

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

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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.

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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*

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### 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  
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52 Washington Street  
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*s/Jonathan Scruggs*  
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No.: 5:18-cv-1419 (MAD/TWD)

**MEMORANDUM OF LAW IN  
SUPPORT OF NEW HOPE  
FAMILY SERVICES' MOTION  
FOR PRELIMINARY  
INJUNCTION**

Oral Argument Requested

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## INTRODUCTION

Organized care for orphans and abandoned infants was—in Western society and in our nation—essentially created by faith-based organizations. Today, religious organizations like New Hope Family Services continue to be key players in the American child-welfare system. They are highly successful in recruiting and training adoptive families and providing thousands of loving homes each year for vulnerable children.

Shortly after its founding in 1965, New Hope received a perpetual authorization to perform adoption services. Across its fifty-plus years of service, New Hope has placed more than 1,000 children in “forever homes.” The State has benefited from New Hope’s many strengths, and has received no complaint about New Hope from anyone. And when then-Governor David Paterson signed legislation allowing adoption by unmarried and same-sex couples eight years ago, he gave written assurance that this “would allow for such adoptions without compelling any agency to alter its present policies” and would not “in any way tread[ ] on the views of any citizen or organization.” Approval Memorandum No. 25, Chapter 509 (2010) (*see* Verified Compl., Ex. 5).

Now, despite those facts and that history, based on nothing more than an administrative regulation, New York’s Office of Children and Family Services seeks to shut New Hope down, punishing it and the children and families it serves because of its faith-driven beliefs about the function of marriage and the nature of a healthy family environment.

The Office's ultimatum is as unwise as it is unconstitutional. It will not help a single child in need find a loving home. It will instead remove effective providers from the system, depriving vulnerable children of adoptive families. Indeed, New Hope is a voluntary adoption provider that primarily places newborns, infants, and toddlers with adoptive families, and has many birthparents contact it directly for counsel and guidance about adoption. (Geyer Aff. ¶¶ 52, 57.) Not surprisingly, birthparents and adoptive parents alike have proceeded with adoption precisely because New Hope shares their Christian beliefs and values about marriage and the family. (See Stultz Aff. ¶ 31; J. Bleuer Aff. ¶ 16; Johnston Aff. ¶ 14; E. Bleuer Aff. ¶ 10). Meanwhile, there are today 58 state-run adoption agencies (and many more private ones) that actively recruit and provide adoption services to unmarried and same-sex couples.<sup>1</sup>

As explained below, the Regulation violates New Hope's constitutional rights. Because a preliminary injunction is needed to preserve New Hope's constitutional freedoms during the pendency of this litigation, and prevent the Office from revoking New Hope's authorization to perform much-needed adoption services, this Court should grant New Hope's motion.

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<sup>1</sup> "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, OCFS, <https://ocfs.ny.gov/adopt/process.asp>.

## BACKGROUND

### A. Faith-based care for orphaned and abandoned children has been a religious mission since time immemorial.

The Apostle James instructed the earliest church that caring for orphans is central to the “religion that God our Father accepts as pure and faultless” (James 1:27), and the central role of churches and religious orders in caring for orphans and abandoned infants across centuries in Western culture is well documented.<sup>2</sup> That religious mission crossed the Atlantic. What was likely one of the earliest orphanages in the American British colonies was founded in 1740 in Georgia by George Whitfield, the preacher who drove what historians call the “first great awakening.”<sup>3</sup> In 1797, The Catholic Sisters of St. Joseph founded the first “Orphan Asylum” in Pennsylvania—St. Joseph’s Orphan Asylum.<sup>4</sup> Similarly, the first orphanage in New York City—founded in 1807—was funded in its early years by collections taken up by “the venerable Clergy of New-York” each of whom agreed to “appoint in his own congregation the day proper for taking up the desired

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<sup>2</sup> See, e.g., Elisabetta Povoledo, *Updating an Old Way to Leave the Baby on the Doorstep*, N.Y. Times (Feb. 28, 2007), <https://nyti.ms/2Rq7Lii>; Anne Lester, “Lost but not yet Found: Medieval Foundlings and their Care in Northern France, 1200-1500,” *Journal of the Western Society for French History*, Vol. 35, 2007, <https://bit.ly/2E6HkLG>.

<sup>3</sup> See *George Whitfield’s Journals* (London, 1960), pp. 395–97, reprinted in Robert Bremner, ed., *Children & Youth in America, a Documentary History*, Vol. I p. 272 (Harvard University Press, 1970)

<sup>4</sup> Holly Caldwell, “Orphanages and Orphans,” *The Encyclopedia of Greater Philadelphia*, <https://bit.ly/2zvBFun>.

contributions.”<sup>5</sup> In short, without attempting a detailed history, it will be uncontroversial, and this Court may take judicial notice,<sup>6</sup> that from the earliest years of our nation the care of orphaned and abandoned children was a religious mission and obligation.

**B. New Hope Family Services is a Christian ministry created to care for women and children.**

In 1958, Clinton H. Tasker, a Christian minister, felt called by God to follow this tradition by opening an adoption ministry to serve women facing unplanned pregnancies who felt unable to keep and care for their children. (Geyer Aff. ¶ 13.) He traveled the State of New York speaking to churches, service organizations, and missionary committees to raise funds. (*Id.* ¶ 14.) In 1965, his vision was finally realized, when New Hope was formed under the name Evangelical Family Service, Inc., and authorized to perform adoption services. (*Id.* ¶ 15.)

Today, New Hope operates as a pregnancy resource center, temporary-foster-placement agency, and adoption provider. (*Id.* ¶ 28.) As a distinctly Christian organization, its 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

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<sup>5</sup> “Collection Proposed for the Benefit of the Orphan Asylum Society,” New York Evening Post, June 5, 1807, reprinted in Bremner Vol. I at 280.

<sup>6</sup> See *Effie Film LLC v. Pomerance*, 909 F. Supp. 2d 273, 299 (S.D.N.Y. 2012), quoting *Weinstein’s Federal Evidence*, § 201.12[5] at 201–44 (“Courts may take judicial notice of historical facts revealed in authoritative writings when there is no dispute about the authenticity of the materials and judicial notice is limited to factual matters that are incontrovertible.”) and 1 *Jones on Evidence* § 2:51 (“Notice has been taken of historic facts relating to religious history and practice, politics, international and foreign history, and a variety of other subjects.”).

area and throughout the State of New York.” (*Id.* ¶ 22.) Its paid staff and counseling volunteers must agree with New Hope’s religious mission and Statement of Faith and must be willing and able to pray with and present the gospel to New Hope’s clients. (*Id.* ¶ 31.) Similarly, New Hope’s board is composed of devout Christians who are actively involved in their local churches. (*Id.* ¶ 21.) And New Hope holds regular times of worship and prayer for its employees and volunteers. (*Id.* ¶ 33.)

New Hope also believes the Bible is the inspired and authoritative word of God and strives to follow its commands. (*Id.* ¶ 35.) Specifically, New Hope believes in and adheres to the biblical model for family—one man married to one woman for life for their mutual benefit and the benefit of their children. (*Id.* ¶ 36.) New Hope further believes that God created two sexes—male and female—and that each sex has a unique role and gifting intended to benefit the other and the family. (*Id.*) The Supreme Court recently described such beliefs as “decent and honorable” and held “in good faith by reasonable and sincere people.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594, 2602 (2015). Consistent with these beliefs, New Hope does not place children with unmarried or same-sex couples, but instead refers such couples to other adoption agencies. (Geyer Aff. ¶ 137.) New Hope has worked with unmarried individuals who are truly single, however, and remains willing to work with such individuals. (*Id.* ¶ 139.)

Moreover, the services New Hope offers through its pregnancy resource center—such as clothing and supplies for infants, referrals to physicians, and education and counseling about pregnancy, birth, parenting, and childcare—are

provided free of charge and without consideration of the recipient’s marital status, sexual orientation, religious belief, or other characteristics. (*Id.* ¶¶ 40–42.) New Hope thus regularly serves unmarried couples and those who identify as LGBT. (*Id.* ¶ 44.)

**C. New Hope provides adoption services as an exercise of its religious beliefs.**

Since its founding in 1965, New Hope’s religious mission to care for the “least of these” has resulted in more than 1,000 children being placed into adoptive homes. (*Id.* ¶ 54.)<sup>7</sup> With an “arm-around-the-shoulder” approach to adoption (*id.* ¶ 58), birthparents and adoptive parents describe New Hope as special and unlike other adoption agencies. (*See* Stultz Aff. ¶¶ 11–15; Johnston Aff. ¶ 14; J. Bleuer Aff. ¶¶ 3–5, 16; E. Bleuer Aff. ¶¶ 6–9.). For birthparents facing unwanted pregnancies, New Hope provides timely information about adoption and patiently guides and counsels them through the journey of creating an adoption plan. (Geyer Aff. ¶ 45.)

For prospective adoptive parents, New Hope walks with them side-by-side through the application, homestudy, placement, supervision, and finalization process. (*Id.* ¶ 58.) This is a very lengthy and intimate process. New Hope conducts several in-depth interviews with the prospective adoptive parents, provides counseling and education about parenting and childrearing, and performs a home safety inspection, among other things. (*Id.* ¶¶ 84–104.) New Hope then studies this

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<sup>7</sup> *See* Matthew 25:44–45 (NIV) (“They also will answer, ‘Lord, when did we see you hungry or thirsty or a stranger or needing clothes or sick or in prison, and did not help you?’ He will reply, ‘Truly I tell you, whatever you did not do for one of the least of these, you did not do for me.’”).

information and provides the State with an official recommendation as to whether the prospective parents should be approved for adoption. (*Id.* ¶¶ 124–25.) If approved, New Hope then assists and collaborates with the prospective parents to develop a “parent profile,” which essentially is a scrapbook containing personal details and pictures to be considered by birthparents as they choose adoptive parents for their child. (*Id.* ¶¶ 107–09; *see also* Stultz Aff. ¶¶ 19–20; Johnston Aff. ¶ 7; J. Bleuer Aff. ¶ 14.)

New Hope remains in close contact with the adoptive parents even after placement, making calls and visits to ensure that the child and adoptive parents are adjusting well. (Geyer Aff. ¶¶ 118–20.) And because almost all of the adoptions New Hope handles are “open” adoptions, New Hope facilitates communication between the adoptive parents and birthparents long after finalization, which usually occurs about one year after placement. (*Id.* ¶¶ 117, 126–28.)

New Hope’s religious beliefs permeate these relationships and the entire process. For example, during orientation for prospective adoptive parents, New Hope shares information about its history and religious mission. (*Id.* ¶ 86.) It also begins every orientation, homestudy, and education class with prayer. (*Id.* ¶¶ 86, 90, 94, 105.) And it regularly shares scripture passages and biblical principles about raising children with both birthparents and adoptive parents. (*Id.* ¶ 86; Stultz Aff. ¶¶ 12–15.) New Hope regularly attracts both birthparents and adoptive parents who want and value its faith-based approach to the profound, intensely personal, and often painful decisions surrounding giving up a child, or adopting a child into a

family. (See Stultz Aff. ¶¶ 15–18, 31; Johnston Aff. ¶¶ 4, 14; J. Bleuer Aff. ¶¶ 16–17; E. Bleuer Aff. ¶ 10.) Indeed, many birthparents and prospective adoptive parents are reluctant to take even the first step towards adoption because they fear red tape, an inefficient bureaucracy, and intrusions into their daily lives. As a religious adoption provider, New Hope is particularly good at assuaging these concerns and providing emotional and spiritual support that other agencies simply cannot offer. (See, e.g., Stultz Aff. ¶¶ 12–15; E. Bleuer Aff. ¶¶ 6–10.)

**D. The Office likes New Hope’s work, but not its religious beliefs.**

In September 2018, the Office conducted a lengthy and comprehensive on-site review of New Hope’s policies and procedures. (Geyer Aff. ¶ 142–53.) The Office raised no major issues during the review. On the contrary, it sent a follow-up letter to New Hope commending it on the “number of strengths” it has “in providing adoption services within the community,” including “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.” (Verified Compl., Ex. 6.) The Office also stated that it “look[s] forward to working with [New Hope] as [it] continue[s] to provide adoption services.” (*Id.*)

But about a week later, the Office’s tone changed dramatically. The Office called New Hope, and informed it that had been reviewing New Hope’s written policies and saw that New Hope’s religious beliefs prohibit it from placing children with unmarried and same-sex couples. (Geyer Aff. ¶ 156.) The Office claimed that New Hope’s religiously based policy violates 18 NYCRR § 421.3(d), a five-year-old

regulation that prohibits, among other things, sexual orientation and marital status discrimination (the “Regulation”). (*Id.* ¶ 156.) The Office then told New Hope that it would be “choosing to close” if it did not change the policy. (*Id.* ¶ 158.) After New Hope said it could not violate its religious beliefs, the Office replied, “some Christian ministries have decided to compromise and stay open.” (*Id.* ¶ 160.) “Compromise,” to the Office, apparently means “violate your convictions.”

**E. The Office’s ultimatum: New Hope must violate its religious beliefs or shut down its adoption program.**

A couple of weeks later in October, New Hope received another letter from the Office. That letter reiterated the Office’s assertion that New Hope could not follow its religious beliefs without also violating the Regulation. (Verified Compl., Ex. 7.) The letter required New Hope to respond as to whether it “intends to revise the present policy and continue the existing adoption program.” (*Id.*) It also promised closure if New Hope does not compromise its religious beliefs:

Please be aware that should the agency fail to bring the policy into compliance with the regulation, [the Office] 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.

(*Id.*) Being unable to renounce its religious beliefs, New Hope now turns to this Court for a preliminary injunction.

**RELEVANT LEGAL STANDARD**

A preliminary injunction preserves the status quo pending resolution of the case. *N. Am. Soccer League, LLC v. U.S. Soccer Federation, Inc.*, 883 F.3d 32, 36 (2d Cir. 2018). To obtain a preliminary injunction, the moving party must show: (1) a

likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) the balance of hardships tips in its favor; and (4) an injunction is in the public interest. *ACLU v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015).

In the First Amendment context, “the likelihood of success on the merits is the dominant, if not dispositive, factor.” *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). To demonstrate a likelihood of success, New Hope “need not show that success is absolute certainty.” *Broker Genius, Inc. v. Zalta*, 280 F. Supp. 3d 495, 510 (S.D.N.Y. 2017) (quoting *Eng v. Smith*, 849 F.2d 80, 82 (2d Cir. 1988)). Rather, it must demonstrate that “the probability” of prevailing “is better than fifty percent.” *Id.* Moreover, New Hope “may alternatively receive an injunction upon a showing that there are ‘sufficiently serious questions going to the merits to make them a fair ground for litigation,’ and that the ‘balance of hardships tip[s] decidedly toward the party requesting the preliminary relief.” *Broker Genius*, 280 F. Supp. 3d at 523–24 (quoting *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010)).

## ARGUMENT

### **I. New Hope is entitled to a preliminary injunction because the Regulation violates its free exercise rights.**

A preliminary injunction is warranted because the Office’s application of the Regulation violates New Hope’s free exercise rights under the First Amendment. It also seeks to impose unconstitutional conditions on New Hope’s exercise of its constitutional freedoms. No concrete harm will be suffered by anyone if New Hope is permitted to continue its services during the pendency of this litigation.

**A. The Regulation violates the Free Exercise Clause because it would exclude organizations from a long-established religious ministry because of their faith convictions.**

In some settings, the boundary line between government power and the Free Exercise Clause is traced by the test articulated in *Employment Division v. Smith*, 494 U.S. 872 (1990). But the Supreme Court has rejected the idea “that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017).

In fact, the Supreme Court has stated that “[t]he contention that *Smith* forecloses recognition of” well-established historical religious practices “rooted in the Religion Clauses has no merit.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012). And it has explained that, notwithstanding what might be required of secular officiants through “neutral and generally applicable” laws, it would be unconstitutional to compel clergy “to perform [a same-sex wedding] ceremony.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018). Similarly, the Court has held that “the Establishment Clause must be interpreted by reference to historical practices and understandings,” and that “[a]ny test the Court adopts must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change.” *Town of Greece v. Galloway*, 572 U.S. 565, 576–77 (2014).

Thus, in *Hosanna-Tabor*, the Supreme Court *unanimously* held that the Religion Clauses bar the government from applying a neutral and generally applicable nondiscrimination law to a religious organization when doing so would

interfere with the organization's selection of its teachers and ability to operate consistently with its faith convictions. 565 U.S. 171 (2012). To permit otherwise, the Court explained, would impermissibly "affect[ ] the faith and mission of the [religious organization] itself." *Id.* at 190.

As reviewed above, religious organizations and individuals have created and engaged in faith-based care for abandoned children since ancient times. And they continued that tradition in this continent in the period leading up to and surrounding the adoption of the First Amendment. They were serving children because of—and in manners consistent with—their faith long before the state involved itself in "licensing" the care and adoption of orphans and abandoned children. If the free exercise of religion means anything at all outside the walls of a church—and it does—it means that the State cannot at this late date flex its licensing power to step in and prevent New Hope from continuing to pursue its 50-year-old adoption ministry in a manner consistent with its faith convictions and past practices. Simply put, the Office cannot "secularize" the whole area and push religious organizations off the field.

Nor can the Office force New Hope to a *choice* of violating its faith convictions or abandoning its historic ministry and reason for being. Indeed, "[g]overnmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine." *Sherbert v. Verner*, 374 U.S. 398, 404 (1963). The unconstitutional conditions doctrine likewise teaches that that "the government may not deny a benefit to a person because he exercises a constitutional right."

*Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013); *see also Perry v. Sindermann*, 408 U.S. 593 (1972) (refusal by public college to renew professor’s contract because he was an outspoken critic of the college’s administration violates his free speech rights); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (limiting healthcare benefits only to those who have been residents of the county for a year imposes an unconstitutional condition by burdening the right to travel); *Agency for Int’l Dev. v. All. for Open Soc’y Int’l*, 570 U.S. 205, 220–21 (2013) (denying access to grants to organizations that fail to adopt a policy opposing prostitution and sex trafficking imposes an unconstitutional condition on the organization’s free speech rights).

**B. The Free Exercise Clause prohibits the Office from requiring New Hope to renounce its religious beliefs to receive a public benefit for which it is otherwise qualified.**

In addition to the above, the Free Exercise Clause prevents the government from excluding a religious organization from a public benefit based solely on its religious beliefs. In *Trinity Lutheran*, the Supreme Court held that the State of Missouri could not exclude a church-operated preschool and daycare from a playground safety grant program because of its religious nature. 137 S. Ct. at 2025. The Court explained that the Free Exercise Clause prohibits the government from requiring an organization “to renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified.” 137 S. Ct. at 2024. To do so “imposes a penalty on the free exercise of religion that must be subjected to the most rigorous scrutiny.” *Id.*

Yet that is precisely what the Office’s application of the Regulation threatens here. While a religious organization should not have to be a supplicant to the state to live out its ministry and mission, once a licensing regime is in place, the state-issued license is the most valuable government benefit possible for the ministry—indeed, it is essential to its existence and fulfilment of its faith-motivated ministry. *Cf. Horne v. Dep’t of Agriculture*, 135 S. Ct. 2419, 2430 (2015) (describing a license as a “valuable Government benefit”). The Office has unconstitutionally conditioned this government benefit on New Hope’s willingness to renounce its religious beliefs and character as it pertains to marriage and family.

Moreover, the Office’s application of the Regulation effectively imposes a “religious test” on the right to provide adoption services—excluding all whose religiously based views of marriage and the family clash with New York State’s current dogma. The First Amendment forbids this. The Framers lived under British laws that excluded Catholics and others outside the Church of England from holding civil, military, academic, or municipal office. *See* Br. of Christian Legal Soc’y, et al., as Amici Curiae in Supp. of Pet’rs at 32–33, *Masterpiece*, 138 S. Ct. 1719 (2018) (No. 16-111), 2017 WL 4005662 (detailing relevant history). So “abhorrent” did they consider this practice, *Torcaso v. Watkins*, 367 U.S. 488, 491 (1961), that the Framers adopted the Religious Test Clause, *see* U.S. Const. art. VI, cl. 3. Religious tests must not be allowed to creep back in under the guise of licensing requirements and regulations.

The Office may not revoke New Hope’s 50-plus-year-old, perpetual authorization solely because New Hope acts consistently with its religious beliefs. If that alone could justify license revocations, the government’s power would be boundless, giving it free reign to use licensing regimes to pressure religious organizations into conformity with state-approved orthodoxy on sensitive and important social issues and pushing to the margins of society those who will not bend or break. *Cf. National Institute of Family & Life Advocates v. Becerra (NIFLA)*, 138 S. Ct. 2361, 2375 (2018) (States cannot give themselves “unfettered power to reduce a group’s First Amendment rights by simply imposing a licensing requirement”).

The Office’s attempt to do so here is anathema to the *free exercise* of religion; it “is odious to our Constitution” and “cannot stand.” *Trinity Lutheran*, 137 S. Ct. at 2025; *see also id.* at 2026 (Gorsuch, J., concurring) (“I don’t see why it should matter whether we describe the benefit, say, as closed to Lutherans (status) or closed to people who do Lutheran things (use). It is free exercise either way.”). And the fact that New Hope now holds disfavored views about marriage and family is more, not less, reason to protect it carefully. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000) (“[T]he fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.”).

**C. The Office’s application of the Regulation to New Hope does not survive strict scrutiny.**

As explained above, it is not necessary to engage in a *Smith* analysis to conclude that the Regulation is unconstitutional as applied to New Hope. But it is also true that such an analysis would lead to the same conclusion.

**1. The Office’s application of the Regulation to New Hope triggers strict scrutiny under a *Smith* analysis.**

At the threshold, the Regulation must be subjected to strict scrutiny because it is not “neutral.” The Free Exercise Clause bars even “subtle departures from neutrality” on matters of religion, and a law is not neutral if its practical effect or “object” is to “infringe upon or restrict practices because of their religious motivation.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533–34 (1993).

Here, the Regulation’s effect is to single out beliefs and practices followed primarily or only by faith-based adoption providers—as the Office’s agent perhaps inadvertently confirmed when she urged that “some *Christian* ministries have decided to compromise and stay open.” (Geyer Aff. ¶ 160.) Because the purpose and function of the Regulation is to put “Christian ministries” to that improper choice, the Office has violated its “duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint.” *Masterpiece*, 138 S. Ct. at 1731.

The Regulation also is not “of general applicability.” In *Lukumi*, the Supreme Court faced an ordinance that was crafted to prohibit ritual animal sacrifice called for by the Santeria religion while allowing slaughter of animals in many other

contexts. There, the Court held that a law is not generally applicable if it exempts *non*religious conduct that undermines the government's interests "in a similar or greater degree than [religious conduct] does." 508 U.S. at 543–44.

Here, the Regulation is radically underinclusive with respect to the government's purported interest in "prohibit[ing] discrimination ... against applicants for adoption services." 18 NYCRR § 421.3(d). In fact, the Regulation and related laws permit and even require multiple types of "discrimination" in the adoption process that "endanger" the government's interest as much or more than New Hope's faith-driven selections do. *See Lukumi* at 543–44. Yet the Office has selectively threatened New Hope (and other "Christian ministries") with closure because their choices in selecting potential adoptive parents are guided by religious convictions of which the State disapproves.

For example, New York law expressly allows—and in fact *requires*—adoption agencies, including all 58 state-run agencies, to make distinctions based on race and religion when placing children with adoptive parents. Agencies must, "when practicable," place children with persons "of the same religious faith as that of the child." N.Y. Soc. Serv. Law § 373(2). Similarly, adoption agencies must direct their recruiting efforts towards "communities of populations which have ethnic, racial, religious, or cultural characteristics similar to those of ... the largest number of waiting children." 18 NYCRR § 421.10(a).

Further, the law permits birthparents to make distinctions based on whatever they think is in the best interest of their child when selecting adoptive

parents, and requires adoption agencies to “give effect” to the “religious wishes” of birthparents. N.Y. Soc. Serv. Law § 373(7); *see also Spence-Chapin Adoption Serv. v. Polk*, 274 N.E.2d 431, 436 (N.Y. 1971) (“[T]hat the mother should have the say on issues of race and religion seems reasonable and is accepted doctrine, so long as she has not abandoned the child or is unfit.”). No law or regulation prevents birthparents from giving consent only to heterosexual, married adoptive parents.

What is more, New York law permits adoption agencies to decline and refer applicants for a myriad of other nonreligious reasons. An agency may, for example, decline applicants for “poor health” or “limited life expectancy.” N.Y. Dom. Rel. Law § 110. And it may of course decline or refer applicants based on geographic convenience, capacity, and personality, among other things.

This underinclusiveness with respect to the state’s supposed aims is fatal. *See Lukumi*, 508 U.S. at 543 (the “government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief”). The message these exemptions send is loud and clear: declining applicants is impermissible only when based on the *adoption agency’s religious beliefs about the nature and importance of marriage*. But the government may not “regulate or outlaw conduct because it is religiously motivated.” *Trinity Lutheran*, 137 S. Ct. at 2021. Because the numerous exemptions identified above undermine the government’s purported interest in prohibiting “discrimination” against prospective adoptive parents, strict scrutiny must apply. *Lukumi*, 508 U.S. at 543–44; *see also Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366

(3d Cir. 1999) (Alito, J.) (“[W]hen the government makes a value judgment in favor of secular motivations, but not religious motivations, the government’s actions must survive heightened scrutiny.”).

Finally, strict scrutiny is called for under *Smith* because this case presents a “hybrid situation” in which, as detailed below, New Hope’s free-exercise claim is linked with “other constitutional protections, such as freedom of speech.” *Smith*, 494 U.S. at 881–82. Nevertheless, because New Hope presents much more than a merely “colorable claim” that its free exercise rights have been violated, it is not necessary to decide whether a “hybrid rights” claim triggers strict scrutiny, *see Leebaert v. Harrington*, 332 F.3d 134, 144 (2003), although New Hope contends that the Circuits that have concluded it does are correct. *See, e.g., Miller v. Reed*, 176 F.3d 1202, 1207 (9th Cir. 1999).<sup>8</sup>

**2. The Office’s application of the Regulation to New Hope is not “narrowly tailored” to “further” a “compelling” state interest.**

No compelling governmental interest exists that could justify the violation of New Hope’s free exercise rights. As noted above, New York law contains numerous exemptions requiring adoption agencies to make distinctions in the recruitment and placement of children with adoptive parents. Application of the Regulation thus “cannot be regarded as protecting an interest of the highest order” because the

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<sup>8</sup> Recognizing that this Court is bound by the Second Circuit’s contrary ruling in *Leebaert*, New Hope raises this argument to preserve the issue for any potential appeal.

existing exemptions already permit “appreciable damage to that supposedly vital interest.” *Lukumi*, 508 U.S. at 547.

Application of the Regulation is not narrowly tailored for the same reason. When exemptions from the law already exist, and no less than 58 state-run agencies (and many more private ones) provide ready alternatives and are available to receive referrals, forcing New Hope to choose between its religious beliefs and serving vulnerable children is, quite frankly, unnecessary. *See Lukumi*, 508 U.S. at 546 (holding that “underinclusive” ordinances could not be considered narrowly tailored). Moreover, strict scrutiny requires the Office to prove that applying the Regulation to New Hope *in these particular circumstances* “advance[s] ‘interests of the highest order’ and [is] narrowly tailored in pursuit of those interests.” *Lukumi*, 508 U.S. at 546 (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 (1978)). This Court must “look[ ] beyond broadly formulated interests” and instead “scrutinize [ ] the asserted harm of granting specific exemptions to [New Hope].” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006).

Further, violating New Hope’s rights will not materially further any governmental interest, even if one existed. In *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972), the Supreme Court exempted Amish children from a compulsory school attendance law, despite recognizing the government had a “paramount” interest in education. The Court explained that the government needs “to show with more particularity how its admittedly strong interest ... would be adversely affected by granting an exemption *to the Amish*.” *Id.* at 236 (emphasis added). The Office also

cannot make that showing. Preventing New Hope from performing adoption services does not help same-sex or unmarried couples become adoptive parents. They already have numerous channels through which to do so. It will simply result in fewer families recruited and fewer children being placed in permanent and loving homes. The government can provide no justification for such a tragic result, let alone a compelling one.

**II. The Regulation violates New Hope’s free speech rights because it would force New Hope to recommend and counsel, contrary to its convictions, that children be placed with unmarried and same-sex couples.**

The Office’s application of the Regulation also would require New Hope to convey messages with which it disagrees—that is, that children *should* be placed with unmarried and same-sex couples. But a long line of U.S. Supreme Court cases has established that the government may not “compel [an individual] to utter what is not in his mind,” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943), “compel affirmance of a belief with which the speaker disagrees,” *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995), or “[c]ompel[ ] individuals to mouth support for views they find objectionable.” *Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018).

Just this year, in *NIFLA*, the Supreme Court criticized California for forcing pro-life pregnancy resource centers to publish notices containing messages they opposed. 138 S. Ct. 2361 (2018). The Court explained that, “[b]y compelling individuals to speak a particular message,” the laws at issue “alter[ed] the content

of [their] speech.” *Id.* at 2371. This content-based application triggered strict scrutiny. *See id.* at 2375.

The Office’s application of the Regulation triggers strict scrutiny for the same reason, because it would necessarily compel speech contrary to New Hope’s religious convictions. Adoption agencies such as New Hope are actively involved in evaluating and recommending prospective adoptive parents, and therefore must communicate their views about the prospective parents to both birthparents and the State. This includes *written assessments* and *recommendations* as to whether a child should be placed with prospective adoptive parents. (*See* Geyer Aff. ¶¶ 115, 116, 124, 125.) Not only would the Office’s application of the Regulation prohibit New Hope from voicing its religious objections and concerns about placing a child with unmarried and same-sex couples, but it would require New Hope to affirmatively recommend them—*in writing*—as adoptive parents, contrary to its religious convictions about the best environment for children. Compliance with the Regulation also would force New Hope into a counseling relationship with unmarried or same-sex prospective adoptive parents in which it would either have to speak contrary to its beliefs or express those beliefs honestly, no doubt triggering a different set of accusations of “discrimination” from the Office.

The Office’s refusal to accommodate New Hope thus creates an untenable and unconstitutional situation. To remain an authorized volunteer adoption agency, New Hope must provide the State with written assessments and recommendations that explicitly contradict its religious beliefs about marriage and family. Because

this necessarily would “alter the content of [New Hope’s] speech,” it triggers strict scrutiny. *NIFLA*, 138 S. Ct. at 2371 (citation omitted). For the reasons already detailed above, the Regulation as applied against New Hope by the Office cannot satisfy that test.

### **III. The Regulation likewise violates New Hope’s expressive-associational rights.**

Besides protecting the right to speak (or not speak), the First Amendment also protects the right to “associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

In considering New Hope’s expressive association claim, the Court must first determine whether New Hope in fact “engages in ‘expressive association.’” *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000). The Supreme Court has explained that an association “engages in expressive activity” when it “seeks to transmit ... a system of values.” *Id.* at 650. Here, New Hope plainly engages in expressive association because it conveys a system of values about life, marriage, family, and sexuality to both birthparents and adoptive parents. (*See, e.g.*, Loscombe Aff. ¶ 13; Stultz Aff. ¶¶ 11–15; Johnston Aff. ¶¶ 6, 14; J. Bleuer Aff. ¶¶ 5, 9–10; E. Bleuer Aff. ¶¶ 6–10.)

Next, the Court must consider whether requiring New Hope to alter its practices “would significantly affect [its] ability to [express its] public or private viewpoints.” *Dale*, 530 U.S. at 650. It undeniably would. As noted above, New Hope has specific religious beliefs about marriage, family, and sexuality, and

intentionally conveys those beliefs to employees, birthparents, adoptive parents, pregnancy resource centers, and everyone else with whom it associates. Forcing New Hope to endorse and facilitate placement with same-sex and unmarried couples would send the message that New Hope supports such home environments for children when in fact it does not. As explained by those with whom New Hope has worked most closely, such a compromising of beliefs “would mean a significant change in New Hope’s identity,” causing birthparents and adoptive parents “to question whether [New Hope’s] faith was genuine.” (E. Bleuer Aff. ¶ 10; Stultz Aff. ¶ 31; *see also* J. Bleuer Aff. ¶ 17.)

Because this would violate New Hope’s expressive-associational rights, strict scrutiny again applies. The Office cannot satisfy that heightened standard of review for the reasons identified above.

**IV. A preliminary injunction would prevent New Hope from suffering irreparable harm, result in no harm to anyone, and be in the public interest.**

In the First Amendment context, “the likelihood of success on the merits is the dominant, if not dispositive, factor.” *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). Even so, the remaining preliminary injunction factors—irreparable harm, balance of equities, and public interest—also weigh in favor of granting New Hope a preliminary injunction.

To begin, New Hope would suffer irreparable harm in the absence of a preliminary injunction because its First Amendment rights would be violated and it would be forced to shut down its adoption ministry. “[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable

injury.” *Bronx Household of Faith v. Bd. of Educ. of City of New York*, 331 F.3d 342, 349 (2d Cir. 2003) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

The balance of equities likewise weighs in favor of New Hope because a preliminary injunction would protect it from suffering constitutional violations and the Office can have no legitimate interest in applying an unconstitutional law. *See N.Y. Progress*, 733 F.3d at 488 (“[T]he Government does not have an interest in the enforcement of an unconstitutional law.”). Furthermore, the unmarried and same-sex couples that the Office purportedly seeks to protect by shutting down New Hope would remain free to adopt and avail themselves of the adoption services provided by numerous other agencies that do not share New Hope’s religious views, including 58 agencies operated directly by the State.

Finally, protecting constitutional rights, including New Hope’s First Amendment rights, is always in the public interest. *See N.Y. Progress*, 733 F.3d at 488 (“[S]ecuring First Amendment rights is in the public interest.”).

## CONCLUSION

The State’s position here is unnecessary. New Hope is just one adoption provider among many and holds no monopoly power. Moreover, the Office has long been aware of New Hope’s religious beliefs, and has previously embraced New Hope’s religious charity until the political winds shifted. Because the First Amendment prohibits the Office from forcing New Hope to choose between its religious beliefs and serving vulnerable children, this Court should grant New Hope’s request for a preliminary injunction.

Dated: December 12, 2018

*s/ Jonathan Scruggs*

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

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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.

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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 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 11<sup>th</sup>, 2018.

Judith A. Geyer  
Judith A. Geyer

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

On the 11<sup>th</sup> 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**

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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**

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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.

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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  
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.

[Signature]  
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**

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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.

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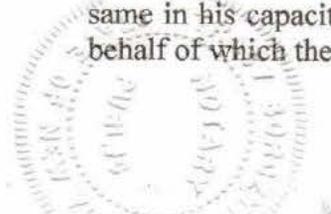
I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

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 7<sup>th</sup> 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.

  
TRACY BORCZYNSKI  
No. 01BO6076794  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Aug. 5, 2022

[Signature]  
Notary Public

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

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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.

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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.

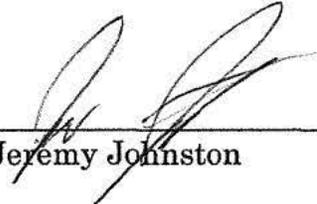
12. We are still waiting to finalize our daughter's adoption. It is scheduled to be finalized in 2019 through New Hope. I don't know what will happen to us if New Hope is forced to stop doing adoptions. We are in the middle of the process and everything would be up in the air. At the very least, I know 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.

14. My wife and I have talked about the possibility of adopting a third time. If we decide to adopt a third time, we would only do so through New Hope. The adoption experience is so personal that if we walk through it again, we would want to do so with an agency that shares our Christian values particularly about life and family.

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 30 day of November, 2018, at MW, USA New York.

  
\_\_\_\_\_  
Jeremy Johnston

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

On the 30 day of November, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Jeremy Johnston, 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

LINDA M. FEATHERLY  
NOTARY PUBLIC STATE OF NEW YORK  
LIC. #01FE801134  
Qualified in Onondaga County  
My Commission Expires Oct 21, 2022

# EXHIBIT

1

Hello, our names are Jeremy and Tara. It's so hard knowing where to start and how to find the right words to express how excited we are and how much we appreciate you looking at our profile. While we will never know the full impact of what you are going through, we do know that this must be a hard and emotional time for you.

We wanted to share with you the life we live and the abundance of love we have in our family.

We would love to expand our family through adoption. Thank you, from the bottom of our hearts, for looking at our profile.

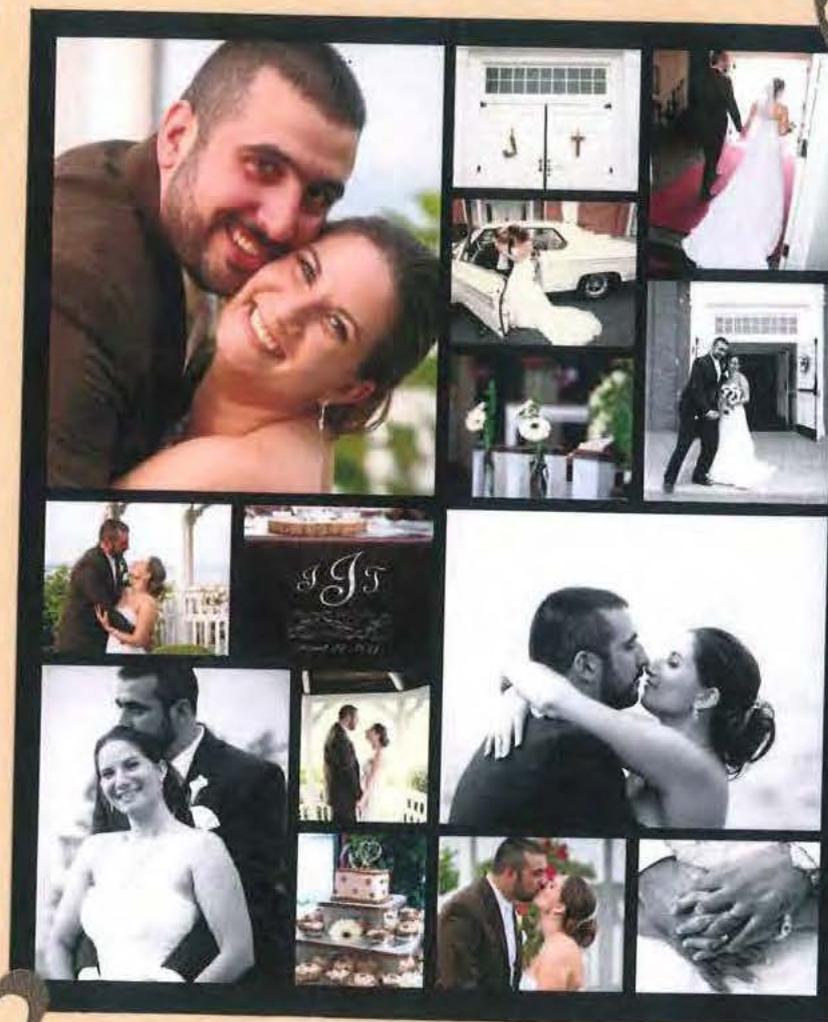
Sincerely,

Tara & Jeremy

»»» Hello



soulmates



*We first met each other 9 years ago briefly at a birthday party. It was not until a year and half later that we would meet again when Jeremy started working for the same company that Tara did. While at a company function we started talking and immediately hit it off. We started taking our lunches together and became great friends. We noticed right away that we share the same sense of humor and adore our families. We had been dating for just over a year and knew that we were meant to be together. We were married on August 27, 2011. We have a strong bond and we face every aspect of our lives together.*

love of my life



two souls, one heart



XOXO

hard WORK

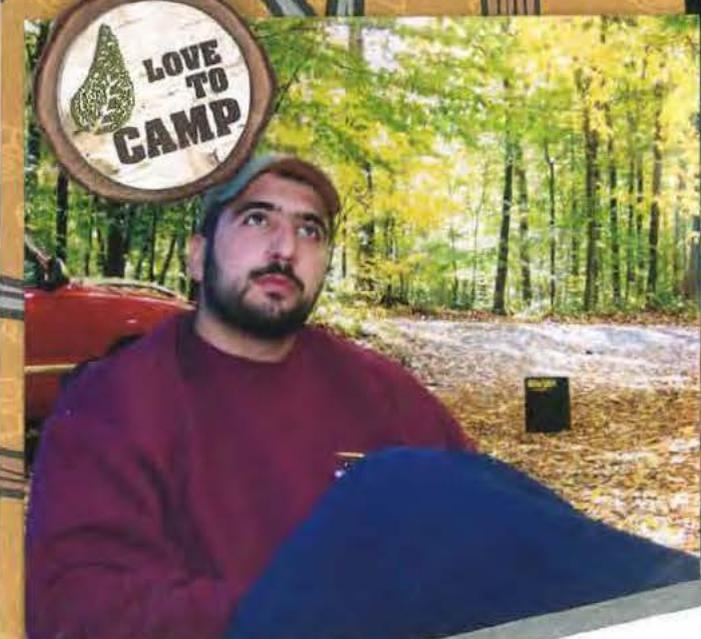
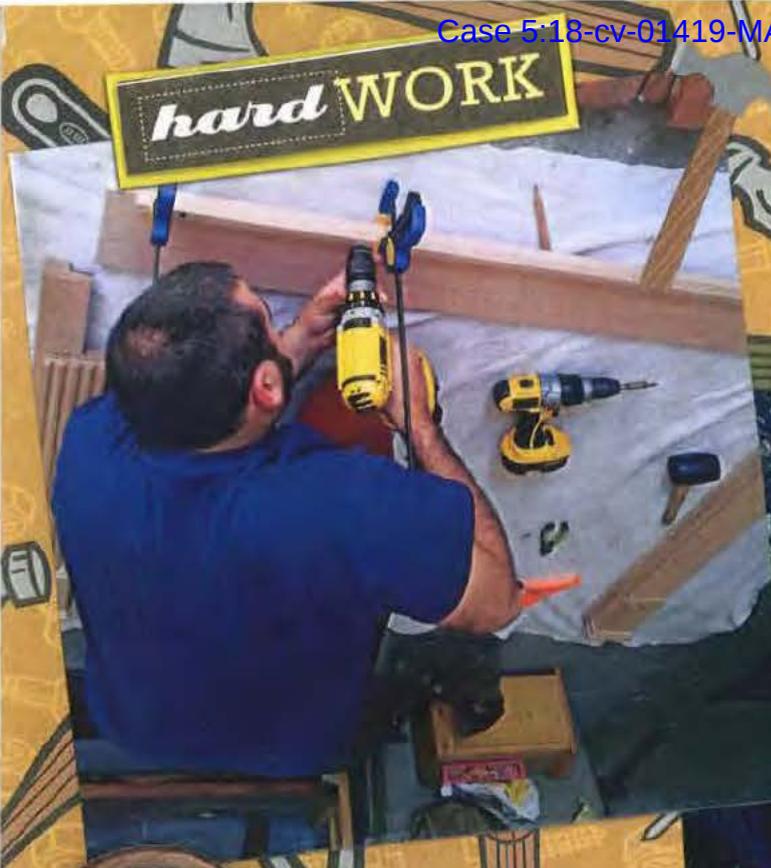
JEREMY

Happy Camper

HOLE IN ONE

HOME RENOVATION

LOVE TO CAMP



**Meet Jeremy ...**  
 I grew up the younger of two children and come from a large and loving Italian family. I grew up with 4 cousins that are all around the same age who are all like brothers, and my aunts are like second moms to me. I would consider myself a great handy man and love to do projects around the house. Whether it's landscaping or installing a new deck I can do it all. I love to learn and push myself. I enjoy anything outdoors such as camping, hiking, and golfing.

I have a Bachelors Degree in History and Communications. I started working for a company as a mechanic when I graduated I was quickly promoted to a sales representative. I love my career and enjoy going to work every day.

**Favorite Food:** Steak  
**Favorite Music:** Anything  
**Favorite Holiday:** Christmas Eve (Family Traditions)  
**Favorite Movie:** Iron Man  
**Favorite Sport to Watch:** College Basketball  
**Hobbies:** Working on old cars with his dad



say cheese!

COLOR ME RAD RUN W/ [redacted] & [redacted]



WEDDING

friends



BREAST CANCER MUD RUN W/ [redacted]

best friends forever



JEREMY & I IN FLORIDA

us



WARRIOR DASH MUD RUN W/ [redacted]

special bond

13298

38355

SLUMBER



lovely ladies



GOLFING W/ MY SISTER [redacted]

happy



sisters

friends

Meet Tara...

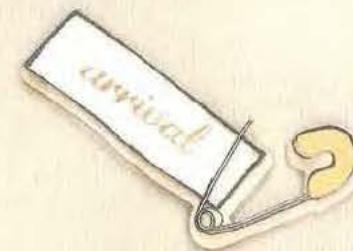
I grew up in a very large family. I am an only child to my mother but grew up with a half brother and sister. After my parents divorced and my mother remarried I gained 3 step sisters and 3 step brothers. My mom's side of the family is very large and she was one of nine children. Although getting around 100 family members together is tricky, we make sure to do it at least once a year at my grandma's house. She loves having a blended family and finds it a blessing and values the time together. I love camping, hiking, golfing and doing fun runs with my friends and family.

She has an Associate's Degree in Office Technology. She works for a company as an order analyst and customer care representative. She loves the company she works for because it feels like a small family owned business.

TARA

- Favorite Food: Prime Rib
- Favorite Music: I listen to it all
- Favorite Holiday: Christmas Eve
- Favorite Movie: Pretty Woman
- Favorite Sport to Watch: College Basketball
- Hobbies: Photography and fun runs

## Preparing the Nursery



When the baby comes...

Tara will have maternity leave from work and extended time off. She also has the flexibility to work from home part time when the time is right to go back to work. Jeremy will also have a couple of weeks of time off as well to be home to help welcome home the baby. Both of our mothers will be taking time off to help us adjust and give a helping hand.

The nursery is set up and waiting. The nursery will be right across the hall from our master bedroom. We will be using the same gender neutral theme as we did for [REDACTED]. Since we were not specific on the gender because we will love a little boy or girl or both! The theme is Baby Bear by Carter's. We felt it would be nice to pass down the theme as a family tradition to the next addition to the family.



# TARA'S



# F A M I L Y

# JEREMY'S



Easter at Mom and Dad's



New Kitchen Floor

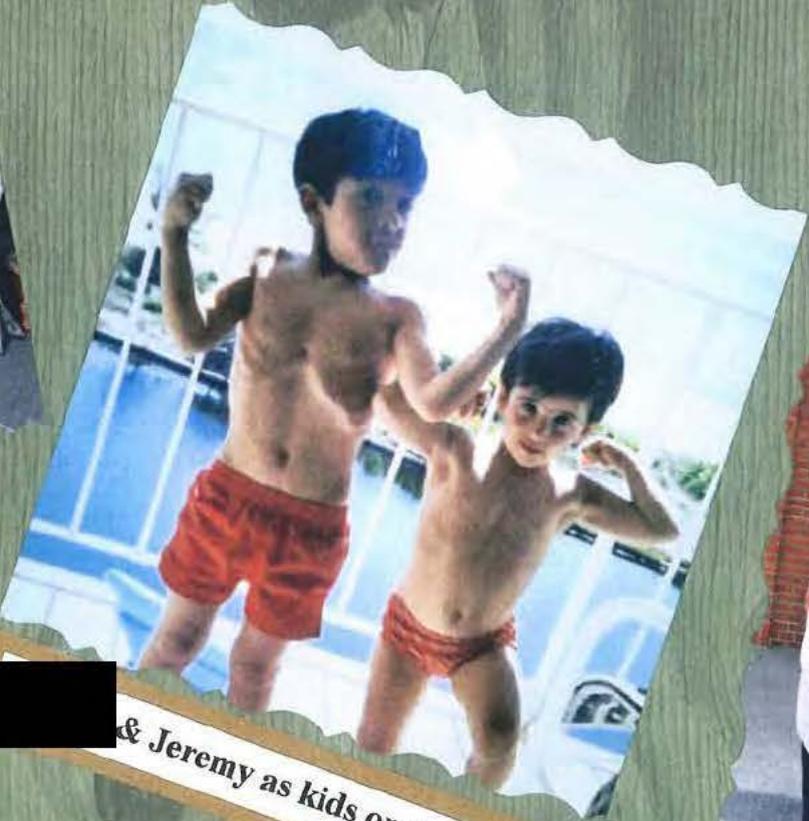
BROTHER



Our Wedding



COUSINS



[Redacted] & Jeremy as kids on vacation



Aunt

ILLY

I fell in love with Tara for a lot of reasons. We enjoy all of the same activities and are always finishing each other's sentences. I love her laugh and also the way that she is so level headed in any situation. We both are very caring for our family members and would do anything for anybody at the drop of a hat. We both love pets and will always have dogs. We enjoy taking long road trips and can ride in a car for hours without even turning on the radio. We will laugh and make jokes like it's the first day we met. She fits into my family like she has been around forever. She is a great mother. She is caring and compassionate and children light up around her.



I fell in love with Jeremy for so many reasons. Where do I begin? He is my partner, my equal and my rock in life. He has such a huge heart it's a gift he shares with so many others. We enjoy so many of the same things that we are rarely apart for very long. He has an amazing sense of humor and makes me smile and laugh every day. Our connection is very deep and more often than not he can finish my sentences. Our family finds this uncanny on how often it really happens. He has had my heart since day one and continues to make me step back and think wow how did I get so lucky to find such a great person to share my life with! Watching him become a father has only made my love for him grow, he's a natural!

Background collage of wooden planks with various phrases: LOVE, Fly, celebrate, WAKE UP, Be, Joy, HE, BE grateful, IMAGINE, FRIENDS, BE, BEAUTY, SMITTEN, with LOVE, FRIENDS, Fly, Happy Day.



#### Our infertility and return to faith

Jeremy attended church regularly growing up as well as attending religious education classes. He went through his confirmation as well and religion was a regular part of his life. He also did a lot of volunteer work through the church serving meals at the Bingo hall, delivering Thanksgiving/Easter groceries to those less fortunate in the community, and helping as needed at other fundraising events for the church. When he went off to college religion played a smaller role but the community service stayed with him as he would always help those in need. Tara attended church regularly as a child also. The family would go every Sunday and was a large part of her life in her youth. As time went on attending church was less regular. Just after we began dating Tara was up front that she was unable to have children for health reasons but Jeremy knew where there was a will there was a way. Before we began this process we started attending church again to guide us through the emotional and stressful adoption journey. We pray daily and when we are in need of reassurance we leave that to our faith. We still do not attend church every week but go as often as we can. Everything in life happens for a reason which is why we are together and going through this exciting time together.



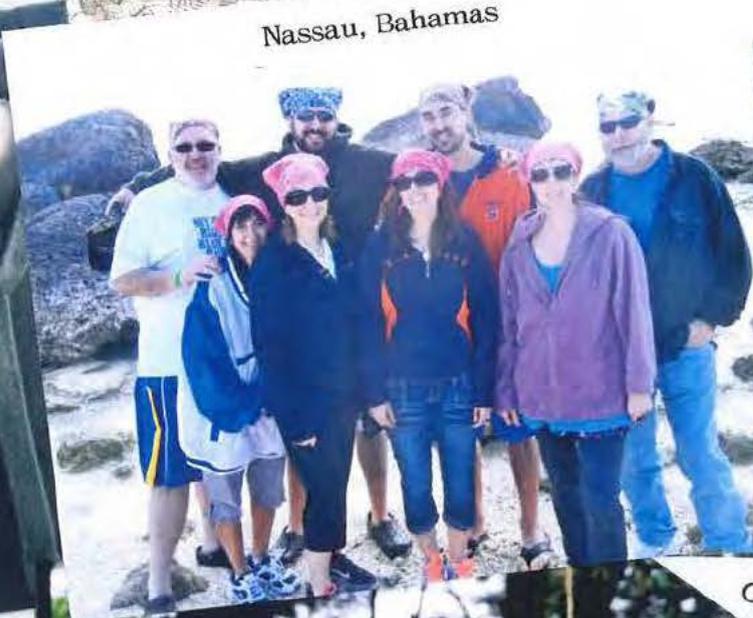
# adventure

## Our Vacation

Freeport, Bahamas



Nassau, Bahamas



sightseeing

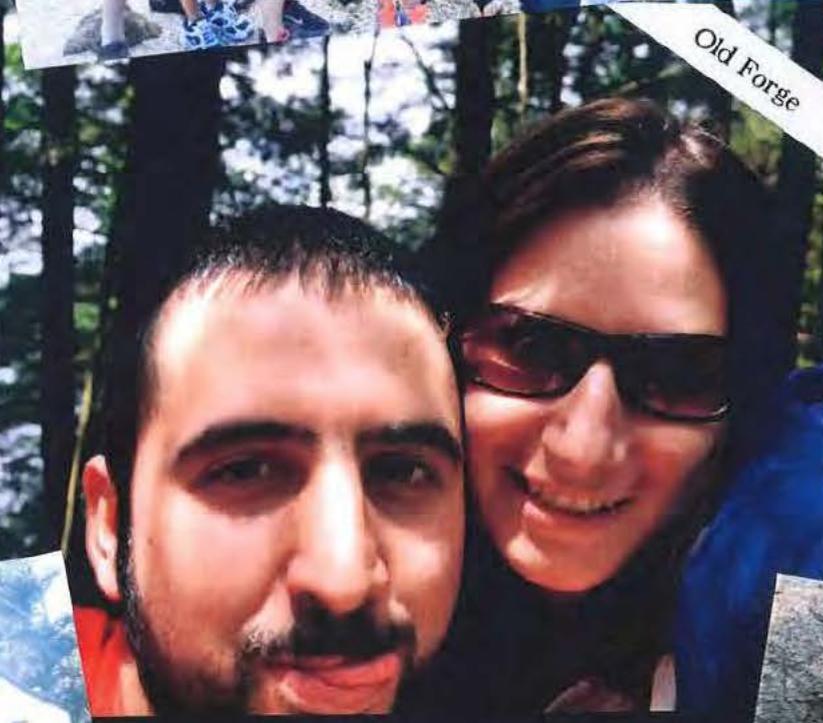


Lake Placid

Jamesville



Old Forge



Key West



LITTLE WHITEFACE ELEV. 3678ft.



Aruba



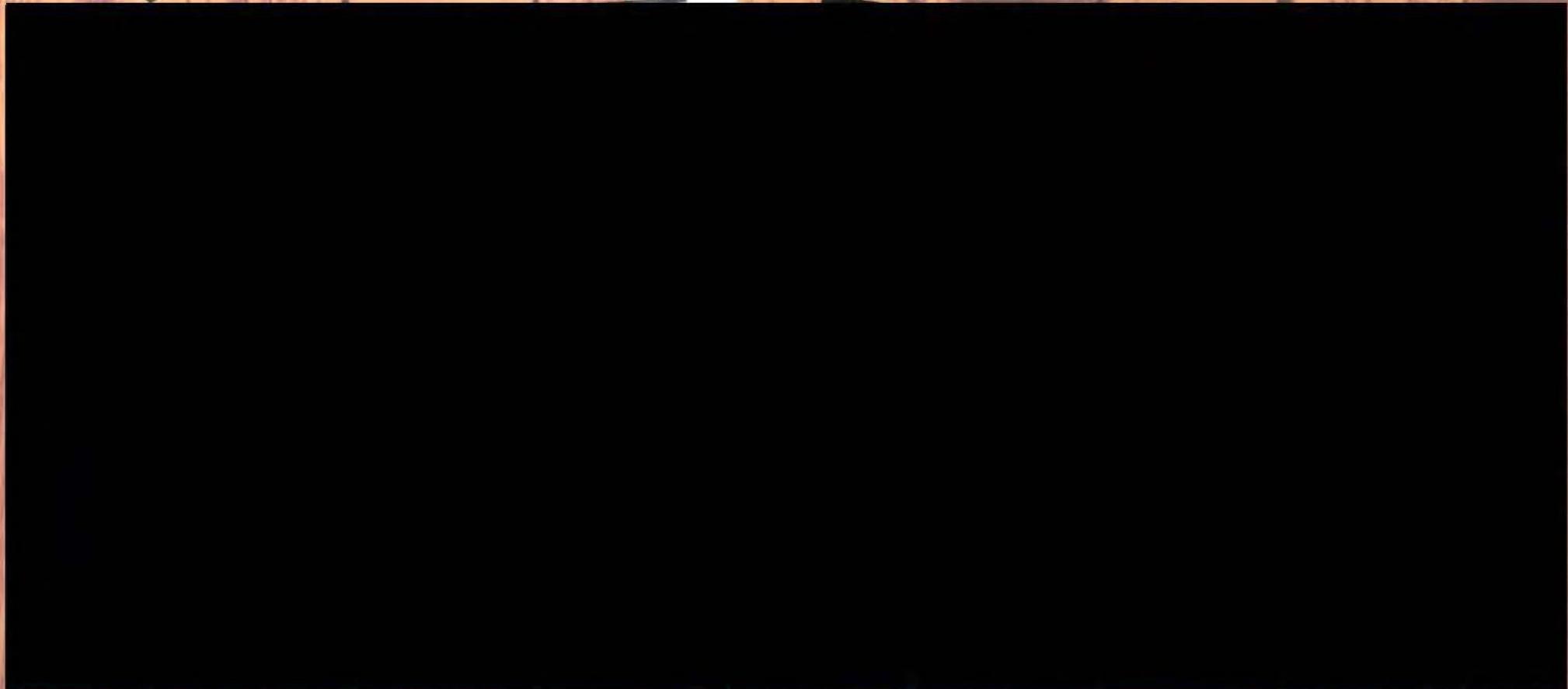
# TRAVEL



We truly appreciate you taking the time to look into our lives and the life that we will be able to provide for a child. We know this is an extremely difficult process for you as well, but know that this step will help fill a void in our lives that we cannot fill on our own. We know that we will make GREAT parents because of the way that our families have taught us to love and care for one another. We will have the support from our friends and family. All of our friends and family are beginning families and we will be able to raise our child with theirs and we can grow together, travel together, and experience the joys of parenthood together. We love our home and neighborhood because of the family friendly environment. The baby's grandparents will be there for us as a wonderful support. Our families traditions will be passed down and continue to hold our family together as Grandma [REDACTED] has shared with us.

Thank you ~

*[Signature]* + Sara



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

**Defendant.**

1. My name is Justin 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 grew up in western New York near Buffalo, the fifth of 14 kids. My parents adopted eleven of my brothers and sisters.
4. My parents adopted from all over the world, so I have siblings from the United States, Sierra Leone, Guatemala, Korea, and Liberia. Our friends used to joke that we were a "United Nations family."
5. Two of my siblings came to us through New Hope Family Services. That was over 20 years ago, but I still remember how different those adoption experiences were for our family. New Hope incorporated its Christian faith and values at every stage of each adoption. Christian faith was something that was important to my family growing up and remains important to me now that I am an adult and a pastor at a local church. Back then, New Hope's Christian focus made my family eager to work with them.

6. It was a blessing for me to grow up with adopted brothers and sisters. So I always desired to follow in my parents' footsteps and adopt. I had seen firsthand the positive impact adoption has on a family and the child that is brought into that family. When I met my wife, Annie, I was pleased to find out that she had the same desire to pursue adoption at some point in our marriage.

7. Annie and I got married in 2005 and by 2011 we had two kids of our own. Then in 2013 we lost a baby to miscarriage. That sparked something in both Annie and I to start thinking more seriously about adopting.

8. When Annie and I began to seriously consider adopting, we knew we wanted to work with New Hope. Through my parents, I had experience with adoption agencies. But I wanted our Christian faith to be an integral part of the process and so we went straight to New Hope.

9. At New Hope we found shared Christian values about the family, respect for life and care for orphans. New Hope's approach to adoption was anchored in the Bible. Prayer was included in meetings and at every step of the process. I saw the staff show true Christian love for the people they served – both birth parents, and adoptive parents. Staff walked with birth families through tough situations and decisions, while prayerfully preparing adopting families to bring a new child into their home. Everything was focused on Biblical teachings about hope, healing, the value of new life, the dignity of every person, and most importantly the gift of family.

10. Staff members told us right away that New Hope's primary goal is not to find children for families, but to serve the babies and mothers they work with to find each child a permanent, loving home that will fit their individual needs and situations.

11. New Hope's Christian faith was obvious to us when we adopted our baby girl. New Hope was working with a particular birth mother and our application moved quicker than most because we were willing to adopt a baby from a different race. She selected us to adopt her baby girl. We were thrilled. Then days before the birth, the birth mom decided she wanted an open adoption, rather than the semi-open one we had arranged. New Hope prayerfully walked both families through that process and we settled on an open adoption arrangement that has worked well for both families.

12. About the same time that the birth mom chose us to adopt her little girl, we found out that Annie was pregnant again. So in March 2014, we welcomed our then 3-day-old little girl into our home, and in July 2014 we had a baby boy.

13. Since then we have had another son, growing our family to five children.

14. As part of the process with New Hope, Annie and I created a family album. It was designed to help birth mothers get to know us as they tried to decide whether to place their baby with us. New Hope staff gave us advice about putting this book together and they reviewed and provided suggestions and edits before we

finalized the book. A true and correct copy of excerpts from that book are attached as Exhibit 1.

15. New Hope has continued to provide care for us, our birth mom, and our baby even after the adoption. They facilitated meetings for our family and the birth family. Initially, those meetings were at New Hope. They also facilitate ongoing correspondence between our family and our daughter's birth family. Every few months we send letters and pictures to New Hope and they provide those to our daughter's birth mom and dad. They will continue to do this for us until she is 18. New Hope is able to facilitate these meetings and correspondence so well because of the close relationship we, and our birth mom, have built with the New Hope staff, through the joys and challenges of the adoption process. It would be hard for us and our birth mom to replicate that with another agency.

16. Annie and I are aware of different adoption agencies, including secular ones. We chose to work with New Hope because it is different, the people there share our Christian views about what it means to be family. Because of that, Annie and I are open to adopting again, but we would only want to work with New Hope.

17. Similarly, we would not be comfortable adopting through New Hope if New Hope changed its Christian beliefs. If New Hope changes its religious beliefs about family, it could no longer provide the consistent Christian-based adoption experience that we and the birth mother we worked with enjoyed.

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# EXHIBIT

1



Thank you for reviewing our profile and meeting our family. We are excited to share our love with another child. We commend you for choosing life for your baby. We respect your tremendous courage and are praying for God's wisdom and strength for you!



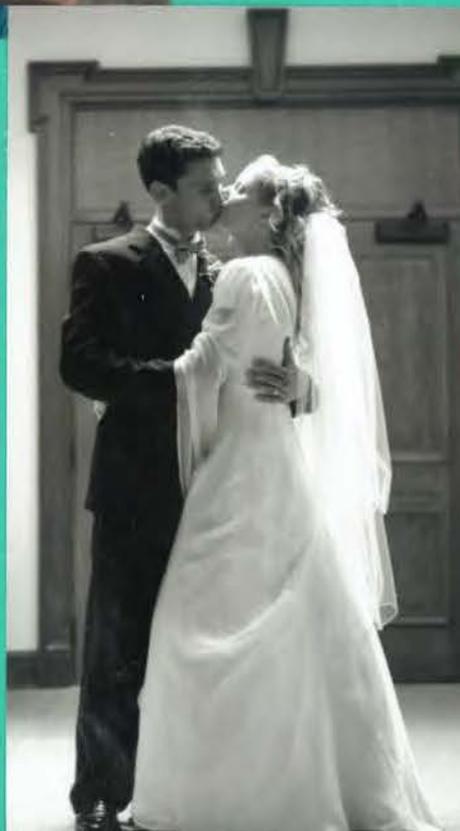
# Our Family



Justin and Annie 2003

## Justin and Annie's Story

Met at College~August 2001  
Started Dating~February 2003  
Engaged~November 2003  
Married~May 21, 2005

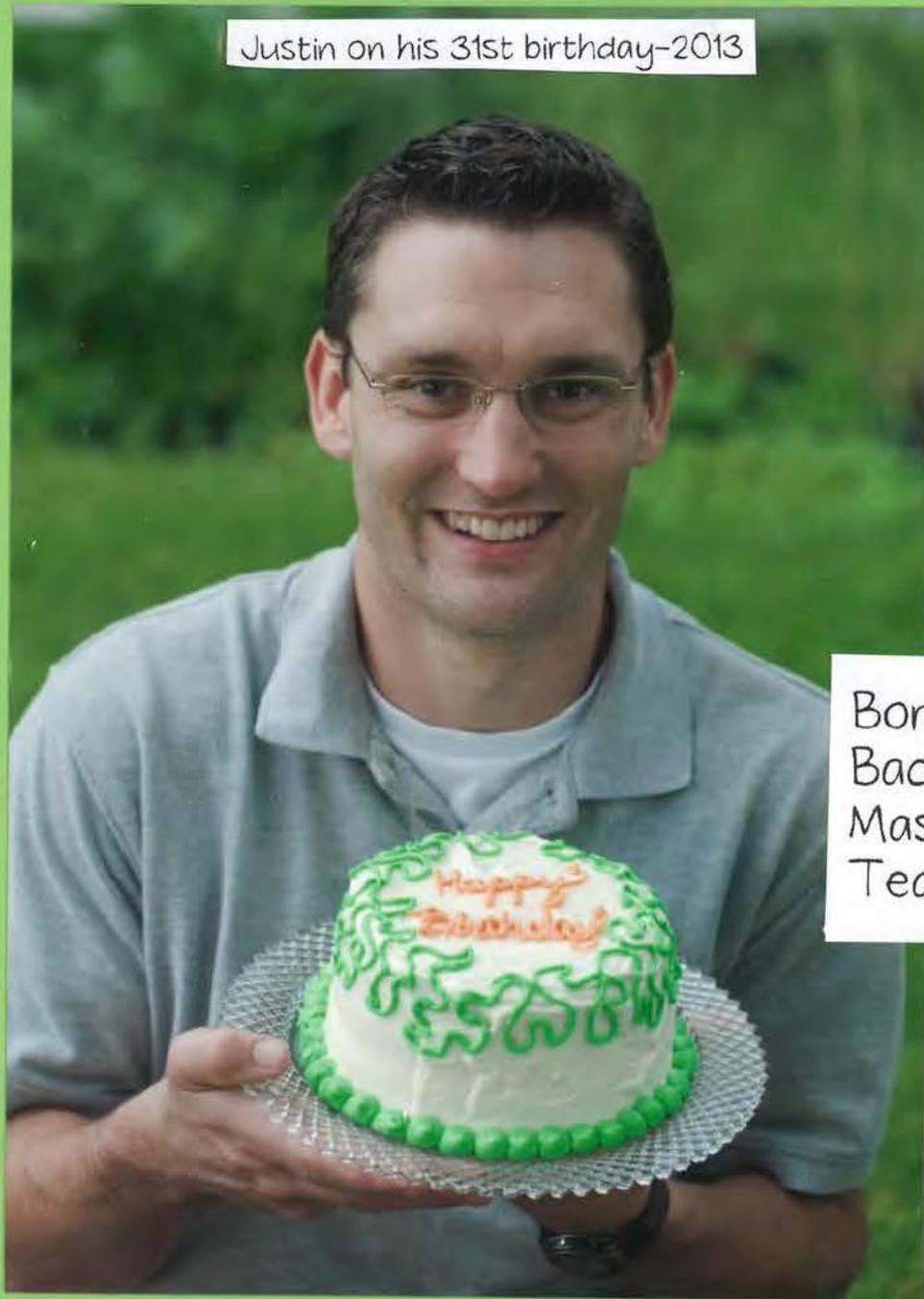


Our Wedding Day~May 21, 2005



# Meet Justin

Justin on his 31st birthday-2013



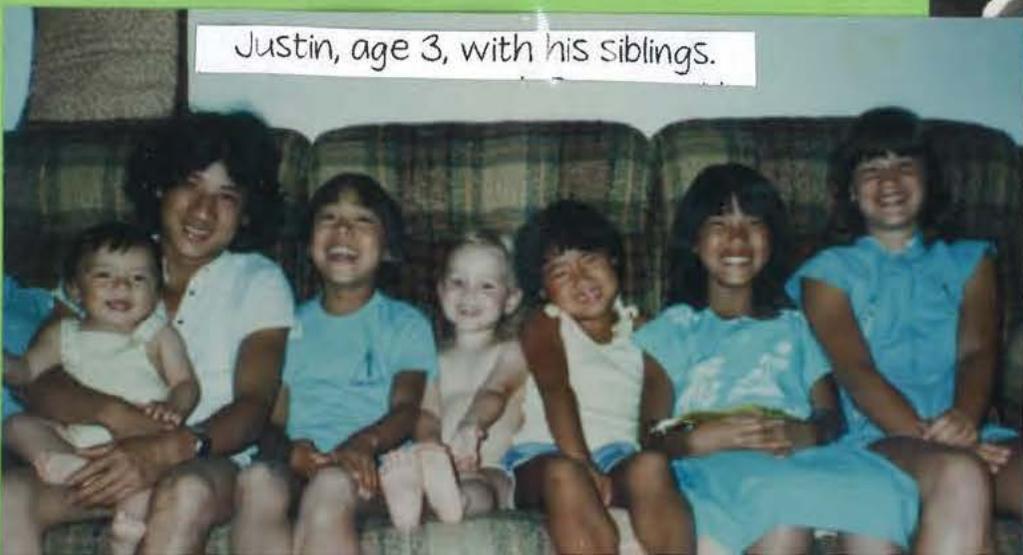
Making a snowman with [redacted] and [redacted]

Born [redacted]  
Bachelors Degree completed  
Masters Degree almost finished  
Teaching Pastor at Christian Church



We caught a fish!

Justin, age 3, with his siblings.



Preaching on a Sunday morning

Justin likes:  
time with his family  
playing soccer  
eating Skittles  
reading  
remote-control vehicles

# Meet Annie

Born [REDACTED]  
Two Associates Degrees completed  
Professional Photographer



Annie at age 30~2013



Annie at age 5



Silly faces with [REDACTED] and [REDACTED]



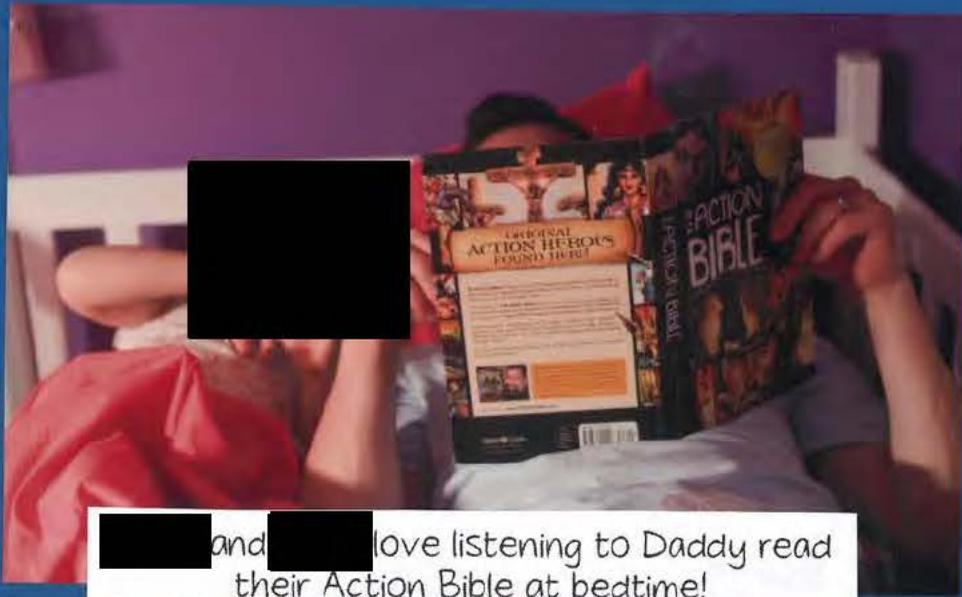
Fishing at the lake near our house

Annie likes:  
time with her family  
photography  
reading  
singing and music  
the color blue  
mashed potatoes  
Hershey's chocolate



Photographing a wedding

# Our Faith

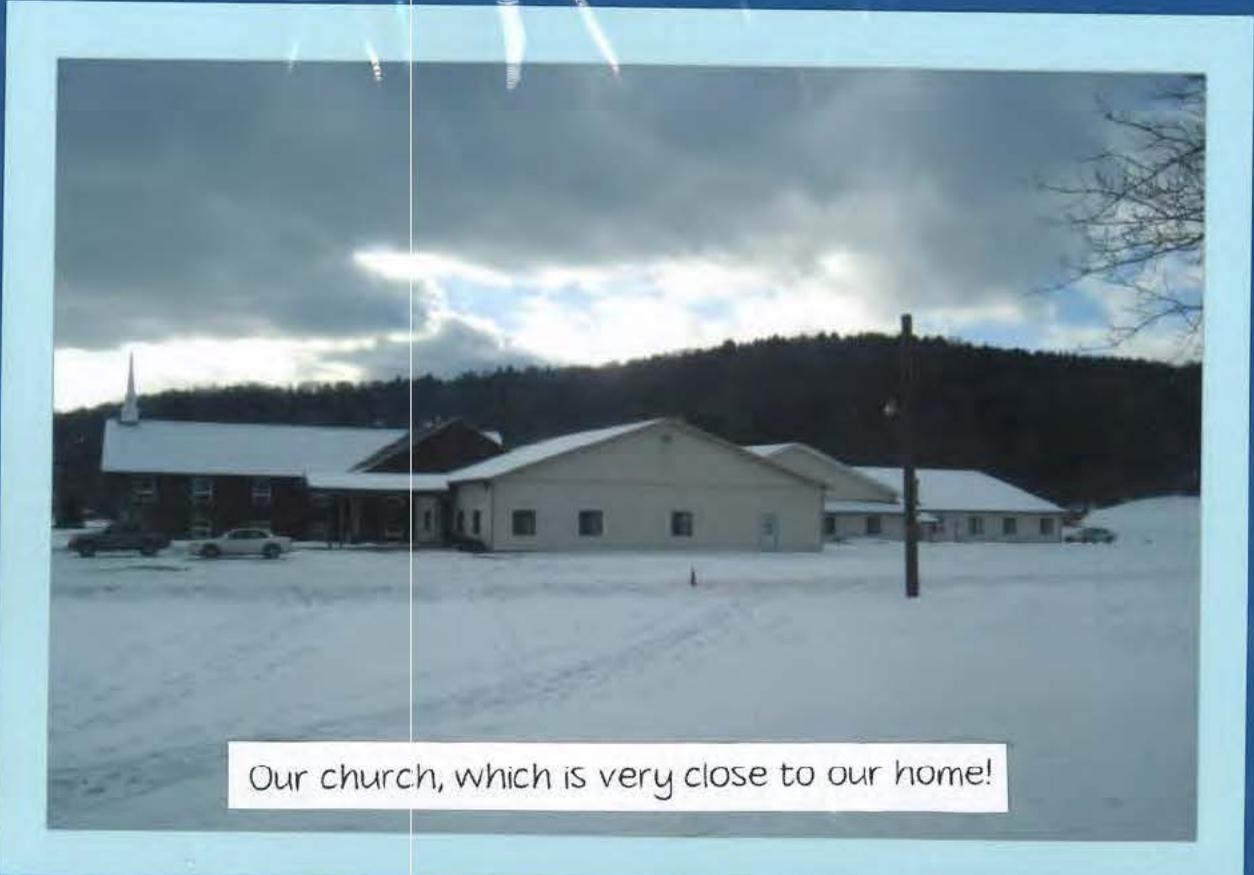


and love listening to Daddy read their Action Bible at bedtime!

Justin's testimony:  
I was four years old when an older sister had an asthma attack. I was so scared for her! I asked my oldest sister where she would go if she died and she explained to me that she'd go to heaven because she had asked Jesus to be her Savior. That very day I also asked Jesus to forgive me, and my life has never been the same. I am so grateful for His forgiveness!  
I love serving at our church by teaching, training, and counseling. I love meeting with young couples and helping prepare them for marriage.

Annie's testimony:  
I was about 8 years old when I asked Jesus to forgive my sins and chose to follow Him for the rest of my life. Since then, God has helped me become the person I am today, and I am eternally grateful for His mercy and grace. I love to serve at our church through singing, managing the library, and supporting Justin as a pastor's wife. I love being able to serve with him!

We feel that God has placed a desire for adoption in both our hearts and that He wants us to provide a safe and loving home for a child of His choosing.

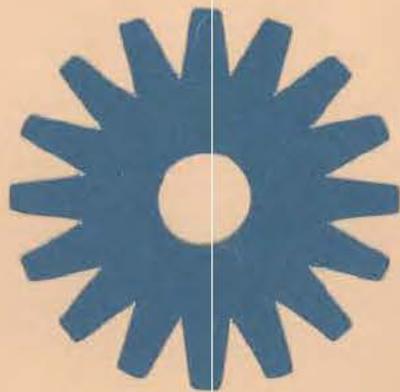


Our church, which is very close to our home!



Justin's words about Annie:

Annie is so beautiful and fun. She's such a kind and thoughtful wife, and is also an excellent Mommy. Our girls adore her, and look forward to her songs and cuddles. She has so much love in her heart and would love to share it with another child.



Annie's words about Justin:

Justin is a sweet and kind husband, with strong character and a faithful heart. He



Thank you for viewing our profile!  
We hope that you enjoyed meeting  
our family. Please know that we are  
praying for you and thank you for  
choosing life!

Love,

Justin, Annie,

[Redacted]

and

[Redacted]

