive family. In our case, our son was with a Tender Loving Care Family for 30 days. Then his mother decided she wanted us to adopt him. We are so glad that she did.

10. We really saw New Hope's faith-based services come through in that difficult 30-day period. The staff we worked with tirelessly prayed, counseled, and

helped us through that time. I know the staff working with the birth mother did the same for her. I don't know how we would have made it through those 30 days without New Hope's Christian counseling and love. Working with New Hope actually inspired us to become more involved with our own church.

11. Before our son's adoption was finalized, we started the process to adopt again through New Hope. In our second adoption, we were able to bring our daughter home two days after she was born.

12. We are still waiting to finalize our daughter's adoption. It is scheduled to be finalized in 2019 through New Hope. I don't know what will happen to us if New Hope is forced to stop doing adoptions. We are in the middle of the process and everything would be up in the air. At the very least, I know it would delay our adoption and increase the costs as we try to find another agency to transfer the adoption to so it can be finalized. It would be like starting over as we got to know the new agency and staff, and they got to know us.

13. I also don't know what would happen to the ongoing relationship we have with New Hope for our son's adoption. We have an open adoption with our son's birth parents, so we send pictures and letters to New Hope three times a year. His birth parents can then get those pictures and letters from New Hope. We are also sending pictures and letters to our daughter's birth mom and will continue to do that through New Hope. For both kids this will continue until their eighteenth birthday. I don't know if or how this can be transferred to another agency so that we can still get information and updates to our children's birth moms.

