

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Eden Rogers et al.,)	
)	Civil Action No. 6:19-cv-01567-JD
Plaintiffs,)	
)	
v.)	<u>Reply in Support of the Motion to Stay</u>
)	<u>Discovery and Hold Pending Discovery</u>
United States Department of Health and)	<u>Motions in Abeyance</u>
Human Services et al.,)	
)	
Defendants.)	

Defendant Henry McMaster (“Governor McMaster” or “the Governor”), in his official capacity as Governor of the State of South Carolina, and Defendant Michael Leach (“Director Leach”), in his official capacity as the Director of the South Carolina Department of Social Services (“SCDSS”) (collectively the “State Defendants”), previously moved the Court to stay discovery and hold several discovery motions in abeyance pending the Court’s ruling on their Motion for Judgment on the Pleadings. (*See* ECF No. 174.) Plaintiffs’ Opposition (ECF No. 181) presents no persuasive arguments to the contrary. The Court should grant the Motion and stay discovery to prevent the unnecessary expenditure of time and effort by the Court, the parties, non-parties, and counsel while the Court considers the State Defendants’ dispositive motion.

Argument¹

Plaintiffs initially argue that a stay of discovery is not warranted because State Defendants’ Rule 12(c) Motion is “meritless.” (*See* ECF No. 181 at 5–6.) Their argument is both incorrect and

¹ Plaintiffs’ Opposition contains a one-sided factual recitation that is not objective, complete, or entirely accurate. (*See* ECF No. 181 at 1–4, 6–7.) The State Defendants will spare the Court a complete rebuttal, as the details of the parties’ past discovery disagreements are unnecessary to the Court’s consideration of the Motion to Stay. Plaintiffs’ accusations of stalling and stonewalling, however, are not well taken. It was, after all, Plaintiffs who waited until the night before the first deposition in this case to produce over 13,000 pages of documents, most of which had been in their possession in a producible format for months, and who shortly before their expert’s deposition unilaterally announced he would not be available at the agreed-upon date and time. *See generally J.R. v. Walgreens Boots All., Inc.*, 470 F. Supp. 3d 534, 548 n.2 (D.S.C. 2020) (Norton, J.) (“In local parlance, this strategy would be called ‘sandbagging.’”).

misses the point. The State Defendants have moved for a stay while their Rule 12(c) motion is pending. For the Court to decide (as Plaintiffs assert) that motion is meritless, the Court must necessarily decide the motion. It is during that decision window that State Defendants have asked for a stay.

Further, Plaintiffs' assertion that the Rule 12(c) motion is meritless is wishful thinking. As explained in the Motion for Judgment on the Pleadings and the Reply in Support thereof, it is hard to imagine a holding in *Fulton* that could more squarely foreclose the claims Plaintiffs have asserted and the relief they have sought. (See ECF Nos. 173 and 181.) Until the Court rules on the merits of the Rule 12(c) Motion, discovery and the pending discovery motions should be stayed.

Plaintiffs' remaining arguments, each of which is discussed in turn below, fare no better.

1. Burden. Plaintiffs argue that the remaining discovery is "minimal" and, therefore, would not be burdensome on the State Defendants. (See ECF No. 180 at 6–7.) Plaintiffs paint too rosy of a picture. The remaining discovery includes at least four (and potentially seven or more) depositions that, if history is any guide, will each last all day or will span multiple days. The time, effort, and cost required of all the parties and their counsel and the multiple witnesses to prepare for and attend these all-day depositions is hardly *de minimis*. And that is just the depositions. Plaintiffs are careful to avoid saying whether they intend to conduct additional document discovery or non-party discovery.

Further, Plaintiffs' discussion of the burden is notably silent as to the burden *on the Court* of deciding the multiple pending discovery motions that may be mooted by the Court's ruling on the Rule 12(c) Motion. In the absence of a stay, the parties, non-parties, counsel, and the Court will be required to expend additional time and expense engaging in discovery matters that will be futile if the Court grants the Motion for Judgment on the Pleadings. Accordingly, the Court can and should stay discovery and hold the discovery motions in abeyance. See *Burks v. Rushton*, Civil

Action No. 3:08-3025-HMH-JRM, 2009 WL 10703167 at *1 (D.S.C. June 8, 2009) (“[T]he motion to dismiss has the potential to dispose of the case on the issues . . . without need for discovery such that it is within the court’s discretion to stay discovery pending resolution of the dispositive motion on that basis”); *Cuyler v. Dep’t of the Army*, Civil Action No. 3:08-3261-CMC-JRM, 2009 WL 1749604 at *8 (D.S.C. June 22, 2009) (“Defendant could and should have avoided the discovery-related concerns by filing a motion to stay deadlines and discovery at the same time it filed its motion to dismiss”).

2. *Prejudice.* Plaintiffs’ claim that a temporary stay of discovery would cause them prejudice is implausible. (See ECF No. 181 at 8.) Plaintiffs focus their discussion of prejudice on the injury they allege they would suffer from a delay in the ultimate resolution of this lawsuit. But that is not the relevant delay or the injury for purposes of this analysis. Rather, the question is what prejudice, if any, they would suffer from a temporary delay of discovery. As the State Defendants already explained, *that* delay would not prejudice Plaintiffs. (See ECF No. 174 at 4–5.)

Further, Plaintiffs’ claim that any delay would prejudice them by delaying their ability to become foster parents is belied by the record, which indicates that at all times relevant to this litigation Plaintiffs had (and have) well over a dozen choices of nearby public or private foster agencies that offer support and services comparable to Miracle Hill and which would gladly accept Plaintiffs’ application. See Deposition of SCDSS Rule 30(b)(6) witness Jaqueline Lowe at 188:5 to 198:22 (attached as **Exhibit A**) (testifying that in addition to SCDSS, which accepts applications from any qualified foster parent, there are at least 15 private CPAs that work with foster parents to provide non-therapeutic foster care in Upstate South Carolina, most of which have an office in the Upstate and the remainder of which will gladly travel to the prospective foster parent as needed); *id.* at 202:13 to 203:1 (agreeing that “Miracle Hill is not the only show in town when it comes to being a CPA in Greenville”); Deposition of SCDSS witness Lauren Staudt at 120:1 to 121:19

(attached as **Exhibit B**) (testifying that all CPAs provide comparable support to the families that work with them); *id.* at 122:21–24 (testifying that SCDSS provides support and services to foster parents comparable to that available from private CPAs); Deposition of Plaintiff Eden Rogers at 57:5–24 (attached as **Exhibit C**) (admitting that at the time Plaintiffs applied to Miracle Hill, they were aware that SCDSS welcomed applications from any qualified prospective foster parent); *id.* at 75:15–21 (testifying that despite knowing of at least eight other local CPAs with whom they could work, Plaintiffs never contacted any of them to pursue fostering); Deposition of Plaintiff Brandy Welch at 52:5 to 53:25 (attached as **Exhibit D**) (admitting Plaintiffs never applied to or even explored other CPAs despite knowing at least one other same-sex couple in Upstate South Carolina who worked with another foster care agency).

Likewise, Plaintiffs’ argument that they will be prejudiced by even a short delay in the ultimate resolution of the legal claims in this lawsuit is belied by the record, which reveals the absence of any factual support for the constitutional claims alleged by Plaintiffs. *See* Deposition of SCDSS Rule 30(b)(6) witness Jaqueline Lowe at 205:15–22 (attached as **Exhibit A**) (testifying that CPAs’ recruiting and screening of foster parents, such as Miracle Hill’s allegedly discriminatory practices, are not funded or reimbursed by the government); Deposition of SCDSS witness Lauren Staudt at 120:8–18 (attached as **Exhibit B**) (same); Deposition of Eden Rogers at 82:8 to 83:4 (attached as **Exhibit C**) (admitting that if Miracle Hill’s recruiting and screening practices are not funded or reimbursed by the government, there is no constitutional violation to be remedied); Deposition of Brandy Welch at 19:4 to 20:10 (attached as **Exhibit D**) (same).

If Plaintiffs desire to achieve their stated goal of becoming foster parents, they can do so, and a brief delay in discovery will not hinder them if they actually choose to pursue fostering.

3. *Complexity.* Plaintiffs assert that this case is a “complex” one and, on that basis, argue that a fully developed record is needed *immediately*. (*See* ECF No. 181 at 9–10.) The State

Defendants agree this case is an important one that raises significant constitutional questions, although not the ones argued by Plaintiffs. It is not, however, a complex one that requires extensive factual development—a point this Court tacitly recognized when it granted a Protective Order limiting discovery against the Federal Defendants to the production of an Administrative Record. (See ECF No. 126.) Even if this case were one that required exhaustive factual development, the dispositive motion pending before the Court does not require discovery at all because it assumes the truth of the Plaintiffs’ allegations. Because the pending Rule 12(c) Motion is likely to resolve the suit on a threshold question, further discovery should not be allowed until that motion has been decided. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (holding in an analogous context that “discovery should not be allowed” until a preliminary and potentially dispositive issue has been decided).

4. *Litigation stage.* Plaintiffs argue that because discovery is “nearly complete,” the parties might as well go ahead and get it over with. (See ECF No. 181 at 9–10.) Their argument is both factually and legally incorrect. It is factually incorrect because, as noted above, there are at least four (and potentially seven or more) depositions remaining; three pending discovery motions to decide; and potentially additional document discovery or third-party discovery. But even assuming discovery is nearer to its end than its beginning, that is no reason to continue taking discovery that may well be futile in light of the pending dispositive motion. See *Boudreaux Grp., Inc. v. Clark Nexsen, Owen, Barbieri, Gibson, P.C.*, Civil Action No. 8:18-cv-1498-TMC, 2018 WL 9785308 at *5 (D.S.C. Nov. 20, 2018) (noting that a court may stay all discovery if it determines that a motion is potentially dispositive); see also *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (good cause to stay discovery may exist where a court is “convinced that the plaintiff will be unable to state a claim for relief”).

CONCLUSION

The totality of the factors weighs in favor of staying discovery and holding all discovery motions in abeyance of the Court's ruling on the Motion for Judgment on the Pleadings.

Respectfully submitted,

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August 26, 2021
Greenville, South Carolina

Rogers et al. v. U.S. Dept. of Health & Human Servs. et al.
Civil Action No. 6:19-cv-01567-JD

Exhibit A

**to the State Defendants' Reply in Support of the Motion to Stay
Discovery and Hold Pending Discovery Motions in Abeyance**

Excerpts from the Deposition of Jaqueline Lowe

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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EDEN ROGERS and
BRANDY WELCH,
Plaintiffs,

vs. CASE NO. 6:19-cv-01567-TMC

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;
ALEX AZAR, in his official capacity as SECRETARY of
the UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ADMINISTRATION FOR CHILDREN AND FAMILIES;
LYNN JOHNSON, in her official capacity as ASSISTANT
SECRETARY of the ADMINISTRATION FOR CHILDREN AND
FAMILIES;
SCOTT LEKAN, in his official capacity as PRINCIPAL
DEPUTY ASSISTANT SECRETARY of the ADMINISTRATION
FOR CHILDREN AND FAMILIES;
HENRY MCMASTER, in his official capacity as
GOVERNOR of the STATE OF SOUTH CAROLINA;
MICHAEL LEACH, in his official capacity as STATE
DIRECTOR of the SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES,

Defendants.

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VIDEOTAPED
DEPOSITION OF: JACQUELINE LOWE
(APPEARING VIA VIRTUAL ZOOM)
DATE: June 3, 2021
TIME: 9:27 AM
REPORTED BY: TERRI L. BRUSSEAU
(APPEARING VIA VIRTUAL ZOOM)

1 increasing the number of foster families available
2 to take children into their homes on a kinship care
3 level and -- and more generally?

4 A. Correct.

5 MS. JANSON: Okay. Well, thank you
6 very, very much, Miss Lowe, for your time today. I
7 don't have any further questions for you at this
8 point.

9 THE WITNESS: Thank you.

10 MS. JANSON: I'm not sure if -- if
11 other counsel have anything that they want to ask.

12 MR. COLEMAN: I'll -- I'll take a turn.

13 EXAMINATION

14 BY MR. COLEMAN:

15 Q. Jackie, thank you so much for -- for
16 your time today. I know it sounds like from your
17 testimony you've already gotten a very full plate
18 and we appreciate your taking a day off to -- to
19 come in and sit for this deposition.

20 A. Thank you, Miles.

21 Q. I think it is fair to say that the
22 end -- we're not at the end yet, but the end is in
23 site, so I hope not to take too too long, but there
24 are a few questions that while we're here, while
25 we've got you sitting down under oath, that I'll

1 follow up and ask you about as well.

2 South Carolina DSS has offices in every
3 county of the state, is that right?

4 A. Yes.

5 Q. And at least up until July of 2020 when
6 DSS switched its focus to kinship care, up until
7 that point it was possible for any qualified person
8 or couple who wanted to be a -- to become a foster
9 parent to work through DSS in one of those local
10 offices, is that also right?

11 A. Well, we were operating on a regional
12 basis. And so while we served in every county, the
13 office was pretty much a regional structure, but
14 each region served a number of counties, so no
15 county was left uncovered.

16 Q. Okay.

17 A. So it wasn't a county-based managed
18 program, it was done regionally but serving a
19 county.

20 Q. Okay. Do you know, for example, at
21 least in the upstate region, would be -- would that
22 region DSS foster care licensure team be -- would
23 that be in Greenville?

24 A. Yes. That was the primary office
25 location, in Greenville.

1 Q. Is that -- do you know is that
2 University Ridge where all the state and county
3 offices are?

4 A. Yes, that is correct.

5 Q. Okay. And you may have already said
6 this. South Carolina DSS will gladly accept any
7 application from anyone who is qualified and who
8 wishes to be licensed as a foster parent without
9 regard to their religion, lack of religion, sexual
10 orientation or marital status, is that correct?

11 A. That is correct.

12 Q. So a person who applies -- a
13 prospective foster parent who applies with a CPA,
14 we use that figure of speech, they apply to or
15 apply with a CPA, really the application to be a
16 foster parent is submitted to DSS, right?

17 A. To issue the license, that's correct.
18 DSS is the only state entity that can issue a
19 foster family license.

20 Q. Okay. And a CPA couldn't prevent
21 someone from being licensed even if they -- even if
22 the CPA didn't want to -- didn't want to work with
23 a particular person, they refer them to another
24 agency or to DSS, they can't prevent them from
25 getting licensed, can they?

1 A. No. An individual can go to any entity
2 or to DSS.

3 Q. Okay. And I think you said -- I think
4 you said -- and I touched on this a second ago. In
5 or around July of 2020, for what sounds like a
6 variety of reasons that you already touched on,
7 that SCDSS has decided to focus on what you called
8 kinship care, right?

9 A. That's correct.

10 Q. And I think you said a family can, if
11 they want, however -- let me -- I didn't ask that
12 well.

13 Even when SCDSS has focused on kinship
14 care in the past year or so, a family who wants to
15 be licensed as a foster parent, not in the kinship
16 care but as a -- more generally as a foster parent,
17 can, if they want, still work directly with SCDSS,
18 is that right?

19 A. What was that last part? It went away.

20 Q. It's still possible for a prospective
21 foster parent or couple to work directly with DSS,
22 is that right?

23 A. Yes. Yes.

24 Q. So if -- if a prospective foster parent
25 can't or doesn't want to work with a CPA, they can

1 work with DSS?

2 A. They can.

3 Q. Even today?

4 A. Even today.

5 Q. And it's still -- has been and still is
6 the policy of DSS that the decision of where a
7 child in foster care will be placed, what foster
8 parent's home that child will be placed in, that's
9 DSS's decision, not the CPA's decision, right?

10 A. That's correct.

11 Q. Okay. You might -- you probably
12 remember Exhibit 3. It was a two-page like a table
13 or a chart with a lot of amounts. It listed all I
14 think 28 CPAs and a whole bunch of different
15 amounts of funding over various periods of years.

16 Do you remember we talked about that I
17 think early on --

18 A. Yes.

19 Q. -- today? Okay. I don't -- I don't
20 mean to be tedious, but I do want to go through a
21 couple of -- I don't think it will take super long,
22 but I know we came back to that document several
23 times and it may be that my note taking got a
24 little bit disjointed. I just want to make sure
25 we -- we've covered all the bases there.

1 If you have it in front of you, that's
2 fine. I don't think you need to pull it up in
3 front of you if you don't.

4 A. I have it.

5 Q. Basically -- okay. Basically what I
6 want to do is I'm going to try to go through in
7 alphabetical order. I just want to -- just so
8 that -- so we've got a clear record and so my own
9 notes can get clearer, figure out which CPAs are
10 operating in the upstate that offer nontherapeutic,
11 perhaps along with therapeutic care, whether they
12 have an office in the upstate and approximately how
13 long they've been licensed.

14 So I think we can -- we can run through
15 these hopefully without it being too tedious, but I
16 apologize in advance if it is a little bit
17 mechanical. So I'm trying to go through them.

18 Church of God Home For Children. They
19 offer nontherapeutic care and they have an office
20 in the upstate, right?

21 A. Yes.

22 Q. And they've been licensed I think you
23 said for maybe ten years or so, is that ballpark
24 correct?

25 A. Yes.

1 Q. Okay. Connie Maxwell Children's
2 Ministries, they are also in the upstate. They
3 serve the upstate. They have an office in the
4 upstate, offer nontherapeutic foster care and
5 they've been licensed for several decades, is that
6 correct?

7 A. That is correct.

8 Q. Epworth Children's Home serve in the
9 upstate, have an office in the upstate, offer
10 nontherapeutic foster care and they've been
11 licensed for several years?

12 A. Several decades. And they also have
13 nontherapeutic and therapeutic.

14 Q. Okay. Growing Home Southeast. This is
15 over my notes are complete. I think they serve the
16 upstate. Do you know if they have an office in the
17 upstate?

18 A. They do not have an office in the
19 upstate, but they do work statewide.

20 Q. Okay. And they do both therapeutic and
21 nontherapeutic, is that right?

22 A. That's correct.

23 Q. And they've been licensed for 15 years
24 or so?

25 A. Or so, yes.

1 Q. Okay. Lutheran Services Carolinas.
2 They serve the upstate, they don't have an office
3 in the upstate, but they offer nontherapeutic and
4 therapeutic and they've been licensed for a couple
5 decades?

6 A. Correct.

7 Q. Okay.

8 A. Yes.

9 Q. Miracle Hill Ministries, which we've
10 talked about, they have an office in the upstate,
11 they do nontherapeutic foster care, they've been
12 licensed for several decades and they serve the
13 upstate?

14 A. Yes.

15 Q. New Foundations Home For Children, I
16 believe they serve the upstate, have an office in
17 the upstate, offer nontherapeutical foster care and
18 been licensed for several years, is that right?

19 A. Yes. That is correct.

20 Q. I think we're about halfway -- halfway
21 through the list. Thanks for hanging with me.

22 Nightlight Christian Adoptions serve
23 the upstate, have an office in the upstate,
24 nontherapeutic foster care, and they've been
25 licensed for several years?

1 A. They've been licensed for several years
2 as an adoption agency and only most recently added
3 foster care services to their list.

4 Q. Okay. Do you know when -- when they
5 were licensed as a CPA to be foster care?

6 A. It's probably been a couple of years,
7 not very long.

8 Q. Okay. Two to three, four years, that
9 ballpark?

10 A. That ballpark, yes.

11 Q. Okay. South Carolina MENTOR serve the
12 upstate. Do they have an office in the upstate, do
13 you know?

14 A. They do.

15 Q. Okay. They offer nontherapeutic foster
16 care, have been licensed for several decades --

17 A. Therapeutic --

18 Q. -- is that right?

19 A. Therapeutic and nontherapeutic services
20 are offered.

21 Q. Okay. South Carolina Youth Advocate or
22 SCYAP sometimes I think later referred to as, they
23 serve the upstate, they don't have an office in the
24 upstate, they do therapeutic and nontherapeutic and
25 they've been licensed for about 30 years, is that

1 right?

2 A. Yes.

3 Q. Okay. Southeastern Children's Home,
4 they serve the upstate. Do they have an office in
5 the upstate?

6 A. Southeastern, yes.

7 Q. Okay. They do nontherapeutic foster
8 care and it looks like they also have been licensed
9 for looks like about 40ish years. Does that sound
10 right?

11 A. Yes.

12 Q. Specialized Alternative For Family and
13 Youth, I think you said sometimes it's -- they go
14 by the acronym SAFY or SAFY?

15 A. SAFY.

16 Q. They serve the upstate, have an office
17 in the upstate, offer both therapeutic and
18 nontherapeutic and been licensed since the 1990s.
19 Is that all correct?

20 A. That is correct.

21 Q. Okay. Tamassee DAR School, if I'm
22 pronouncing that right, I think you said they
23 closed at some point in 2019. But prior to that,
24 and at least you said, into some part of 2019 they
25 were licensed as a CPA, is that --

1 A. That is -- that's correct.

2 Q. They do nontherapeutic foster care,
3 serve the upstate, they -- do you know if they have
4 an office in the upstate?

5 A. They did.

6 Q. Okay. The Bair Foundation has an
7 office in the upstate, serves the upstate, have
8 therapeutic and nontherapeutic foster care and
9 they've been licensed for about 20 years. Is that
10 all correct?

11 A. That's correct.

12 Q. Then -- let's see. Thornwell. Let's
13 see. Serves the upstate, office in the upstate,
14 nontherapeutic foster care and they've been
15 licensed for a number of years?

16 A. Um-hum. Yes.

17 Q. And then I think the last -- the last
18 one, this is one that I have written in, so -- from
19 your testimony -- so correct me here. I can't read
20 my own writing. Family Preservation? Is that --

21 A. Um-hum. Family Preservation Community
22 Services.

23 Q. Okay. So they serve the upstate. Do
24 they have an office in the upstate?

25 A. They serve statewide, but they do not

1 have an office in the upstate.

2 Q. Okay. They do nontherapeutic foster
3 care?

4 A. And therapeutic.

5 Q. And do you know ballpark how long
6 they've been licensed as a CPA?

7 A. It's been awhile, so certainly more
8 than ten years.

9 Q. Okay. I just wanted to -- for the ones
10 we just -- we just discussed, I think it's around
11 15 or 16 or so that at least serve the upstate,
12 some of them you said don't have an office here.
13 I'm trying to find an example.

14 Southeastern Children's Home, they
15 do --

16 A. Right.

17 Q. So let's use Southeastern as an
18 example. If -- if I wanted to be licensed as a
19 foster parent, I did a Google search for a foster
20 care agency in Greenville, South Carolina and I
21 think -- I just like the sound of that name, I
22 click on it. If I wanted to talk to and to apply
23 through that to DSS, how would I go about doing
24 that if they don't have an office?

25 A. You would -- sure. There is a main

1 contact number for each CPA and you would contact
2 either by e-mail or telephone to inquire and you
3 will be connected with someone at that agency who
4 would follow up with you. The staff travels
5 statewide even if they don't have an office
6 presence, and so there is staff that are assigned
7 and would meet with you and your family and take
8 you through the application process.

9 Q. Okay. Is that process -- would that
10 process be any less convenient to me as a
11 prospective foster parent than if I went with
12 Southeastern Children's Home that has an office
13 nearby?

14 A. I don't think it would. The staff
15 would be required to make contact with you, visit
16 with you, as would any other CPA that may have a
17 presence in the county in which you reside.

18 Q. Okay. Thanks for marching through that
19 with me. Look again at -- I think you still have
20 Exhibit 3 in front of you. You didn't yourself
21 prepare this document, did you?

22 A. I did not.

23 Q. Okay. By my count there are about 28
24 CPAs listed here. There were two or three,
25 JusticeWorks Behavioral Care and LifeShare

1 Q. Then down toward the bottom, the Bair
2 Foundation, also 16 million, is that correct?

3 A. Yes.

4 Q. And then Specialized Alternatives for
5 Youth, or SAFY, which actually has looks like three
6 separate listings there that total up to about 33
7 or 34 million. Does that also look right?

8 A. Yes.

9 Q. So we just went through a list of 15 or
10 16 CPAs that serve the upstate that most of which
11 have offices in the upstate that offer
12 nontherapeutic foster care.

13 Is it accurate to say that Miracle Hill
14 is not the only show in town when it comes to being
15 a CPA in Greenville?

16 A. They are not.

17 Q. And we just looked at this document
18 here with the funding. Is it fair to say -- and I
19 know we skipped through, we didn't go line by line,
20 but is it also fair to say from what we just talked
21 about, Miracle Hill is not even the best funded
22 when it comes to state and federal funding
23 reimbursements, Miracle is not even the most -- the
24 most lucrative, most reimbursed show in town, is
25 that also right?

1 A. Based on this document.

2 Q. And looking at the very bottom of -- of
3 that Exhibit 3, this is the grand total of the
4 grand totals, so the grand sum amount of state and
5 federal funds that have been spent to reimburse or
6 for contract services on all these CPAs over this
7 four-year period, the very bottom right corner, 193
8 million dollars, right?

9 A. Yes.

10 Q. I'm a lawyer, so I'm bad at math.
11 Don't expect -- doing math in your head, but does
12 it sound at least approximately right?

13 If we look at that -- the total of the
14 total is 193 million and Miracle Hill got 7.7
15 million of that. I took out my calculator earlier
16 and ran it. Basically over that period of time
17 Miracle Hill received 4 percent of the total amount
18 that the state has spent on CPAs during that time
19 period.

20 Does that -- again, I'm not trying to,
21 you know, actually run the numbers in your head,
22 but does that sound about right?

23 A. Based on what -- on your calculation, I
24 would agree.

25 Q. Okay. While we're -- while we're on

1 the topic, and I may have just, first, fallen into
2 a -- a phraseology I think a lot of us have used
3 today and would probably just use it in sort of
4 common conversation.

5 We talked about the state or the
6 federal government funding a CPA. And you -- I
7 think you, in fact, earlier, you sort of clarified
8 saying no, no, no, no, no, the state doesn't fund
9 CPAs, the state -- it would -- it would reimburse,
10 I think they used the word, used a -- reimburse
11 them either for specific contracted services or in
12 their role as a CPA when a child is placed. Is
13 that an accurate high-level summary of -- of how it
14 works?

15 A. Yes.

16 Q. Okay. Let me -- let me drill down a
17 little bit on that just -- just to make sure that I
18 understand and that we know how that works. Let
19 me -- let me start with the piece that may be
20 easiest to slice off. You had said in response to
21 a question earlier that some of these CPAs also
22 provide other services --

23 A. Yes.

24 Q. -- either apart from or in addition to
25 their CPA service and they're contracted with SCDSS

1 for it. So I'll give you an example that like I'm
2 familiar with myself.

3 SCYAP, the South Carolina Youth
4 Advocate Program, they offer transportation
5 services to foster children through a contract with
6 DSS, is that right?

7 A. That is correct.

8 Q. So if a child -- a child in foster care
9 in Columbia needs to do a visit with his or her
10 biological family in Greenwood, SCYAP would send a
11 driver, transport the child there and back, that --
12 that's something that's funded -- that's separate
13 from CPA work, right?

14 A. Yes.

15 Q. Okay. So leaving that aside, let's
16 just talk about that the -- that the reimbursement
17 that a CPA received for doing CPA work. Is it
18 accurate to say that a CPA's expenses and efforts
19 to recruit foster parents is not in any way
20 reimbursed under or funded by state or federal
21 dollars, is that correct?

22 A. That would be correct.

23 Q. Say, for example, if -- if The Bair
24 Foundation took out a billboard on Bull Street in
25 Columbia that said South Carolina needs foster

1 parents, call Bair Foundation today, they would pay
2 somebody to do -- the ad agency for that billboard,
3 they would never get that expense reimbursed from
4 SCDSS or the federal government, would they?

5 A. That's correct.

6 Q. That they would not?

7 A. They would not submit an invoice for
8 reimbursement to DSS.

9 Q. Okay. Or if -- I'm trying to think of
10 another example. Let's say Connie Maxwell. Let's
11 say that they send someone to go visit the Rotary
12 Club in Hartsville to talk to the Rotary Club about
13 the need for foster parents. The time and the
14 expense, the salary of that person from Connie
15 Maxwell going to that, that's never reimbursed or
16 paid by state or federal funds, is it?

17 A. It is not.

18 Q. Let's pick a different one. How about
19 SCYAP. When someone comes to them and expresses
20 interest in being a foster parent and SCYAP helps
21 walk with them through the home study and make sure
22 they have got the fire extinguishers and the smoke
23 detectors and that sort of thing, the time and the
24 effort that SCYAP spends on that piece of it,
25 that's never reimbursed by the state or federal

Rogers et al. v. U.S. Dept. of Health & Human Servs. et al.
Civil Action No. 6:19-cv-01567-JD

Exhibit B

**to the State Defendants' Reply in Support of the Motion to Stay
Discovery and Hold Pending Discovery Motions in Abeyance**

Excerpts from the Deposition of Lauren Staudt

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

-----X

EDEN ROGERS and

BRANDY WELCH,

Plaintiffs,

vs. CASE NO. 6:19-cv-01567-TMC

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;
ALEX AZAR, in his official capacity as SECRETARY of
the UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ADMINISTRATION FOR CHILDREN AND FAMILIES;
LYNN JOHNSON, in her official capacity as ASSISTANT
SECRETARY of the ADMINISTRATION FOR CHILDREN AND
FAMILIES;
SCOTT LEKAN, in his official capacity as PRINCIPAL
DEPUTY ASSISTANT SECRETARY of the ADMINISTRATION
FOR CHILDREN AND FAMILIES;
HENRY MCMASTER, in his official capacity as
GOVERNOR of the STATE OF SOUTH CAROLINA;

MICHAEL LEACH, in his official capacity as STATE
DIRECTOR of the SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES,

Defendants.

-----X

VIDEOTAPED
DEPOSITION OF: LAUREN COLLINS STAUDT
(APPEARING VIA VIRTUAL ZOOM)

DATE: June 4, 2021

TIME: 9:05 AM

REPORTED BY: TERRI L. BRUSSEAU
(APPEARING VIA VIRTUAL ZOOM)

1 When you were talking earlier about the
2 different types of support that a CPA provides
3 during the application process, there are things a
4 CPA does before a family is licensed -- before a
5 child is placed in a home and there's -- there's
6 support, there's things after that point, right?

7 A. Yes.

8 Q. For all the things that happened
9 before, the recruiting, the awareness in the
10 community, activities, helping instill home
11 inspection, even helping out a family to fill out
12 paperwork if that's -- for all of those things,
13 just the pre-license aspect of it, CPAs never get
14 reimbursed or funded by the state or federal
15 government for any of those activities, do they?

16 A. Not -- no, not that I'm aware of. I
17 don't know about the federal government, but not as
18 far as DSS.

19 Q. Okay. And during that -- that process
20 of -- we've sort of defaulted to call it
21 recruiting, but whether it's generating interest or
22 awareness in the community, encouraging people to
23 consider becoming foster parents, throughout that
24 process and then the process of helping to do the
25 home study, helping someone get to the point of

1 applying for licensure, I think you said that all
2 private CPAs provide this support or I think you
3 said they should, is that right?

4 COURT REPORTER: I'm sorry, I didn't
5 hear an answer.

6 THE WITNESS: Yes. Sorry.

7 BY MR. COLEMAN:

8 Q. And then after a -- an individual or
9 couple or family is licensed as a foster parent or
10 foster family and a child is placed in their home
11 by DSS, all CPAs provide ongoing case management
12 and support in that way too, right?

13 A. Yes.

14 Q. I think you said some CPAs might be
15 bigger, some might be smaller, but they all have
16 to -- have to provide comfortable types of support
17 to the individuals or families that they're working
18 with, right?

19 A. Correct.

20 Q. When you were talking earlier about
21 some of the services that CPAs provide to licensed
22 foster families that are associated or affiliated
23 with them, you mentioned that they do quarterly
24 visits, they might provide training, they could
25 help arrange doctors appointments or transportation

1 or things like that, right?

2 A. Yes.

3 Q. And then a little bit after that there
4 were -- there was some sort of discussion about
5 what those things were, but then you were asked
6 does SCDSS provide those kinds of support.

7 I want to -- I want to make sure I
8 understand that, right, because if a family is
9 working not with a CPA but is directly with SCDSS,
10 does SCDSS provide a quarterly visit?

11 A. Yes.

12 Q. Okay. And I know, for example, that
13 SCDSS can provide transportation services. That's
14 right, isn't it?

15 A. Yes.

16 Q. Does SCDSS provide any sort of
17 ongoing -- I don't know if it's annual or -- but
18 any sort of training or additional continuing
19 education for foster parents?

20 A. Yes.

21 Q. So SCDSS provides it sounds like
22 comparable types of ongoing support that you had
23 described that private CPAs provide, is that right?

24 A. That's correct.

25 Q. I'm going to look for a moment at the

Rogers et al. v. U.S. Dept. of Health & Human Servs. et al.
Civil Action No. 6:19-cv-01567-JD

Exhibit C

**to the State Defendants' Reply in Support of the Motion to Stay
Discovery and Hold Pending Discovery Motions in Abeyance**

Excerpts from the Deposition of Eden Rogers

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
Civil Action No. 6:19-cv-01567-JD

Eden Rogers, et al.,
Plaintiffs,

vs.

United States Department of Health and Human
Services, et al.,

Defendant.

VIRTUAL

DEPOSITION OF: EDEN ROGERS

DATE: May 21, 2021

TIME: 1:01 p.m.

LOCATION: 222 Rutherford Street
Greenville, South Carolina 29609

TAKEN BY: Counsel for Governor Henry McMaster

REPORTED BY: MICHELLE BAKER LEE,
Certified Court Reporter

1 Q So the text of the tweet and the image in
2 the tweet are, I think, either very close or maybe
3 identical. This one was tweeted out by SC Equality --

4 A Oh.

5 Q -- (indiscernible audio) the ACLU of South
6 Carolina. I think that's -- that's the difference.
7 But I think you're right that they're very similar.

8 A Okay.

9 Q Had you ever seen this tweet?

10 A No.

11 Q Are you familiar with SC Equality?

12 A I've heard of it.

13 Q Okay. Have you ever spoken with anyone from
14 there?

15 A To be fair, probably, yes, since all of
16 this, but before the Complaint was filed, no.

17 Q Okay. You can set those exhibits aside.

18 In early 2019 it was national news that
19 federal HHS had granted a waiver specifically to
20 Governor McMaster, to South Carolina related to
21 Miracle Hill. It was in the Washington Post, it
22 was -- it was all over the news. Were you aware of
23 that at that time?

24 A No.

25 Q Okay. At the time you applied to -- you

1 submitted an application to Miracle Hill, were you
2 aware that they worked only at that time with
3 Protestant Christian foster parents?

4 A No, I wasn't.

5 Q Did you know at that time -- and when I say
6 "at that time," to be a little bit more precise we're
7 talking about like April and May approximately of
8 2019, around the time you applied. At that time did
9 you know that the South Carolina Department of Social
10 Services, SCDSS, would work with any qualified foster
11 parent or prospective foster parent of any religion or
12 no religion and any marital status?

13 A I actually was aware of that. However, I
14 have had lots of contact with a number of people that
15 I do not know personally that worked for DSS through
16 the school that I taught at. We would go through
17 regular evaluations. And I had been -- I guess I had
18 heard a number of times that going through them was
19 lengthy and not easy, and the agencies in the area had
20 the ability to shorten the process significantly and
21 do a very thorough job with a lot of support. So I
22 was aware that that was possible, but how realistic it
23 was as far as becoming a foster parent anytime soon, I
24 was not confident in that.

25 Q Okay. And when -- just to make sure I am

1 hearing what you're saying and understanding, right,
2 when you say through SCDSS, I think you said the
3 process was lengthy. Are you talking about the
4 process of becoming licensed as a foster parent, the
5 application and licensure process?

6 A Yes.

7 Q And you also said that your understanding
8 was that other agencies -- you're talking about
9 private foster agencies?

10 A Private organizations, yeah.

11 Q Okay. And you said agencies plural, that
12 there's more than one in your area and in the state
13 generally but specifically in your area?

14 A Yeah, I'm assuming so. I only know of
15 Miracle Hill because they're the only one that
16 advertises so -- but I'm assuming at this point that
17 there's more than one.

18 Q And maybe you just answered the last -- so
19 how did you decide -- you'd explained why you didn't
20 at the time want to apply directly with DSS. How did
21 you decide on Miracle Hill instead of one of the --
22 one of the other private agencies in your area?

23 A They're the only one that I knew about.
24 Every day on the way to work I passed billboards and,
25 you know, little signs that you stick in the grass

1 the third page. Down at the bottom it says Rogers
2 underscore Welch underscore 00051. It's the e-mail
3 we've been looking at. It was sent on May 1st at
4 2:22 p.m. Above it there's that black redacted box.
5 If you flip to the previous page you'll see that that
6 e-mail was sent from Brandy Welch to Currey Cook who
7 you mentioned earlier, one of the lawyers at Lambda
8 Legal, to you, to L. Cooper. Is that Leslie Cooper at
9 the ACLU, one of your lawyers?

10 A That sounds familiar.

11 Q And then Susan Dunn at the ACLU who, of
12 course, is also one of your lawyers who's with you
13 right there.

14 When you look at that e-mail that Brandy
15 sent, she sent it on May 1, 2019 at 3:58 p.m. That's
16 about an hour and a half after you got it. Am I -- am
17 I reading those dates and times right?

18 A Yes.

19 Q I thought you said that you at least took
20 overnight to talk about it and think about it and then
21 you talked to Ms. Bovee-Kemper and then at some point
22 thereafter you got introduced to the folks at Lambda
23 and the ACLU. But here it looks like you sent it one
24 and a half hours after you got the e-mail from Miracle
25 Hill; is that right?

1 A Well, I do know that we were definitely up
2 half the night talking about it and struggling over
3 this. But, yes, it does -- does look like that's the
4 case.

5 Q So how did you know who to send it to? How
6 did you have these people's e-mail addresses that
7 quick after you got the e-mail from Miracle Hill?

8 A I suppose that we had already gotten it from
9 Cindy.

10 Q Had you ever talked to any of these people
11 before you applied to Miracle Hill?

12 A I don't know.

13 Q You don't remember?

14 A I don't remember.

15 Q In the e-mail that Sharon Betts sent to
16 you-all that afternoon, I think we counted there were
17 nine bullet points of other private or public agencies
18 that you could have reached out to to apply to be a
19 foster parent. Did you ever reach out to any of
20 those?

21 A No.

22 Q But you wanted to be a foster parent, right?

23 A Still do, yes.

24 Q Well, why haven't you reached out to any of
25 them to become one?

1 A We had no reason to believe that the same
2 thing wasn't going to happen with all of these.

3 Q Now, earlier you told me that you knew that
4 SCDSS would have worked with you. So why didn't you
5 reach out to SCDSS?

6 A Because they are not the same sort of
7 program and they don't have the same thing to offer as
8 far as support and, like, a reasonable amount of time
9 to get all of this going. They're -- basically it's
10 not the same service.

11 Q How long do you think it takes for a person
12 who applies to DSS before they get licensed as a
13 foster parent?

14 A It can take a year or more.

15 Q How long do you think it takes for a person
16 who applies to Miracle Hill to get licensed as a
17 foster parent?

18 A From what I've heard, months.

19 Q Could you be more specific?

20 A I mean, I don't have more specific answers
21 than that other than from what I've heard from other
22 people over the course of time in casual conversation
23 or passing, months.

24 Q Like a couple of months?

25 A I don't know.

1 open to and welcoming of people of any and all faiths
2 or marital status or orientation; did you look?

3 A I don't remember. It was a long night.

4 Q So you don't remember if either that night
5 or ever after that you've looked to see if there's
6 another agency that would welcome you?

7 A I don't remember.

8 Q You've alleged in your lawsuit that the
9 Governor and the other Defendants have violated the
10 Constitution by funding, by paying Miracle Hill for
11 recruiting and screening only evangelical Christian
12 foster parents, right?

13 A Right.

14 Q And the relief you've asked for in your
15 lawsuit is for the court to order Governor McMaster
16 and the other Defendants to stop funding what you
17 referred to as Miracle Hill's discriminatory
18 recruiting and screening practices; is that right?

19 A Right.

20 Q So if Miracle Hill wasn't being reimbursed
21 by the state or federal government for its recruiting
22 and screening practices then there's no constitutional
23 violation, right?

24 A Can you repeat that, please?

25 Q So if Miracle Hill isn't getting reimbursed

1 for its discriminatory recruiting and screening
2 practices then there's not a constitutional problem or
3 a Constitution violation anymore, is there?

4 A Right.

5 Q Okay.

6 MR. COLEMAN: Well, why don't we take a
7 break there. Let's see. It's 2:52 eastern.
8 And, Susan, I'll tell you, I'm probably -- well,
9 I don't want to over-promise. I'm definitely
10 past the halfway point. I'm probably on sort of
11 the downward slope toward the -- toward the
12 runway. I'm happy to take however long or --
13 well, I'll either take a five-minute break, a
14 ten-minute break, whatever -- whatever would suit
15 everyone. But just in terms of timing, I bet
16 I'll probably take maybe another 45 minutes or so
17 and I think I'll probably be wrapped up. Do you
18 think five minutes or do you want to take ten --
19 maybe ten minutes is better just to give everyone
20 time to take care of --

21 MS. DUNN: Yeah, why don't we say ten.

22 MR. COLEMAN: Okay. We'll be back around
23 3 -- about 3:02?

24 MS. DUNN: Okay.

25 MR. COLEMAN: Okay. Sounds good.

Rogers et al. v. U.S. Dept. of Health & Human Servs. et al.
Civil Action No. 6:19-cv-01567-JD

Exhibit D

**to the State Defendants' Reply in Support of the Motion to Stay
Discovery and Hold Pending Discovery Motions in Abeyance**

Excerpts from the Deposition of Brandy Welch

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Eden Rogers, et al.,
Plaintiffs,

vs.

United States Department of Health and Human
Services, et al.,

Defendant.

VIRTUAL

DEPOSITION OF: BRANDY WELCH

DATE: May 24, 2021

TIME: 9:04 a.m.

LOCATION: 11 Brendan Way
Suite 200
Greenville, South Carolina 29615

TAKEN BY: Counsel for Governor Henry McMaster

REPORTED BY: MICHELLE BAKER LEE,
Certified Court Reporter

1 agree that if that were the outcome, fewer homes would
2 be a bad thing?

3 A Yes.

4 Q In the Complaint which we've been talking
5 about a little bit, in the Complaint you have alleged
6 that Governor McMaster and the other Defendants
7 violated the Constitution, the United States
8 Constitution, by funding Miracle Hill's recruiting and
9 screening of only evangelical Christian foster
10 parents. I think at the time when you applied it was
11 evangelical Protestant Christian foster parents and I
12 think now it's a little bit broader than that. But is
13 that accurate that the violation -- the constitutional
14 violation that you've alleged is that in Miracle
15 Hill's recruiting and screening of foster parents
16 they're turning away, I think is the phrase that you
17 used in the Complaint, those who don't share their
18 evangelical Christian beliefs, right?

19 A Yep.

20 Q And the relief or the -- maybe that's a
21 legal term. The -- what you've asked the court for,
22 the outcome that you've asked the court for in your
23 lawsuit is for the court to order Governor McMaster,
24 Mike Leach at DSS, and the federal Defendants to stop
25 funding what you refer to as Miracle Hill's

1 discriminatory recruiting and screening practices,
2 right?

3 A Yes.

4 Q So if the -- if the Governor, DSS, and the
5 federal Defendants weren't doing that, right, if
6 Miracle Hill wasn't being reimbursed by the state or
7 the federal government for its recruiting and
8 screening practices then there wouldn't be a
9 constitutional violation anymore, right?

10 A Right.

11 Q You and Eden are friends with -- is it Lisa
12 and Cindy Bovee-Kemper; is that right?

13 A Yes.

14 Q I think Lisa is your pastor?

15 A Correct.

16 Q That's at the -- sometimes I get the -- I
17 know you guys call it UU by the initials, but it's the
18 Greenville Unitarian Universalist Church. Is that --

19 A That's correct.

20 Q And I apologize for that dingy noise in
21 the background. It's my e-mail prompts coming in.

22 Cindy and Lisa are -- my understanding from
23 talking to Eden are more than just, you know, pastor,
24 Lisa is more than just a pastor, but Lisa and Cindy it
25 sounds like to me are almost advisers or mentors or

1 confidants that you've talked to a lot sort of
2 extensively about their experience as foster parents
3 and your desire to become foster parents; is that
4 right?

5 A Yes.

6 Q About -- and you don't have to give me a
7 precise date, but give me a ballpark about what time
8 period have you talked to them? Is this something
9 that you've talked to the Bovee-Kempers about for
10 years?

11 A Yeah, I would say -- I would say probably
12 about a couple of years before we applied we started
13 talking to them about it.

14 Q Okay. Did -- and this is not a trick
15 question. This is just my memory. So, again, the
16 dates I don't think here are terribly relevant. But
17 my recollection from talking to Eden on Friday was --
18 did you-all start attending the Greenville Unitarian
19 Universalist Church in 2017 or was it --

20 A Maybe. Eden's way better at dates than I am
21 so --

22 Q Okay.

23 A -- that could be.

24 Q And I don't remember too precisely, either.
25 But -- and the reason I ask is it sounds like that

1 would sort of match up with what you -- generally
2 match up with the chronology you said a second ago,
3 that you've been talking for a period of some years
4 about the idea of fostering with the Bovee-Kempers?

5 A Yeah. I mean, we met them before we started
6 attending UU because Eden taught at UU World of
7 Children.

8 Q Okay.

9 A So we met them through the school and then
10 we started attending the church, also.

11 Q Okay. The Bovee-Kempers, they have been
12 foster parents in the past; is that right?

13 A Yes.

14 Q Like in the time that you've known them have
15 they had any foster children in their home?

16 A Yes.

17 Q They're licensed in South Carolina as foster
18 parents?

19 A Yes.

20 Q And Lisa and Cindy are a same-sex married
21 couple, right?

22 A Yes.

23 Q Do you know are they licensed -- did they go
24 directly to DSS or are they with a private agency?

25 A I'm not sure. When they moved to South

1 Carolina they were fostering through North Carolina so
2 they already had their foster children when they moved
3 to South Carolina. So they had to -- they were in the
4 process of adopting the kids, and before they could do
5 that, they had to get licensed here just as a
6 formality. So I'm not sure who they went through.

7 Q Okay. Interesting. So their children they
8 were fostering in North Carolina, moved to South
9 Carolina and got licensed as foster parents here and
10 then adopted the children here?

11 A Yeah, they're adopted now.

12 Q That's a -- that's a -- I think a relatively
13 rare and probably complicated bureaucratic situation
14 just because --

15 A Yes.

16 Q -- the states are, you know --

17 A It was --

18 Q -- (indiscernible audio) --

19 A Yeah, I'm pretty sure it was a long process.

20 Q Yeah, I would imagine so. But, in any
21 event, they're licensed. At one point it sounds like
22 they -- you think they --

23 A They are licensed here, yeah.

24 Q Okay. And I think it's probably safe to say
25 they didn't go through Miracle Hill to get licensed in

1 South Carolina, right?

2 A That's probably safe to say, although Cindy
3 is a Christian pastor or was a Christian pastor, but I
4 don't know if it was evangelical Protestant.

5 Q Okay. Lisa is not?

6 A Lisa is a Unitarian Universalist pastor.

7 Q Okay. So I guess we can deduce from that at
8 least that there are some either private agencies or
9 South Carolina DSS who will work with a non-Christian,
10 same-sex married couple, right?

11 A Sure.

12 Q If you and Eden want to be licensed as
13 foster parents and when you knew it wouldn't work out,
14 when you learned it wouldn't work out with Miracle
15 Hill, why didn't you apply to wherever Lisa and Cindy
16 applied to and got licensed through?

17 A They weren't licensed yet here in South
18 Carolina, I don't believe. But they were still, I
19 think, going through North Carolina two years ago when
20 we started this. I believe, anyway. I don't know --
21 I don't know exactly when they -- the process they
22 went through was a long process and I'm not sure when
23 that was finalized or even began.

24 Q So they've been in South Carolina since at
25 least 2017, right?

1 A Right.

2 Q And you applied to Miracle Hill in 2019?

3 A Right.

4 Q You don't know if at that time -- like had
5 they -- were their children adopted yet in 2019?

6 A No, no, but I know the process was pretty
7 long as far as them officially becoming foster -- like
8 they had to go through the home study, they had to go
9 through that whole process again here in South
10 Carolina, and I don't recall when that was that they
11 did that.

12 Q Okay. You're not sure if that -- if they
13 had started that process --

14 A Right. They may have -- they probably
15 started it before then. I just don't know when it was
16 finalized.

17 Q Okay.

18 A And I don't know who they went through.

19 Q Okay. How -- and, again, I'm not asking for
20 a precise number of conversations. But give me a
21 sense over the couple of years that you and Eden
22 talked to Lisa and Cindy about your desire someday to
23 become foster parents, how many times do you think you
24 talked to them about that?

25 A I don't recall.

1 Q Is it like five or fewer?

2 A No, I'd say it's more than that.

3 Q Pretty regularly?

4 A Yeah, fairly regularly. Probably even more
5 than us together, but, I mean, we definitely all
6 talked together. And then Eden had the chance to talk
7 to them more because she was seeing them a lot more at
8 school.

9 Q Because she works at a school at the same
10 facility as the church?

11 A She did, yeah.

12 Q Okay. But there's no question that Lisa and
13 Cindy knew that you-all wanted to become foster
14 parents some day?

15 A Correct.

16 Q Did they -- did they know in, I guess we'll
17 say, kind of early 2019 up until like March-April
18 before you applied that you-all were right on the cusp
19 of taking that -- of this thing we've talked about for
20 so long, we're going to -- we're going to start the
21 ball rolling? Were they aware that you guys were
22 about to apply to become foster parents?

23 A Yes.

24 Q Okay. Did you know that kind of in that
25 same time period on Sunday, March 17, 2019 Cindy

1 Bovee-Kemper hosted and interest meeting at your
2 church, Greenville Unitarian Universalist, for people
3 who were interested in becoming foster parents through
4 Miracle Hill and who were either not Christians or in
5 a same-sex marriage and who wouldn't be able to work
6 with Miracle Hill; did you know about that?

7 A No, I didn't know about that.

8 Q Like in all those conversations and she knew
9 you were interested in becoming a foster parent and
10 knew you were about to apply and she knew that Miracle
11 Hill wouldn't work with Unitarian Universalists or
12 same-sex married couples and she didn't tell you about
13 it?

14 A No, she didn't.

15 Q You never got an e-mail about it or got --
16 heard anything about that?

17 A No, I did not know about it.

18 Q What all did you do to prepare for today's
19 deposition?

20 A We had a couple of calls last week with
21 Currey and Susan and our team just to go over like --
22 like prep for the deposition.

23 Q And Currey, that's Currey Cook, one of your
24 lawyers?

25 A Yes.

1 Q Yeah. I'll phrase it a little bit
2 differently. Subsequently when you were ready to get
3 married and you could, you did?

4 A Yes.

5 Q So I guess my question is this: You applied
6 to Miracle Hill and they referred you either to DSS or
7 to, I think, eight other private agencies. You didn't
8 call any of those other agencies, did you?

9 A No.

10 Q And you didn't even look at their websites
11 to see if they would work with you, did you?

12 A No.

13 Q And you know that Lisa and Cindy
14 Bovee-Kemper, a same-sex married couple who couldn't
15 work with Miracle Hill, they got licensed as foster
16 parents in South Carolina through some agency, right?

17 A Yes. I don't -- I don't know when they did
18 that, though, but, yeah.

19 Q But at some point in between 2017 and now,
20 they did?

21 A Right, that's correct.

22 Q And you want to be a foster parent, right?

23 A Yes.

24 Q So why, knowing that there is an opportunity
25 and availability to be licensed as a foster parent,

1 why haven't you taken advantage of it and gotten
2 licensed?

3 A I don't think the point is that we could be
4 somewhere else. The point is that this organization
5 that is huge is only allowing this small margin of
6 people to foster through their organization. And
7 we're paying our tax dollars to this organization. I
8 feel like they should be opening up their services to
9 more loving families that want to foster.

10 Q Yeah, but, I mean, there's any number of
11 people, right? There might be a thousand people in
12 Greenville who sort of have that same abstract belief
13 that this organization, if they receive government
14 funding, that organization ought to be open to
15 everybody. But that's not really why you brought the
16 lawsuit, right? You brought the lawsuit saying that
17 you want to be a foster parent but you haven't gone
18 and applied and you know you could?

19 A But I can't to the place that we went to,
20 like --

21 Q So am I hearing you right, you think that
22 you should have the ability or the legal right to
23 foster with any one agency that you want?

24 A I think if I qualify as a foster parent then
25 I should be able to foster to any agency, correct,